

## CONSULTATION STAGE RESOURCE ASSESSMENT: BLADED ARTICLES AND OFFENSIVE WEAPONS

### 1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.<sup>1</sup>

### 2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 Bladed article and offensive weapon offences are high volume and it is therefore important that sentencers have clear, comprehensive and up to date sentencing guidelines.

2.2 The existing guidance produced by the Sentencing Guidelines Council (SGC) relates to possession of a bladed article or offensive weapon, and applies to adult offenders sentenced in magistrates' courts. There is currently no guidance for adult offenders sentenced in the Crown Court, or for youth offenders.

2.3 Since the original guidance was produced a number of new offences have been introduced, many of which are subject to mandatory minimum sentences. In addition, recent legislation created a minimum custodial sentence, of 6 months' imprisonment, for those convicted of a second or subsequent offence of possession of a bladed article or offensive weapon. The new guidelines reflect this legislation, and will provide sentencers across the Crown Court, magistrates' court and youth court with guidance for all of the offences within one self contained document. The Council is proposing two new guidelines; one for possession of a bladed article/ offensive weapon, and one for threatening with a bladed article/ offensive weapon.

2.4 The Council's aim in developing these guidelines has been to ensure that the sentences are proportionate to the offence committed and in relation to other offences, and additionally to promote a consistent approach to sentencing.

### 3 SENTENCING FOR BLADED ARTICLE AND OFFENSIVE WEAPON OFFENCES

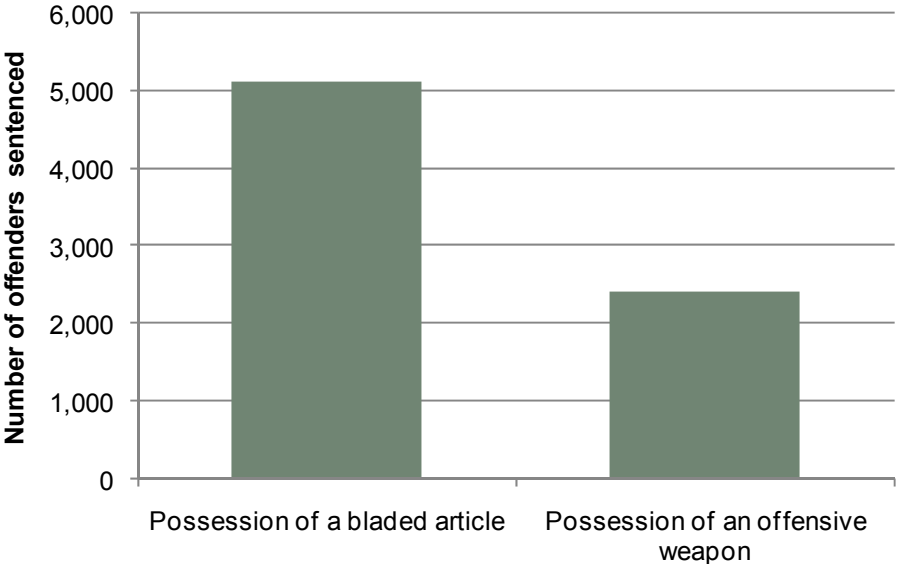
3.1 Detailed sentencing statistics for bladed article and offensive weapon offences have been published on the Sentencing Council website at the following link: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>. This section presents simple statistics to give an indication of the volume of these offences and the types of sentences received by offenders.

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<sup>1</sup> Coroners and Justice Act 2009 section 127

3.2 Bladed article and offensive weapon offences are high volume; in 2015 around 7,800 adult offenders were sentenced for these offences.<sup>23</sup> The majority of offences (7,500) related to possession of a bladed article or offensive weapon, and the remainder related to threatening with a bladed article or offensive weapon. Offences involving a bladed article are more common than those involving an offensive weapon (see Figures 1 and 2).

