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Crime and Criminal Offences:

Offensive Weapons and Articles with
Blades or Points

Version 2.3

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Authorised Professional Practice

These notes are aimed at learners completing their Initial training to meet the learning outcomes specified on the National Policing Curriculum. The primary source of content is the Authorised Professional Practice (APP) and the supporting evidence based research of “what works” in policing.

APP can be found at: <http://www.app.college.police.uk/>

1. Offensive weapons and articles with blades or points

Most statutory preventative measures follow a general principle that certain acts that could lead to a serious criminal offence being committed should themselves be offences. Some of the offences need proof of criminal intent or unlawful purpose to be complete.

The aim of the legislation covered within these notes is to protect people by preventing others from carrying items in public places, and on school premises, that may cause injury. Weapons and knives are often found during the course of a search by a police officer. These may be weapons that are offensive per se (by their very nature) or they could be an every day object adapted for causing injury to another or one that the person intends to use to threaten or injure another person with.

An understanding of the meaning or legal definition of terms within any of the individual offence definitions will assist you in determining whether that offence has been committed. Some of the terms are used in more than one of these offences and their meaning is not repeated to avoid duplication. The notes will assist you to identify whether the offences have been committed and be aware of the powers available to constables.

1.1 Having an offensive weapon in a public place

The Prevention of Crime Act 1953 was brought into force mainly to prevent people arming themselves with articles capable of causing injury, rather than to deal with them after the injury has been caused. It was particularly useful in dealing with the gangs of the early 1950s, football related disorder in the 1970s and remains a useful preventative measure. As a preventative measure it is an offence to have an offensive weapon in a public place as follows.

The offence

Section 1 of the Prevention of Crime Act 1953 states:

Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence.

Without lawful authority: Lawful authority to have offensive weapons in a public place is very limited to those required to carry them. Lawful authority does not cover members of

private security firms guarding valuable loads or door staff at night clubs carrying truncheons etc.

Examples:

- A police officer may have been given lawful authority by someone permitted to do so e.g. a Chief Constable to carry in public a baton or, in certain cases, a firearm.
- A soldier may be given lawful authority to carry arms in a public place while on duty e.g. at an airport.

Reasonable excuse: Whether there is reasonable excuse depends on whether a reasonable person would think it excusable in the circumstances to carry the weapon or article in question. The person who claims that the article he has with him is for 'self-defence' seldom has a 'reasonable excuse'. If, however, they can prove there was some specific and immediate danger, they may have a reasonable excuse. Individuals are not entitled to arm themselves simply because they may be attacked by someone at some place.

Examples:

- A butcher or chef may have reasonable excuse to carry knives if there is a legitimate reason, e.g. while travelling directly from home to work.
- A taxi driver has a truncheon down the side of their driving seat to use to hit another with if they are threatened by a customer. This is not a reasonable excuse to carry an offensive weapon and they do not have lawful authority.

Proof whereof shall lie on him: The burden of proof is on the defendant for the purpose of proving the defence of lawful authority or reasonable excuse. This means, for example, that if a person is found with a cosh in their pocket and claims they have reasonable excuse to carry it, they must prove that reasonable excuse.

Has with him: This means the offender knowingly has the article in his/her possession; in his hand, in a bag being carried or in a coat pocket. It also applies if the article was in the glove box of a car or on the seat next to him. It would not apply if the article was in the boot of a car parked 50 metres away. The phrase implies that there must be some form of immediate control over the item.

Public place: This is defined by the Act as below.

‘This includes any highway and any other premises or place to which at the material time the public have or are permitted to have access whether on payment or otherwise’

Highway means the street, pavement, footpaths etc.

- Place to which public have access on payment or otherwise covers a wide variety of places.
- Sports grounds on event/match days during the time spectators are admitted
- A cinema during showing hours
- A shop or bank, but only in the area(s) to which the public have access (the public side of the counter)
- Public parks or gardens
- Streets
- Communal areas of blocks of flats or office blocks in the areas the public can freely enter for access
- Public transport

Offensive weapon: This means any article which is made or adapted for use by the person, or intended by the person, having it with him for such use by him or some other person. You need to consider whether an item was made, adapted or intended to be used to cause injury to another. It is difficult to provide a definitive list of offensive weapons but in practice it is usually clear whether something is made, adapted or intended to be used as a weapon.

