

Commencement of Legislation: Possession of Offensive Weapons in Prison

Legislation making it a criminal offence for a person to possess within prison a range of offensive weapons gained Royal Assent in March 2015 through the Serious Crime Act 2015 and will commence on 1 June 2015. Section 78 of that Act inserts a new section 40CA into the Prison Act (1952). The new legislation is set out at Annex B.

From 1 June 2015 it will be a criminal offence for a person to possess within prison, without authorisation, an article which has a blade or is sharply pointed or any other “offensive weapon”, as defined in section 1 (9) of the Police and Criminal Evidence Act 1984.

The Police and Criminal Evidence Act 1984 defines an offensive weapon as “any article made or adapted for use for causing injury to persons; or intended by the person having it with him for such use by him or by some other person”. As such, the offence also includes all makeshift weapons which are manufactured from items within prisons.

The offence applies to all persons in prison including prisoners, staff and visitors.

The offence carries a four year maximum prison sentence on conviction on indictment or a fine or both. Alternatively, on summary conviction at magistrates Court it carries a maximum six month prison sentence or a fine or both. This mirrors the penalty for possession of such weapons in the community.

Referral Guidance

It will not be mandatory for prison establishments to report this offence to the police. As with all such offences establishments should consider with local police and CPS colleagues the most effective way in which the Criminal Justice System can be used to tackle this type of crime within prison bearing in mind the use of the prison disciplinary system as an alternative and the range of sentencing options that courts have available on conviction for serving prisoners.

The attached guidance for referral of the offence to the police has been agreed between NOMS and Chief Officers (see annex A).

Authorisations

The current authorisation process, covering items already an offence to possess or convey into a prison, has been extended to allow those bladed/pointed items or other offensive weapons with legitimate uses to be possessed within prison. This includes authorisations the Governor may grant and those issued centrally on behalf of the Secretary of State. The

following central authorisations will be introduced through a Prison Instruction on 1 June.

- Knives, tools or other items that may be classed as offensive weapons in the possession of delivery drivers if such items remain in the delivery vehicle.
- Possession of tools/equipment required for prisoners in workshops or kitchens or for activities where permission has been given locally and where the item has not been removed from the area in which it is authorised for use.
- Possession of cutlery issued by the prison for the purposes of preparation or consumption of food and where the cutlery has not been removed from the area in which it is authorised for use.
- A kirpan in the possession of a Sikh Chaplains visiting prisons (although a kirpan is not recognised in law as an offensive weapon).
- Tasers and items of personal protection equipment held in possession by police when visiting a prison (Tasers to be left at reception other than during an operational emergency).
- Such items already authorised by Prison Service Instructions to be in the possession of staff in the course of their duties such as batons and cut-down knives including specialist equipment and tools carried as part of national response teams (NDTSG and NTRG) whilst operating within prisons.
- Items such as safety razors authorised for shaving.

A Prison Service Instruction setting out further guidance to Governors will be published on 1 June to correspond with commencement of the legislation. Advance (draft) copies will be available to Governors/Directors in May.

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**National Offender Management Service
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Referral Guidance: Unauthorised Possession of Knives and other Offensive Weapons in Prison

NOMS and ACPO have agreed the following operational guidance regarding dealing with offences of the unauthorised possession by prisoners of a knife, bladed or pointed weapon or other offensive weapon.

1. REPORTING GUIDANCE

All incidents of the unauthorised possession of a knife, bladed or pointed weapon, or other offensive weapon must be investigated by prison staff to determine the appropriate course of action to take; i.e. adjudication or referral to the police for consideration of investigation and recommendation for prosecution.

Prisons are not required to report all possession offences to the police. However, prisons may do so depending on local protocols and agreements with Criminal Justice System partners.

It would normally be appropriate to deal with offences that are considered to be less serious (i.e. where there are no aggravating factors – see section 2, below) internally as part of the prison adjudication system. Dealing with minor offences in this way provides for a faster and more efficient disposal of this type of offence and removes the risk that a court on a finding of guilt might impose a nominal penalty or an absolute discharge which is of little deterrent value. Mitigating factors which may indicate that internal disciplinary action is more appropriate are set out at section 3.

In more serious cases where a preliminary decision has been made to refer an offence to the police, (i.e. where there is reason to suggest that the penalties that the adjudication system can impose may be insufficient to deal with the particular nature or circumstances) a disciplinary charge should still be laid in the usual way (within 48 hours of the incident save for exceptional circumstances) and the evidence for possession tested but the adjudication should then be adjourned to await a decision by the police or CPS on whether to prosecute. If the police or CPS decide not to proceed then the matter may revert to be considered at adjudication.

Opening an adjudication will allow the prison to evaluate whether there is sufficient evidence of possession for a referral to the police and, if so, whether the circumstances of the offence suggest that referral to the police is appropriate.

2. AGGRAVATING FACTORS FOR REFERRAL TO THE POLICE

Key aggravating factors that would indicate that referral to the police may be appropriate include the following:

- Cases where the prisoner has a history of violence within prison;
- Evidence that the accused prisoner has been engaged in persistent criminal behaviour that puts the safety and lives of others at risk;
- Cases where there are grounds for believing that violent/criminal behaviour is likely to be repeated or continue;

- Evidence that the crime is part of, or linked to, organised criminal activity on a wider scale than this offence alone;
- Any evidence of the weapon having been used to attack or threaten another person;
- Cases where multiple weapons are found in possession;
- Cases where the weapon found has potential for causing particularly serious injuries;
- Evidence of high levels of violence at the prison where the weapon was found and the need to reduce this.

3. MITIGATING FACTORS FOR CONSIDERATION

Mitigating factors that may indicate that internal disciplinary proceedings rather than criminal action is more appropriate include those listed below. The occurrence of one or more of these factors does not necessarily mean the crime should be dealt with by internal disciplinary proceedings. Each case must be considered on its own merits in the context of the evidence available and factors such as violence in the prison in question.

- Cases where the prisoner has no previous history of violence and/or other criminal behaviour within prison;
- Cases where it is strongly believed that the prisoner in question has been coerced to hold the weapon for another prisoner;
- No evidence that the offence is part of, or linked to organised criminal activity;
- No evidence that the prisoner has used the weapon to attack or threaten another person;
- No evidence that the offence is likely to be repeated;
- Prisons must take into account the special circumstances of known self-harmers holding weapons.

Amended Prison Act

“Knives and offensive weapons in prisons

After section 40C of the Prison Act 1952, the following new clause is inserted –

“40CA Unauthorised possession in prison of knife or offensive weapon

- (1) A person who, without authorisation, is in possession of an article specified in subsection (2) inside a prison is guilty of an offence.
- (2) The articles referred to in subsection (1) are –
 - (a) any article that has a blade or is sharply pointed;
 - (b) any other offensive weapon (as defined in section 1(9) of the Police and Criminal Evidence Act 1984).¹
- (3) In proceedings for an offence under this section it is a defence for the accused to show that –
 - (a) he reasonably believed that he had authorisation to be in possession of the article in question, or;
 - (b) in all the circumstances there was an overriding public interest which justified his being in possession of the article.
- (4) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding four years or to a fine (or both);
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to [a fine] (or both).
- (5) In this section “authorisation” means authorisation given for the purposes of this section; and subsections (1) to (3) of section 40E apply in relation to authorisations so given as they apply to authorisations given for the purposes of section 40D.”

¹ The term “offensive 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.