**Figure 1: Number of adult offenders sentenced for possession offences, by type of offence, 2015**



<sup>2</sup> Source: Court Proceedings Database, Ministry of Justice. For details of data collection and methodology please see <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

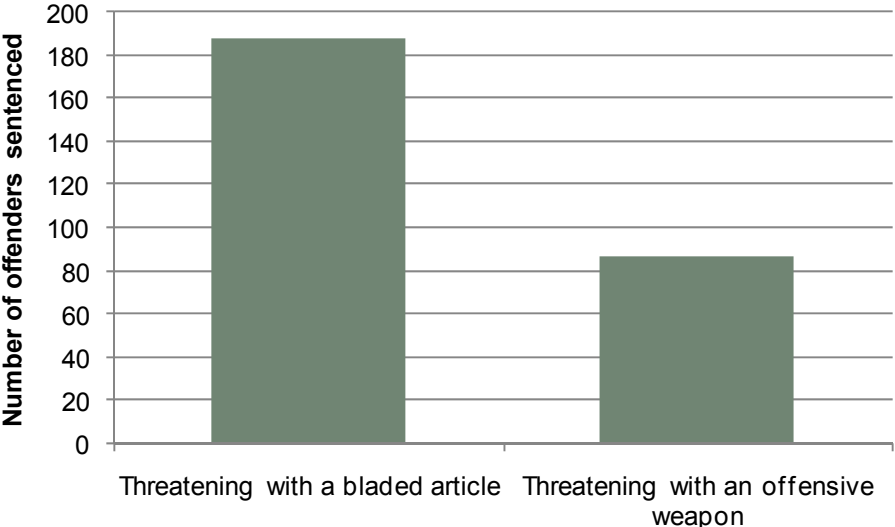
The figures shown relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

<sup>3</sup> The Ministry of Justice publishes Official Statistics on these offences in the 'Knife Possession Sentencing Quarterly' publication, available here: <https://www.gov.uk/government/collections/knife-possession-sentencing-quarterly>

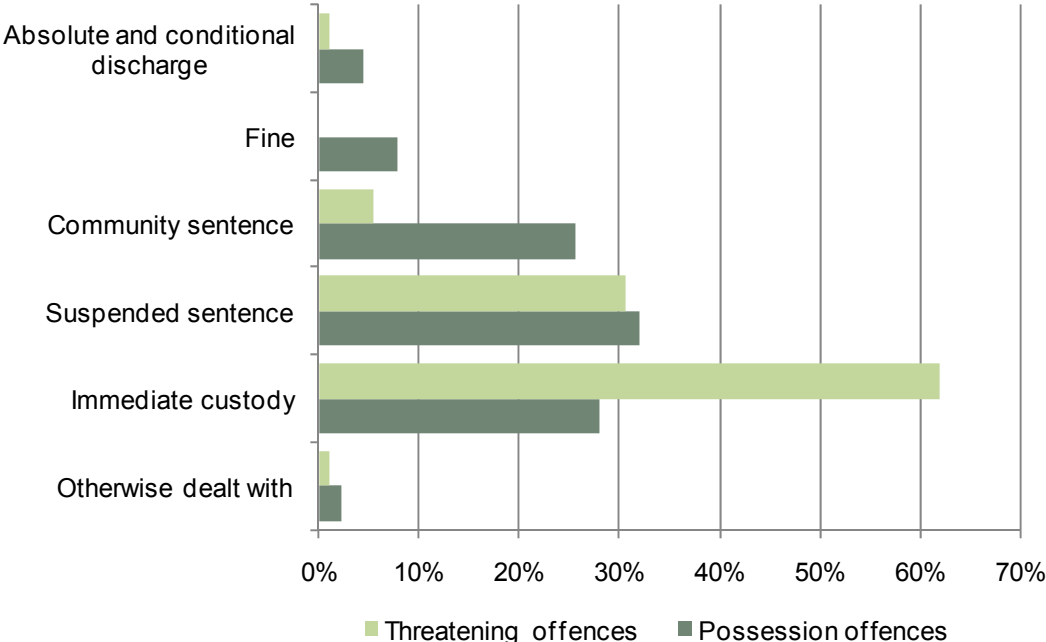
This data is sourced from the Police National Computer and includes cautions and convictions for all knife and offensive weapon offences (i.e. not just those which are the principal offence), along with estimated sentence outcomes. The CPD has been used for this resource assessment as it details final sentence outcomes recorded.

**Figure 2: Number of adult offenders sentenced for threatening offences, by type of offence, 2015**



3.3 Figure 3 shows the disposal types used for these offences, and Figure 4 shows average custodial sentence lengths over time.<sup>4</sup> The majority of offenders sentenced in 2015 for threatening offences received an immediate custodial sentence (62 per cent). For possession offences, around 30 per cent each received immediate custody or a suspended sentence, and 26 per cent received a community sentence.

