



Home Office

# Knife Crime Prevention Orders

Guidance – issued under section 30 of the Offensive Weapons Act 2019

July 2021

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# 1. Introduction

## 1.1 Background

The Offensive Weapons Act 2019 (also described as “the Act”) received Royal Assent on 16 May 2019. The Act includes new legislative measures to control the sale of knives and corrosive substances, and it introduces new offences on their possession and use. It also restricts access to certain firearms. Separate statutory guidance will be issued, under section 66 of the Act, that relates to the implementation of Parts one, three, four and five of the Offensive Weapons Act 2019.

Part two of the Offensive Weapons Act 2019 introduces Knife Crime Prevention Order (KCPOs). These civil orders are designed to, with the approval of the Court, provide the police with a tool to help steer young people and others away from knife crime and from routinely carrying knives in public.

KCPOs will help to divert those who may be carrying knives, or who are at greatest risk of being drawn into serious violence, away from being involved in knife crime. They will also help to prevent others who have been involved in knife crime from further offending when an order is granted by the court following a conviction.

The intention is that KCPOs will be preventative rather than punitive – to help prevent knife crime, by using positive requirements to help steer the individual away from serious violence and to address factors in their lives that may increase the chances of offending, alongside measures to prohibit certain activities to help prevent future offending.

## 1.2 Terminology

The following terminology is used throughout this guidance:

- KCPO – Knife Crime Prevention Order.
- Applicant – The authority applying for the KCPO, which for KCPOs ‘other than on conviction’ will be the relevant police force in England and Wales (including British Transport Police and Ministry of Defence Police) or for KCPOs ‘on conviction’ will be the Crown Prosecution Service.
- Defendant – The person who is the recipient or potential recipient of the KCPO.

- The Court – When only referring to ‘the court’ this shall be a reference to the Magistrates’ Court. Any other court such as the Crown Court will be specified in the text.
- A child- for the purposes of this guidance, means a person aged 12 or over who is under the age of 18.

### 1.3 Purpose of Guidance

The Offensive Weapons Act 2019 allows the Secretary of State to issue guidance, under section 30 of the Act, relating to “the exercise by a relevant person of functions in relation to knife crime prevention orders and interim knife crime prevention orders”. A “relevant person’ is defined as “a person who is capable of making an application for a knife crime prevention order or an interim knife crime prevention order”. This guidance is primarily intended to be used by the relevant authorities who can apply for a KCPO, namely the police and the Crown Prosecution Service (CPS). The guidance will also be of interest to the Judiciary.

KCPOs require and support a multi-agency approach to tackling knife crime. The police are expected to work with relevant organisations and community groups to support those who have been issued with a KCPO to steer away from offending or further offending. Relevant organisations and community groups will include Youth Offending Teams as well as third sector organisations that support vulnerable children, young people and adults at risk of offending. All will have a role to play to ensure that KCPOs are the preventative tool that they are intended to be. This guidance is therefore also aimed at those who are involved in the management and review of KCPOs.

## 2. Consideration of Children and Young People

The cohort for KCPOs includes children from aged 12 through to adults. Children and young people must be given specific consideration regarding all aspects of the KCPO process. Their emotional and physical maturity is different from adults and needs to be understood, factors such as distress or trauma may manifest differently in a child or young person’s behaviour.

The guidance in this document should be considered alongside the National Police Chiefs Council (NPCC) [National Strategy for the Policing of Children & Young People](#).<sup>1</sup> This strategy stresses that in certain circumstances enforcement may be the most effective tool, but for many others it can be a blunt instrument. Evidence

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<sup>1</sup> [National Strategy for the Policing of Children & Young People](#)

shows that highly punitive sanctions have little impact on recidivism, so enforcement should be considered appropriately and used only where necessary to prevent others from becoming victims.

Whilst this guidance makes a clear separation of adults and children, it is recognised that the 18-24 year age range is a key stage of development; the brain is still developing, independence is gained, socialising activity increases, and experimentation with drugs, alcohol and sexual relationships takes place. This age period also coincides with a time when they are most likely to come into contact with the police. It is therefore important to remember the impact on this older age group as they transition to adulthood.

