EXPLANATORY MEMORANDUM TO

RETENTION OF KNIVES IN COURT REGULATIONS 2010

2010 No. 790

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1. Part 4 of the Courts Act 2003 (sections 51-57) makes provision for court security officers and related matters, including the powers of search, the power to request the surrender or seize item and the power to exclude, remove and restrain persons on specific grounds. Section 55A provides for the retention of knives brought into court and the purpose of the Instrument is to prescribe:

> The procedure to be followed when a knife is retained by court security officers, including the information which is required to be provided by the court security officer to the person.
>
> The requirement for the court manager to keep a written record of any knives retained by court security officers.
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> The procedure for making a request for the return of a retained knife.
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> The procedure to be followed by the courts in dealing with a request for the return of a retained knife.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None

4. Legislative Background

4.1. Section 146 of the Coroners and Justice Act 2009 (c.25) inserts a new section 55A into Part 4 of the Courts Act 2003, which deals with security in court buildings. The new section modifies the existing procedures for dealing with items surrendered or seized from people entering or in court buildings and makes different provision in relation to knives (see section 7 below). The regulations govern the procedures for retaining knives, for seeking their return and returning them.

5. Territorial Extent and Application

5.1. The Regulations apply to England and Wales.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1. The number of knives carried legally and illegally and brought into court buildings has been recognized as exceptionally high and following administrative actions to try and inhibit people from bringing such items to court a more rigorous approach has been developed, supported by the Regulations.

7.2. Current policy, which is supported by section 55 of the Courts Act 2003 states that when an article is surrendered or seized by a court security officer, the item must be either returned to the owner when they leave the court building or at the end of the permitted period, if the item is believed to be evidence of, or in relation to an offence. That permitted period is 24 hours to enable the knife to be referred to a police constable for advice and action.

7.3. Ahead of the Parliamentary passage and the implementation of these provisions HMCS introduced a temporary scheme whereby all legally carried knives brought into court were returned to their owner in a sealed bag with a public notice requesting that they not be bought to court again. This approach has had a negligible impact on the number of knives being bought into court and no visible reduction can be seen. This can be demonstrated by the number of knives surrendered or seized nationally in the month prior to this approach being introduced (September 2008) of 2060 against the most up to recent figures available of 1936 (January 2010). The new provision therefore allows courts not to return knives at all when the owner leasves the court building. Instead it enables procedures, governed by Regulations, for the person to make a written request for the return of the knife, and for the court to return, by post, knives which do not appear to be “evidence of, or in relation to, an offence”,

7.4. No concerns about the provision were raised during the Coroners and Justice Act's passage through Parliament

7.5. These are the first regulations made under sections 55A and 56 of the Courts Act 2003

8. Consultation Outcome

8.1. Due to the fact that these Regulations are procedural (and therefore of limited public interest) and would have no impact on persons outside court premises no formal consultation was considered necessary on this occasion.

8.2. However, ahead of implementation all courts will display public notices to forewarn court users of the new policy.

8.3. To ensure the effective implementation of these Regulations, the Ministry has agreed a Joint protocol with the Association of Chief Police Officers. This Protocol provides the following principles:

When plainly offensive weapons are seized there will be appropriate local mechanisms in place to ensure an urgent police response. Subject to local discussion this may require an emergency response in some circumstances.

Appropriate local mechanisms should be in place to ensure that items which are "suspicious" are brought to the attention of a police officer quickly. HMCS and the police will agree mechanisms for dealing with items that are potentially offensive – these may involve calls to the local police station to request a response before the end of the court day.

HMCS routinely confiscates other articles which though legal to carry, are capable of jeopardising order in the court building. Appropriate arrangements should be in place locally to ensure that such items are subject to regular monitoring by a police constable. In many areas a local neighbourhood police team may be able to call into the court as part of its regular beat patrol.

9. Guidance

9.1. These regulations will be published on the Office of Public Sector Information website.

10. Impact

10.1. No Regulatory Impact Assessment has been prepared because there is no regulatory impact on any part of the private or voluntary sector.

11. Regulating Small Business

11.1. The regulations do no apply to small business

12. Monitoring and Review

12.1. Theses Regulations will be kept under review by the Ministry of Justice and the Executive Agency responsible for the administration of courts, Her Majesty's Courts Service.

13. Contact

Any enquiries about the contents of this memorandum should be addressed to:

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