

OFFENSIVE WEAPONS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Offensive Weapons Bill as brought from the House of Lords on 20 March 2019.
- 2 These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 149, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Most Lords Amendments were tabled in the name of the Lords Minister, Baroness Williams of Trafford.
- 6 Lords Amendments 58, 59, 67, 68, 72, 81, 89, 94 and 95 were tabled by Earl Attlee and agreed to by the Government.
- 7 Lords Amendments 27 and 28 were tabled by Lord Kennedy and were opposed by the Government. They were added to the Bill after a vote.
- 8 In the following Commentary, an asterisk (*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords amendments

Lords Amendment to clause 1: Sale of corrosive products to persons under 18

Lords amendments 1 to 4

- 9 Schedule 1 contains a list of corrosive products for the purposes of the offences in clauses 1 to 4 of the Bill (which relate to the sale and delivery of corrosive products). The Bill includes a power, by regulations, to amend Schedule 1.
- 10 Lords amendments 1 and 4 exempt any form of battery from the prohibitions on the sale and delivery of corrosive products under clauses 1 to 4 of the Bill.
- 11 Lords amendments 2 and 3 require the appropriate national authority (that is, the Secretary of State or the Northern Ireland Department of Justice) to consult affected persons before making regulations under clause 1(12) which amend the list of corrosive products in Schedule

1 to the Bill.

Lords Amendments to clause 9: Offence under section 6: relevant convictions

Lords amendment 5

- 12 Clause 8 makes provision for mandatory minimum sentences where a person has been convicted of having a corrosive substance in a public place and has a previous “relevant conviction”.
- 13 The definition of a “relevant conviction” takes account of convictions for certain offences committed in EU member States other than the United Kingdom. As the Bill may be enacted after the UK’s withdrawal from the EU we cannot use the powers in the European Union (Withdrawal) Act 2018 to modify these provisions post EU exit. In such circumstances, Lords amendment 5 would enable the repeal of these provisions relating to EU convictions.

New Part 1A of the Bill: Knife crime prevention orders

Lords amendments 6 to 25, 77, 82, 91 and 92

- 14 Lords amendments 6 to 25 provide for knife crime prevention orders. The scheme for new civil preventative orders as provided for in new Part 1A of the Bill have the following key features:
 - They will be available on application by the police to a magistrates’ court, including in certain circumstances without notice to the respondent, (Lords amendments 6 to 8) or on conviction for a relevant violent or knife-related offence (Lords amendment 11).
 - A court may make a KCPO if it thinks it is necessary to protect any person from risk of harm or to prevent the commission of an offence involving a bladed article.
 - An order may be made in respect of a person aged 12 and above; in the case of a person under 18, the police / Crown Prosecution Service (CPS) would be required to consult the relevant youth offending team (Lords amendment 7 and 12).
 - In prescribed circumstances, a court will be able to make an interim knife crime prevention order (Lords amendments 9 and 10).
 - A court will be able to include in an order such prohibitions and requirements as the court thinks necessary, these may include requirements to address the causes of the offending behaviour (Lords amendments 13 and 14).
 - An order will last for a period of up to two years and would be subject to periodic reviews (Lords amendments 15 and 18).
 - A person subject to an order will be required to notify the police of their name and home address and keep such information up to date. Failure to comply with the notification requirements would be a criminal offence. (Lords amendments

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16 and 17.)

- Provision will be made for the variation, renewal or discharge of an order and for appeals (Lords amendments 19 and 20).
- Breach of an order will be a criminal offence punishable by up to two years' imprisonment (Lords amendment 21).
- The police and CPS will be required to have regard to guidance issued by the Secretary of State on the exercise of their functions relating to knife crime prevention orders (Lords amendment 22).
- Knife crime prevention orders will be subject to piloting. The Secretary of State is required to lay before Parliament a report on the outcome of the pilot before the orders are rolled out nationally. (Lords amendment 23.)