## 3. Application

### 3.1 KCPO made on conviction

A KCPO may be made by any court dealing with the defendant (e.g. The Crown Court, magistrates' court or Youth Court).

Section 19 of the Offensive Weapons Act 2019 sets out the conditions that must be met for the court to make a KCPO on conviction.

- Firstly, the court must be satisfied, on the balance of probabilities (the civil standard of proof) that the defendant has committed an offence. This offence must be a relevant offence, that is, an offence involving violence (or the threat of violence) or where a bladed article was used or carried by the defendant or any other person in the commission of the offence. (A "bladed article" is an article to which section 139 of the Criminal Justice Act 1988 applies). The conviction to which the KCPO is related to must post-date the coming into force of the relevant provisions on KCPOs in Part two of the Offensive Weapons Act 2019 and the offence was committed in an area where section 19 of the Act is in force.
- Secondly, an application must have been made by the prosecution. The court may not make an order on its own volition. The application would normally be supported by evidence from the police. The forms of evidence that can be used in application for a KCPO are detailed further in the KCPO Practitioner's Guidance this can be found at [KCPO practitioners guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- Thirdly, the court is required to consider that it is necessary to make the order to protect the public generally, or particular persons (including the defendant)

from the risk of physical or psychological harm involving a bladed article, or to prevent the defendant from committing an offence involving a bladed article.

When the CPS applies for a KCPO, it will need to identify which requirements and prohibitions are sought and the evidence in support of them'. That evidence does not need to be provided according to the strict rules of criminal evidence and the application may rely on the facts of the offence of which the defendant has been convicted. The purpose of the order is to prohibit the defendant from doing certain activities or to require the defendant to comply with anything described in the order for protective purposes.

## CPS responsibilities

- For applications on conviction, the CPS will review the case in conjunction with the police and decide whether and how to proceed with the KCPO application in the light of the circumstances of the particular case. Where the defendant is under 18, the prosecution is required to obtain the views of the local Youth Offending Team.
- The CPS will ensure that the defendant and court are aware of the application to be made at, or before, the first hearing after receipt of the application from the police.
- The CPS will serve the application on the defence and the court, copying in the police.
- The CPS will make an application or seek an adjournment to make an application as appropriate upon conviction.
- The CPS will consult with the police wherever possible, particularly around substantial amendments. The CPS review will ensure that only requirements and prohibitions which are necessary and proportionate are sought, and only where there is evidence in support of them

### 3.2 Other than on conviction

The courts have the power to make KCPOs in cases other than on conviction. A KCPO may be made in respect of any person who is over the age of 12. Where the intended recipient is an adult, the application must be made to a magistrates' court, and where the intended recipient is under 18, to a Youth Court.

Section 14 of the Offensive Weapons Act 2019 sets out the conditions that must be met for the court to make a KCPO other than on conviction:

- Firstly, the court must be satisfied that an application has been made in accordance with section 15 of the Offensive Weapons Act 2019. The

application is made by complaint. The time limits imposed by section 127 of the Magistrate's Courts Act 1980 do not apply to such a complaint.

- Secondly, the court must be satisfied, on the balance of probabilities (the civil standard of proof), that the person has, on at least two occasions in the relevant period, had a bladed article with them in a public place, on school premises or on further education premises without good reason or lawful authority. (A "bladed article" is an article to which section 139 of the Criminal Justice Act 1988 applies and the "relevant period" means a period of two years preceding the date on which the order is made).
- Thirdly, it is a requirement for the court to consider it necessary to make the order to protect the public generally, or particular persons (including the defendant) from risk of physical or psychological harm involving a bladed article or to prevent the defendant from committing an offence involving a bladed article.

### 3.3 Requirements for making a KCPO application other than on conviction

An application may be made by the chief officer of police of the area where the defendant lives or where, in the view of the applicant, the defendant is intending to be or to travel to. The chief officer of the relevant police force must make the application to the court acting for their local justice area. The Chief Constable of the British Transport Police and the Chief Constable of the Ministry of Defence Police may also make an application.

