



National Offender Management Service

REVISIONS TO NSF FUNCTION 6.3

NEW LEGISLATION – UNAUTHORISED POSSESSION WITHIN PRISONS OF KNIVES AND OTHER OFFENSIVE WEAPONS

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| This instruction applies to :- | | Reference :- |
| All Prisons | | PSI 21/2015 |
| Issue Date | Effective Date | Expiry Date |
| 1 June 2015 | 1 June 2015 | 31 May 2019 |
| Issued on the authority of | NOMS Agency Board | |
| For action by | <p>All staff responsible for the development and publication of policy and instructions</p> <p><input type="checkbox"/> NOMS HQ</p> <p><input checked="" type="checkbox"/> Public Sector Prisons</p> <p><input checked="" type="checkbox"/> Contracted Prisons*</p> <p><input checked="" type="checkbox"/> Governors</p> <p><input type="checkbox"/> Heads of Groups</p> <p><input type="checkbox"/> NOMS Immigration Removal Centres (IRCs)</p> <p>* If this box is marked, then in this document the term Governor also applies to Directors of Contracted Prisons</p> | |
| Instruction type | Delivery of non-specified service/service improvement | |
| For information | All HQ and Prison staff | |
| Provide a summary of the policy aim and the reason for its development/ revision | <p>The aim of this instruction is to provide guidance on a new criminal offence for a person to possess a bladed or pointed article or other offensive weapon without authorisation in prison.</p> <p>It updates NSF Function 6.3, (PSI 10/2012 – Conveyance and Possession of Prohibited Items and Other Related Offences) which will be amended to reflect this instruction in due course.</p> | |
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| Associated documents | <p>NSF Function 6.3 (PSI 10/2012 Conveyance and Possession of Prohibited Items and Other Related Offences).</p> <p>PSI 47/2011 - Prison Discipline Procedures.</p> <p>Violence Reduction – Operational Guidance for Developing Local VR Strategies</p> <p>The Appropriate Handling of Crimes in Prison protocol</p> | |
| Replaces the following documents which are hereby cancelled: None | | |
| Audit/monitoring: Monitoring of compliance will be undertaken by Audit and Corporate Assurance and as part of the self-audit process. | | |

Mandatory elements of instructions must be subject to management checks (and may be subject to self or peer audit by operational line management), as judged to be appropriate by the managers with responsibility for delivery. In addition, NOMS will have a corporate audit programme that will audit against mandatory requirements to an extent and at a frequency determined from time to time through the appropriate governance.

Introduces amendments to the following documents: NSF Function 6.3 (PSI 10/2012 - Conveyance and Possession of Prohibited Items and Other Related Offences).

Notes: *All Mandatory Actions throughout this instruction are in italics and must be strictly adhered to.*

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1. Executive Summary

Background

- 1.1 This Prison Service Instruction (PSI) provides guidance on a new criminal offence, introduced into the Prison Act 1952 by the Serious Crime Act 2015, for a person to possess a bladed or pointed article or any other offensive weapon, without authorisation in a prison.
- 1.2 It updates National Security Framework (NSF) Function 6.3, PSI 10/2012, Conveyance and Possession of Prohibited Items and Other Related Offences, which will be amended to reflect this PSI and re-issued in due course.

Desired outcomes

- 1.3 This instruction is part of a group of measures to reduce incidents of violence in prisons by prosecuting offenders through the criminal justice system where appropriate.
- 1.4 Prison staff must understand the circumstances in which criminal proceedings can be taken against those found in possession of a knife or other offensive weapon within prison without authorisation (including makeshift weapons) where appropriate, in accordance with this instruction.

Application

- 1.5 This PSI applies to all Prison and Young Offender establishments.

Mandatory actions

- 1.6 *All instructions included in the NSF are mandatory.*
- 1.7 *Governors must ensure that local arrangements take into account the new possession offence and that they are consistent with this instruction.*
- 1.8 *Local procedures must be in place for effectively dealing with those who are found to be in breach of the legislation.*
- 1.9 *Prisoners, staff and visitors must be made aware of the new offence.*

Resource Impact

- 1.10 There may also be some limited resource implications for establishments in reviewing any local arrangements and ensuring that they take into account this instruction.

