

# OFFENSIVE WEAPONS BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Offensive Weapons Bill as introduced in the House of Commons on 20 June 2018 (Bill 232).

- These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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# Overview of the Bill

- 1 The purpose of this Bill is to help reduce violent crime. Specifically, the Bill will:
  - Prohibit the possession of certain corrosives substances in a public place and the sale of corrosive products to those aged under 18;
  - Strengthen the arrangements for the online sale of bladed articles and corrosive products;
  - Prohibit the possession of certain offensive weapons;
  - Prohibit the possession of certain firearms.

## Policy background

- 2 Recent police recorded crime in England and Wales has shown an increase in the number of serious violent offences involving knives, corrosives and firearms. In 2017, there was a 22 per cent increase in offences involving knives/sharp instruments and an 11 per cent increase in offences involving firearms, and between 2012/13 and 2016/17 the number of recorded corrosive substance attacks increased from 183 to 504. In London alone, in the first five months of 2018, there were 70 homicides.
- 3 As part of the development of this Bill the Government publicly consulted on a number of legislative proposals which now form a large part of the Bill. The consultation, which closed on 9 December, received over 10,500 responses and we will be publishing a summary of the responses at introduction.
- 4 The Bill forms one of the commitments within the Government's Serious Violence Strategy<sup>1</sup>, published on 9 April 2018. The Strategy aims to take action to address serious violence and in particular the recent increases in knife crime, gun crime and homicide.
- 5 There is increasing public concern about the use of acid as a weapon. Statistics released by the Metropolitan Police Service in response to Freedom of Information requests suggest that the number of acid attacks in London has risen sharply in recent years. The statistics indicate that noxious or corrosive fluids – including but not limited to acid – were used in London in 454 crimes in 2016, 261 in 2015 and 166 in 2014.
- 6 There is increasing public concern about the use of acid as a weapon. Statistics released by the Metropolitan Police Service in response to Freedom of Information requests suggest that the number of acid attacks in London has risen sharply in recent years. The statistics indicate that noxious or corrosive fluids – including but not limited to acid – were used in London in 454 crimes in 2016, 261 in 2015 and 166 in 2014.
- 7 There is already in place a voluntary commitment<sup>2</sup> amongst retailers on the sale of corrosive products under which retailers agree not to sell products to those under 18 that contain potentially harmful levels of acid or corrosive substances - including applying Challenge 21/25 policies when asking for age identification, staff supported by till alerts, supervision and inclusion of these products in age restricted sales training. Retailers must also agree that equivalent age restriction measures are

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<sup>1</sup> Serious Violence Strategy for England and Wales - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698009/serious-violence-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf)

<sup>2</sup> <https://www.gov.uk/government/news/retailers-and-academics-join-government-effort-to-tackle-acid-attacks>

applied to products sold online. In addition retailers must agree to comply with the Poisons Act 1972 and promote awareness to staff and what this means for the sale of products which contain levels of acid and other corrosive substances which are either regulated or reportable under the Act.

## Legal background

8 The related legislation includes:

- The Criminal Justice Act 2003
- The Interpretation and Legislative Reform (Scotland) Act 2010
- The Criminal Justice Act 1988
- Schedule to Criminal Justice Act 1988 (Offensive Weapons) Order 1988 (SI 1988/2019)
- Article 54 of the Criminal Justice (Northern Ireland) Order 1996 (SI 1996/3160 (NI24))
- Article 53 of the Criminal Justice (Northern Ireland) Order 1996 (SI 1996/3160 (NI24))
- The Restriction of Offensive Weapons Act 1959
- The Children and Young Persons Act 1993
- The Criminal Appeal Act 1968
- The Criminal Justice and Court Services Act 2000
- The Prevention of Crime Act 1953
- The Armed Forces Act 2006
- The Army Act 1955
- The Air Force Act 1955
- The Naval Discipline Act 1957
- The Education Act 1996
- The Further and Higher Education Act 1992
- The Academies Act 2010
- The Violent Crime Reduction Act 2006
- The Custodial Sentences and Weapons (Scotland) Act 2007
- The Criminal Justice Act 1998 (Offensive Weapons) (Scotland) Order 2005 (SSI 2005/483)
- The Firearms Act 1968
- The Firearms (Northern Ireland) Order 2004 (SI 2004/702 (NI 3))

## Territorial extent and application

- 9 Clause 38 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 10 The Offensive Weapons Bill makes provision in respect of matters in relation to Scotland and Northern Ireland, and matters that are within the devolved legislative competence of the Scottish Parliament. Where the Bill makes provision in respect of matters within the legislative competence of the Scottish Parliament and Northern Ireland Assembly consent will be sought for those provisions.
- 11 The extent of clauses 28 and 30 to 35 is the United Kingdom, as the subject matter of these clauses relate to prohibited firearms which is a reserved matter in relation to both Scotland and Northern Ireland. While a reserved matter, these measures are within the competence of the Scottish Parliament and Northern Ireland Assembly and, therefore, consent will be sought for those provisions.
- 12 Clauses 1 to 5, which make provision in respect of the reserved matter of corrosive products, extend to the United Kingdom. Other clauses, which make provision in respect of corrosive substances, the sales and delivery of knives and the possession of certain offensive weapons also extend to Great Britain and make provision for matters that are within the devolved legislative competence of the Scottish Parliament and so therefore, the legislative consent process is engaged.
- 13 If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 14 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of Bill

