

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 9: Offences

Section 142 and Schedule 26: Offences of threatening with article with blade or point or offensive weapon in public or in school premises

768. **Section 142** creates offences relating to the aggravated use of an offensive weapon or an article with a blade or point, as defined in the offences relating to the possession of such articles under section 1 of the Prevention of Crime Act 1953 (“the 1953 Act”) and section 139 of the 1988 Act respectively.
769. *Subsections (1) and (2)* of the section insert the new offences into those Acts to become new section 1A of the 1953 Act and section 139AA of the 1988 Act. The offences are committed where a person (A) has an offensive weapon or an article with a blade or point with him or her and intentionally uses the weapon or article to threaten another (B) creating an immediate risk of serious physical harm to B.
770. A’s use of the weapon must be unlawful, allowing A to raise relevant defences to the use such as self-defence, defence of others or property, and the prevention of crime. If raised, the burden of rebutting those defences will rest on the prosecution. “Serious physical harm” is defined as harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.
771. Like the offences relating to possession of such articles, the offence must be committed in a public place or on school premises, as defined in relation to the relevant possession offences.
772. The offences under this section will be triable either way, and subject to a maximum penalty of 4 years’ imprisonment on indictment. These offences carry a minimum custodial sentence for offenders aged 16 and over. In the case of an offender aged 16 or 17 on the date on which they are convicted, the court must impose a detention and training order of at least 4 months’ duration. For those offenders who are over 18, the court must impose a sentence of imprisonment (or detention in a young offenders institution where the offender is aged 18-20) of 6 months. In each instance the court may depart from the specified minimum sentence if there are particular circumstances relating to the offence or offender which would make it unjust to impose such a sentence. In the case of a 16 or 17 year old the court is required to have regard to its duties pursuant to section 44 of the Children and Young Persons Act 1933 when considering whether such circumstances arise. Section 44 imposes on the court a duty to have regard to the welfare of the child.

773. The section also provides expressly that if a person is found not guilty of the new aggravated offence but it is proved that the person committed the relevant possession offence the court can return an alternative verdict of guilty to the possession offence.
774. *Subsection (3)* of section 142 gives effect to Schedule 26 which makes minor and consequential amendments as a result of section 142. The amendment made by paragraph 16 to section 142 of the 1991 Act will allow a court, where a person pleads guilty to the new offences created by section 142, to reduce the sentence of imprisonment it would otherwise have passed; but it may not reduce it to below 80% of the minimum term referred to in the new section 1A(6) of the 1953 Act and the new section 139AA(8) of the 1988 Act. The amendments made by paragraphs 23 to 29 to the Armed Forces Act 2006 make equivalent provision in respect of sentencing by a service court to that made in section 142 and Schedule 26 in respect of sentencing by a civilian court. The amendment made by paragraph 30 to the Armed Forces Act 2006 includes in Schedule 2 to that Act an offence under section 42 of that Act as respects which the corresponding offence under the law of England and Wales is an offence under section 1A of the 1953 Act and an offence under section 42 of the 2006 Act as respects which the corresponding offence under the law of England and Wales is an offence under section 139AA of the 1988 Act. Schedule 2 to the Armed Forces Act 2006 lists those serious offences to which section 113 and 116 of the 2006 Act apply.

Section 143 and Schedule 27: Causing serious injury by dangerous driving

775. This section inserts new section 1A in the Road Traffic Act 1998 (“RTA”), and makes provision for a new criminal offence of causing serious injury by dangerous driving. The offence extends to England, Wales and Scotland.
776. The offence is committed when a person causes serious physical injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place.
777. Section 1A (2) defines “serious injury” both for the purposes of England and Wales and in Scotland. In England and Wales, “serious injury” means physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861. In Scotland, “serious injury” means “severe physical injury”. The definitions reflect concepts which are familiar in the respective jurisdictions.
778. Section 1A(3) applies the existing definition of dangerous driving in the RTA to the new offence of causing serious injury by dangerous driving. Section 1A(4) provides that the offence of causing serious injury by dangerous driving only applies to driving after the offence comes into force.
779. *Subsections (5) and (6)* create an entry in Schedule 2 to the Road Traffic Offenders Act 1988 (“RTOA”), making provision for the section 1A offence to be triable either way and setting out the maximum penalties available on summary conviction (in England this is 6 months’ imprisonment or a fine of £5,000, or both; in Scotland this is 12 months’ imprisonment or a fine of £10,000, or both) and on indictment (5 years or a fine or both). It also sets out that the offence will be subject to mandatory disqualification and endorsement and sets the range of penalty points available for the offence.
780. *Subsection (7)* gives effect to Schedule 27, which makes minor and consequential amendments as a result of section 114. Paragraph 1 amends section 13A(1) of the “RTA” so that the new offence does not apply to motoring events authorised under regulations made by the Secretary of State under that section.
781. **Paragraphs 2 to 4** amend sections 23 and 24 of the RTOA to provide for alternative verdicts. Where a person is found not guilty of culpable homicide in Scotland, or manslaughter in England and Wales, they may instead be convicted of the new offence. A person found not guilty of the new offence may in the alternative be convicted of