‘**Made**’ are weapons made to cause injury to a person such as:

- a knuckle-duster
- baton
- flick-knife
- lock knife
- butterfly knife

‘Adapted’ are items adapted to cause injury to a person such as:

- an umbrella with a sharpened point
- a bottle deliberately broken so that the jagged edge can be used as a weapon
- sharpened coins
- a wooden stick or handle with nails protruding through
- razor blades concealed in a glove

‘Intended’ is where items that have another everyday use are being carried by a person who intends to use them specifically to cause injury to a person such as:

- a pointed hairbrush
- a hammer
- a golf club
- a key

The prosecution must prove the element of specific intent to cause injury with the item i.e. it requires proof that the accused intended to injure another person. Intention to frighten or intimidate is not an intention to cause injury. It is often very difficult or impossible to prove a person’s intent therefore further offences were introduced as below relating to bladed or sharply pointed articles.

Under other legislation, such as Section 8 of the Criminal Law Act 1977, items are called a weapon of offence. A weapon of offence includes articles that are made, adapted or intended to cause injury as above but also includes articles for incapacitating a person such as a rope or tape.

Police Powers

If you have reasonable grounds to suspect someone of having an offensive weapon with them in a public place you have the power to stop and search them under Section 1 of the Police and Criminal Evidence Act 1984.

Full stop and search powers and procedures are detailed within your ‘Search powers and procedures and stop and search’ notes plus within Code A of the PACE Codes of Practice that cover the conduct of searches.

The important point is that you must have “reasonable grounds to suspect” that a person has an offensive weapon with them before the power to stop and search may be used. Any search undertaken without reasonable grounds is likely to be considered unlawful. If an offensive weapon is found it may be seized.

1.2 Having a bladed or sharply pointed article in a public place

The increase in the carrying and use of knives and other similar articles together with difficulties presented in prosecuting people who are in possession of articles that are not specifically made or adapted for causing injury, such as kitchen knives or Stanley knives, prompted the introduction of more specific legislation.

The offence

Section 139 Criminal Justice Act 1988 states:

It is an offence for a person to have with him any article which has a blade or is sharply pointed except a folding pocket knife, in a public place without good reason or lawful authority, the onus of proof being on the carrier.

Article which has a blade or is sharply pointed: This will include all sorts of knives. Home-made items which have a blade or are sharply pointed will also be covered, as well as some screwdrivers and chisels. Items that have been adapted, such as the sharpened end of an umbrella, will come within the meaning of the Act. Section 139 of the Criminal Justice Act 1988 specifically excludes folding pocket knives that have a blade where the cutting edge is less than 7.62 (3 inches) long.

Note: The terms ‘have with him’, ‘in a public place’ and ‘lawful authority’ all have the same meanings as already described above.

Defences

Defences to carrying a bladed or sharply pointed article in a public place are covered by sections 4 and 5 of the Criminal Justice Act 1988:

- good reason
- lawful authority
- use at work
- religious reasons

- part of a national costume

Good reason: This is similar to reasonable excuse and is something for the carrier to prove. If you find someone in a public place in possession of a bladed or sharply pointed article covered by the offence, they must satisfy you and eventually a court that they have a good reason for having it. Such good reason could be a parent taking a knife from their child, for example. The carrier has only to prove this on the 'balance of probabilities'.

Examples:

- A butcher uses a sharp knife in the course of his or her work. If found to be carrying a knife in a public place they would be unable to rely on this defence if carrying a butcher's knife during a night out and merely said that he or she had forgotten about it. If they were en route to work they may have a defence.
- Kirpans are knives sometimes carried by members of the Sikh religion. They may carry them for religious reasons but must be genuine followers of that religion.
- Part of the Highland national costume of the Scots is the skean dhu which is a black dagger carried in the sock. This could be carried while in national costume, but not when the person is not dressed in national costume.

Police powers

If a constable has reasonable grounds to suspect someone of this offence they have the power to stop and search them under Section 1 of the Police and Criminal Evidence Act 1984.