## Chapter 1: Sale and corrosive products

### Clause 1: Sale of corrosive products to under 18 and Schedule 1

- 15 The sale of certain types of acids, and other dangerous corrosive chemicals, is controlled by the Poisons Act 1972, as amended by the Deregulation Act 2015. The 1972 Act draws a distinction between "regulated" substances and "reportable substances". Regulated substances – which contain high concentrations of certain chemicals – are now restricted from sale to the general public. If a member of the general public wants to buy any of the regulated substances, they need to apply to the Home Office for a licence to acquire and to possess and use. Reportable substances can be bought without a licence, but retailers are required to report suspicious transactions and significant losses and thefts.
- 16 Under section 1(1) of this clause an individual commits an offence if they sell a corrosive product, as defined in Schedule 1 of the Bill, to a person who is under the age of 18.
- 17 Subsection (2) sets out a defence to this offence, in England and Wales and Northern Ireland, of taking all reasonable precautions and exercising all due diligence to avoid committing the offence. This is similar to the defence available in relation to the sale of knives and age verification set out in section 141A of the Criminal Justice Act 1988. Such verification could be through, for example, age verification software or checks against accepted and recognised identification documents.
- 18 Subsection (3) sets out a defence, in Scotland, where the accused is able to show that they believed the person to whom the product was sold was aged 18 or over and either the accused had taken reasonable steps to establish the purchaser's age or no reasonable person, based on the purchaser's age, could have suspected they were under 18. Reasonable steps must include that the accused was shown any of the documents listed in subsection (5) and that the document would have convinced a reasonable person. Under subsection (6), the accused will be considered to have shown they have taken all reasonable precautions and exercised all due diligence where they have produced sufficient evidence to raise an issue in relation to the defence and the contrary has not been proved beyond reasonable doubt.
- 19 This offence is a summary only offence and subsection (7)(a) makes provision for a maximum penalty in England and Wales of imprisonment of 51 weeks, a fine, or both. The 51 weeks maximum sentence is contingent on s281(5) of the Criminal Justice Act 2003 coming into force and until that time the maximum sentence will be six months.
- 20 Subsection 7(b) makes provision for the maximum penalty that will apply to offences committed in Northern Ireland or Scotland, which is a term of imprisonment not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.
- 21 Subsection (9) provides that, for the purposes of clauses 2 to 4 of the Bill, a corrosive product is a substance listed in the first column of Schedule 1 of this Act, or a product that contains a substance listed in the first column of Schedule 1 in a concentration higher than that set out in the second column of Schedule 1.
- 22 Subsection (10) of clause 1 provides that the Secretary of State and the Department of Justice in Northern Ireland may, through secondary legislation, amend Schedule 1 so that corrosive substances or their concentration limits (w/w) can be added, amended or removed from that Schedule.
- 23 Subsection (11)(b) provides that, in relation to Northern Ireland, "the appropriate national

authority” for the purposes of subsection (10) (regulation making power) means the Department of Justice in Northern Ireland.

24 This clause forms part of the law of the United Kingdom.

## Clause 2: Defence to remote sale of corrosive products to persons under 18

25 Clause 2 sets out how the defence to the clause 1(1) offence of selling a corrosive product to persons under 18 applies in relation to remote sales. Remote sales are sales conducted at a distance and include, for example, when the sale was made online or over the telephone.

26 Where the seller is charged with the offence in England and Wales or Northern Ireland, the seller will not be regarded as having taken all reasonable precautions and exercised all due diligence to avoid the commission of the offence unless, as a minimum, they prove they have met the following:

- Condition A – that, at the time of any alleged offence being committed, a seller had a system in place for checking the age of anyone purchasing corrosive products that was likely to prevent anyone under the age of 18 from purchasing that product;
- Condition B – that any package containing a corrosive product that is dispatched from the seller is clearly marked in a way that indicates that the package both contains a corrosive product and that, on final delivery, it must only be delivered and handed over to a person aged 18 or over (whether the buyer or their representative);
- Condition C – is that the seller must prove they took all reasonable precautions and exercised all due diligence to ensure that the package would be handed over to a person aged 18 or over. This applies whether the retailer delivers the package themselves or through a third party; and,
- Condition D – that the seller did not deliver the package, or arrange for it to be delivered, to a locker as defined in subsection (9) of clause 2.

27 In Scotland, under subsection (4), it is a defence to the offence for the accused to show those same conditions are met. Under subsection (5), the accused will be considered to have shown a condition where they have produced sufficient evidence to raise an issue in relation to the defence and the contrary has not been proved beyond reasonable doubt.

28 This clause forms part of the law of the United Kingdom.

## Clause 3: Delivery of corrosive products to residential premises etc

29 Clause 3 provides that it is an offence for a seller to deliver, or to arrange for the delivery of, a corrosive product to a residential premises or to a locker, where the sale is made remotely.

30 Subsection (8) provides for a defence to the offence in England and Wales and Northern Ireland, where the person charged can prove that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

31 Subsection (9) provides for a defence to the offence in Scotland, where the accused can show they took all reasonable precautions and exercised all due diligence to avoid committing the offence. Subsection (10), the accused will be considered to have shown they have taken all reasonable precautions and exercised all due diligence where they have raised sufficient evidence in relation to the defence and the contrary has not been proved beyond reasonable doubt.