(Signed)

Digby Griffith
Director of National Operational Services, NOMS

OPERATIONAL INSTRUCTIONS

2. Introduction

- 2.1 Section 78 of the Serious Crime Act, which came into force on 1 June 2015, introduced section 40CA into the Prison Act 1952 which provides a new criminal offence for a person to possess a bladed or pointed article or any other offensive weapon within a prison establishment. The offence applies to all those who enter a prison, including prisoners, staff and visitors. Amendments to the legislation are attached at [Annex A](#).
- 2.2 While it has been a criminal offence to convey a knife or other offensive weapon into or out of prisons without authorisation for some time (as set out in NSF Function PSI 10/2012, "Conveyance and Possession of Prohibited Items and Other Related Offences"), it was not previously an offence to possess such weapons within prisons without authorisation. In addition, it is a longstanding criminal offence within the community to be in possession of an offensive weapon, but this existing offence applies only to public places and a prison is not a public place.
- 2.3 The new offence addresses this disparity and will allow more serious incidents of weapon possession within prison to be punished through the criminal justice system as opposed to the adjudication system, as appropriate, and to provide a greater deterrent effect against prisoners possessing weapons which may be used to attack other prisoners or staff.
- 2.4 *Prison managers must assess whether to use the criminal offence or internal disciplinary proceedings in individual cases, based on an assessment of the particular circumstances.* Section 7 of this instruction sets out guidance on making a referral to the police. See also PSI 47/2011 - Prison Discipline Procedures.
- 2.5 NSF Function 6.3 will be amended in due course to incorporate the policy and guidance within this instruction. A new chapter will be included to specifically cover the offence and other existing chapters will be updated to incorporate relevant instruction.

3. Definition

- 3.1 The new legislation makes it a criminal offence to possess, without authorisation, an article which has a blade or is sharply pointed or any another "offensive weapon", as defined in section 1 (9) of the Police and Criminal Evidence Act 1984.
- 3.2 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.

4. Penalties

- 4.1 The offence carries a four year maximum prison 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. This is the same penalty for such offences committed within the community. It should be noted that for the existing equivalent offence in the community, 80% of those found guilty are currently given a non-custodial sentence and of those given a custodial sentence the average sentence length is 6 months imprisonment.
- 4.2 As with the other prohibited items offences that exist within prison, a defence exists for persons who reasonably believed they had authorisation to possess the item within prison, or if there was an overriding public interest in justifying the possession of the item.

5. **Authorisations**

- 5.1 There are circumstances where it is necessary for persons in prison, including prisoners, to have possession of articles which, in another context, may constitute an offensive weapon. *This includes knives, tools and bladed items necessary for legitimate use in workshops, kitchens, hobbies and for eating. In addition, razors are available to most prisoners to emulate normal everyday activities and to support decent treatment. Authorisations must be in place to ensure that those in possession of such items for legitimate purposes are not in breach of the new legislation.*
- 5.2 There are already provisions set out within the Prison Act to authorise the possession or conveyance into prison of prohibited items where this is necessary (see chapter 5 of NSF Function 6.3 for full instruction and guidance). The possession of articles under this new legislation are authorised by the same processes; that is, centrally on behalf of the Secretary of state, or locally by the Governor or persons designated by the Governor to grant authorisations on his/her behalf. In addition, Crown Immunity provides protection from criminal liability for Crown Servants who may commit a criminal offence as a result of carrying out their normal lawful duties.
- 5.3 Crown Immunity applies for prison staff to possess items restricted under the new legislation. However, if there is reason to believe these items are to be used as a weapon against others, for example, the staff member would be liable for prosecution.
- 5.4 The following are centrally authorised for this offence:
- Knives, tools or other items that may be classed as offensive weapons in the possession of delivery drivers is 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 during incidents/operational emergencies. (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.
- 5.5 The relevant sections of NSF Function 6.3 will be updated to include these authorisations. *Governors or authorised prison staff must issue local authorisations for any other reason prisoners or staff may need to possess such weapons (see NSF 6.3 for guidance on local authorisations).*

6. **Information for Staff, Visitors and Prisoners**

- 6.1 *Prisons must ensure that staff, prisoners and social and official visitors are aware of the new offence.*
- 6.2 [Annex B](#) provides example information notices which may be used by prisons to inform staff, prisoners and visitors of all prohibited item offences and other related offences.

7. **Referrals to the Police**

- 7.1 Prison managers should consider, in consultation with PIOs and local criminal justice service partners, how to respond to offences under the new legislation in accordance with this guidance. *However, individual circumstances must be considered in all cases.*
- 7.2 NOMS and ACPO have agreed the following operational guidance regarding dealing with offences of the unauthorised possession by persons of a knife, bladed or pointed weapon or other offensive weapon. This forms part of the wider “The Appropriate Handling of Crimes in Prison” protocol.

