



Custodial Sentences and Weapons (Scotland) Act 2007

2007 asp 17

PART 3

WEAPONS

Licensing of knives, swords etc.

58 Licensing of knife dealers

After section 27 of the Civic Government (Scotland) Act 1982 (c. 45) insert—

“Licensing and regulation of knife dealers

27A Knife dealers' licences

- (1) A licence, to be known as a “knife dealer’s licence”, is required for carrying on business as a dealer in any article mentioned in subsection (2).
- (2) Those articles are—
 - (a) knives (other than those designed for domestic use);
 - (b) knife blades (other than those designed for domestic use);
 - (c) swords;
 - (d) any other article—
 - (i) which has a blade; or
 - (ii) which is sharply pointed,and which is made or adapted for use for causing injury to the person.
- (3) A knife dealer’s licence shall, in addition to specifying the activity which the dealer engages in, specify the premises in or from which the activity is to be carried on.
- (4) In subsections (1) and (3), “dealer” means a person carrying on a business which consists wholly or partly of—

Status: This is the original version (as it was originally enacted).

- (a) selling;
- (b) hiring;
- (c) offering for sale or hire;
- (d) exposing for sale or hire;
- (e) lending; or
- (f) giving,

to persons not acting in the course of a business or profession any article mentioned in subsection (2) (whether or not the activities mentioned in paragraphs (a) to (f) are carried out incidentally to a business which would not, apart from this section, require a knife dealer's licence).

(5) In subsection (4), “selling”, in relation to an article mentioned in subsection (2)

- (a) includes—
 - (i) selling such an article by auction;
 - (ii) accepting goods or services in payment (whether in part or in full) for such an article; but
- (b) does not include selling (by auction or otherwise) such an article by one person on behalf of another;

and “sale” is to be construed accordingly.

(6) For the purposes of subsection (4), an article is not to be treated as being exposed for sale if it is exposed for sale (by auction or otherwise) by a person other than the owner.

(7) The Scottish Ministers may by order modify subsection (2) so as to—

- (a) add articles or classes of article;
- (b) amend descriptions of articles or classes of article;
- (c) remove articles or classes of article.

(8) The Scottish Ministers may by order—

- (a) modify subsection (4) so as to modify the definition of “dealer”;
- (b) specify descriptions of activity which are not to be taken to be businesses for the purposes of that subsection (or that subsection as modified).

(9) The power in subsection (8)(a) includes in particular power to add descriptions of business.

27B Applications for knife dealers' licences: notice

- (1) A licensing authority must cause public notice to be given of every application made to them for the grant or renewal of a knife dealer's licence.
- (2) Sub-paragraph (8) of paragraph 2 of Schedule 1 applies to the giving of public notice under subsection (1) as it applies to the giving of public notice under sub-paragraph (7) of that paragraph.

27C Knife dealers' licences: conditions

- (1) In granting or renewing a knife dealer's licence, a licensing authority—

Status: This is the original version (as it was originally enacted).

- (a) must attach to the licence such conditions as are specified (in particular or in general) by order by the Scottish Ministers;
 - (b) may, without prejudice to paragraph 5 of Schedule 1, attach to the licence different conditions in relation to different articles or different classes of article;
 - (c) may, without prejudice to that paragraph, attach to the licence conditions for or in connection with—
 - (i) the keeping of records by the holder of the licence;
 - (ii) the storage of articles mentioned in section 27A(2); and
 - (iii) the display of such articles.
- (2) An order under subsection (1)(a) may provide for different conditions to apply to different articles or different classes of article.