15 Lords amendments 77, 82, 91 and 92 make consequential amendments to the extent and commencement clauses.

New clause: Sale etc. of bladed articles to persons under 18

Lords amendments 26, 29 to 34, 71, 80, 83 and 85

*Lords amendments 27, 28

- 16 Lords amendment 26 amends section 141A of the Criminal Justice Act 1988 (the CJA) and the equivalent Northern Ireland legislation.
- 17 Lords amendment 27 exempts remote sellers of bladed products from the prohibition on delivery of bladed products to a residential premise or locker where the delivery of the product is made by a 'trusted courier'.
- 18 Lords amendment 28 provides a power for the Secretary of State, Scottish Ministers and Department of Justice in Northern Ireland to set out in regulations conditions subject to which a trusted courier is to be designated.
- 19 Section 141A of the CJA prohibits the sale to a person under 18 of knives, knife blades, razor blades, axes and other articles with a blade or sharp point made or adapted for use for causing injury to a person. The prohibition does not apply to weapons covered by section 141 of the CJA (which makes it an offence to manufacture and supply an offensive weapon to which that section applies).
- 20 A significant number of exclusions and defences apply to the supply of weapons covered by section 141. These include an exemption for antique weapons and defences for swords with a curved blade of 50 cm or over made before 1954 or by traditional methods and for sporting, re-enactment purposes and religious reasons.
- 21 Lords amendment 26 ensures that the sale of all section 141 weapons to a person under 18 is prohibited by removing the exemption for weapons covered by s141 from section 141A of the CJA.
- 22 Lords amendments 71, 80, 83 and 85 make consequential amendments to the extent and commencement clauses.

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- 23 Lords amendments 29 to 34 to Clause 19 modifies the offences relating to delivery of a bladed product to residential premises or a locker in Clause 17. Previously in the Bill these offences do not apply to weapons to which section 141 of the CJA applies and the amendments remove that exception.

Lords Amendment to clause 24: Prohibition on the possession of offensive weapons

Lords amendments 35

- 24 Lords amendment 35 amends Section 141 of the Criminal Justice Act 1988 so that an order made under this section which has the effect of prohibiting private possession of an offensive weapon may also make provision for the surrender and payment of compensation for such weapons.
- 25 Amendments 65 and 66 are consequential on amendment 35.

Lords Amendment to clause 25: Prohibition on the possession of offensive weapons: supplementary

Lords amendments 36, 37, 39 to 42, 74 to 76, 79

- 26 Lords amendment 37 adds a knife often referred to as a 'cyclone knife' or 'spiral knife' to the list of offensive weapons prohibited under section 141 of the CJA (which applies to England and Wales and Northern Ireland). This means that such knives cannot be manufactured, imported, sold or possessed in private. Lords amendments 40 to 42 would make an equivalent change to the law in Scotland.
- 27 Lords amendments 36, 38 and 39 create defences to the offences in section 141(1) and (1A) (manufacture, sale, possession etc. of an offensive weapon) and section 50(2) and (3) of the Customs and Excise Management act 1979 (importation of an offence weapon) relating to the presentation of a Sikh kirpan by a Sikh to another person. Lords amendment 64 makes a consequential amendment to the extent clause.
- 28 The amendments create defences to the offences of supply and possession in private to enable the gifting and receiving of a ceremonial kirpan by a Sikh to another. They create a defence to the offence of supply (as covered by section 141 of the CJA 1988) at a religious ceremony or other ceremonial event. The amendments also create a defence to the offence of possession in private for Sikhs possessing such swords for the purpose of presenting them to others at a ceremony and for the recipients, whether Sikh or non-Sikh, to possess swords that have been presented to them.
- 29 Lords amendments 43 to 48 bring cyclone knives, and zombie knives in Northern Ireland, within the surrender and compensation provisions in the Bill.

Lords Amendments to clauses 27, 36, 37 and 38: Payments in respect of surrendered offensive weapons, firearms etc.