32 This offence is a summary only offence and subsection 11(a) makes provision for a maximum penalty in England and Wales of imprisonment of 51 weeks, a fine, or both. In Scotland and Northern Ireland the maximum sentence will be six months imprisonment, a fine or both. The 51 weeks maximum sentence is contingent on section 281(5) of the Criminal Justice Act 2003 coming into force and until that time the maximum sentence will be six months.

33 This clause forms part of the law of the United Kingdom.

#### Clause 4: Delivery of corrosive products to persons under 18

34 This clause applies to delivery companies that have entered into an arrangement with a seller of corrosive products, who is outside of the United Kingdom, to deliver bladed articles to buyers in the United Kingdom. This only applies to corrosive products that been sold when the seller and the buyer have not been in each other's presence at the time of the sale (i.e. the sale was made remotely, whether by telephone or online).

35 Subsection (2) makes provision to ensure that the offence in subsection (4) applies whether the seller is an individual or a corporate body.

36 Subsection (4) provides that it is a criminal offence for a delivery company to which this clause applies to deliver a bladed article into the hands of a person aged 17 or under. Subsection (10) sets out the penalties for this offence.

37 Subsections (5) to (9) set out the defences that apply to this offence, which differ depending on whether the delivery company is charged with an offence in England and Wales, Scotland or Northern Ireland.

38 This clause forms part of the law of the United Kingdom.

## Chapter 2: Possession of corrosive substances

#### Clause 5: Offence of having a corrosive substance in a public place

39 Subsection (1) of clause 5 provides that a person commits an offence if they are in possession of a corrosive substance in a public place.

40 Subsection (2) provides that it is a defence in England and Wales and Northern Ireland for the person charged to prove they had good reason or lawful authority for having the corrosive substance with them in a public place.

41 Subsection (4) provides that is a defence in Scotland for a person charged with the offence in Scotland to show they had a reasonable excuse or lawful authority for having the corrosive substance with them in a public place.

42 Under subsection (6), the accused will be considered to have shown they had a reasonable excuse or lawful authority where they have produced sufficient evidence to raise an issue in relation to the defence and the contrary has not been proved beyond reasonable doubt.

43 The offence is triable either way. On summary conviction in England and Wales a person is liable to a term of imprisonment for a term not exceeding 12 months or to a fine or both, and in Scotland to a term of imprisonment not exceeding 12 months or to a fine not exceeding the statutory maximum or both. In Northern Ireland the maximum sentence is 6 months imprisonment, a fine or both. The maximum 12 month sentence in England and Wales is contingent on section 154(1) of the Criminal Justice Act 2003 coming into force and until that time the maximum sentence will be six months. On conviction on indictment in England and Wales, Scotland and Northern Ireland a person is liable to a term not exceeding 4 years, to a fine or both.

44 This clause forms part of the law of the United Kingdom.

#### Clause 6: Appropriate custodial sentence for conviction under Clause 5

45 Subsection (1) of section 6 provides that, where a person who is 16 years of age or older is convicted in England and Wales of the offence set out in clause 5 and has at least one relevant conviction (as set out in clause 7) then the Court must impose an appropriate custodial

sentence, which may also include a fine, unless the Court decides that there are appropriate circumstances not to do so.

- 46 Subsection (3) makes provision that the “appropriate custodial sentence” is a custodial sentence of at least 6 months imprisonment for an offender aged 18 years of age or older. For an offender aged 16 or 17 years old the appropriate custodial sentence is a detention and training order of at least 4 months duration.
- 47 Subsection (4) provides that, in the case of an individual aged 16 or 17 years old, when considering whether there are particular circumstances which would make imposing an appropriate custodial sentence unjust, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 which sets out that *“Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.”*
- 48 Subsections (5) and (6) make provision for the procedure that applies for appeals against sentence where a relevant conviction that was relied on by the court in order to impose an appropriate custodial sentence has been set aside on appeal. Subsection (7) provides that the requirement to impose an appropriate custodial sentence only applies to an offence committed after this clause has come into force.
- 49 Subsection (8) provides that where an offence is committed under clause 5 which has been committed over (a) a period of two or more days or (b) at some time during a period of two or more days then for the purposes of an offence under this clause the offence will have said to have been committed on the last of those days.
- 50 This clause forms part of the law of England and Wales.

### Clause 7: Offence under Clause 5: relevant convictions

- 51 Clause 7 provides details of the convictions that amount to a “relevant conviction” for the purposes of clause 6.
- 52 This clause forms part of the law of England and Wales.

### Clauses 8 to 10: Search for corrosive substances

- 53 These clauses provide law enforcement officers in England and Wales, Scotland and Northern Ireland with appropriate investigative and enforcement powers in relation to offence of possessing a corrosive substance in a public place. Clause 10 provides for offences in Scotland of obstructing a constable in their exercise of these powers and concealing a corrosive substance from a constable.
- 54 Clause 10 amends Article 3 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (power of constable to stop and search persons, vehicles etc.), to allow for stop and search powers to be used in respect of the prevention or detection of an offence under clause 5 of the Bill (offence of having a corrosive substance in a public place).
- 55 These clauses forms part of the law of the United Kingdom.

### Clause 11: Consequential amendments relating to Clause 5

- 56 Clause 11 makes consequential amendments to the Prevention of Crime Act 1953 and the Criminal Justice Act 1988 to provide that a conviction under clause 5 of this Act, having a corrosive substance in public, is as a “relevant conviction” for the purposes of those sentencing provisions.
- 57 This clause forms part of the law of England and Wales.