1.3 Having an article with a blade or point (or offensive weapon) on school premises

There are two separate, but similar, offences relating to school premises as follows.

The Offences

Under Section 139A(1) Criminal Justice Act 1988 any person who has an article which has a blade or is sharply pointed under Section 139 with them on school premises, without good reason or lawful authority, commits an offence, the onus of proof being on the carrier.

Under Section 139A(2) Criminal Justice Act 1988 any person who has an offensive weapon with them on school premises commits an offence.

The Criminal Justice Act 1988 specifically covers school premises so that they are, in effect, treated for the purposes of this legislation in the same manner as public places.

School premises: School premises means any land used for the purposes of a school except land occupied solely as a dwelling by a person employed by the school. This includes primary and secondary schools but does not include further education establishments.

Defences

It is a defence for a person charged with one of these offences to prove that they had good reason or lawful authority for having the article or weapon with them. A more specific defence is also provided for a person charged with one of these offences to prove that they had the article or weapon with them on the premises in question:

- For use at work
- For educational purposes
- For religious reasons
- As part of any national costume

For educational purposes: This is not defined by the Act therefore the everyday meaning should be used. For example an art teacher may have sharp blades to use for lino cutting and a maintenance person may be carrying screwdrivers and sharp cutting blades or knives.

Powers to enter and search premises and people

A constable may enter school premises and search those premises and any person on those premises for:

- any article which has a blade or is sharply pointed (as defined in Section 139), or
- any offensive weapon as defined by Section 1 of the Prevention of Crime Act 1953

if the constable has reasonable grounds for suspecting that an offence under Section 139 of the Criminal Justice Act 1988 or Section 1 Prevention of Crime Act 1953 is being, or has been, committed.

Examples:

- The pupils of a secondary school contact the police and say that they have seen a person carrying what they say is “a long knife” in the school grounds. There may be an offence of having a knife or any bladed or sharply pointed article on school premises.
- An example of having reasonable grounds to suspect could be the information from the school pupil (as above) plus finding a person who matches the description given by the pupil still on those premises.
- If however, the person can prove that they are using the knife for a legitimate purpose, e.g. he is a gardener tending to the school grounds then there is no offence. The head teacher would have known of any reasonable cause and speaking to them would clarify the situation. The prohibition extends to pupils and staff as well as visitors.

If in the course of a search under this section a constable discovers an article with a blade or point or an offensive weapon then the constable may seize and retain it. The constable may use reasonable force, if necessary, in the exercise of the power of entry conferred by this section.

Circumstances when a member of staff of a school, further and higher education may search pupils

There have been knife-related fatalities or serious injuries involving young people of school age where pupils have carried a knife in school for illegitimate purposes. Sections 550ZA (England) and 550AA (Wales) Education Act 1996 gives head teachers, or members of staff authorised by the head teacher, a power to search a pupil and his/her belongings if they have reasonable grounds to suspect that the pupil may have with him, or in his possessions, an article to which Section 139 Criminal Justice Act 1988 applies, or an offensive weapon under Section 1 Prevention of Crime Act 1953. The search can be conducted without the pupil's consent, using reasonable force if necessary.

The Education Act 1996 provides a power; it does not invoke a duty to carry out such a search. The power is exercisable only when the member of staff and pupil are on the premises of the school or whenever he/she has lawful control or charge of the pupil; this will therefore include such times as when the pupil is not on school premises, for example, on a

school trip. Of course, head teachers may decide to exercise the power or to rely on the current option of calling the police.

The member of staff can seize and retain anything which they have reasonable grounds for suspecting to be a bladed or sharply pointed article or any other thing which he/she has reasonable grounds for suspecting is evidence in relation to an offence.

Any article seized must be delivered to a constable as soon as is reasonably practicable. Any person who exercises a power under Section 550ZA/550AA may use such force as is reasonable in the circumstances for exercising that power.

The Further and Higher Education Act 1992 also creates an equivalent power for principals of further education institutions. In relation to England, the relevant authority is Section 85AA which provides a power of members of staff to search students for prohibited items and this power also applies to '16 to 19 Academies'.

