

EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE ACT 1988 (OFFENSIVE WEAPONS) (AMENDMENT No. 2)
ORDER 2008

2008 No. Draft

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 On 6 April 2008, the Criminal Justice Act 1988 (Offensive Weapons) (Amendment) Order 2008 came into force banning the sale, hire, manufacture and import of certain curved swords, subject to defences for legitimate uses. This instrument broadens the defence which allows for the continued trade in genuine curved swords, so that it applies to swords made anywhere in the world, not just in Japan. It also introduces a defence for curved swords for use in religious ceremonies.

2.2 These changes are being made in response to representations made by interested parties following a Parliamentary undertaking given by the Parliamentary Under Secretary of State for Crime Reduction.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 Under section 141 of the Criminal Justice Act 1988 (**section 141**), it is an offence to manufacture, sell, hire (etc) a weapon specified in an Order made under that section. The importation of any such weapon is also prohibited. Importation in breach of this prohibition can lead to criminal liability under section 50(2) or (3) of the Customs and Excise Management Act 1979 (**section 50**). 18 descriptions of weapons have been specified under section 141, including butterfly knives, knuckledusters and batons. These weapons are listed in the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 (the **1988 Order**).

4.2 The Criminal Justice Act 1988 (Offensive Weapons) (Amendment) Order 2008 added swords with a curved blade of 50 centimetres or over in length to the 1988 Order. The Government accepted that there are certain legitimate uses of such swords and so the instrument provided for certain defences to the offences under section 141 and section 50 mentioned above.

4.3 One of these defences was for genuine swords made in Japan. Collectors have made representations that this defence does not account for non-Japanese swords of cultural and historical significance. Makers of high value curved swords in England and Wales, hand-made according to traditional methods, have also made representations that

the ban unfairly impacts on their business. The Government is moving quickly to address these concerns to ensure legitimate business is safeguarded. This instrument accordingly changes the defence to remove the references to Japan, and applies the defence to any curved swords made before 1954 and any curved swords hand-made at any other time according to traditional methods.

4.4 The Order also creates a defence for the manufacture, sale, hire and import of curved swords for use in 'religious ceremonies' recognising that curved swords can be an integral part of Sikh wedding ceremonies.

4.5 This Order is consistent with commitments provided by the Parliamentary Under Secretary of State for Crime Reduction in First Delegated Legislation Committee meeting held on Monday 17 March 2008 during which he provided an undertaking to listen to representations of groups concerned that their legitimate use of items covered by the Order had been adversely affected (column 13 in attached link - <http://www.publications.parliament.uk/pa/cm200708/cmgeneral/deleg1/080317/80317s01.htm>)

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 Vernon Coaker, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:

"In my view the provisions of the Criminal Justice Act 1988 (Offensive Weapons) (Amendment No. 2) Order 2008 are compatible with the Convention rights".

7. Policy background

7.1 The Government has been concerned for some time about the use of offensive weapons in violent crime. Section 141 of the Criminal Justice Act 1988 gives the Secretary of State a power to specify weapons by Order. Where such weapons are specified, it is an offence to manufacture, sell, hire (etc) them and their importation is prohibited. The availability of such weapons is therefore significantly restricted.

7.2 Recently, the Government has been concerned in particular by a number of reports of weapons described as "samurai swords" being used in violent crime, including murders. Police advice is that portability and availability of these swords make them the weapon of choice for growing numbers of young men with criminal intentions.

7.3 A consultation paper was published on 5 March 2007 detailing proposals to ban samurai swords and other weapons which have no legitimate use which gave a 12 week period for submission of views. The closing date for the consultation was 28 May 2007.

7.4 The Consultation Paper asked a number of questions regarding proposals to ban samurai swords and other offensive weapons, including about the definition and whether there should be a defence for genuine swords and for martial arts practitioners. The 270

responses to the Consultation were summarised in a “summary of responses” paper which is contained in the link below (together with the consultation paper itself).

<http://www.homeoffice.gov.uk/documents/cons-2007-ban-offensive-weapons/>

7.5 The majority of responses were from individual collectors, martial arts enthusiasts and retailers. These groups were against a ban, but in favour of certain exemptions should a decision be taken to ban samurai swords. Law enforcement agencies, a victims group and a number of individuals were in favour of a ban with varying views on exemptions. Responses made a good case for framing defences to account for collectors of genuine high-value samurai swords of historical and cultural significance, and for use in connection with reputable martial arts associations.

7.6 In response to the consultation, on 6 April 2008 the Government added swords with a curved blade of 50cm or over to the 1988 Order and included defences for collectors of genuine Japanese swords, swords used in historical re-enactments and swords used by martial arts enthusiasts. These defences allowed legitimate use without undermining the effectiveness of the ban. The Government sought to balance the views of the many collectors, historical re-enactors and martial arts enthusiasts against the position adopted by law enforcement agencies and victims organisations, reflecting the views of wider communities, who thought a ban necessary and proportionate to tackle the menace of violent crime involving these weapons.

7.7 The Northern Ireland Office ran a consultation on ‘The Law on Knives in Northern Ireland’ from July – October 2006. Whilst this paper dealt with knife crime in general, it specifically sought views on adding ‘samurai sword’ type weapons to the 1988 Order. All 9 responses to that point agreed that such weapons should be added to the offensive weapons list albeit with exemption criteria.

7.8 This instrument is being made to address the concerns of collectors by allowing the continued trade in collectable military swords e.g. First and Second World War swords. It also addresses concerns of makers of high value curved swords in England and Wales who have made representations that the ban impacts unfairly on their business. This instrument therefore broadens the existing defence for genuine Japanese curved swords so that it applies to any curved swords made before 1954 and any curved swords hand-made at any other time according to traditional methods. It also introduces a defence for the sale, hire and import of curved swords for use in religious ceremonies. These defences do not impact adversely on the intention behind the ban to target the cheaply available curved swords used in violent crime. Defences for sporting purposes and historical re-enactments remain unchanged. The amendments have the support of the Association of Chief Police Officers (ACPO).

7.9 The Home Office will be publishing guidance to courts and law enforcement agencies in a Home Office Circular. The Home Office and the Northern Ireland Office also intend to issue guidance on the ban to the general public.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no substantive impact on business, charities or voluntary bodies. It will not impose or reduce costs and what marginal impact for business there is will be positive in allowing

the continued trade in collectable curved swords of historical significance and allowing continued manufacture of high value curved swords in England and Wales according to traditional methods.

8.2 The Home Office has agreed to keep costs to the criminal justice system under review though the anticipated costs are expected to be minimal such that they should be absorbed by HMCS and the legal aid fund.

9. Contact – England and Wales

Jonathan Batt at the Home Office Tel: 0207 035 1807 or e-mail:

Jonathan.Batt@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

Contact - Northern Ireland

For Northern Ireland specific queries please contact Lizanne Kennedy, Northern Ireland Office Tel: 02890 527524 or e-mail: Lizanne.Kennedy@nio.x.gsi.gov.uk