

EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 1988 (OFFENSIVE WEAPONS) (AMENDMENT) ORDER 2008

2008 No. 973

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 This instrument adds certain swords, commonly known as “samurai swords”, to the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 (the **1988 Order**). The effect of this is to make it an offence to manufacture, sell, hire (etc) these swords and to prohibit their importation, subject to an exemption for antique swords and certain defences. The instrument is being made to restrict the availability of these weapons for use in violent crime.

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**). Currently 17 descriptions of weapons have been specified under section 141, including butterfly knives, knuckledusters and batons. These weapons are listed in the 1988 Order.

4.2 This instrument adds swords with a curved blade of 50 centimetres or over in length to the 1988 Order. These swords are commonly known as “samurai swords”. The Government accepts that there are certain legitimate uses of such swords and so the instrument provides for certain defences to the offences under section 141 and section 50 mentioned above. The 1988 Order itself already contains an exemption from these offences for antique weapons which are over 100 years old.

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) 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 samurai 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 of samurai swords and whether there should be a defence for genuine samurai 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 12 December 2007 the Government announced its intention to add samurai swords to the 1988 Order but to include defences for collectors of genuine Japanese swords, swords used in historical re-enactments and swords used by martial arts enthusiasts. These defences will allow legitimate use without undermining the effectiveness of the ban. In coming to this decision 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 Article 2(2) of this instrument sets out the definition of “samurai swords”. These are defined as any sword with a curved blade of 50 centimetres or over in length (the length being the straight line distance from the top of the handle to the tip of the blade). Article 2(3) contains the defences for genuine swords, historical re-enactments and certain sporting activities.

7.9 The defence for genuine samurai swords recognises the interests of collectors of genuine high-value Japanese samurai swords of historical and cultural significance. The market in these swords will continue to exist. This is consistent with the aim of adding samurai swords to the 1988 Order, which is to target cheap, easily available swords, rather than genuine collectors’ items.

7.10 In relation to the defence for historical re-enactments and certain sporting activities, an important aspect is that third party public liability insurance is held. This is a means of ensuring that the defence is limited to genuine, organised historical re-enactments and sporting events.

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

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

8.3 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
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Summary: Intervention & Options

Department /Agency: Home Office	Title: Impact Assessment of Proposals to add samurai swords to the Offensive Weapons Order 1988	
Stage: Implementation	Version: 3	Date: 20 February 2008
Related Publications:		

Available to view or download at:

<http://www.>

Contact for enquiries: Jonathan Batt

Telephone: 020 7035 1807

What is the problem under consideration? Why is government intervention necessary?

Problem: Use of samurai swords in violent crime including murders

Government action necessary to reduce availability of samurai swords as part of the wider strategy to tackle violent crime. Police advise that their portability and availability make them the weapon of choice for growing numbers of young men with criminal intentions. Samurai swords have been used in around eighty incidents in 4 years including at least ten murders

What are the policy objectives and the intended effects?

To ban the sale, hire, manufacture and import of samurai swords to reduce the availability of samurai swords thereby contributing to:

1. A reduction in violent crime
2. A reduction in fear of crime
3. An increase in community reassurance.

What policy options have been considered? Please justify any preferred option.

A number of options were considered: no action, ban on all swords, complete ban on selling and hiring samurai swords, and the introduction of a ban on selling and hiring samaria swords with defences for collectors and martial arts enthusiasts. A ban on selling and hiring samurai swords with defences allowed for certain groups was the Government's preferred option. This option would target those weapons most likley to be used in violent crime - that is cheap imitation swords - whilst allowing legitimate use e.g. collectors of genuine samurai swords and martial arts practitioners.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Three years after implementation.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

VERNON COAKERDate: 26 FEBRUARY 2008

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' In a worst case scenario, if 20,000 collectors buy 1 sword a year at £30 each there is lost revenue to business of £600,000. Any effect on business is likely to be moderated by the defences to the ban that allow some groups to purchase these swords. Over time business should adapt and demand may displace into other goods.			
	One-off (Transition) Yrs				
	£ Unknown				
	Average Annual Cost (excluding one-off)				
	£ Max 600,000 PA		Total Cost (PV)	£ Max 600,000 PA	
Other key non-monetised costs by 'main affected groups' There will be some enforcement and CJS costs. These are likely to be minimal as the ban extends a current law that is already enforced and generates a very small number of prosecutions.					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' If the ban prevents 1 murder and 7 serious woundings a year then this is a benefit to society of £1.74M. However, the ban does not reduce the stock of swords or prevent all sales and so it is possible that no offences will be prevented.			
	One-off Yrs				
	£ None				
	Average Annual Benefit (excluding one-off)				
	£ zero to 1.74m		Total Benefit (PV)	£ zero to 1.74m PA	
Other key non-monetised benefits by 'main affected groups' The ban may reduce fear of crime.					

Key Assumptions/Sensitivities/Risks This policy will be implemented and enforced on an on-going basis. To illustrate the potential costs and benefits we have estimated these for the first year. We assume that there is the potential for less incidents (and thus equivalent benefits) for subsequent years but have not estimated them over an arbitrary timeframe

Price Base Year -67	Time Period Years 1	Net Benefit Range (NPV) £ -600,000 to 1.74m PA	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	E&W and NI
On what date will the policy be implemented?	April 2008
Which organisation(s) will enforce the policy?	Police, Customs
What is the total annual cost of enforcement for these organisations?	£ minimal
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ n/a
What is the value of changes in greenhouse gas emissions?	£ n/a
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £ unknown

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The Government has been concerned for some time about the use of offensive weapons in violent crime and in particular 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 samurai swords make them the weapon of choice for growing numbers of young men with criminal intentions. 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 window for people to let us have their views. The closing date for the consultation was 28 May 2007.