In England, Section 85AA(3)(ea) also provides the power in relation to 'an article that the member of staff reasonably suspects has been, or is likely to be, used

- i. To commit an offence, or
- ii. To cause personal injury to, or damage to the property of, any person'

Section 85B only applies in Wales and gives a power to search for prohibited weapons.

A search under section 85AA or 85B can only be carried out by the principal of the institution, or a member of staff (anybody who works at the institution, whether or not as its employee) authorised by the principal. The member of staff can seize and retain anything which he/she has reasonable grounds for suspecting to be a bladed or sharply pointed article or an offensive weapon.

In relation to Wales, section 85B (6) (b) also provides that:

If, in the course of a search under section 85B, the person carrying out the search finds any other thing which he has reasonable grounds for suspecting is evidence in relation to an offence, he may seize and retain it.

Any article seized must be delivered to a constable as soon as is reasonably practicable. Any person who exercises a power under section 85AA or 85B may use such force as is reasonable in the circumstances for exercising that power.

1.4 Threatening with an article with a blade or point (or offensive weapon) in a public place or on school premises

In addition to the offences discussed above, there is also Section 139AA of the Criminal Justice Act 1988 where a further offence is committed if, in a public place or on school premises:

- A person has an article with a blade or point, or an offensive weapon
- Unlawfully and intentionally threatens another person
- Does so in such a way that there is an immediate risk of serious physical harm to that other person

The Act does not define 'threatens another person' or 'immediate risk' therefore you should use their ordinary, everyday meanings.

Serious physical harm: For the purposes of this section physical harm is serious if it amounts to grievous bodily harm under the Offences against the Person Act 1861.

Section 1A of the Prevention of Crime Act 1953 is similar to the above, however, it does not include school premises.

The Offence

A person is guilty of the offence of threatening with offensive weapon in public if that person:

- a. Has an offensive weapon with him or her in a public place,
- b. Unlawfully and intentionally threatens another person with the weapon, and
- c. Does so in such a way that there is an immediate risk of serious physical harm to that other person.

1.5 The prohibitions in respect of the importation, manufacture, sale and supply of offensive weapons and knives etc.

Section 141 Criminal Justice Act 1988: Manufacture, sale and hire of offensive weapons:

The offence

Any person who manufactures, sells or hires or offers for sale or hire, exposes or has in his possession for the purpose of sale or hire, or lends or gives to any other person a weapon to which this section applies shall be guilty of an offence.

There are certain defences available to persons under this legislation. Members of visiting foreign armed forces may import their weapons as can members of H.M. services. Donations may be made to museums and galleries or for religious or cultural purposes. The burden of proof is on the supplier.

The importation of any such weapon is also prohibited under Section 141(4) of the Criminal Justice Act 1988.

Section 141 of the Criminal Justice Act 1988 extended the range of weapons to which the prohibition applies. The list is extensive and is shown in the Criminal Justice Act 1988 (Offensive Weapons) Order 1988.

The Home Secretary has the power to prohibit certain weapons and list them as offensive weapons in their own right. This has been done for many items which are listed in Schedule 1 of the Criminal Justice Act 1988 (Offensive Weapons) Order 1988. For example:

Knuckleduster	A band of metal or other hard material worn on one or more fingers and designed to cause injury, and any weapon incorporating a knuckleduster.
Swordstick	A hollow walking stick or cane containing a blade which may be used as a sword.

Handclaw	A band of metal or other hard material from which a number of sharp spikes protrude, and which is worn around the hand.
Belt-buckle knife	A buckle which incorporates or conceals a knife.
Push dagger	A knife, the handle of which fits within a clenched fist and the blade of which protrudes from between two fingers.
Hollow kubotan	A cylindrical container containing a number of sharp spikes.
Footclaw	A bar of metal or other hard material from which a number of sharp spikes protrude, and which is worn strapped to the foot.
Shuriken, shaken or death star	A hard, non-flexible plate having three or more sharp radiating points and which is designed to be thrown.
Balisong or butterfly knife	A blade enclosed by its handle, which is designed to split down the middle without the operation of a spring or other mechanical means, to reveal the blade.
Blowpipe or blowgun	A hollow tube out of which hard pellets or darts are shot by the use of breath.
Kusari gama	A length of rope, cord, wire or chain fastened at one end to a sickle.
Kyoketsu shoge	A length of rope, cord, wire or chain fastened at one end to a hooked knife.