## Chapter 3: Sale and delivery of knives etc

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## Clause 12: Defence to sale of bladed articles to persons under 18: England and Wales

58 Section 141A(1) of the Criminal Justice Act provides that it is an offence in England and Wales to sell knives and certain articles with a blade or point to persons under the age of 18. Section 141A(4) provides a defence to that offence where the person charged can prove they took all reasonable precautions and exercised all due diligence to avoid committing the offence. Clause 12 inserts a new section 141B to the 1988 Act which modifies the operation of this defence where the sale is carried out remotely.

59 In order to be able to rely on this defence, the accused must meet all of the conditions set out below.

- Condition A is that, at the time the offence is alleged to have been committed (the sale) the seller had a system in place to check that the buyer was not under the age of 18 and that the system in place would prevent anyone under the age of 18 from purchasing bladed articles.
- Condition B is that, when the package containing the article was dispatched by the seller, the package was clearly marked in a way that indicated it contained an article with a blade or an article which was sharply pointed and, that when that package was delivered it was clearly marked that it should only be delivered into the hands of a person aged 18 or over.
- Condition C is that the seller took all reasonable precautions and exercised all due diligence to ensure that, when finally delivered, the package would be delivered into the hands of a person aged 18 or over.
- Condition D is that the seller did not deliver the package, or arrange for its delivery, to a locker.

60 This clause forms part of the law of England and Wales.

## Clause 13: Defence to sale etc of bladed articles to persons under 18: Scotland

61 Section 141A(1) of the Criminal Justice Act 1998 provides that it is an offence in Scotland to sell knives or certain articles with a blade or point to persons under the relevant age. For a knife or knife blade designed for domestic use the relevant age is 16, in any other case the relevant age is 18.

62 Clause 13 of this Act inserts a new section 141C into the Criminal Justice Act 1988. New Section 141C provides a defence to the section 141A offence in the context of remote sales of bladed or pointed articles when Conditions A to D are met.

63 Clause 12 modifies the circumstances in which sections 141A (3A) and (4) will apply, where the sale or hiring out is carried out remotely. The conditions are:

- Condition A is that, at the time the offence is alleged to have been committed, the accused operated a system for checking that recipients of purchased or hired articles were not under the age of 18, and that such a system was likely to prevent persons under the age of 18 from buying or hiring such articles.
- Condition B is that the package containing the article, when dispatched to the accused, was clearly marked to indicate that it contained an article with a blade or which was sharply pointed (as the case may be), and when finally delivered, it should only be delivered into the hands of a person aged 18 or over.
- Condition C is that the accused took all reasonable precautions and exercised all due diligence to ensure that, when finally delivered, the package would only be delivered to

a person aged 18 or over.

- Condition D is that the accused did not deliver the package, or arrange for its delivery, to a locker.

64 This clause forms part of the law of the United Kingdom.

#### Clause 14: Defence to sale etc of bladed articles to persons under 18: Northern Ireland

65 Clause 14 amends Article 54 of the Criminal Justice (Northern Ireland) Order 1996 to place certain limitations on the defence provided, and it also inserts a new subsection Article 54A (limitation on defence to offender under Article 54) into the 1996 Order.

66 Article 54 provides the offence of selling specific articles with a blade or point to persons under the age of 18 years. Subsection (4) of the Article provides a defence for a person charged with this offence, to prove that they took all reasonable precautions and exercised due diligence to avoid the commission of the offence.

67 The limitations at Article 54A, mean that where a seller was not in the presence of a buyer at the time of sale, a seller is not regarded as having proved that they took all reasonable precautions and exercised all due diligence to avoid the commission of an offence unless, as a minimum, they prove that the following four conditions are met:

- Condition A – at the time the offence is alleged to have been committed, they operated a system for checking that those who bought articles under Article 54 were not under the age of 18;
- Condition B – when the package containing the article was dispatched, they had clearly marked it to indicate that it contained an article with a blade or with a sharp point and that, when finally delivered, it should only be delivered into the hands of a person aged 18 or over;
- Condition C – they took all reasonable precautions and exercised all due diligence to ensure that, when finally delivered, the package would be delivered into the hands of a person aged 18 or over;
- Condition D – they did not deliver the package, or arrange for its delivery, to a locker.

68 Subsection (8) defines the term ‘final delivery’ and subsection (9) defines the term ‘locker’.

69 The extent of this clause is Northern Ireland.

#### Clause 15: Delivery of bladed products to residential premises etc

70 This clause provides that where a sale is carried out remotely, it is an offence for a seller to deliver or arrange for the delivery of a bladed product to a residential premises or to a locker. Clause 15 applies where a person sells a bladed product to another person, and they are not in each other’s presence at the time of the sale (i.e. the sale was made remotely, whether by telephone or online).

71 Subsections (2) and (3) create new offences prohibiting the delivery, or arranging thereof, of a bladed product to residential premises or a locker.

72 Subsection (4) makes provision to ensure that the offence in subsection (2) applies to both individuals and companies.

