

THE CRIMINAL JUSTICE AND COURTS ACT 2015: MINIMUM SENTENCE FOR 'SECOND STRIKE' KNIFE POSSESSION

INTRODUCTION

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 **17th July 2015**. The 'two strikes' measure creates mandatory minimum sentences for a second conviction of possession of a bladed article or possession of an offensive weapon. 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** for 16 and 17 year olds. There is no mandatory sentence for young people under 16 years.

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A minimum custodial sentence can only be given on conviction of a second or subsequent offence where that offence is committed **after** the date of the commencement of these provisions. A relevant previous conviction for :

- a) possession of an offensive weapon, contrary to section 1 of the Prevention of Crime Act 1953;
- b) threatening with an offensive weapon in public, contrary to section 1A of the Prevention of Crime Act 1953;
- c) possession of an article with a blade or point in a public place, contrary to section 139(1) of the Criminal Justice Act 1988;
- d) possession of an article with a blade or point on school premises, contrary to section 139A of the Criminal Justice Act 1988; or
- e) threatening with an article with blade or point or offensive weapon, contrary to section 139AA of the Criminal Justice Act 1988;

will satisfy the 'previous conviction' condition for the imposition of the minimum sentence, regardless of when that prior offence was committed.

A Ministry of Justice impact assessment shows that around 1,300 adults who already have a knife conviction are caught in possession of a knife each year without receiving an immediate custodial sentence under the current regime. Justice Ministers estimate that more than a thousand additional offenders per year who are repeatedly caught carrying a knife or blade will be imprisoned under the new measure, which will put extra strain on the already overcrowded prison system.

DETAILS OF THE LEGISLATION

Section 28 makes 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.'

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.' 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.'

DOES THE COURT HAVE ANY DISCRETION?

Some limited judicial discretion is retained. 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 the circumstances. This caveat is identical to that contained in the 'three strike' mandatory minimum sentence provisions for drug trafficking and domestic burglary.

In *McInerney* [2003] 1 All ER 1089, Lord Woolf CJ at [16] gave examples of the type of situation where imposition of the minimum sentence may be 'unjust' in the context of domestic burglary cases. Relevant factors include:

- a) The passage of time since the commission of the two previous offences;
- b) Whether the offender has made good progress following the two previous convictions; and
- c) Whether the first two offences were committed when the offender was not yet 16 years old.

In *Sparkes* [2011] 2 Cr App R (S) 614 where the offender was subject to the prescribed sentence, properly imposed consecutively to a sentence of five years for other offences, it was held to be unjust to pass the prescribed sentence because the overall sentence would infringe totality.

Schedule 5 lays out consequential provisions.

- a) Paragraph 1 of the Schedule amends section 37(1A) of the Mental Health Act 1983 to enable the court to impose a hospital order instead of a minimum sentence.
- b) Paragraph 2 amends section 36(2)(b) of the Criminal Justice Act 1988 to enable the Attorney General to make a reference where the court has failed to impose the minimum sentence.
- c) Paragraph 12 of the Schedule amends section 144 of the Criminal Justice Act 2003 to allow a court, where a person pleads guilty to a relevant offence in circumstances in which the new minimum sentence would apply, to reduce the sentence of imprisonment it would otherwise have passed; but it may not reduce it to below 80% of the appropriate custodial sentence in the case of those aged 18 or over when convicted.

CONCERNS WITH THE NEW REGIME

This measure represents the first 'minimum sentence' provision for an offence (other than murder), which covers young persons. The minimum custodial sentences for domestic burglary and Class A drug offences apply only to those aged over 18 years at the time the third offence is committed.

The limited judicial discretion is all the more concerning as the mandatory term applies after only 'two strikes,' when in other contexts such as domestic burglary and drug trafficking, a defendant is permitted 'three strikes.'

HELPFUL LINKS

4. The Criminal Justice and Courts Act 2015 is available at

http://www.legislation.gov.uk/ukpga/2015/2/pdfs/ukpga_20150002_en.pdf

14. The Explanatory Note to Section 28 is available at

<http://www.legislation.gov.uk/ukpga/2015/2/notes/division/3/1/14/1>

15. 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

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