

Draft Order laid before Parliament under section 141(11E) of the Criminal Justice Act 1988, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

CRIMINAL LAW, ENGLAND AND WALES CRIMINAL LAW, NORTHERN IRELAND

The Criminal Justice Act 1988 (Offensive Weapons) (Amendment No. 2) Order 2008

<i>Made</i>	- - - -	<i>2008</i>
<i>Coming into force</i>	- -	<i>2008</i>

The Secretary of State makes the following Order in exercise of the powers conferred by section 141(11D) of the Criminal Justice Act 1988⁽¹⁾.

In accordance with section 141(11E) of that Act⁽²⁾, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Criminal Justice Act 1988 (Offensive Weapons) (Amendment No. 2) Order 2008 and shall come into force on the seventh day after the day on which it is made.

(2) This Order extends to England and Wales and Northern Ireland.

Amendment of the Criminal Justice Act 1988 (Offensive Weapons) Order 1988

2.—(1) The Schedule to the Criminal Justice Act 1988 (Offensive Weapons) Order 1988⁽³⁾ (which specifies offensive weapons for the purposes of section 141 of the Criminal Justice Act 1988) is amended as follows.

(2) For paragraph 3 substitute—

“3. It shall be a defence for a person charged—

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- (1) [1988 c.33](#). Section 141(11D) was inserted in relation to England and Wales by section 43(4) of the Violent Crime Reduction Act 2006 ([c.38](#)) and in relation to Northern Ireland by paragraph 11(3) of Schedule 2 to that Act.
- (2) Section 141(11E) was inserted in relation to England and Wales by section 43(4) of the Violent Crime Reduction Act 2006 and in relation to Northern Ireland by paragraph 11(3) of Schedule 2 to that Act.
- (3) [S.I. 1988/2019](#), amended in relation to England and Wales and Northern Ireland by [S.I. 2002/1668](#), [2004/1271](#) and [2008/973](#).

- (a) with an offence under section 141(1) of the Criminal Justice Act 1988; or
 - (b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979⁽⁴⁾,
in respect of any conduct of his relating to a weapon to which section 141 of the Criminal Justice Act 1988 applies by virtue of paragraph 1(r) to show that the weapon in question was made before 1954 or was made at any other time according to traditional methods of making swords by hand.”
- (3) After paragraph 5, insert—
- “**5A.** It shall be a defence for a person charged—
- (a) with an offence under section 141(1) of the Criminal Justice Act 1988; or
 - (b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979,
in respect of any conduct of his relating to a weapon to which section 141 of the Criminal Justice Act 1988 applies by virtue of paragraph 1(r) to show that his conduct was for the purpose only of making the weapon available for the purposes of use in religious ceremonies.”
- (4) In paragraph 6, for “paragraphs 3 and 4” substitute “paragraphs 3, 4 and 5A”.

Home Office

Parliamentary Under Secretary of State

(4) 1979 c.2. Relevant amendments are section 114 of the Police and Criminal Evidence Act 1984 (c.60), regulation 4(1)(a) of S.I. 1996/2686 and section 12 of the Finance Act 1988 (c.39).

EXPLANATORY NOTE

(This note is not part of the Order)

Section 141 of the Criminal Justice Act 1988 (“section 141”) provides that any person who manufactures, sells or hires or offers for sale or hire, exposes or has in his possession for the purpose of sale or hire, or lends or gives to any other person, a weapon to which that section applies shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both. The importation of any such weapon is prohibited.

The Criminal Justice Act 1988 (Offensive Weapons) Order 1988 (the “1988 Order”) specifies weapons to which section 141 applies. Swords with a curved blade of 50 centimetres or over in length are in the list of specified weapons contained in the 1988 Order. In relation to such swords, this Order widens an existing defence to offences under section 141(1) and section 50(2) or (3) of the Customs and Excise Management Act 1979. This amended defence applies to swords made anywhere in the world either before 1954 or at any other time according to traditional methods of making swords by hand. The Order also creates a new defence where the conduct which gave rise to the offence was undertaken for the purposes of making the weapon available for use in religious ceremonies.