73 Subsections (5) to (7) set out the definitions of residential premises and lockers.

74 Subsections (8) to (9) make provision in relation to the penalties for this offence.

75 This clause forms part of the law of the United Kingdom.

#### Clause 16: Defences to offence under Clause 15

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- 76 Subsections (1) to (4) of clause 16 set out the defences that apply to the offence in clause 15.
- 77 Subsections (5) and (6) make provision for the burden of proof that will apply to an accused person in Scotland who seeks to rely on one of the offences in subsections (1) to (4).
- 78 Subsection (7) provides the Secretary of State and Scottish Ministers with the power to create further defences to the clause 15 offence by regulations.
- 79 Subsection (8)(c) provides that, in relation to Northern Ireland, “the appropriate national authority” for the purposes of subsection (7) (regulation making power) means the Department of Justice in Northern Ireland.
- 80 This clause forms part of the law of the United Kingdom..

#### Clause 17: Meaning of “bladed product” in Clauses 15 and 16

- 81 This provision is self-explanatory and forms part of the law of the United Kingdom.

#### Clause 18: Delivery of bladed articles to persons under 18

- 82 Clause 18 applies to delivery companies that have entered into an arrangement with a seller of bladed articles, who is outside of the United Kingdom, to deliver bladed articles to buyers in England and Wales, Scotland and Northern Ireland. This only applies to bladed articles that been sold when the seller and the buyer have not been in each other’s presence at the time of the sale (i.e. the sale was made remotely, whether by telephone or online).
- 83 Subsection (2) makes provision to ensure that the offence in subsection (4) applies to both individuals and companies.
- 84 Subsection (3) sets out when a person other than an individual is outside the United Kingdom.
- 85 Subsection (4) provides that it is a criminal offence for a delivery company to which this clause applies to deliver a bladed article into the hands of a person aged 17 or under. Subsection (10) sets out the penalties for this offence.
- 86 Subsections (5) to (9) set out the defences that apply to this offence, which differ depending on whether the delivery company is charged with an offence in England and Wales, Scotland or Northern Ireland.
- 87 Subsection (11) provides the definition of a bladed article for the purposes of this clause.
- 88 This clause forms part of the law of the United Kingdom.

### Chapter 4: Possession etc of certain offensive weapons

#### Clause 19: Amendments to the definition of “flick knife”

- 89 Subsection (1) of clause 19 amends section 1 of the Restriction of Offensive Weapons Act 1959 to provide that the definition of a “flick knife” will also include any knife that opens automatically from a closed position, or partially opened position to a fully opened position, by means of any manual pressure that is applied to a button, spring or other device which is contained either within the knife or is attached to the knife.
- 90 Subsection (2) amends the definition of a flick knife contained within Article 53 of the Criminal Justice (Northern Ireland) Order 1996 (manufacture or sale etc of certain knives).
- 91 This clause forms part of the law of the United Kingdom.

#### Clause 20: Prohibition on the possession of certain dangerous knives

- 92 Section 141 of the Criminal Justice Act 1988 provides that it is an offence to manufacture, sell,

hire, offer to sell or hire, possess for the purposes of sale or hire, import, lend or give weapons to which that section applies. The weapons to which that section applies are set out in the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 (SI 1988/2019)

93 This clause creates an offence of possession of a weapon to which section 141 of the Criminal Justice Act 1988 applies.

94 This clause forms part of the law of the United Kingdom.

## Clause 21: Prohibition on the possession of offensive weapons on further education premises

95 This clause amends section 139A of the Criminal Justice Act 1988 (offence of having an article with a blade or point or offensive weapon on school premises) to extend the offence of having an offensive weapon on a school premises in England and Wales to include further education premises.

96 Subsection (5) amends the penalties in section 139A of the Criminal Justice Act 1988 (offence of having offensive weapon on school premises) in Northern Ireland. The maximum penalty is, on summary conviction, a term of imprisonment not exceeding 12 months or to a fine not exceeding the statutory maximum or both, and on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.

97 Subsection (6) defines “school premises” as land used for the purposes of a school, excluding any land occupied solely as a dwelling by a person employed at the school. “School” is defined in Northern Ireland under Article (2) of the Education and Libraries (Northern Ireland) Order 1986.

98 Subsection (7) “(6A)(b) sets out that, in relation to Northern Ireland, “further education premises” means land used solely for the purposes of an institution of further education within the meaning of Article 2 of the Further Education (Northern Ireland) Order 1997 (SI 1997/1772 (NI 15)) excluding any land occupied solely as a dwelling by a person employed at the institution.

99 Subsection (10) inserts a new subsection 6A of section 139A of the Criminal Justice Act 1988 to provide a definition of a “further education premises in England and Wales”.

100 Subsection (11) to (14) make consequential amendments in relation to the power of entry to search for offensive weapons in section 139B of the Criminal Justice Act 1988.

101 This clause forms part of the law of England and Wales and Northern Ireland.

## Clause 22: Prohibition on the possession of offensive weapons

102 Section 141 of the Criminal Justice Act 1988 provides that it is an offence to manufacture, sell, hire, offer to sell or hire, possess for the purposes of sale or hire, import, lend or give weapons to which that section applies. The weapons to which that section applies are set out in the Criminal Justice Act 1988 (Offensive Weapons) Order 1988.

103 This clause creates an offence of possession of a weapon to which section 141 of the Criminal Justice Act 1988 applies.

104 Subsection (2) inserts a new subsection 1A to section 141. New subsection 1A provides that any person who, in England and Wales or Scotland, possesses a weapon to which this section applies is guilty of an offence and liable:

- a. on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, to a fine or to both, or
- b. on summary conviction in Scotland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.
- c. on summary conviction in Northern Ireland a term of imprisonment not

exceeding 12 months or a fine not exceeding the statutory maximum, or both and on conviction on indictment to imprisonment for a term not exceeding four years or to a fine or to both.

