

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 6: Miscellaneous and General

Commentary on Sections

Section 78: Knives and offensive weapons in prison

314. It is not currently a criminal offence to possess an offensive weapon within prison. The offence of having an article with blade or point (or offensive weapon) in section 1 of the Prevention of Crime Act 1953 and section 139 and 139A of the Criminal Justice Act 1988 is confined to public places or schools. The term “public place” is defined in section 1(4) of the Prevention of Crime Act 1953 and section 139(7) of the Criminal Justice Act 1988 to include any place to which the public have, or are permitted to have access. A prison does not fall within the definition of a public place and possession of a weapon there is not therefore a criminal offence.
315. Whilst the possession of an offensive weapon is currently dealt with as a disciplinary offence within prison (for possession of an unauthorised article – see Rule 51(12)(a) of the [Prison Rules 1999 \(SI 1999/728\)](#)) the maximum penalty for the internal disciplinary offence is 42 added days served in prison (Rule 55(1) of the Prison Rules 1999) compared to the four years’ maximum for the equivalent offence in the community.
316. This section inserts a new section 40CA into the Prison Act 1952 to provide for a new offence of unauthorised possession in prison of a knife or any other offensive weapon. Liability for the offence arises where a person has in his or her possession any article in prison that 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, namely 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). The term “possession” goes wider than a person having a relevant prohibited article with him or her, and also covers, for example, circumstances where a prisoner has hidden a knife in his or her cell. As a result of section 43(5) and (5A) of the Prison Act 1952, the offence also applies to possession of such articles in a young offender institution or secure training centre.
317. Under subsection (1) of new section 40CA, the offence is only committed where a person possesses a knife or other offensive weapon “without authorisation”. New section 40CA(5) applies the provisions in section 40E(1) to (3) of the Prison Act 1952 which defines “authorisation” for the purposes of the offences relating to prison security in section 40D of that Act. Section 40E(1) to (3) of the Prison Act 1952 provides that authorisation for the purposes of section 40D means authorisation given in relation to all prisons or prisons of a specified description by Prison Rules or administratively by the Secretary of State or, in relation to a particular prison, by the Secretary of State or the governor, director of the prison or by a person authorised by the governor or director for this purpose. No provision in respect of authorisations under section 40E

*These notes refer to the Serious Crime Act 2015 (c.9)
which received Royal Assent on 3rd March 2015*

is currently made in Prison Rules. Annex 2 to Prison Service Instruction 10/2012¹ sets out authorisations given by the Secretary of State under sections 40B (which relates to the conveyance of unauthorised articles into and out of prison) and 40E of the Prison Act 1952. In relation to the conveyance of offensive weapons into and out of prison, Annex 2 authorises, amongst other things, Sikh members of the Chaplaincy carrying the Kirpan and police officers carrying extendable batons. It is envisaged that a Prison Service Instruction will authorise the possession of knives and other sharply pointed articles in a limited range of circumstances, including for the preparation of food and for use in workshops.

318. New section 40CA(3) provides for a defence where the accused individual reasonably believes that he or she had authorisation to possess the article or that there was an overriding public interest which justified possession of the article; the latter defence would cover, for example, where a prisoner takes a knife from a fellow inmate to prevent him or her using it.
319. New section 40CA(4) provides for the maximum penalty for the offence, namely four years' imprisonment or a fine, or both, on conviction on indictment and 12 months' imprisonment or a fine, or both, on summary conviction. Section 86(14)(f) reduces the maximum custodial sentence available on summary conviction to six months' imprisonment until such time as magistrates' courts sentencing powers are increased on the coming into force of section 154(1) of the Criminal Justice Act 2003.

1 <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-10-2012-conveyance-prohibited.doc>