27D Provision of information to holder of knife dealer’s licence

- (1) Subsection (2) applies where the holder of a knife dealer’s licence (“the dealer”)—
- (a) is required by the licence to obtain information of a type specified in the licence from a person; and
 - (b) the dealer requests (whether orally, in writing or otherwise) the information from the person.
- (2) A person, or any person acting on behalf of the person, who knowingly or recklessly provides false information in response to a request under subsection (1)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

27E Knife dealers' licences: warrants to enter, search and seize articles

- (1) Subsection (2) applies if a justice of the peace or sheriff is satisfied by evidence on oath that—
- (a) subsection (3) applies; and
 - (b) subsection (4) or (5) applies.
- (2) The justice of the peace or sheriff may grant a warrant authorising a constable or an authorised officer—
- (a) to enter and search the premises specified in the warrant; and
 - (b) to seize and remove any relevant article.
- (3) This subsection applies if there are reasonable grounds for suspecting that a person (the “suspect”) is carrying on in any premises an activity in respect of which a knife dealer’s licence is required under section 27A.
- (4) This subsection applies if no knife dealer’s licence is in force in respect of the activity.
- (5) This subsection applies if a knife dealer’s licence is in force in respect of the activity but there are reasonable grounds for suspecting that the suspect has failed, or is failing, to comply with a condition of the licence.

27F Powers of constables and authorised officers

- (1) A constable or an authorised officer may use reasonable force in executing a warrant granted under section 27E(2).
- (2) Where a constable who is not in uniform is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his identification.
- (3) Where an authorised officer is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his authorisation.
- (4) If a constable has been required to produce his identification under subsection (2) he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.
- (5) If an authorised officer has been required to produce his authority under subsection (3), he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.
- (6) Any person who—
 - (a) fails without reasonable excuse to permit a constable, or an authorised officer, acting in pursuance of a warrant granted under section 27E(2) to enter and search any premises; or
 - (b) obstructs the entry to, or search of, any premises by a constable or an authorised officer so acting,is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Any relevant article which has been seized and removed under a warrant granted under section 27E(2) may be retained until the conclusion of proceedings against the suspect.
- (8) For the purposes of subsection (7), proceedings in relation to a suspect are concluded if—
 - (a) he is found guilty and sentenced or otherwise dealt with for the offence;
 - (b) he is acquitted;
 - (c) proceedings for the offence are discontinued;
 - (d) it is decided not to prosecute him.
- (9) In this section, “suspect” is to be construed in accordance with section 27E(3).

27G Power to inspect documents

- (1) Subsection (2) applies where—
 - (a) a constable or an authorised officer has reasonable grounds for suspecting that an activity in respect of which a knife dealer’s licence is required under section 27A is being carried on; and
 - (b) no such licence is in force in respect of the activity.
- (2) The constable or authorised officer may—

- (a) require a relevant person to produce any records or other documents connected with the activity,
 - (b) inspect any such records or documents, and
 - (c) take copies of, or extracts from, any such records or documents.
- (3) A relevant person who—
 - (a) is required under subsection (2) to produce records or documents; and
 - (b) fails without reasonable excuse to do so,is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Before exercising the power conferred by subsection (2)—
 - (a) a constable who is not in uniform must produce his identification to the relevant person;
 - (b) an authorised officer must produce his authorisation to the relevant person.
- (5) For the purposes of this section, a person is “relevant” if the constable or authorised officer has reasonable grounds for believing that the person has access to the records or documents.

27H Sections 27E to 27G: interpretation

- (1) In sections 27E and 27F—
 - “premises” includes a vehicle or vessel;
 - “relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A.
- (2) In sections 27E to 27G, “authorised officer” means an officer of a licensing authority authorised by the authority for the purposes of section 27E, 27F or, as the case may be, 27G.

27J Forfeiture orders

- (1) Subsection (2) applies where a person (“the offender”) is convicted of an offence under subsection (A1) or (2) of section 7 in relation to a relevant article—
 - (a) seized by virtue of a warrant granted under section 27E(2); or
 - (b) in the offender’s possession or control at the relevant time.
- (2) The court by which the offender is convicted may make an order for forfeiture (a “forfeiture order”) in respect of the relevant article.
- (3) The court may make a forfeiture order—
 - (a) whether or not it also deals with the offender in respect of the offence in any other way; and
 - (b) without regard to any restrictions on forfeiture in any enactment.
- (4) In considering whether to make a forfeiture order, the court must have regard to—
 - (a) the value of the relevant article; and

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- (b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(5) In this section—

“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A;

“relevant time” means—

- (a) the time of the offender’s arrest for the offence; or
- (b) the time of his being cited as an accused in respect of the offence.