- 105 1B is amended so that, in relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, subsection (1A)(a) has effect as if the reference to 51 weeks were to 6 months.
- 106 Subsections 17 and 18 make contingent provision in the event that section 20(2) is commenced before section 60(1)(b) of the Custodial Sentences and Weapons (Scotland) Act 2007 comes into force.
- 107 Subsection (16) adds the new offence under section 141(1A) of the Criminal Justice Act 1988 into the list in Article 29(1)(l) of the Magistrates' Courts (Northern Ireland) Order 1981. This means there will be no right to elect for trial by jury for this new offence.
- 108 This clause forms part of the law of the United Kingdom.

### Clause 23: Prohibition on the possession of offensive weapons: supplementary

- 109 Clause 23 of this Act makes amendments to the Schedule to the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 (SI 1988/2019) that are consequential to the amendments made to section 141 of the Criminal Justice Act 1988 made by clause 22 of this Act.
- 110 This Order specifies descriptions of weapons to which section 141 of the Criminal Justice Act 1988 applies and also makes provision for particular defences to the offence in section 141(1). The amendments made by subsections 2 to 6 of this clause amend the operation of these defences so that they apply to the new offence of possession of a weapon created by clause 20 of this Act in relation to England and Wales and Northern Ireland.
- 111 Subsection (8) makes consequential amendments to the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (SSI 2005/483).
- 112 This clause forms part of the law of the United Kingdom.

### Clause 24: Surrender of prohibited offensive weapons

- 113 Clause 24 provides the Secretary of State and Scottish Ministers with the power to make appropriate arrangements to secure the surrender of weapons which will become unlawful to possess due to the operations of clauses 18 and 20.
- 114 Subsection (3) makes provision for the Department of Justice in Northern Ireland to make arrangements for the surrender to the police of prohibited offensive weapons under clauses 20 and 22.
- 115 Subsection (4) makes provision for the chief officer of police for any force area in England and Wales to designate any police station in their force's area as being suitable for the receipt of surrendered weapons or surrendered weapons of a particular description.
- 116 Subsection (5) makes provision for the Chief Constable of the Police Service of Northern Ireland to designate any police station in Northern Ireland as being suitable for the receipt of surrendered weapons or surrendered weapons of a particular description.
- 117 This clause forms part of the law the United Kingdom.

### Clause 25: Payments in respect of surrendered offensive weapons

- 118 Clause 25 applies if the Secretary of State makes arrangements for the surrender of weapons in accordance with clause 24 above.

- 119 Subsections (2) and (4) provide that the Secretary of State and Scottish Ministers must, by regulations, provide for payments to be made in respect of weapons which are surrendered in accordance with these arrangements.
- 120 Subsections (5) and (6) provide that, if the Department of Justice in Northern Ireland makes arrangements for the surrender of weapons as set out under clause 24 (3), it must by regulations provide for payments to be made in respect of weapons which are surrendered in accordance with the arrangements.
- 121 Subsections (5) to (8) provide that payments may only be made when a claim for compensation meets specific criteria.
- 122 Subsection (9) sets out the provision that may be made by regulations under subsections (2) and (4), which includes restricting eligibility to receive compensation payments and the procedure to be followed to determine claims.
- 123 This clause forms part of the law of the United Kingdom.

## Chapter 5: Threatening with offensive weapon

### Clause 26: Offence of threatening with offensive weapon etc

- 124 Section 1A of the Prevention of Crime Act 1953 provides for an offence of threatening with an offensive weapon in a public place and section 139AA of the Criminal Justice Act 1988 provides for offences of threatening with a bladed article in a public place, and threatening with an offensive weapon and bladed article on school premises. It is an essential element of these offences that the defendant threatened the victim with the weapon “in such a way that there is an immediate risk of serious physical harm to the victim”.
- 125 Clause 26 amends these offences to replace the requirement of the threat causing immediate risk of physical harm to the accused, with a requirement that the threat is such that a reasonable person who was exposed to it would think that they were at risk of immediate physical harm.
- 126 This clause forms part of the law of England and Wales.

### Clause 27: Offence of threatening with offensive weapon etc on further education premises

- 127 Section 139AA of the Criminal Justice Act 1988 provides for offences of threatening with a bladed article in a public place, and threatening with an offensive weapon and bladed article on school premises.
- 128 Clause 27 amends the 1988 Act to introduce a new offence that has the effect of extending the prohibition from school premises to further education premises in England and Wales.
- 129 This clause forms part of the law of England and Wales.

## Chapter 6: Prohibition of certain firearms

### Clause 28: Prohibition of certain firearms etc: England and Wales and Scotland

- 130 Section 5 of the Firearms Act 1968 sets out a list of prohibited weapons. These are subject to more rigorous controls than other firearms, and the possession of a prohibited weapon is unlawful without the authority of the Secretary of State.
- 131 Clause 28 amends this list to include:
- rifles that can discharge a shot bullet or other missile with kinetic energy of more than 13,600 joules at the muzzle of the weapon;
  - chambered weapons (other than rifles chambered for 0.22 rim-fire cartridges) from which

cartridge cases are extracted using energy from propellant gas or from energy imparted to an energy storage device by propellant gas; and bump stocks.

- 132 Subsection (3) sets out the definition of a bump stock.
- 133 Subsections (4) to (8) make consequential amendments to the 1968 Act to accommodate the new list of prohibited firearms, which includes provision in respect of sentencing of offenders.
- 134 This clause forms part of the law of Great Britain.

