



Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 3

SENTENCING AND PUNISHMENT OF OFFENDERS

CHAPTER 9

OFFENCES

142 Offences of threatening with article with blade or point or offensive weapon in public or on school premises

- (1) In the Prevention of Crime Act 1953, after section 1 (prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse) insert—

“1A Offence of threatening with offensive weapon in public

- (1) A person is guilty of an offence if that person—
- has an offensive weapon with him or her in a public place,
 - unlawfully and intentionally threatens another person with the weapon, and
 - does so in such a way that there is an immediate risk of serious physical harm to that other person.
- (2) For the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.
- (3) In this section “public place” and “offensive weapon” have the same meaning as in section 1.

Status: Point in time view as at 14/05/2013.

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- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.
- (5) Where a person aged 16 or over is convicted of an offence under this section, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (6) In this section “appropriate custodial sentence” means—
- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
 - (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.
- (7) In considering whether it is of the opinion mentioned in subsection (5) in the case of a person aged under 18, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.
- (8) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (4) (a) to 12 months is to be read as a reference to 6 months.
- (9) In relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (6)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.
- (10) If on a person's trial for an offence under this section (whether on indictment or not) the person is found not guilty of that offence but it is proved that the person committed an offence under section 1, the person may be convicted of the offence under that section.”
- (2) In the Criminal Justice Act 1988 after section 139A (offence of having article with blade or point or offensive weapon on school premises) insert—

“139AA Offence of threatening with article with blade or point or offensive weapon

- (1) A person is guilty of an offence if that person—
- (a) has an article to which this section applies with him or her in a public place or on school premises,
 - (b) unlawfully and intentionally threatens another person with the article, and
 - (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.

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- (2) In relation to a public place this section applies to an article to which section 139 applies.
- (3) In relation to school premises this section applies to each of these—
 - (a) an article to which section 139 applies;
 - (b) an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953.
- (4) For the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.
- (5) In this section—
 - “public place” has the same meaning as in section 139;
 - “school premises” has the same meaning as in section 139A.
- (6) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.
- (7) Where a person aged 16 or over is convicted of an offence under this section, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
 - (a) relate to the offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (8) In this section “appropriate custodial sentence” means—
 - (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
 - (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.
- (9) In considering whether it is of the opinion mentioned in subsection (7) in the case of a person aged under 18, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.
- (10) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (6) (a) to 12 months is to be read as a reference to 6 months.
- (11) In relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (8)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.
- (12) If on a person's trial for an offence under this section (whether on indictment or not) the person is found not guilty of that offence but it is proved that the person committed an offence under section 139 or 139A, the person may be convicted of the offence under that section.”

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- (3) Schedule 26 (knives and offensive weapons: minor and consequential amendments) has effect.

143 Offence of causing serious injury by dangerous driving

- (1) The Road Traffic Act 1988 is amended as follows.
 (2) After section 1 insert—

“1A Causing serious injury by dangerous driving

- (1) A person who causes serious injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.
 (2) In this section “serious injury” means—
 (a) in England and Wales, physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861, and
 (b) in Scotland, severe physical injury.”
 (3) In section 2A (meaning of dangerous driving) in subsections (1) and (2) after “sections 1” insert “, 1A ”.
 (4) Section 1A inserted by subsection (2) has effect only in relation to driving occurring after that subsection comes into force.
 (5) In Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (prosecution and punishment of offences under the Traffic Acts) in the appropriate place insert—

“RTA section 1A	Causing serious injury by dangerous driving.	(a) Summarily.	(a) 12 months or the statutory maximum or both.	Obligatory.	Obligatory.	3-11.”
		(b) indictment.	On (b) 5 years or a fine or both.”			

- (6) In the entry inserted by subsection (5), in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 “12 months” is to be read as “6 months (in England and Wales) or 12 months (in Scotland)”.
 (7) Schedule 27 (causing serious injury by dangerous driving: minor and consequential amendments) has effect.