27K Effect of forfeiture order

- (1) A forfeiture order under section 27J(2) operates to deprive the offender of any rights he has in the property to which it relates.
- (2) The property to which a forfeiture order relates must be taken into the possession of the police.
- (3) The court by which the offender is convicted may, on the application of a person who—
 - (a) claims property to which a forfeiture order relates; but
 - (b) is not the offender from whom it was forfeited,
 make an order (a “recovery order”) for delivery of the property to the applicant if it appears to the court that he owns it.
- (4) An application under subsection (3) must be made—
 - (a) in such manner as may be prescribed by Act of Adjournal; and
 - (b) before the end of the period of 6 months beginning with the date on which the forfeiture order was made.
- (5) An application may be granted only if the applicant satisfies the court that—
 - (a) he had not consented to the offender’s having possession of the property; or
 - (b) he did not know, and had no reason to suspect, that the offence was likely to be committed.
- (6) If a person has a right to recover property which, by virtue of a recovery order, is in the possession of another, that right—
 - (a) is not affected by the making of the recovery order at any time before the end of the period of 6 months beginning with the day on which the order is made;
 - (b) is lost at the end of that period.
- (7) The Scottish Ministers may by order make provision for or in connection with the disposal of property forfeited under a forfeiture order in cases where—
 - (a) no application under subsection (3) has been made before the end of the 6 month period beginning with the day on which the forfeiture order was made; or
 - (b) no such application has succeeded.
- (8) An order under subsection (7) may in particular make provision for—

- (a) dealing with any proceeds from the disposal;
- (b) investing money; and
- (c) auditing accounts.

27L Offences by partnerships

Where an offence committed by a partnership under—

- (a) section 5 (in so far as the offence relates to a knife dealer's licence);
- (b) section 7 (in so far as the offence so relates);
- (c) section 27D;
- (d) section 27F; or
- (e) section 27G,

is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

27M Appropriate licence required

Where a person carries on a business which—

- (a) by virtue of section 24 requires a second-hand dealer's licence; and
- (b) by virtue of section 27A requires a knife dealer's licence,

the person requires the appropriate licence in respect of each activity.

27N Remote sales of knives etc.

- (1) This section applies where, in connection with the sale of an article mentioned in section 27A(2)—
 - (a) the premises (the “relevant premises”) from which the article is dispatched in pursuance of the sale are not the same as those where the order for the article is taken (the “sale premises”),
 - (b) the relevant premises are in Scotland, and
 - (c) the sale premises are not in Scotland.
- (2) For the purposes of this Act the sale of the article is to be treated as taking place on the relevant premises.

27P Sales and dispatches in different local authority areas

- (1) Subsection (2) applies where, in connection with the sale of an article mentioned in section 27A(2)—
 - (a) the relevant premises are situated in the area of a local authority, and
 - (b) the sale premises are situated in the area of another local authority which, by virtue of section 2(2), is the licensing authority in respect of the taking of the order for the article.
- (2) For the purposes of this Act, the sale of the article is to be treated as taking place—
 - (a) on the relevant premises, and

(b) on the sale premises.

- (3) In this section, “relevant premises” and “sale premises” have the same meanings as in section 27N.

27Q Duty to avoid conflict between conditions of licences

- (1) Subsection (2) applies where an application is made to a licensing authority for the grant or renewal of a second-hand dealer’s licence by the holder of a knife dealer’s licence issued by that authority.
- (2) In granting the application, the licensing authority must not impose any condition which conflicts, or is inconsistent, with a condition of the knife dealer’s licence.
- (3) Subsection (4) applies where an application is made to a licensing authority for the grant or renewal of a knife dealer’s licence by the holder of a second-hand dealer’s licence issued by that authority.
- (4) In granting the application, the licensing authority must, in accordance with paragraph 10 of Schedule 1, vary the terms and conditions of the second-hand dealer’s licence to avoid any conflict or inconsistency with the terms or conditions of the knife-dealer’s licence.