### 3.4 Application for a KCPO made without notice

Whilst an application for a KCPO will normally be made following the giving of notice to the defendant, section 16 of the Offensive Weapons Act 2019 also enables the applicant to make an application for a KCPO without giving such notice. Without notice applications should be made only in exceptional or urgent circumstances and the applicant would need to produce evidence to the court as to why a without notice application is necessary.

This would usually occur where a without notice hearing has been sought to prevent imminent harm or absconding. An adjournment may be necessary to enable further information to be gathered ahead of a full hearing and will be necessary to enable the defendant to attend a full hearing.



### 3.5 Interim KCPO without notice

Where an application without notice is made, the court is able to grant an interim KCPO pending a full hearing following the giving of notice to the defendant. The applicant is not required to comply with the requirement to consult the relevant YOT before making an application without notice for a defendant under 18. However, the requirement to consult the relevant YOT will apply before the date of the first full hearing of the KCPO.

The court can only grant an interim KCPO on an application made without notice when the court considers it necessary to do so. Such an order may impose such prohibitions as may be imposed with a full KCPO (and as the court considers necessary) but the order may not impose any of the requirements which may be imposed by a KCPO under section 14 (KCPO made otherwise than on conviction).

### 3.6 Interim KCPO when an application with notice is not determined

The court has a power under section 18 of the Act to grant an interim KCPO where it adjourns a hearing of which the defendant has been given notice. The court may grant an interim KCPO if an application has also been made for an interim KCPO (either at the same time as the full application or subsequently) and the court considers that it is just to make such an order. So, for example, the court may make an interim order in a situation where it is satisfied it is necessary for the purpose of protecting a person from immediate harm pending the full determination of the application for the order.

An interim KCPO granted as the result of the adjournment of a hearing, where the defendant was notified of the application or an application for a KCPO had been made in line with section 14 of the Act, may include any prohibition or requirement that the court has the power to include in a KCPO granted after a full hearing and which the court thinks are appropriate in the circumstances applying. The Offensive Weapons Act 2019 disappplies the time limits imposed by section 127 of the Magistrates Courts Act 1980 in respect of complaints made under section 18 of the Act.

### 3.7 Specific considerations for applications where the defendant is under 18

A Youth Court may make a KCPO in respect of any person aged under 18 provided that the person is no younger than 12 years of age. **If the KCPO sought is in relation to a defendant under 18 years of age, section 15 of the Offensive**

**Weapons Act 2019 requires the applicant to consult with the relevant Youth Offending Team before making an application.** The consultation is an important opportunity for the views of the Youth Offending Team to be taken into consideration. As it is a requirement for the applicant to consult with the relevant Youth Offending Team, it is expected that, as good practice, the police and the Crown Prosecution Service (CPS) share with the court the outcome of the consultation at the hearing. The police and the CPS may want to consider including the Youth Offending Team's report in the evidence bundle in anticipation of the court wishing to see it.

Applicants must show consideration of the following general principles when considering whether to apply for a KCPO in respect of a person under 18:

1. KCPOs should be sought only where the applicant believes that the defendant under 18 is routinely carrying knives in public, school or further education premises without good reason, and is therefore at risk of engaging in, or becoming a victim of knife crime.
2. There are clear child protection processes to follow when significant harm or the risk of significant harm has been identified. Section 11 of the Children Act 2004 imposes a duty on local authorities, the police and others to make arrangements to ensure that, in discharging their functions, they have regard to the need to safeguard and promote the welfare of children. Local children's services, who have legal responsibilities for safeguarding and child protection, should be involved in discussions regarding a potential KCPO for a person under 18. It is imperative that where the child is being supported by a social worker Children's Social Care (CSC) are consulted early on in the consideration process of a KCPO and CSC should be engaged and consulted in the YOT report to ensure the full circumstances of the child are fully accounted for in terms of risks, needs and vulnerabilities.
3. Where appropriate, applicants should work closely with the young person's family or carers, from the earliest possible stage, to ensure parental/carer support. Evidence suggests that where parents or carers are supportive, interventions are more likely to succeed. In the event that an application for a KCPO is sought against a child in care, consultation will be required with children's services.
4. Although the relevant Youth Offending Team is well placed to advise and must be consulted on making a KCPO, it is not the only agency that can assist the police to identify risk factors. In addition to the Youth Offending Team, the police should determine on a case by case basis whether any other agencies are able to assist. For example, local community groups or organisations could provide appropriate information on risk factors and interventions, particularly if they are working, or have worked, with the young

person who is subject to the order. Education services and children's services for example may also be able to assist the police in this context.