**Figure 3: Sentence outcomes received by adult offenders sentenced for bladed article and offensive weapon offences, 2015<sup>5</sup>**

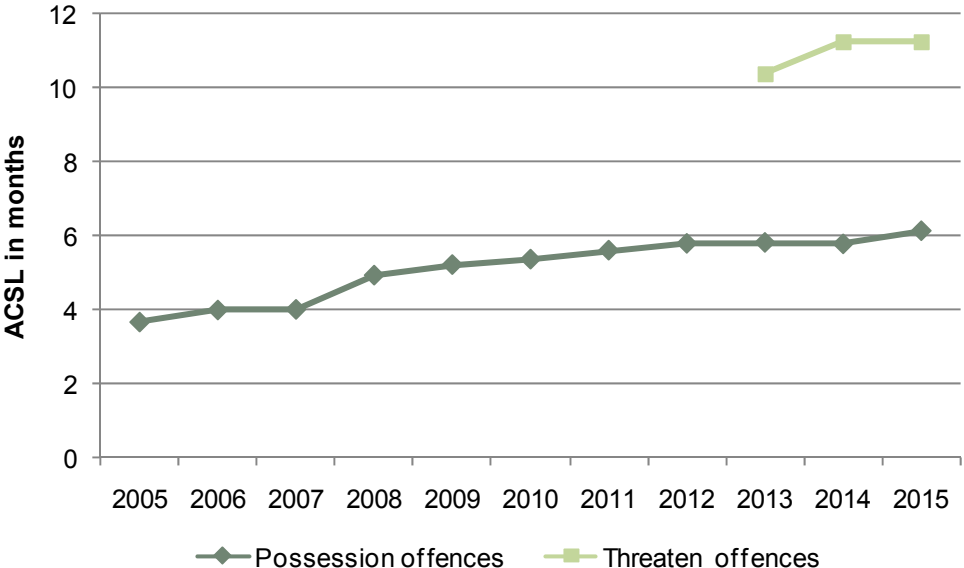


<sup>4</sup> Offences which relate to threatening with a bladed article or offensive weapon were introduced in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into force on 1 April 2013.

<sup>5</sup> The category 'Otherwise dealt with' includes a number of orders, for example hospital orders, confiscation orders and compensation orders.

3.4 The average custodial sentence length for threatening offences was just under one year in 2015. Over the last decade the average custodial sentence length for possession offences has increased, from 3.6 months in 2005 to 6.1 months in 2015.

**Figure 4: Average (mean) custodial sentence length (ACSL) for adult offenders sentenced to immediate custody for bladed article and offensive weapon offences, 2005-2015<sup>6</sup>**



3.5 Over a quarter of offenders sentenced for these offences receive a custodial sentence. As a consequence any changes in sentencing practice have the potential to have a noticeable impact on requirements for prison places.

**4 KEY ASSUMPTIONS**

4.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline, and draws upon analytical and research work undertaken during guideline development.

4.2 Strong assumptions must also be made, in part because it is not possible precisely to foresee how sentencers’ behaviour may be affected across the full range of sentencing scenarios. Historical data on changes in sentencing practice can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. Therefore any estimates of the impact of the new guideline are subject to a large degree of uncertainty.

4.3 The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of the new guideline. Any future changes in sentencing practice which are unrelated to the publication of the new guideline are not included in the estimates.

<sup>6</sup> Excludes life and indeterminate sentences.

## 5 RESOURCE IMPACTS

### Bladed articles and offensive weapons - possession

5.1 The existing SGC guideline for possession of a bladed article or offensive weapon contains three categories of offence seriousness, based on harm and culpability. The proposed new guideline adopts the Sentencing Council's standard approach, based on three levels of harm and three levels of culpability.