144 Offence of squatting in a residential building

- (1) A person commits an offence if—
 (a) the person is in a residential building as a trespasser having entered it as a trespasser,
 (b) the person knows or ought to know that he or she is a trespasser, and

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- (c) the person is living in the building or intends to live there for any period.
- (2) The offence is not committed by a person holding over after the end of a lease or licence (even if the person leaves and re-enters the building).
- (3) For the purposes of this section—
 - (a) “building” includes any structure or part of a structure (including a temporary or moveable structure), and
 - (b) a building is “residential” if it is designed or adapted, before the time of entry, for use as a place to live.
- (4) For the purposes of this section the fact that a person derives title from a trespasser, or has the permission of a trespasser, does not prevent the person from being a trespasser.
- (5) A person convicted of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale (or both).
- (6) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (5) to 51 weeks is to be read as a reference to 6 months.
- (7) For the purposes of subsection (1)(a) it is irrelevant whether the person entered the building as a trespasser before or after the commencement of this section.
- (8) In section 17 of the Police and Criminal Evidence Act 1984 (entry for purpose of arrest etc)—
 - (a) in subsection (1)(c), after sub-paragraph (v) insert—
 - “(vi) section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (squatting in a residential building);”;
 - (b) in subsection (3), for “or (iv)” substitute “, (iv) or (vi)”.
- (9) In Schedule 10 to the Criminal Justice and Public Order Act 1994 (consequential amendments), omit paragraph 53(b).

145 Scrap metal dealing: increase in penalties for existing offences

- (1) The Scrap Metal Dealers Act 1964 is amended as follows.
- (2) For the following words (which have effect as references to a fine not exceeding level 3 on the standard scale) substitute in each case “ a fine not exceeding level 5 on the standard scale ”
 - (a) in section 1(7) (dealer failing to register) the words from “a fine” to the end;
 - (b) in section 2(6) (dealer failing to record dealings) the words from “a fine” to the end;
 - (c) in section 3(4) (itinerant collector failing to keep receipts) the words from “a fine” to the end;
 - (d) in section 4(4) (convicted dealer failing to meet additional requirements) the same words before “and the court”.
- (3) For the following words (which have effect as references to a fine not exceeding level 1 on the standard scale) substitute in each case “ a fine not exceeding level 3 on the standard scale ”

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- (a) in section 1(8) (dealer failing to give notice of cessation of business) the words from “a fine” to the end;
- (b) in section 5(1) (dealer acquiring metal from a person under 16) the same words before the proviso;
- (c) in section 5(2) (selling metal to a dealer under a false name or address) the words from “a fine” to the end;
- (d) in section 6(5) (obstructing entry and inspection) the words from “a fine” to the end.

Commencement Information

II S. 145 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2770, art. 2(c) (with art. 3)

146 Offence of buying scrap metal for cash etc

- (1) The Scrap Metal Dealers Act 1964 is amended as follows.
- (2) After section 3 insert—

“3A Offence of buying scrap metal for cash etc

- (1) A scrap metal dealer must not pay for scrap metal except—
 - (a) by a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or
 - (b) by an electronic transfer of funds (authorised by credit or debit card or otherwise).
- (2) The Secretary of State may by order amend subsection (1) to permit other methods of payment.
- (3) In this section paying includes paying in kind (with goods or services).
- (4) If a scrap metal dealer pays for scrap metal in breach of subsection (1), each of the following is guilty of an offence—
 - (a) the scrap metal dealer;
 - (b) a person who makes the payment acting for the dealer;
 - (c) a manager who fails to take reasonable steps to prevent the payment being made in breach of subsection (1).
- (5) In subsection (4)(c) “manager” means a person who works in the carrying on of the dealer's business as a scrap metal dealer in a capacity, whether paid or unpaid, which authorises the person to prevent the payment being made in breach of subsection (1).
- (6) Subsection (1) does not apply if—
 - (a) the payment is 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
 - (b) at the time of the payment an order under section 3(1) is in force in relation to the dealer.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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- (8) An order under subsection (2) is to be made by statutory instrument.
- (9) A statutory instrument containing an order under subsection (2) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (3) Section 2 (records of dealings) is amended as follows.
- (4) After subsection (2)(d) insert—
- “(da) where paragraph (d) applies, any part of the price that is unpaid at the time when the entry is to be made;”.
- (5) In subsection (2)(e) for “the last preceding paragraph” substitute “ paragraph (d) ”.
- (6) After subsection (4) insert—
- “(4A) If a scrap metal dealer pays at any time for scrap metal falling within subsection (1)(a)—
- (a) the dealer must keep, with the book containing the entry relating to receipt of the scrap metal, a copy of the cheque (if the payment was by cheque), or any receipt identifying the transfer (if the payment was by electronic transfer and such a receipt was obtained), and
- (b) the particulars required by this section to be entered include those listed in subsection (4B).
- (4B) The particulars are—
- (a) the full name and address of any person who makes the payment acting for the dealer;
- (b) the full name and address of the person to whom the payment is made;
- (c) in the case of an electronic transfer where no receipt identifying the transfer was obtained, particulars identifying the transfer.
- (4C) Anything kept by virtue of subsection (4A)(a) must be marked so as to identify the scrap metal by reference to the entry relating to receipt of the metal.
- (4D) An entry in pursuance of subsection (4A)(b)—
- (a) must be made immediately after the payment is made, and
- (b) if not made at the same time as the entry relating to receipt of the scrap metal, must identify the metal by reference to that entry.”
- (7) In subsection (5), after “this section and” insert “ the book and anything required by subsection (4A)(a) to be kept with it ”.
- (8) Section 3 (special provisions as to records in certain cases) is amended as follows.
- (9) In subsection (5)(d), for “subsection (4)” substitute “ subsections (4) and (4D)(a) ”.
- (10) In subsection (6)(a)—
- (a) after “books” insert “ , and the obligation imposed by subsection (4A)(a) of that section to keep anything with a book, ”;
- (b) after “the like particulars” insert “ , and to keeping the same things, ”;
- (c) for “and (3)” substitute “ , (3) and (4A) to (4D) ”.
- (11) In subsection (6)(c), for “subsection (4)” substitute “ subsections (4) and (4D)(a) ”.