Lords amendments 50 to 57, 65, 66, 86 to 88, 93

- 30 Clauses 27 and 36 to 38 confer powers to make regulations setting out the arrangements for making compensation payments for offensive weapons, firearms and ancillary equipment made unlawful by the Bill. Lords amendments 50 to 57 modify these regulation-making

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powers to enable the person determining the amount of compensation to exercise discretion in determining the amount payable to the claimant (including discretion to determine that no compensation is payable).

- 31 Amendments 86 to 88 and 93 relate to Northern Ireland, these amendments allow the Department of Justice in Northern Ireland to commence these provisions locally.

***New clauses: Conditions applying to certain firearms**

Lords amendments 58, 59, 67, 68, 72, 81, 89, 94 and 95

- 32 Lords Amendment 58 places a duty on the Secretary of State to set out in regulations minimum, mandatory security conditions, covering the safe storage and transportation of certain high muzzle energy rifles, which would be attached to the owner's firearms certificate on grant or renewal. Lords Amendment 59 makes equivalent provision for Northern Ireland.
- 33 Lords amendments 67, 68, 72, 81, 89, 94 and 95 make consequential amendments to the extent and commencement clauses.

New clauses: Enforcement of offences relating to sale etc. of offensive weapons and Application of Regulatory Enforcement and Sanctions Act 2008

Lords amendments 62, 63 and 69

- 34 Lords amendment 62 provides trading standards officers with a power to enforce various existing and new offences (as provided for in the Bill) related to the sale etc. of bladed articles, offensive weapons and corrosive products. It also confers on trading standards officers the investigatory powers in Schedule 5 to the Consumer Rights Act 2015 for the purpose of enforcing those offences. Such powers will, for example, enable trading standards officers to request evidence such as access to records and documents of internal test purchase operations and request evidence that staff have been adequately trained in relation to the legislation on age-related sales of such products.
- 35 Lords amendment 63 extends the primary authority scheme to the sale and delivery of bladed articles, offensive and dangerous weapons and corrosive products. This enables businesses to enter into partnerships with a local authority that would act as the primary authority for that business in relation to an area of regulation. This enables the primary authority to provide advice and guidance on compliance to the business in areas of regulation covered by the partnership, on which the business can rely.
- 36 Lords amendments 69 makes a consequential amendment to the extent clause.

Lords Amendments to clause 39 and 42: Interpretation of sections 32 to 38 and Extent

Lords amendments 60, 61 and 78

- 37 Lords amendments 60, 61 and 78 make drafting amendments consequential on the rearrangement of the Bill into Parts.

New clause: Guidance on offences relating to offensive weapons etc.

Lords amendments 64, 70, 84 and 90

- 38 Lords amendment 64 enables the Secretary of State, the Scottish Ministers or the Department of Justice in Northern Ireland to issue guidance to relevant persons (such as retailers) about the operation of offences relating to corrosives and offensive weapons. Before issuing such guidance, the relevant national authority will be required to consult such persons as they consider appropriate.
- 39 Lords amendments 70, 84 and 90 make consequential amendments to the extent and commencement clauses.

Financial Effects of Lords Amendments

- 40 Lords amendments 6 to 25 providing for knife crime prevention orders will have financial implications for the police, Crown Prosecution Service, the courts and other agencies. These costs would be fully assessed as part of the pilots provided for by Lords amendment 23.
- 41 Lords amendments 27 and 28 might entail expenditure in administering a trusted courier scheme but that is unclear as it has not been fully articulated how the scheme would operate.
- 42 Lords amendments 62 and 63 entail expenditure by local authorities and (in the case of amendment 63) by the Secretary of State.
- 43 The other Lords amendments are not expected to have a material financial impact on public sector bodies.

European Convention on Human Rights implications

Lords amendments 6 to 25: knife crime protection orders

- 44 A supplementary ECHR memorandum in respect of these Lords amendments is attached.

OFFENSIVE WEAPONS

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Trade Bill as brought from the House of Lords on 20 March 2019.

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