#### Clause 29: Prohibition of certain firearms etc: Northern Ireland

- 135 Clause 29 makes equivalent provision to clause 28 in respect of Northern Ireland through amendments to the Firearms (Northern Ireland) Order 2004 (SI 702/2004 (NI 3)).
- 136 The extent of this clause is Northern Ireland.

#### Clause 30: Consequential amendments relating to clauses 28 and 29

- 137 Clause 30 and Schedule 2 make consequential amendments to other Acts.

#### Clause 31: Surrender of prohibited firearms etc

- 138 Clause 31 provides the Secretary of State with the power to make appropriate arrangements to secure the surrender of weapons which will become unlawful to possess due to the operation of clauses 28 and 29, and of any ancillary equipment.
- 139 Subsections (2) and (3) provide chief officers of police, and the Chief Constable of the Police Service of Northern Ireland (PSNI), with the power to designate any police stations in Northern Ireland as being suitable for the receipt of surrendered firearms or ancillary equipment.
- 140 Subsection (4) sets out that, for the purposes of this clause, “ancillary equipment” is defined by as set out in clause 32(2) of this Act
- 141 This clause forms part of the law of the United Kingdom.

#### Clause 32: Payments in respect of surrendered firearms other than bump stocks

- 142 Clause 32 applies if the Secretary of State makes arrangements for the surrender of firearms (other than bump stocks) in accordance with clause 31 above.
- 143 Subsection (3) provides that the Secretary of State must, by regulations, provide for payments to be made in respect of firearms which are surrendered in accordance with these arrangements.
- 144 Subsections (4) to (7) provide that payments may only be made when a claim for compensation meets specific criteria.
- 145 Subsection (8) sets out the provision that may be made by regulations made under subsection (3) which includes restricting eligibility to receive compensation payments and the procedure to be followed to determine claims.
- 146 This clause forms part of the law of the United Kingdom.

#### Clause 33 Payments in respect of prohibited firearms other than bump stocks

- 147 Clause 33 applies if the Secretary of State makes arrangements for the surrender of bump stocks in accordance with clause 31 above.
- 148 Subsection (3) provides that the Secretary of State must, by regulations, provide for payments

to be made in respect of firearms which are surrendered in accordance with these arrangements.

149 Subsections (4) to (8) provide that payments may only be made when a claim for compensation meets specific criteria.

150 Subsection (9) sets out the provision that may be made by regulations made under subsection (3) which includes restricting eligibility to receive compensation payments and the procedure to be followed to determine claims.

151 This clause forms part of the law of the United Kingdom.

#### Clause 34: Payments in respect of ancillary equipment

152 Subsection (1) of clause 34 provides the Secretary of State with a power to make payments in respect of any ancillary equipment by regulations.

153 Subsection (2) sets out the definition of ancillary equipment, which excludes ammunition which is prohibited by section 5 of the Firearms Act 1968.

154 Subsections (3) to (5) provide that payments may only be made when a claim for compensation meets specific criteria.

155 Subsections (6) and (7) sets out the provision that may be made by regulations made under subsection (3) which includes conditions of eligibility and the procedure to be followed to determine claims.

156 This clause forms part of the law of the United Kingdom.

#### Clause 35: Interpretation of Clause 28 to 34

157 This clause is self explanatory.

### Chapter 7: Supplementary

#### Clause 36: Consequential amendments relating to armed forces

158 Clause 36 amends the Armed Forces Act 2006 to provide that the criminal conduct offences that can be dealt with at summary hearings will include the new offences provided for by this Act in relation to the possession of offensive weapons and corrosive substances and delivery of corrosive products.

159 This clause forms part of the law of the United Kingdom.

#### Clause 37: Regulations

160 Subsection (2) of clause 37 sets out that any regulations made under this Act by the Secretary of State are subject to the affirmative Parliamentary procedure.

161 Subsections (3) and (4) set out whether the regulations to be made by Scottish Ministers are subject to the affirmative or negative procedure within the meaning of section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010.

162 Subsection (6) sets out that subsections (2) and (4) of this clause do not apply to commencement regulations made under clause 39.

#### Clause 38: Extent

163 This clause sets out the extent of the provisions of the Act (see Annex A for further details).

164 Subsections (8) and (9) enables the amendments to the Armed Forces Act 2006 made by clause 36 to be extended, with or without modifications, to any of the Channel Islands and provides power to modify that Act, as amended by the Bill, as it extends to the Isle of Man or a British overseas

territory.

### Clause 39: Commencement

165 This clause is self explanatory.

### Clause 40: Short title

166 Clause 40 sets out that the Act will be known as the Offensive Weapons Act 2018.

## Commencement

167 Clause 39 sets out the various commencement provisions for clauses contained within this Act, including provision for Scottish Ministers to commence various provisions as they extend to Scotland and for the provisions set out in subsection (4) to come into force on Royal Assent.

## Financial implications of the Bill

168 The Bill will entail additional public expenditure to provide compensation to the owners of weapons that are being prohibited under the Bill. We estimate the compensation bill to be around £5.2M.

169 The other main public sector financial implications of the Bill fall to criminal justice agencies, including the police, prosecutors and prisons and probation services. The best estimate average annual cost of the measures in the Bill is £8 million. This figure is an estimate based on a number of assumptions about implementation which are subject to change. Further details of the costs and benefits of individual provisions are set out in the overarching impact assessment published alongside the Bill.