27R Offences in relation to knife dealers' licences: exceptions

The Scottish Ministers may by order provide that an offence under—

- (a) section 5 (in so far as the offence relates to a knife dealer’s licence);
- (b) section 7 (in so far as the offence so relates);
- (c) section 27D;
- (d) section 27F; or
- (e) section 27G,

is subject to such exceptions as may be specified in the order.

27S Orders under sections 27A to 27R

- (1) Any power conferred by section 27A(7), 27A(8), 27C(1)(a), 27K(7) or 27R to make orders is exercisable by statutory instrument.
- (2) Subject to subsection (3), a statutory instrument containing an order under any of those sections is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) A statutory instrument containing an order under section 27R may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

59 Knife dealers' licences: further provision

- (1) The Civic Government (Scotland) Act 1982 (c. 45) is amended in accordance with subsections (2) and (3).

- (2) In section 6(1)(a) (powers of entry to and search of unlicensed premises), after “Act” insert “(other than a knife dealer’s licence)”.
- (3) In section 7 (offences etc.)—
- (a) before subsection (1) insert—
- “(A1) Any person who without reasonable excuse does anything for which a licence is required under section 27A without having such a licence is guilty of an offence and liable—
- (a) on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.”,
- (b) in subsection (1)—
- (i) after “under” insert “any provision of”, and
- (ii) after “Act” insert “other than section 27A”,
- (c) in subsection (2)—
- (i) the word “and” immediately after paragraph (a) is repealed, and
- (ii) after that paragraph, insert—
- “(aa) in a case where the licence is a knife dealer’s licence, to a fine not exceeding level 5 on the standard scale; and”,
- (d) in subsection (4), after “conviction,” insert—
- “(a) in a case where the application is for a knife dealer’s licence, to a fine not exceeding level 5 on the standard scale; and
- (b) in any other case.”.

Sale etc. of weapons

60 Sale etc. of weapons

- (1) In section 141 of the Criminal Justice Act 1988 (c. 33) (prohibition on sale etc. of certain weapons)—
- (a) in each of subsections (5), (8) and (9), for “prove” substitute “show”, and
- (b) after subsection (11) insert—
- “(11A) Subject to subsection (11C), where a person is charged with an offence under subsection (1) above in respect of conduct of his relating to a weapon to which this section applies, it shall be a defence to show that his conduct was for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (11B).
- (11B) Those purposes are—
- (a) the purposes of theatrical performances and of rehearsals for such performances;
- (b) the production of films (as defined in section 5B of the Copyright, Designs and Patents Act 1988 (c. 48));

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- (c) the production of television programmes (as defined in section 405(1) of the Communications Act 2003 (c. 21)).

(11C) Where—

- (a) a person is charged with an offence under subsection (1) above in respect of conduct of his relating to a weapon to which this section applies (a “relevant weapon”), and
 (b) the relevant weapon is one the importation of which is prohibited,

subsection (11A) does not apply unless the condition in subsection (11D) is satisfied.

(11D) The condition is that there is in force as respects Scotland provision to the effect that it is a defence for a person (“A”) charged with a relevant offence in respect of A’s conduct relating to a relevant weapon to show that A’s conduct was for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (11B).

(11E) In subsection (11D), “relevant offence” means an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (c. 2) (penalty for improper importation of goods).

(11F) For the purposes of this section, a person shall be taken to have shown a matter specified in subsection (5), (8), (9) or (11A) above if—

- (a) sufficient evidence of the matter is adduced to raise an issue with respect to it; and
 (b) the contrary is not proved beyond a reasonable doubt.

(11G) The Scottish Ministers may by order made by statutory instrument modify the application of this section in relation to any description of weapon specified in the order.