In the Consultation Paper we asked a number of questions regarding proposals to ban “samurai swords” and other offensive weapons. The 270 responses to these questions are enclosed in a “summary of responses” paper which is contained in the link below.

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

Numerically most respondents were against a ban as most responses were from individual collectors, martial arts enthusiasts and retailers. These groups were in favour of certain exemptions should a decision be taken to ban these weapons. Law enforcement agencies and victims groups were in favour of a ban with varying views on exemptions.

The paper also summarises views on definitions to capture samurai swords, possible exemptions/defences, and views on banning other offensive weapons. Responses to the Consultation make a good case for framing defences to account for collectors of genuine high-value samurai swords of historical and cultural significance. A defence for use in connection with reputable martial arts associations would cater for the only other identifiable legitimate use of samurai swords.

In response to the consultation on 12 December 2007, the Government announced its intention to add “samurai swords” to the Offensive Weapons Order but to include defences for collectors of genuine Japanese swords and swords used by martial arts enthusiasts. These defences will allow legitimate use without undermining the effectiveness of the ban.

The Government needs to balance the views of the many collectors and martial arts enthusiasts against the position adopted by law enforcement agencies and victims, reflecting the views of wider communities, who thought a ban necessary and proportionate to tackle the menace of violent crime involving these weapons. The Government will consider whether any ban should be extended to other swords, subject again to appropriate exemptions, but does not propose, at present, to add any other articles to the Offensive Weapons Order.

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 offensive weapons list. All 9 responses to that point agreed that such weapons should be added to the offensive weapons list albeit with exemption criteria.

Costs

Impact on business

We estimate that there are 2000 individuals who collect genuine samurai swords based on information from retailers and collectors. These individuals would not be affected by the ban as such swords could still be sold, hired imported etc through defences to account for genuine samurai swords of cultural significance.

We estimate that there are 20 000 individuals who collect lower-end samurai swords based on information from retailers and collectors. These individuals would not be covered by the defences to the ban. The cheap replicas retail at £10-£30; higher quality replicas may retail in the hundreds of pounds.

There will be some impact on businesses. It is unknown how many specialist retailers exist who sell only cheap replica samurai swords and therefore it is impossible to estimate how many businesses will cease trading because of the ban.

Businesses who sell cheap replica swords along with other items will also be affected. The number of these businesses is also unknown.

As an illustration, if we assume 20000 collectors purchase one sword a year at £30 each sword then there is lost revenue to businesses of £600,000 per year. This is a worst case scenario. It is important to note that this is lost revenue and not lost profit. If we assume that collectors only purchase a sword every 2 years and the sword costs £20 then the lost revenues is £200000. However, it is likely that any affect on business will be moderated by the defences to the ban that allow sales of samurai swords to certain groups. Over time we would expect businesses to adapt to the new ban and sell other items which will moderate the effect of the ban further.

Impact on CJS

It is difficult to provide an estimate of the number of prosecutions likely to arise from the ban as there is limited evidence on the present number of samurai swords sold. However the numbers involved are likely to be small.

Current prosecution figures for section 141 offences (that is offences relating to the 17 other offensive weapons that are banned through their inclusion on the offensive weapons order) are of the scale of 40 in eight years. We have no expectation that adding samurai swords to the section 141 offences will significantly increase this number.

The penalty for the offence of selling hire etc of samurai swords would be 6 months in prison or a fine. Cases would be dealt with by Magistrates Courts.

Costs for enforcement of the ban are difficult to quantify accurately as decisions on tactics for and resources dedicated to enforcing the ban will be an operational one for chief officers. However it is important to note that the ban adds samurai swords to a list of seventeen other banned items. Enforcement policy should accordingly not need to radically change but merely account for an additional banned item.

Benefits

The benefits of the ban are also difficult to quantify as there is no accurate count of the number of offences currently committed with samurai swords.

Our estimates suggest that there have been around eighty incidents in 4 years including at least ten murders. This is based on unofficial data assembled from police and media reports. Preventing one murder generates a benefit to society of approximately £1.57M, preventing one serious wounding generates £23, 123 and preventing one 'other wounding' generates a benefit of £8696. These numbers are taken from Home Office Online report 30/05 'The Economic and Social costs of crime against individuals and businesses 2003/04' and have been adjusted to 2006-07 prices. They represent the estimated cost to society of a crime and include such things as CJS cost, the physical and emotional impact on victims and health costs. As such there is a potential for the ban to generate high benefits but the ban will not reduce the stock of samurai swords in the near future (in the long run the ban on selling these swords should reduce the stock but this is likely to take a number of years) and therefore it is possible that the ban will not prevent any offences. It is also possible that there may be displacement into other weapons if samurai swords cannot be obtained.

Given this uncertainty we assume that 40% of the current annual offences would be prevented, this is 1 murder and 7 serious woundings, assuming that all the other incidents were serious wounding. This gives benefits in the range of that of £0 to £1.74m per year in 2006-07 prices.

The banning of samurai swords should also contribute to a positive impact on community confidence and reduce fear of crime.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