5. A KCPO should not be seen as the sole option for young people, they are an important tool within a wider partnership approach to managing the risk of knife crime amongst under 18s. Careful consideration should be given as to the appropriateness of the KCPO as the correct method of intervention for the individual child in question. Everyone who works with children has a responsibility for keeping them safe. The Children Act 2004 states that the interests of children and young people are paramount in all considerations of welfare and safeguarding.

### 3.8 Documents to be provided to the court

In applying for a KCPO, the applicant will need to complete the KCPO application form. This form should be completed by the lead individual in charge of the case for the applicant and filed at the court.

### 3.9 Fee to be paid

Please refer to the current Fees Order(s) for details of the application fees. The fee is paid to commence proceedings. No other payment is required.

## 4. Provisions of a KCPO

The nature of any requirement or prohibition included in a KCPO or interim KCPO is a matter for the court to determine. However, a court may only include prohibitions or requirements which it is satisfied are necessary for the purpose of protecting the public generally, or particular persons, from the risk of physical or psychological harm involving a bladed article or to prevent the defendant from committing an offence involving a bladed article.

### 4.1 Positive Requirements

The intention is that KCPOs should be preventative in approach, rather than punitive. Therefore, alongside the prohibitions detailed in the order, it is expected that applicants apply for positive requirements that work towards addressing the

offending behaviour in relation to the relevant risk factors. Applicants should think creatively and carefully about the positive requirements that they intend to propose. Applicants should ensure that the requirements are tailored to the individual circumstances of each case. This means taking into account specific characteristics such as ethnicity, gender, age or disability, that could require the involvement of specialist services. Where children are supported by a social worker, that social worker will be able to provide a particularly knowledgeable insight into what will work for that particular child. Applicants will need to be able to present evidence to the court showing that the positive requirements sought are available and appropriate for the defendant.

The applicant for the KCPO can find information on the positive requirements locally from their Community Safety Partnership (CSP) and from local Violence Reduction Units (VRUs). These positive requirements can include those available from voluntary sector organisations as well as programmes provided by statutory agencies.

The availability and range of positive requirements will vary between local areas. Examples include:

- Educational courses – for both adults and under 18s
- Life skills programmes
- Sporting participation – such as membership of sporting clubs or participation in group sports.
- Awareness raising courses
- Targeted Intervention programmes
- Relationship counselling
- Drug rehabilitation programmes
- Anger management classes
- Mentoring

This list is not exhaustive but is intended to provide ideas of possible positive requirements. The positive requirements proposed when making a KCPO will depend upon what is available locally and what is likely to address the defendant's risk factors and the likelihood of offending or further offending. Section 21(2) of the Offensive Weapons Act 2019 says that the requirements imposed by a KCPO on a defendant may, in particular, have the effect of requiring a defendant to do the following:

- to be at a particular place between particular times on particular days or any days;
- to present themselves to a particular person at a place where they are required to be between particular times on particular days;
- and to participate in particular activities between particular times on particular days.

The requirements imposed through a KCPO must, so far as practicable, take due regard of (i) the defendant's religious beliefs and (ii) any interference with the times, if any, at which the defendant normally works or attends an educational establishment.

## 4.2 Prohibitions

Section 21(4) of the Offensive Weapons Act 2019 sets out a list of possible prohibitions that can be imposed on a defendant by a KCPO. The Act also lists possible effects of prohibitions, such as:

- an exclusion zone
- non-association with other individuals
- non-participation in particular activities,
- being in a particular place between particular times on any given day or days
- preventing the defendant from using or having particular articles with them
- using the internet to facilitate or encourage crime involving bladed articles

An order may include exceptions to such prohibitions. The Act also makes it clear that these lists of prohibitions are non-exhaustive, and the Court may decide to include other prohibitions in a KCPO on a case by case basis. Care must be taken that prohibitions take due regard of all protected characteristics or groups requiring reasonable adjustments in line with equalities legislation.