(11H) An order under subsection (11G) may make different provision for different purposes.

(11J) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.”.

- (2) The defence in section 141(11A) of the Criminal Justice Act 1988 (c. 33) is not available in relation to so much of any charge as relates to conduct taking place before the commencement of this section.

Swords

61 Sale etc. of swords

- (1) The Criminal Justice Act 1988 (c. 33) is amended in accordance with subsections (2) and (3).

- (2) After section 141 insert—

Status: This is the original version (as it was originally enacted).

“141ZA Application of section 141 to swords: further provision

- (1) This section applies where the Scottish Ministers make an order under subsection (2) of section 141 directing that the section shall apply to swords.
 - (2) The Scottish Ministers may include in the order provision for or in connection with modifying section 141 in its application to swords.
 - (3) The Scottish Ministers may in particular—
 - (a) provide for defences (including in particular defences relating to religious, cultural or sporting purposes) to offences;
 - (b) increase the penalties specified in subsection (1) of section 141 (or that subsection as modified) so as to make a person liable—
 - (i) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or both;
 - (ii) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both;
 - (c) create an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) relating to the provision, without reasonable excuse, of false information by a person acquiring a sword in circumstances specified in the order.
 - (4) In making provision under subsection (3)(a) the Scottish Ministers may make provision for or in connection with—
 - (a) the granting, and revocation, by them of authorisations in relation to the acquisition of swords;
 - (b) enabling them to specify conditions in such authorisations;
 - (c) requiring persons to whom authorisations are granted to comply with such conditions;
 - (d) making it an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) to fail to comply with any such conditions.
 - (5) Defences specified under subsection (3)(a) may relate to swords in general or to a class, or classes, of sword specified in the order.
 - (6) The penalty is—
 - (a) imprisonment for a term not exceeding 12 months; or
 - (b) a fine not exceeding level 5 on the standard scale,or both.
 - (7) The power conferred by subsection (2) is without prejudice to the generality of the power conferred by section 141(11G).”
- (3) In subsection (4) of section 172 (extent), after “124” insert—
“section 141ZA;”.

*Crossbows***62 Sale etc. of crossbows**

- (1) In the Crossbows Act 1987 (c. 32), in the provisions mentioned in subsection (2), for “seventeen” in each place it occurs, substitute “eighteen”.
- (2) The provisions are—
 - (a) section 1 (sale and letting on hire),
 - (b) section 2 (purchase and hiring),
 - (c) section 3 (possession).

*Possession of weapons in prisons etc.***63 Possession of weapons in prisons etc.**

After section 49B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39), insert—

“49C Offence of having offensive weapon etc. in prison

- (1) Any person who has with him in a prison—
 - (a) an offensive weapon, or
 - (b) any other article which has a blade or is sharply pointed,
 commits an offence.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that he had good reason or lawful authority for having the weapon or other article with him in the prison.
- (3) A defence under subsection (2) includes, in particular, a defence that the person had the weapon or other article with him in prison—
 - (a) for use at work,
 - (b) for religious reasons, or
 - (c) as part of any national costume.
- (4) Where a person is convicted of an offence under subsection (1), the court may make an order for the forfeiture of any weapon or other article to which the offence relates.
- (5) Any weapon or other article forfeited under subsection (4) is, subject to section 193 of the Criminal Procedure (Scotland) Act 1995 (c. 46), to be disposed of as the court may direct.
- (6) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or a fine or both.
- (7) In this section—

“offensive weapon” has the meaning given by section 47(4),

“prison” includes—

- (a) any prison other than a naval, military or air force prison,
- (b) a remand centre (within the meaning of paragraph (a) of subsection (1) of section 19 of the Prisons (Scotland) Act 1989 (c. 45) (provision of remand centres and young offenders institutions),
- (c) a young offenders institution (within the meaning of paragraph (b) of that subsection), and
- (d) secure accommodation within the meaning of section 93(1) of the Children (Scotland) Act 1995 (c. 36).”.