5.2 The proposed sentencing ranges have been set in line with existing guidance, which states that sentencers should be considering a minimum starting point of 12 weeks' custody for those offences involving a bladed article.<sup>7</sup> There is evidence, however, that current sentencing practice does not fully reflect the existing guidance. For example, a high proportion (38 per cent) of offenders sentenced for possession of a bladed article in 2015 received a non custodial sentence.<sup>8</sup>

5.3 Under the new guideline, any offences involving possession of a bladed article will fall within high culpability (category A). At the lowest level of harm (category A3), this will attract a minimum starting point of 12 weeks' custody, with a sentence range from a high level community sentence to six months' custody. As a high proportion of offenders currently receive a non custodial sentence, it is anticipated that under the new guideline, more offences involving possession of a bladed article will result in a custodial sentence, compared to current sentencing practice. This will have an impact on prison and probation resources. However, it is not possible to estimate with any certainty the proportion of offenders who may now receive a custodial sentence.

5.4 The maximum uplift in custodial sentences which may occur can be calculated by assuming that all offenders who currently receive a non custodial sentence for possession of a bladed article will now receive a short custodial sentence. Using 2015 CPD data as a guide, this would result in around 1,800 additional offenders<sup>9</sup> receiving a short custodial sentence of around two months (post guilty-plea). The net cost would be around £2.7 million, as the majority of these offenders would no longer be receiving a community sentence. However, it is very unlikely that all offenders sentenced for these offences would receive a custodial sentence under the new guideline; this represents a maximum figure and the actual figure is likely to be lower. As the sentence range for these offences includes a high level community sentence, it is anticipated that a proportion of offenders will continue to receive this type of sentence under the new guideline.

5.5 The new guideline also reflects recent legislation which states that offenders convicted of a second or subsequent offence of possession of a bladed article or offensive weapon should receive a minimum custodial sentence of 6 months' imprisonment. As a result, any increase in the number of offenders receiving custodial sentences for a second or subsequent offence is the impact of the legislation and not the sentencing guideline. It is therefore not anticipated that this aspect of the guideline will have any impact on prison and probation resources for these offences.

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<sup>7</sup> [https://www.sentencingcouncil.org.uk/wp-content/uploads/MCSG-Sentencing\\_for\\_possession\\_of\\_a\\_weapon\\_-\\_knife\\_crime.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/MCSG-Sentencing_for_possession_of_a_weapon_-_knife_crime.pdf)

<sup>8</sup> This includes discharges, fines, community sentences, and offences otherwise dealt with.

<sup>9</sup> This is the number of offenders who received a discharge, fine or community sentence in 2015.

## Bladed articles and offensive weapons - threats

5.6 The proposed new guideline for threatening offences is based on two levels of culpability and three levels of harm. Under the new guideline, threatening offences attract a starting point of custody, with an offence range of six months' custody up to three years. Current sentencing practice shows that in 2015, 18 offenders received either a conditional discharge or a community sentence for these offences.

5.7 While there is currently no specific guideline for these offences, there is a mandatory minimum sentence for threatening offences of six months' custody. The new guideline therefore reflects the legislation, and as a result any increase in the number of offenders receiving custodial sentences is the impact of the legislation and not the sentencing guideline. It is therefore not anticipated that the guideline will have any impact on prison and probation resources for these offences.

## **6 RISKS**

6.1 Two main risks have been identified:

### **Risk 1: The Council's assessment of current sentencing practice is inaccurate.**

6.2 An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

6.3 This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase, including:

- A request for early feedback from the Council's research pool of magistrates and district judges, asking for comments on the current guideline and suggestions for what the Sentencing Council may want to take into consideration for the new guideline. In total 91 magistrates and district judges provided feedback
- Content analysis of 110 transcripts of Crown Court sentencing remarks for the offences of: possession of a bladed article or offensive weapon, and threaten with a bladed article or offensive weapon
- A telephone survey with 52 magistrates and 8 district judges, which explored sentencing behaviours and attitudes. In this exercise scenarios were used to test how the guideline would be used in practice.

6.4 However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

6.5 The risk is also mitigated by the collection and analysis of sentencing information from courts. By comparing sentence outcomes to those that may result from the new guideline, it is possible to detect and amend problematic areas of the proposed new guideline.

**Risk 2: Sentencers do not interpret the new guideline as intended.**

6.6 This could cause a change in the average severity of sentencing, with associated resource effects (including the potential for anticipated changes to some categories of the guideline to affect other categories where no change was intended).

6.7 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing.

6.8 Following the release of guidelines, explanatory material will be provided to read alongside the guidelines; consultees can also feedback their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.