As with requirements, the prohibitions imposed on a defendant through a KCPO must, so far as practicable, take due regard of (i) the defendant's religious beliefs and (ii) any interference with the times, if any, at which the defendant normally works or attends an educational establishment

Further clarification and examples of the prohibitions that can be included in a KCPO can be found in the Practitioner's Guidance, available on the gov.uk website at [KCPO practitioners guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/612219/kcpo-practitioners-guidance.pdf).

## 4.3 Specific considerations for positive requirements and prohibitions for defendants under 18

In relation to making KCPO applications in respect of defendants under 18, in addition to the Community Safety Partnerships, Violence Reduction Units (VRUs) and Youth Offending Teams (YOTs) will also be able to identify and propose positive requirements for defendants. YOTs should be consulted on the suitability of all proposed requirements and prohibitions for defendants under 18. Care must be

taken to ensure that prohibitions or requirements proposed for a KCPO take due regard of any protected characteristics or with defendants requiring any reasonable adjustments in line with equalities legislation. Consideration should also be taken to ensure prohibitions and requirements do not conflict with other interventions in place to support children in need that are already in place.

#### 4.4 Supervision and Compliance

Section 22 of the Offensive Weapons Act 2019 makes further provision in relation to supervising the requirements imposed on a defendant under a KCPO (or interim KCPO in some cases).

Where a KCPO imposes a requirement on a defendant, that order must specify the person (an individual or an organisation) who is to be responsible for supervising the defendant's compliance with the requirement. The court must receive evidence on the suitability and enforceability of the requirement from this person. The Act also requires that, before imposing two or more requirements, a court must consider the compatibility of those requirements.

It is the duty of the specified person to make any necessary arrangements in connection with the requirement. The specified person is also best placed to promote the defendant's compliance and to help the defendant meet the requirements imposed in the KCPO. It is also the responsibility of the specified person to notify the appropriate chief officer of police that the defendant has complied with all of the relevant requirements in the KCPO or, should it be the case, that the defendant has failed to comply. The defendant is responsible for maintaining contact with the specified person and must inform them of any change of address.

As indicated above, the specified person may be an individual or an organisation. The person could be a police officer dealing with the case, a member of the local Youth Offending Team or a youth worker. It could also be a person who was running a knife crime prevention course at which the defendant is attending as part of the requirement of that KCPO, and who is in a position to monitor the defendant's attendance and progress and who would also be able to notify the police if the defendant failed to comply with relevant requirements in the order.

## 5. Duration of a KCPO

Generally, a KCPO or interim KCPO will take effect on the day it is made. However, an interim KCPO made without notice will not take effect until it is served. A KCPO or interim KCPO made in respect of a defendant in custody, who is subject to a

custodial sentence or who is on licence, takes effect when the defendant is released from custody, or ceases to be subject to the custodial sentence, or ceases to be on licence.

An interim KCPO ceases to have effect once the main application is determined or the order is otherwise varied, renewed or discharged. A KCPO must specify its duration and must last for a fixed period of at least 6 months but no more than 2 years. The prohibitions and requirements specified in a KCPO or interim KCPO may each have different duration.

For KCPOs issued to under 18s, the relevant Youth Offending Team and CSC (where the child is supported by a social worker) should be consulted on the appropriate duration of the order and this should be reviewed regularly, for example every 6 months.

## 6. Service of a KCPO

### 6.1 Serving the KCPO on the defendant

Once a KCPO has been made, it must be served on the defendant, unless the court orders otherwise. If the applicant obtains the KCPO at a court hearing where the defendant is present, the applicant should consider asking the court to order that the defendant remain on the court premises until the defendant is served with the KCPO.