Reporting Guidance

- 7.3 *All incidents of the unauthorised possession of a knife, bladed or pointed weapon, or other offensive weapon must be investigated 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.*
- 7.4 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.
- 7.5 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 paragraph 7.8) 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 paragraph 7.9.
- 7.6 In more serious cases where the decision has been made to refer an offence to the police, (i.e. where there is reason to suggest that the adjudication system is insufficient to deal with the particular nature or circumstances) a disciplinary charge (i.e. under Prison Rule 51 (12) / YOI Rule (13), “has in his possession any unauthorised article” should still be laid in the usual way (within 48 hours of the incident save for exceptional circumstances) but adjourned to await a decision by the police or CPS on prosecution. If the police or CPS decide not to proceed then the matter may revert to be considered at adjudication.
- 7.7 Opening an adjudication will allow the prison to evaluate whether there is sufficient evidence of possession and, if so, whether the circumstances of the offence suggest that referral to the police is appropriate. See PSI 47/2011 - Prison Discipline Procedures and “The Appropriate Handling of Crimes in Prison” protocol.

Aggravating Factors for Referral to the Police

- 7.8 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 a background of high levels of violence and/or serious violent incidents at the prison where the weapon was found and the need to reduce this.

Mitigating Factors for Consideration

7.9 Mitigating factors that may indicate that internal disciplinary proceedings rather than criminal action is more appropriate include those listed below. The occurrence of one of 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, both in terms of volume and/or severity of violent incidents, in the prison in question.* Note that prisoners may use self-defence as a mitigating factor. *This is not a reason to not refer an incident to the police where there are other aggravating factors.*

- 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;
- *Prison must take into account the special circumstances of known self-harmers holding bladed implements.*

Governors may wish to consider implementing a weapons amnesty as a way of reducing the presence of weapons in prisons – see “Violence Reduction – Operational Guidance for Developing Local VR Strategies”

Wording of the Revised 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.

Model Information Notices

NOTICE TO PRISONERS AND SOCIAL VISITORS

It is a criminal offence under the Prison Act 1952 for certain items to be used, brought into, possessed within or taken out of prisons.

It is a criminal offence for any person without authority:

- i. to bring or throw any of the following items in or out of a prison or to cause another person to do so, to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner or to give to a prisoner any of the following items:

- (a) a controlled drug, an explosive a firearm or other offensive weapon;

Maximum penalty is 10 years imprisonment or an unlimited fine or both.

- (b) alcohol, a mobile telephone, a camera or a sound-recording device;

Maximum penalty is 2 years imprisonment or an unlimited fine or both.

- ii. to bring or throw any of the following items in or out of a prison with the intention of it coming into the possession of a prisoner or to cause another person to do so, or to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner, or to give to a prisoner any of the following items:

- (c) tobacco, money, clothing, food, drink, letters, papers, books, tools, IT equipment and associated peripherals

Maximum penalty is a £1000 fine.

- iii. to possess inside a prison a mobile telephone or any device capable of transmitting or receiving images, sounds or information by electronic communications (or a component part of such a device or an article designed or adapted for use with such a device) or take a photograph or make a sound recording within a prison or convey a restricted document out of a prison.

Maximum penalty is 2 years imprisonment or an unlimited fine or both.

- iv. to possess inside a prison any article that has a blade or is sharply pointed or any other offensive weapon (including makeshift weapons).

Maximum penalty is 4 years imprisonment or an unlimited fine or both.

Criminal prosecutions will be pursued against those found to be in deliberate breach of the above provisions.

NOTICE TO STAFF

It is a criminal offence under the Prison Act 1952 for certain items to be used, brought into, possessed within or taken out of prisons.

It is a criminal offence for any person without authority:

- i. to bring or throw any of the following items in or out of a prison or to cause another person to do so, to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner or to give to a prisoner any of the following items:

- (a) a controlled drug, an explosive a firearm or other offensive weapon;

Maximum penalty is 10 years imprisonment or an unlimited fine or both.

- (b) alcohol, a mobile telephone, a camera or a sound-recording device;

Maximum penalty is 2 years imprisonment or an unlimited fine or both.

- ii. to bring or throw any of the following items in or out of a prison with the intention of it coming into the possession of a prisoner or to cause another person to do so, or to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner, or to give to a prisoner any of the following items:

- (c) tobacco, money, clothing, food, drink, letters, papers, books, tools, IT equipment and associated peripherals

Maximum penalty is a £1000 fine.