Manrikigusari or kusari	A length of rope, cord, wire or chain fastened at each end to a hard weight or hand grip.
Disguised knives	Any knife which has a concealed blade or concealed sharp point and is designed to appear to be an everyday object of a kind commonly carried on the person or in a handbag, briefcase, or other hand luggage, such as a comb, brush, writing instrument, cigarette lighter, key, lipstick or telephone. The definition has been carefully drawn up to deal with a specific type of knife and there are two key parts to it. The knife must: • Have a concealed blade or concealed sharp point and be, • Designed to appear to be an everyday item commonly carried on the person or other hand luggage.
Truncheons	Straight, side-handled or friction-lock truncheons. These are sometimes known as a baton. Telescopic truncheons are included. A telescopic truncheon is a truncheon which extends automatically by hand pressure applied to a button, spring or other device in or attached to its handle.

Stealth knives	'A knife or spike, which has a blade, or sharp point, made from a material (such as nylon zytel or high tensile plastic) that is not readily detectable by apparatus used for detecting metal and which is not designed for domestic use or for use in processing, preparation or consumption of food or as a toy.' The definition of a stealth knife has been carefully drawn up to deal with a specific type of knife and there are two key parts to it. The knife must: • Be made from a material that is not readily detectable by apparatus used for detecting metal, and • Is not designed for domestic use or for use in the processing, preparation or consumption of food or as a toy.
Samurai swords	A sword with a curved blade of 50 centimetres or over in length. The length of the blade is taken as the straight line distance from the top of the handle to the tip of the blade. The Act recognises the interests of collectors of genuine, high value swords with historical, religious and cultural significance, and includes exemptions for their use in historical re-enactments and certain sporting activities.

Section 1 of the Restriction of Offensive Weapons Act 1959 prohibits the manufacture, importation, sale, hire, lending or giving of flick knives, flick guns or gravity knives. Flick knives or guns are knives that have a blade released by hand pressure on a device such as a spring. Gravity knives have blades released by gravity and thereafter locked into place. It is also an offence to offer to manufacture, sell, hire etc. any of these articles.

Section 141A of the Criminal Justice Act 1988 makes it an offence to sell knives, knife blades, razor blades, any axe or any other article which has a blade or is sharply pointed and which is made or adapted for causing injury to anyone under the age of 18 years.

In respect of supplying an offensive weapon, constables have the power of stop and search. It is unlikely that you will deal with this aspect of weapon control to any great degree, but articles such as quite lethal sheath knives may be sold on market stalls under the guise of being used for sporting purposes e.g. fishing or camping.

Power to enter and search premises by warrant

Under section 142 of the Criminal Justice Act 1988 a Justice of the Peace may authorise a constable to enter and search any premises if they are satisfied that the following articles are on those premises:

- knives such as are mentioned in section 1(1) of the Restriction of Offensive Weapons Act 1959; or
- weapons to which section 141 Criminal Justice Act 1988 applies

and

- that an offence under section 1 of the Restriction of Offensive Weapons Act 1959 or section 141 of the Criminal Justice Act 1988 has been or is being committed in relation to them

Once on the premises, the constable has the power to seize any offensive weapons which they suspect fall within these categories.

2. Key legislation

Key pieces of legislation applicable to this topic are:

- Sections 139, 139A, 139AA, 139B, 141, 141A and 142 of the Criminal Justice Act 1988
- Sections 1 and 1A of Prevention of Crime Act 1953
- Schedule 1 of the Criminal Justice Act 1988 (Offensive Weapons) Order 1988
- Section 1 of the Restriction of Offensive Weapons Act 1959
- Section 85AA, 85AB, 85AC, 85B of the Further and Higher Education Act 1992
- Sections 550ZA, 550ZB, 550ZC Section 8 and 550AA of the Education Act 1996