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(12) In section 4(1) (power for court to impose additional requirements on convicted dealers)—

- (a) omit “or” at the end of paragraph (a), and
- (b) after that paragraph insert—
 - “(aa) is convicted of an offence under section 3A, or”.

(13) Section 6 (rights of entry and inspection) is amended as follows.

(14) After subsection (3) insert—

“(3A) Whether or not a place is one to which a constable has a right of entry in accordance with subsection (1), a justice of the peace may issue a warrant described in subsection (3B) if satisfied by information on oath that there are reasonable grounds for believing that the place—

- (a) is a scrap metal store where scrap metal paid for contrary to section 3A is or has been received or kept, or
- (b) is a place to which admission is reasonably required in order to ascertain whether that section is being complied with.

(3B) The warrant is a warrant signed by the justice issuing it which specifies the place concerned and authorises a constable to enter the place, if need be by force, at any time within one month from the date of the warrant.

(3C) A constable authorised to enter a place by a warrant granted under subsection (3A) has a right—

- (a) to inspect that place;
- (b) to require production of, and to inspect, any scrap metal kept at that place;
- (c) to require production of and to inspect any book which the dealer is required by this Act to keep at that place and any copy or receipt required to be kept with the book, or, as the case may be, any receipt which the dealer is required to keep as mentioned in section 3(1)(b), and to take copies of the book, copy or receipt;
- (d) to require production of and to inspect any other record kept at that place relating to payment for scrap metal, and to take copies of the record.”

(15) In subsection (4) for “the last preceding subsection” substitute “ subsection (3) or (3A) ”.

147 Review of offence of buying scrap metal for cash etc

(1) Before the end of 5 years beginning with the day on which section 146(2) comes into force, the Secretary of State must—

- (a) carry out a review of the offence created by that subsection, and
- (b) publish a report of the conclusions of the review.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by creating the offence,
- (b) assess the extent to which those objectives have been achieved, and
- (c) assess whether it is appropriate to retain the offence to achieve those objectives.

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148 Reasonable force for the purposes of self-defence etc

- (1) Section 76 of the Criminal Justice and Immigration Act 2008 (reasonable force for the purposes of self-defence etc) is amended as follows.
- (2) In subsection (2) after paragraph (a) omit “and” and insert—
 - “(aa) the common law defence of defence of property; and”.
- (3) After subsection (6) insert—
 - “(6A) In deciding the question mentioned in subsection (3), a possibility that D could have retreated is to be considered (so far as relevant) as a factor to be taken into account, rather than as giving rise to a duty to retreat.”
- (4) In subsection (8) for “Subsection (7) is” substitute “ Subsections (6A) and (7) are ”.
- (5) In subsection (10)(a) after sub-paragraph (i) omit “or” and insert—
 - “(ia) the purpose of defence of property under the common law, or”.
- (6) Paragraph 27 of Schedule 27 to the Criminal Justice and Immigration Act 2008 (which provides for section 76 of that Act to apply whenever the alleged offence took place, but not in relation to certain proceedings if they began, or the arraignment took place, before that section comes into force) applies to any amendment made by this section to section 76 of that Act as it applies to that section, but as if references to the date on which that section comes into force were references to the date on which the amendment comes into force.

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Changes to legislation:

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