- iii. to possess inside a prison a mobile telephone or any device capable of transmitting or receiving images, sounds or information by electronic communications (or a component part of such a device or an article designed or adapted for use with such a device) or take a photograph or make a sound recording within a prison or convey a restricted document out of a prison.

Maximum penalty is 2 years imprisonment or an unlimited fine or both.

- iv. to possess inside a prison any article that has a blade or is sharply pointed or any other offensive weapon (including makeshift weapons).

Maximum penalty is 4 years imprisonment or an unlimited fine or both.

Criminal prosecutions will be pursued against those found to be in deliberate breach of the above provisions.

Notice to Staff (cont.)**Authorisation for conveying or using or possessing items restricted by the above rules**

Staff whose normal duties require them to bring in or out of prison, or use or possess within prison, the items restricted by these rules will be covered by Crown Immunity and will be allowed therefore to continue these activities. Staff working in prisons who are not public servants (staff working in contracted out prisons, contractors and volunteers in public prisons, etc) are also covered in this way by a specific extension of Crown Immunity to them. However, this extension applies only to those activities outlined overleaf and not to other aspects of prison work.

There is no intention of prosecuting (or taking disciplinary action against) any member of staff who contravenes the prohibitions outlined overleaf whilst conducting their normal and lawful duties. The table attached to this notice [attach table similar to annex 1 of PSI 10/2012] provides an outline of the sorts of activities that are legitimately allowed for each of the items and who would be expected to carry them out. If you are in any doubt about bringing in or using one of these restricted items you should check with your line manager first.

Staff should be aware that the bringing in to prisons and use within prisons of mobile phones is not part of the normal duties of any member of staff or allowed for any visitor. Groups of staff and others who have specific authorisation to bring in and use and possess mobile phones within prison are shown under section 2.2 on the attached table. *Any authorisation to bring in and/or use mobile phones within prison must be obtained from the DDC or equivalent and not the Governor/Director.*

Staff are not normally allowed to bring in or use cameras or sound recording devices within prison. The categories of staff who are authorised to convey and/or use and/or possess these items are shown in the attached table. *You must seek local authorisation from your governor for other uses.*

In addition, each governor may publish additional restrictions and may prohibit by local rules the bringing in of any of these items or a wider range of items. *The Governor's local prohibited list must be adhered to.*

The bringing in of items listed under "List C" overleaf (tobacco, money, food, etc) is only a problem and will only need authorisation under these rules if the intention is to give one of these items to a prisoner. However, please note that the simple possession of any item of IT equipment capable of transmitting or receiving sounds or information within a prison a criminal offence. *Therefore, IT equipment which falls within this definition must be authorised by the Governor in all cases.* There may also be local prison rules prohibiting the bringing in of some of these items or more than a certain quantity of these items. *These local rules must still be adhered to.* Giving any of these items to a prisoner is an offence unless your normal duties are to give/sell these items to prisoner or you seek specific authority from your line manager or governor to do so.

NOTICE FOR OFFICIAL VISITORS

It is a criminal offence under the Prison Act for certain items to be used, brought into, possessed within or taken out of prisons.

It is a criminal offence for any person without authority:

- i. to bring or throw any of the following items in or out of a prison or to cause another person to do so, to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner or to give to a prisoner any of the following items:

- (a) a controlled drug, an explosive a firearm or other offensive weapon;

Maximum penalty is 10 years imprisonment or an unlimited fine or both.

- (b) alcohol, a mobile telephone, a camera or a sound-recording device;

Maximum penalty is 2 years imprisonment or an unlimited fine or both.

- ii. to bring or throw any of the following items in or out of a prison with the intention of it coming into the possession of a prisoner or to cause another person to do so, or to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner, or to give to a prisoner any of the following items:

- (c) tobacco, money, clothing, food, drink, letters, papers, books, tools, IT equipment and associated peripherals

Maximum penalty is a £1000 fine.

- iii. to possess inside a prison a mobile telephone or any device capable of transmitting or receiving images, sounds or information by electronic communications (or a component part of such a device or an article designed or adapted for use with such a device) or take a photograph or make a sound recording within a prison or convey a restricted document out of a prison.

Maximum penalty is 2 years imprisonment or an unlimited fine or both.

- iv. to possess inside a prison any article that has a blade or is sharply pointed or any other offensive weapon (including makeshift weapons).

Maximum penalty is 4 years imprisonment or an unlimited fine or both.

Criminal prosecutions will be pursued against those found to be in deliberate breach of the above provisions.