dangerous driving (contrary to section 2 of the RTA) or careless, or inconsiderate, driving (contrary to section 3 of the RTA).

782. Paragraphs 5 and 6 amend sections 34(4) and 36(2)(b) of the RTOA to make provision in respect of disqualification. A person convicted of the new offence will be subject to a minimum disqualification of two years, unless the court considers there are special reasons either not to disqualify them, or to disqualify for a shorter period. A person convicted of the new offence will be disqualified until they pass an extended driving test (section 36 of the RTOA).
783. Paragraphs 7 and 8 amend section 45(6) and, prospectively, section 45A(4) of the RTOA so that an endorsement in relation to the new offence will remain effective until four years have elapsed following conviction. Paragraph 9 inserts the new offence into Schedule 1 to the RTOA for the purpose of applying sections 11 and 12(1) of that Act relating to evidence as to driver, user or owner of a vehicle in proceedings in England and Wales.
784. Paragraph 10 amends, prospectively, paragraph 3 of Schedule 3 to the Crime (International Co-operation) Act 2003 to insert the new offence. Where a defendant is normally resident outside the UK, notice of conviction and disqualification for the new offence will be given to the authorities of a state where they are normally resident.
785. Paragraph 11 amends Schedule 2 to the Armed Forces Act 2006 to insert the new offence into that Schedule for the purpose of sections 113 and 116 of that Act. Those sections govern the reporting of serious offences to the service police force and the Director of Service Prosecutions respectively.

Section 144: Offence of squatting in a residential building

786. This section creates a new offence of squatting in a residential building.
787. Subsection (1) sets out the elements of the offence. The offence is committed when a person is in a residential building as a trespasser having entered it as such, the person knows or ought to know that they are a trespasser, and the person is living in the building or intends to live there for any period.
788. Subsection (1)(a) is designed to ensure that only people who enter and remain in the residential building as trespasser will be captured by the offence. It will not cover anybody who entered the building with permission of the property owner, such as a legitimate tenant.
789. Subsection (1)(b) states that the offence will only be committed if the defendant knew or ought to have known he or she was a trespasser.
790. Subsection (1)(c) provides that the trespasser must be living or intending to live in the building for any period. The offence does not apply to people who are in the residential building momentarily or have no intention of living there.
791. Subsection (2) is designed to ensure that the offence is not committed by a person who remains in occupation after the end of a lease or licence.
792. 'Residential building' is defined in subsection (3).
793. Subsection (4) makes it clear that a defendant who occupied a residential building with the permission (e.g. consent or licence) of a trespasser can, where appropriate, still be considered a trespasser as against the owner or lawful occupier and as such be captured by the offence.
794. The offence will be triable summarily only and will carry a maximum penalty of six months' imprisonment, a level 5 fine or both. The maximum penalty of imprisonment will become 51 weeks if section 281(5) of the 1991 Act is commenced.

795. *Subsection (7)* provides that the offence applies regardless of whether the trespasser entered the property before or after commencement of the section. The offence will therefore apply if having entered the building as a trespasser the person commits the following elements after commencement of the section: they are in the building as a trespasser; they know or ought to know that they are a trespasser, and they are living in the building or intend to live there.
796. *Subsection (8)* amends section 17 of the Police and Criminal Evidence Act 1984 to give uniformed police officers the power to enter and search premises for the purpose of arresting a person for the offence of squatting in a residential building.
797. *Subsection (9)* makes a consequential amendment to Schedule 10 to the Criminal Justice and Public Order Act 1994 by removing a reference to a previous amendment to section 17(3) of the Police and Criminal Evidence Act 1984.

