

POLICING AND CRIME ACT 2009

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

Part 8 – Miscellaneous

Chapter 2 – Other

Border controls

Section 102 Prohibition on importation of offensive weapons

561. Section 141(2) of the Criminal Justice Act 1988 (CJA) contains a power for the Secretary of State to specify offensive weapons. Where a weapon is specified, it is an offence to sell, hire or manufacture that weapon under section 141(1) CJA. The importation of a specified weapon was previously also prohibited under section 141(4) CJA. Section 141(4) CJA is repealed by paragraph 119(2) in Part 11 of Schedule 7 to this Act (minor and consequential amendments).
562. **Section 102** inserts new sections 141ZB, 141ZC and 141ZD into the CJA. New section 141ZB CJA creates a new prohibition on the importation of a weapon, replacing that in section 141(4) CJA. Section 141ZB CJA also creates a separate power for the Secretary of State to specify weapons for the purposes of the prohibition on importation only. New section 141ZC CJA sets out the exceptions to the prohibition on importation, which mirror the defences to an offence under section 141(1) CJA. New section 141ZD CJA makes provision about the burden of proof applying in respect of the exceptions.
563. The purpose of section 102 is to clarify the position of Scottish Ministers in relation to the power to make orders specifying weapons for prohibition, by drawing a distinction between the prohibition on manufacture, sale or hire, and the prohibition on importation (restrictions on importation being a reserved matter). The effect of section 102 is that importation restrictions are created by the Secretary of State on a UK wide basis. Scottish Ministers are still be able to make an order under section 141 CJA specifying weapons for the purposes of the prohibition on their manufacture, sale or hire in Scotland, but no importation consequences flow from the order.
564. Subsections (2) to (4) contain transitional provisions. These provisions apply where a weapon has been imported in breach of a prohibition but it cannot be proven whether the prohibition is that imposed by section 141(4) CJA (before it was repealed) or by section 141ZB CJA. In such a case, then for the purposes of any criminal proceedings under the Customs and Excise Management Act 1979, it shall be conclusively presumed that the conduct took place after the commencement of section 102 and therefore that the relevant prohibition is that in section 141ZB CJA. The purpose of this transitional provision is to ensure that a defendant is not able to escape liability solely on the basis that it cannot be proven which importation prohibition has been breached.