It is essential that the defendant understands the nature and precise details of the terms and the specific provisions of their KCPO and that the terms are explained in ordinary language. This may include, for example, providing the defendant with a map showing any exclusion zones that are referenced in the order. Careful consideration will be required in ensuring the defendant is able to understand the impact of the KCPO and the respective requirements and prohibitions imposed.

Where a defendant has not been served personally with the KCPO at court, the applicant will be responsible for arranging personal service as soon as possible thereafter.

### 6.2 Serving the KCPO on defendants under 18

When serving a KCPO on a defendant under 18, the applicant must comply with any directions given to them under the terms of the court order relating to service in the presence of a responsible adult/appropriate adult. An appropriate adult may, for example, be a parent, guardian, local authority social worker, someone from a

voluntary sector organisation or other responsible adult aged 18 or over who is not a police officer or employed by the police. The usual Youth Offending Team arrangements in respect of providing appropriate adults should apply.

It is particularly important in the case of defendants under the age of 18 that consideration is given in the service of the order to the level of maturity and/or any developmental needs the defendant may have to ensure the young person is able to fully understand the conditions of their order. Any developmental needs or observations about the level of maturity of the defendant should be communicated in the YOT report.

## 7. Notification

### 7.1 Notification requirements

Upon the making of the order, the person subject to a KCPO or an interim KCPO must notify the police, within three days, of their name(s) and address. Where the KCPO replaces an interim KCPO, this requirement does not apply.

The person subject to a KCPO or an interim KCPO notification is also required to notify the police, within three days, of any subsequent changes to this information; specifically, the use of a new name, a change to their home address or an address at which they will live for one month or more. Notification is to be given in person by attending a police station in the police force area in which the defendant lives or by giving an oral notification to a police officer, or to any person authorised for the purpose by the officer in charge of the station.

### 7.2 Notification requirements for defendants under 18

Notification requirements for defendants under 18 are similar to those for adults. The defendant must notify the police, within three days, of their name(s) and address. Where the KCPO replaces an interim KCPO, this requirement does not apply. The defendant must also notify the police, within three days, of any subsequent changes to this information; specifically, the use of a new name, a change to their home address or an address at which they will live for one month or more. Notification is to be given in person by the defendant attending at a police station in the police area in which they live or by giving an oral notification to a police officer, or to any person authorised for the purpose by the officer in charge of the station. Notification requirements for children should be adjusted to take into account any special



educational needs (SEN) that have been identified, whether the child is a Looked after Child (LAC) or identified has been as a Child in Need (CIN).

### 7.3 Offences relating to notification

It is an offence for a person subject to a KCPO or interim KCPO to fail, without reasonable excuse, to comply with the notification requirements in section 24 of the Offensive Weapons Act 2019 or to notify the police with information they know to be false. The standard of proof is the criminal standard.

The maximum penalty for a notification offence is six months' imprisonment or a fine or both on summary conviction, or two years' imprisonment or a fine or both following conviction on indictment. The person commits an offence on the first day on which they fail to notify and continues to commit the offence for the duration of the continued failure but may be prosecuted only once in respect of the same offence.

The maximum term of imprisonment on summary conviction will increase to twelve months in relation to offences committed after the coming into force of section 154(1) of the Criminal Justice Act 2003.

## 8. Review

### 8.1 Review hearings

The court has the power to specify the date and frequency of review hearings which the applicant and defendant must attend. The purpose of review hearings is primarily to consider whether the KCPO should be varied or discharged.

The court is required to set a review hearing if any prohibition or requirement of a KCPO is to take effect after the end of the period of one year beginning with the day on which the KCPO took effect. The review hearing must be held within the last four weeks of the one-year period. The court can hold a review hearing when it considers it would be appropriate, so it could decide to hold a review hearing well before the one-year time limit for a review if it is appropriate in that particular case.

During review hearings, the court may impose an additional prohibition or requirement by variation if it is satisfied it is necessary to do so to protect the public generally or a particular person from harm involving a bladed article, or to prevent the defendant from committing an offence involving a bladed article. A review hearing may consider whether the KCPO should be discharged or a prohibition or requirement removed.