Section 145: Scrap metal dealing: increase in penalties for existing offences

798. **Section 145** raises the level of fines available for certain offences under the Scrap Metal Dealers Act 1964, which regulates those carrying on business as a scrap metal dealer. The effect of the section is to increase the level of fine available for those offences by two levels on the standard scale.

Section 146: Offence of buying scrap metal for cash etc

799. **Section 146(2)** inserts new section 3A into the Scrap Metal Dealers Act 1964 (“the Act”) creating a criminal offence of buying scrap metal for cash etc.
800. The new section 3A prohibits scrap metal dealers paying for scrap metal other than by cheque or by electronic transfer. For the purpose of the offence, “paying” includes payments in kind using goods or services. Section 3A(2) gives the Secretary of State a power, by order (subject to the affirmative Parliamentary procedure), to permit other methods of payment. The offence does not apply if the payment was made in the carrying on of the dealer’s business as a scrap metal dealer as part of the business of an itinerant collector and, at the time of the payment, an order by the local authority was in force in accordance with section 3(1) of the Act is in force. A person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
801. *Subsections (3) to (12)* make consequential amendments to the record-keeping requirements under sections 2 and 3 of the Act. These amendments include a requirement for the dealer to record the method of payment and keep a copy of any cheque or any receipt identifying the transfer. The record-keeping provisions referred to do not apply to itinerant collectors who have an order from the relevant local authority under section 3(1) of the Act.
802. *Subsection (14)* amends section 6 of the Act to provide a constable with a right of entry, exercisable by warrant, to a scrap metal store where scrap metal paid for contrary to the prohibition on cash payments has been received or kept, or to a place to which admission is reasonably required to ascertain whether the prohibition on cash payments is being complied with.

Section 147: Review of offence of buying scrap metal for cash etc

803. **Section 147** places a duty on the Secretary of State to review the offence of buying scrap metal for cash within five years of the offence coming into force. The purpose of this review is to assess whether the offence has achieved the objectives that it was intended to achieve and whether it is appropriate to retain the offence.

Section 148: Reasonable force for the purposes of self-defence etc

804. **Section 148** amends section 76 of the 2008 Act, which provides a gloss on the common law of self-defence and the defences provided by section 3(1) of the Criminal Law Act 1967 and section 3(1) of the Criminal Law Act (Northern Ireland) 1967.
805. These amendments expand section 76 so that the law relating to self-defence and related defences is set out clearly in one place.
806. *Subsection (2)* expands the list of defences in section 76(2) of the 2008 Act to include the common law defence of defence of property.
807. *Subsection (3)* adds a new subsection (6A) to section 76 of the 2008 Act. This is designed to make clear the existing legal position that a person is not under a duty to retreat but the possibility that they could have retreated is an element in the consideration of whether the degree of force used by that person was reasonable in all the circumstances as that person believed them to be.
808. *Subsection (4)* amends subsection 76(8) of the 2008 Act to make it clear that the new subsection (6A) does not prevent other matters from being taken into consideration when the court is deciding whether the degree of force used by the defendant was reasonable in the circumstances.
809. *Subsection (5)* amends subsection (10)(a) of the 2008 Act which defines the meaning of “legitimate purpose” for the purpose of section 76 of the 2008 Act. The amendment provides that a legitimate purpose includes the defence of property under common law.
810. *Subsection (6)* ensures that the amendments to section 76 of the 2008 Act will apply whether the alleged offence took place before, or on or after, the date on which the amendments come into force. The amendments will not apply, however, in relation to a trial on indictment or any proceedings in respect of that trial where the arraignment took place before the date on which the amendments come into force, nor will they apply to a summary trial or any proceedings in respect of that trial which began before the commencement date. Similar transitional provision applies where the alleged offence is a service offence.
811. The amendments to section 76 of the 2008 Act and the transitional provision in *subsection (6)* will extend to England and Wales only though, in relation to service offences, the amendments and transitional provision also extend to Scotland and Northern Ireland. The remaining provisions of section 76 of the 2008 Act will continue to extend to England and Wales and Northern Ireland (and, in relation to service offences, Scotland).