## Parliamentary approval for financial costs or for charges imposed

170 A money resolution is required for the Bill. Such a resolution is required where a Bill authorises new charges on the public revenue - broadly speaking new expenditure. In this case clause 25 authorises the payment of compensation by the Secretary of State for weapons the possession of which will become unlawful as a result of clause 22 or 23. Clauses 32 to 34 authorise the payment of compensation by the Secretary of State for firearms the possession of which will become unlawful as result of clause 28 or 29 and for ancillary equipment relating to such firearms.

## Compatibility with the European Convention on Human Rights

171 The Home Secretary, the Rt. Hon. Sajid Javid MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the Offensive Weapons Bill are compatible with the Convention rights”.

172 The Government has published a separate ECHR memorandum with its assessment of compatibility of the Bill’s provisions with the Convention rights: this memorandum is

available on the Government website.

## Related documents

173 The following documents are relevant to the Bill and can be read at the stated locations:

- Serious Violence Strategy:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698009/serious-violence-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf)

Impact Assessment (available on the parliament.uk website):

<https://services.parliament.uk/bills/>

- Offensive Weapons Consultation:

<https://www.gov.uk/government/consultations/offensive-and-dangerous-weapons-new-legislation>

## Annex A - Territorial extent and application in the United Kingdom

Subject to certain exceptions, the provisions of the Bill extend and apply to England and Wales, Scotland and Northern Ireland where indicated in the table below. For the purposes of English Votes for English Laws (EVEL) clauses 6 to 8, relating to the possession of corrosive substances, and clause 12, on the sale of bladed articles to those aged under 18, and clauses 26 and 27, on the offence with threatening with an offensive weapon, apply to England and Wales only.

3

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI)
Clause 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI)
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI)
Clause 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI)
Clause 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes(S) (NI)
Clause 6	Yes	Yes	No	No	No	Yes	Yes	No
Clause 7	Yes	Yes	No	No	No	Yes	Yes	No
Clause 8	Yes	Yes	No	No	No	Yes	Yes	No
Clause 9	No	No	Yes	No	N/A	N/A	N/A	Yes(S)

<sup>3</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 10	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Clause 11	Yes	Yes	No	No	No	Yes	Yes	No
Clause 12	Yes	Yes	No	No	No	Yes	Yes	No
Clause 13	In part	In part	Yes	In part	N/A	N/A	N/A	Yes ( S )
Clause 14	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Clause 15	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S) (NI)
Clause 16	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes ( S ) (NI)
Clause 17	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes ( S ) (NI)
Clause 18	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes ( S ) (NI)
Clause 19	In part	Yes	In part	Yes	N/A	N/A	N/A	Yes(S) (NI)
Clause 20	In part	Yes	In part	In part	N/A	N/A	N/A	Yes(S) (NI)
Clause 21	Yes	Yes	No	Yes	N/A	N/A	N/A	Yes (NI)
Clause 22	In part	In part	In part	In part	N/A	N/A	N/A	Yes (S) (NI)
Clause 23	In part	In part	In part	In part	N/A	N/A	N/A	Yes (S) (NI)
Clause 24	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S) (NI)
Clause 25	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes(S) (NI)

*These Explanatory Notes relate to the Offensive Weapons Bill as introduced in the House of Commons on 20 June 2018 (Bill 232)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 26	Yes	Yes	No	No	No	Yes	Yes	No
Clause 27	Yes	Yes	No	No	No	Yes	Yes	No
Clause 28	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 29	No	No	No	Yes	N/A	N/A	N/A	No
Clause 30	In part	In part	In part	In part	N/A	N/A	N/A	Yes(S)
Clause 31	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes(S)
Clause 32	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes(S)
Clause 33	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes(S)
Clause 34	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes(S)
Clause 35	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes(S)
Clause 36	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 37	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 38	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 39	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 40	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

*These Explanatory Notes relate to the Offensive Weapons Bill as introduced in the House of Commons on 20 June 2018 (Bill 232)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Schedule 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 2	In part	In part	In part	In part	N/A	N/A	N/A	No

## Minor or consequential effects<sup>4</sup>

174 There are no minor or consequential provisions in the Bill that apply to England and have effects outside England.

## Subject matter and legislative competence of devolved legislatures

175 The Offensive Weapons Bill makes provision in respect of matters devolved to Scotland and Northern Ireland. Where the Bill makes provision in respect of matters within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly consent will be sought for those provisions.

176 The extent of clauses 28 and 30 to 35 is the United Kingdom, as the subject matter of these clauses relate to prohibited firearms which is a reserved matter in relation to both Scotland and Northern Ireland. While a reserved matter, these measures will require the legislative consent process to be engaged in Scotland because they deal with matters that are within the devolved legislative competence of the Scottish Parliament.

177 Clauses 1 to 4, which make provision in respect of corrosive products, extend to the United Kingdom. Corrosive products are a matter that is reserved in respect of Scotland but is within the competence of the Northern Ireland Assembly. Other clauses, which make provision in respect of corrosive substances, the sales and delivery of knives and the possession of certain offensive weapons also extend to the United Kingdom and make provision for matters that are within the legislative competence of the devolved administrations and, therefore, will require legislative consent motions.

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<sup>4</sup> References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

# OFFENSIVE WEAPONS BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Offensive Weapons Bill as introduced in the House of Commons on 20 June 2018.

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