## 8.2 Review hearings for defendants under 18

For KCPOs made in respect of defendants under 18, reviews should not be left until the one-year minimum review period. As for defendants under 18, the younger the defendant, the more frequent the review by the court should be of the KCPO. The Youth Offending Team and Children's Social Care (where the child is receiving social worker support) should be consulted regarding the initial length of the order as well as proposed review dates.

## 8.3 Variation

Under section 27 of the Offensive Weapons Act 2019, a court may also vary, renew or discharge a KCPO or vary or discharge an interim KCPO upon application by the person subject to the order or the police (including the British Transport Police and Ministry of Defence Police). The application must be made to the appropriate court. This provision ensures that the order can be modified to reflect changing circumstances, both to ensure that it remains effective to manage the risk posed by activities related to knife crime and carrying a knife and that the order remains necessary for that purpose.

A renewal or variation may take a number of forms including the addition of a new prohibition or requirement or the removal of an existing one. However, the court must be satisfied that any such additional prohibition or requirement is necessary to protect the public generally, or particular persons from risk of harm involving a bladed article, or to prevent a defendant committing an offence involving a bladed article.

## 8.4 Variation for defendants under 18

Where the defendant is under 18, the relevant Youth Offending Team must be consulted before an application under section 27 of the Act is made (other than if it is made by the defendant themselves). Before making its decision on such an application, the court must hear the person making the application and any other person who wishes to be heard that is listed in section 27(2) of the Act. This lists the defendant and the relevant police forces.

## 8.5 Discharge

A KCPO will only be made by the court, whether on conviction or otherwise, when it is satisfied that the conditions for doing so are met in respect of the particular defendant who would be subject to the order. However, it is open to the police or the defendant to apply to the court to discharge an order before it expires if they consider they will be able to satisfy the court that the order is no longer necessary to address the risk posed when the order was first made.

Section 27(10) of the Act prevents the court from discharging an order before the end of six months from the day on which it took effect without the consent of the defendant and the appropriate chief officer of police. If the application to discharge was made by a chief officer, that chief officer must give consent. If the application to discharge was not made by a chief officer but the application for the KCPO was made by a chief officer, that chief officer must give consent in addition to each chief officer(s) for the area(s) where the defendant lives. In any other case (for example, where the defendant applies for discharge and the CPS applied for the KCPO), consent must be given by the chief officer of police for an area in which the defendant lives.

## 9. Appeals

### 9.1 Rights of appeal

Where a KCPO or an interim KCPO is made otherwise than on conviction, the applicant or the defendant may appeal against the making of the order, or refusal to make such an order, to the Crown Court.

Where a KCPO is made on conviction, the defendant may appeal against the making of the order as if the order were a sentence passed on the defendant for the offence.

A person may appeal against a decision to vary, renew or discharge an order, or a refusal to do so, to the Crown Court or, where the application was made to the Crown Court, to the Court of Appeal.

In determining an appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal and such incidental and consequential orders as appears to it to be appropriate.

## 10. Breaches

## 10.1 Offences

It is an offence for a person to breach a KCPO or interim KCPO, that is, to do anything which is prohibited by or fail to do anything which is required by the order without reasonable excuse. The court must be satisfied to the criminal standard that the defendant has, without reasonable excuse, breached the order.

It will be at the discretion of the police to decide what action to take when a breach occurs. For example, the police will wish to consider whether the behaviour that led to a breach of the KCPO is relatively minor or if it constitutes a major breach of the order. The more minor the breach the less likely it is to be of public concern. In such cases, the police will need to decide if formal action is necessary (including referral to the Crown Prosecution Service (CPS)) or whether it will be more appropriate to take informal action. However, the police will need to be mindful that repeated minor breaches or a number of minor breaches occurring at the same time might be of sufficient concern that it is necessary to consider taking formal action.

With regard to cases involving breaches of a KCPO referred by the police to the CPS, it is a matter for the CPS to consider whether to proceed with a prosecution. In making that decision prosecutors will apply the Code for Crown Prosecutors and consider where there is sufficient evidence against the defendant to provide for a realistic prospect of conviction and whether it is in the public interest to prosecute.

