

OFFENSIVE WEAPONS BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

The Government has tabled amendments to the Offensive Weapons Bill for Lords Report Stage which includes a power to issue statutory guidance. This supplementary memorandum explains why the power has been taken and the justification for the procedure selected. The memorandum also details changes to existing regulation-making powers in the Bill in respect of the arrangements for the making of compensation payments for surrendered weapons etc, the possession of which is made unlawful by the Bill.

New clause “Guidance on offences relating to offensive weapons” - Power to issue guidance relating to the sale, delivery and possession of corrosive products/substances and offensive weapons

Power conferred on: Secretary of State, Scottish Ministers and Northern Ireland Department of Justice

Power exercisable by: Statutory guidance

Parliamentary procedure: None

Context and purpose

1. Parts 1 to 3 of the Bill introduce a number of new offences relating to the sale and delivery of corrosive products and the possession of corrosive substances, and creates new criminal offences and amends existing offences relating to the sale and delivery of knives and other bladed articles and products and the possession of offensive weapons. Amongst other things, the Bill:
 - Creates a new criminal offence of selling (both online and offline) a corrosive product to a person under the age of 18. There is a defence where the defendant can prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. Where a corrosive product is sold online, the defence of having taken all reasonable precautions etc. can only be relied on where the seller meets certain conditions in terms of age verification and packaging and delivery of the items.
 - Creates a new criminal offence of possessing a corrosive substance in a public place. There are defences of possessing the corrosive substance for good reason, lawful authority or for use at work.
 - Creates new criminal offences prohibiting the dispatch of bladed products and corrosive products sold online to a residential address or locker. The offence for bladed articles is limited to those that can cause serious injury

and includes defences for made to order items and those for sporting and re-enactment purposes.

- Creates new criminal offences on delivery companies of delivering a bladed article or a corrosive product on behalf of a seller outside the United Kingdom to a person under 18.
 - Makes it a criminal offence to possess flick and gravity knives and offensive weapons to which section 141 of the Criminal Justice Act 1988 applies – the sale and importation of these is already prohibited. It provides for compensation of owners.
 - Extends the existing offences of possessing a bladed article or offensive weapon on school premises to cover further education premises in England and Wales.
2. These provisions will impact on, amongst others, retailers of corrosive products and bladed products/articles, delivery companies, educational establishments and private citizens seeking to purchase such products and articles online or who have certain offensive weapons the possession of which is made unlawful by the Bill (subject to certain exceptions). During Committee stage in the House of Lords there were calls for statutory guidance to assist such persons affected by the provisions in the Bill.
 3. New clause “*Guidance on offences relating to offensive weapons*” enables relevant national authorities (that is, the Secretary of State, Scottish Ministers and the Northern Ireland Department of Justice) to issue guidance about the operation of offences relating to corrosive products and substances, knives and offensive weapons. Before issuing guidance, a relevant national authority is required to consult such persons as they consider likely to be affected by the guidance as they consider appropriate.

Justification for taking the power

4. The purpose of guidance is to aid the implementation of the provisions in Parts 1 to 3 of the Bill and existing legislation, as amended by the Bill, governing the sale and possession of knives and offensive weapons by supplementing the legal framework provided for in Parts 1 to 3 of the Bill and the legislation amended by those Parts. Amongst other things, the guidance could provide further information to retailers and delivery companies about how the provisions of the Bill could affect their businesses. In relation to the possession offences, the guidance could provide illustrative examples of what might constitute a good reason for having a corrosive substance or bladed article in their possession. Such guidance would, for example, be useful to tradespersons, such as plumbers, garden maintenance companies and chefs.
5. It is important that the guidance can be updated at regular intervals to ensure it reflects the needs of persons affected by the legislation and keeps pace with developments in case law.

6. The requirement for the guidance to be published in such a manner as the relevant national authority thinks appropriate will ensure that it is accessible to all those who may need to refer to the guidance.

Justification for the procedure

7. The guidance is not subject to any parliamentary procedure because it deals with practical advice to those affected by the legislation and will have been the subject of consultation with interested parties before it is issued. The guidance will not, and indeed cannot, conflict with the statutory framework governing the sale, delivery and possession of corrosive products/substances, knives and offensive weapons and there will be no statutory duty for persons to have regard to or abide by the guidance. This approach is consistent with the Government's general approach to statutory guidance as reaffirmed by the Leader of the House of Lords in her letter, dated 16 October 2018, to the Delegated Powers and Regulatory Reform Committee (Appendix 1 to the Committee's 35th Report of session 2017-19).

Amendments to clauses 28, 37, 38 and 39: Extension of power to make regulations as to payments in respect of surrendered offensive weapons, firearms and ancillary equipment.

8. The Department's original Delegated Powers Memorandum in respect of the Bill set out the justification for the powers in what are now clauses 28 and 37 to 39 to provide in regulations the arrangements for making compensation payments for offensive weapons, firearms and ancillary equipment made unlawful by the Bill. In each case, the regulations are subject to the affirmative procedure.
9. The Government has now published draft regulations to assist the scrutiny of these provisions. Given the array of makes and models of firearms etc which will be eligible for compensation, the draft regulations provide for the amount of compensation payable to be determined on a case-by-case basis based on an individual valuation of an item's market value. To support this approach, the Government considers it prudent to make express provision in the enabling powers to the effect that the person determining the amount of compensation may exercise discretion in doing so. Amendments have been tabled to the Bill to that end.
10. The Government does not consider that this extension of these regulation-making powers alters the case for leaving the form of these compensation arrangements to be determined by secondary legislation or the rationale for the level of parliamentary scrutiny provided.