Prosecution does not automatically have to take place where the evidential stage of the [Full Code Test](#)<sup>2</sup> is deemed to have been met by the CPS, as it may not be in the public interest to do so based on the seriousness of the breach or other public interest factors.

## 10.2 Sentencing

The maximum penalty for a breach is six months' imprisonment or a fine or both on summary conviction, or two years' imprisonment, a fine or both, following conviction on indictment. Section 29(4) of the Offensive Weapons Act 2019 prevents the court from making an order for a conditional discharge following a conviction for an offence in this section.

The court will have the full range of community sentences available to them for consideration. The alternative options to a custodial sentence for those convicted of a breach include:

- Unpaid work – Community Payback
- Rehabilitation activity requirement (RAR) undertaking activities as instructed

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<sup>2</sup> <https://www.cps.gov.uk/publication/code-crown-prosecutors>

- Undertaking a particular programme to help change offending behaviour
- Mental health treatment with the defendant's consent
- A drug rehabilitation requirement with the defendant's consent
- A drug treatment and testing order (DTTO)
- An alcohol treatment requirement with the defendant's consent
- An alcohol abstinence and monitoring requirement with the defendant's consent.

### 10.3 Specific considerations for sentencing for defendants under 18

In considering appropriate sentences for defendants under 18, the court will follow the sentencing guidelines set out by the Sentencing Council<sup>3</sup>. The court must have regard to the principal aim of the youth justice system, the prevention of offending by young people and children and the welfare of the child or young person.

The court will have the full range of community sentences available to them for consideration in respect of young people under 18 as they do with adults.

## 11. Territorial Extent

The territorial extent of KCPOs is England and Wales. Where a KCPO or interim KCPO has been made in respect of a defendant who travels to an area outside England and Wales, that person cannot breach a prohibition or fail to comply with a requirement in that order unless the order prohibits the defendant from travelling outside of England or Wales.

A defendant in respect of whom a KCPO or interim KCPO has been made is required to notify a change of their home address or an address where that person has decided to live for a period of one month or more and so would be required to notify the police of their new address. The KCPO will continue to have effect for the duration of the period specified in the order and the person in respect of whom it was made will be required to comply with the requirements and prohibitions imposed by it if that person returns to England or Wales.

## 12. Communication of the use of KCPOs

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<sup>3</sup> <https://www.sentencingcouncil.org.uk/>

The police may wish to communicate that they are using, or are intending to use, KCPOs in the local area. Communicating this information may increase community confidence in the local response to knife crime, reassure the community that knife crime and concern that people are carrying knives can be reported safely, and act as a deterrent against a person choosing to carry a knife in public without good reason. General information about KCPOs may be communicated through consultation partners, the media, via social media channels, or any other appropriate medium.

However, KCPOs proceedings in the Youth Court are subject to automatic reporting restrictions by virtue of section 49 of the Children and Young Persons Act 1933. Section 49 does allow certain matters to be reported in relation to a child or young person so long as this is not likely to lead members of the public to identify them as someone concerned in proceedings

## 13. Consideration of the public-sector equality duty

Applicants must also remember that, in accordance with section 149 of The Equality Act 2010, all considerations and decisions in relation to applications for KCPOs should be made with due regard to the need to eliminate discrimination, harassment and victimisation, and advance equality of opportunity regardless of factors such as age, disability, gender, race, religion or belief or sexual orientation.

## 14. Pilot

Section 31 of the Offensive Weapons Act 2019 makes provision for two conditions which must be met before KCPOs can be brought into force across the whole of England and Wales:

- firstly, the KCPO provisions must be piloted in one or more area in England and Wales for one or more specified purposes; and
- secondly, the Secretary of State must lay a report before Parliament on the operation of the pilot.

The purpose of piloting KCPOs pilot is to test and inform processes for its wider rollout. The pilot will provide useful information on the use and format of the documentation used in the application for an order as well as an opportunity to assess the prohibitions and requirements made in KCPOs and how these have worked. The pilot will also allow for a fuller understanding of the likely costs to be incurred once the orders are introduced throughout the rest of England and Wales.

This guidance will be reviewed in light of the findings of the pilot and updated ahead of the introduction of KCPOs across England and Wales.