

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 3 – Weapons

127. Part 3 of the Bill contains two sets of provisions relating to the control of swords, non-domestic knives and other weapons. The first set of provisions relates to the licensing of sellers of knives etc. while the second introduces new provisions relating to restricting the sale etc. of swords and other weapons; increasing the age limit for purchase or possession of crossbows; and making it an offence to possess an offensive weapon in prisons.

Licensing of Knives, swords etc.

Section 58 - Licensing of knife dealers

128. This section inserts new provisions on the licensing of sellers of knives etc. into the Civic Government (Scotland) Act 1982 and amends existing provisions of the 1982 Act to accommodate this new regime. The provisions should be read alongside the 1982 Act.

The 1982 Act

129. The 1982 Act makes provision for a civic government licensing system, operated by local authorities (as the “licensing authority”). Sections 1 to 8 of, and Schedule 1 to, the 1982 Act contain general provisions which apply to the licensing of all activities covered by the 1982 Act. These include-
- procedures for application and renewal, variation and suspension of licences;
 - powers of entry and search of both licensed and unlicensed premises; and
 - offences in connection with carrying out unlicensed activities, failure to comply with licence conditions, making false statements and failure to notify changes of circumstances.
130. Sections 10 to 43 of the 1982 Act make specific provision in relation to the licensing of e.g. taxis and private hire cars, public entertainment, second hand dealers, metal dealers, street trading and window cleaning. These supplement the general provisions and, with the exception of those for metal dealers, are “optional provisions” (defined in section 9 of the 1982 Act) – they do not apply in an area unless the licensing authority decides that they should. Section 44 of the 1982 Act allows further activities to be designated and brought within the licensing scheme.

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131. Section 58 of the Bill inserts new sections 27A to 27S into the 1982 Act. These new provisions are not “optional provisions”, and will apply automatically in every local authority area. Section numbers 27I and 27O are omitted deliberately.
132. Section 27A (Knife dealers’ licences) provides that a “knife dealer’s licence” is required to carry on business as a dealer in knives and other specified articles. A licence is not therefore required for private sales between individuals.
133. Section 27A(2) provides that the section applies to knives, knife blades, swords or other bladed or pointed articles designed or adapted for causing injury (e.g. arrows or crossbow bolts). Knives and knife blades designed for domestic use are excluded. Section 27A(6) allows the list of articles covered by the section to be altered by an order made by Scottish Ministers.
134. Section 27A(3) provides that a knife dealer’s licence shall specify the premises to which it relates.
135. Section 27A(4) gives a wide definition of a “dealer” and includes those whose business involves not only selling knives etc. but also hiring, lending, giving and offering or exposing for sale or hire such items. The subsection only applies to businesses which sell to private purchasers and therefore sales etc. to persons acting in the course of business or a profession are excluded from these licensing provisions. Sections 27A(7) & (8) allows the definition of dealer to be altered by an order made by Scottish Ministers.
136. Sections 27A(5) and (6) clarify the meaning of “selling”, particularly in relation to sale by auction. These provisions ensure that the requirements for a licence apply to the owner of the goods rather than to any intermediary such as an auction house or online marketplace.
137. Section 27B (Applications for knife dealers’ licences: notice) requires the licensing authority to publicise applications for the grant or renewal of knife dealers’ licences. This replaces the general public notice provisions in paragraphs 2(7) and (9) of Schedule 1 to the 1982 Act, which require notice to be given only for certain classes of licence application. Section 27B(2) applies paragraph 2(8) of the Schedule to the 1982 Act, which requires the notice to be published in a newspaper stating the particulars of the application and the process for making objections and representations.
138. Section 27C (Knife dealers’ licences: conditions) makes provision for the conditions to be attached to knife dealers’ licences. Under paragraph 5 of Schedule 1 to the 1982 Act, the licensing authority has a general power to grant or renew licences subject to such “reasonable conditions” as it thinks fit. Section 27C allows the licensing authority to include conditions in relation to record-keeping and the storage and display of knives etc. It also gives Scottish Ministers the power to specify minimum conditions which must be included in all licences. These conditions may be specified in either particular or general terms, and different conditions may be specified for different classes of article, e.g. different conditions for swords and for knives.
139. Section 27D (Provision of information to holder of knife dealer’s licence) provides for a new offence of providing false information to the holder of a knife dealer’s licence. Section 27D provides that where the dealer requests information from a person (either the customer or a third party) and that person knowingly or recklessly provides false information, then that person is guilty of an offence. The maximum penalty on summary conviction is a fine of up to level 3 on the standard scale (currently £1,000).
140. Sections 27E (Knife dealers’ licences: warrants to enter, search and seize articles) to 27H (Sections 27E to 27G: interpretation) provide powers of entry, inspection, search and seizure in relation to licensed and unlicensed premises.
141. Sections 27E and 27F (Powers of constables and authorised officers) replace section 6 of the 1982 Act, which is disappplied in relation to knife dealers’ licences by

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section 59(2) of this Bill. They provide that a justice of the peace or sheriff may grant a warrant authorising entry and search of premises and the seizure and removal of relevant articles. The power is broader than that contained in section 6 of the 1982 Act in that it includes power to seize and remove articles and that authority may be given to an authorised officer of the licensing authority (e.g. a trading standards officer) as well as to a police constable. Section 27F(6) provides that it shall be an offence to obstruct or fail to permit such a search, with a maximum penalty on summary conviction of a fine of up to of level 3 on the standard scale.

142. Section 27G (Power to inspect documents) provides that where it is suspected that unlicensed activity is taking place, police constables and authorised officers of the licensing authority have the power to inspect and copy records held by persons having access to such documents. It is an offence for such persons to fail to produce records or documents requested without reasonable excuse. That offence is punishable on summary conviction with a fine of up to level 3 on the standard scale. Section 5 of the 1982 Act already provides, among other things, a power of entry and inspection in respect of licensed premises.
143. Sections 27J (Forfeiture orders) and 27K (Effect of forfeiture order) provide for the forfeiture of articles where an offender is convicted of offences of dealing without a licence or failure to comply with licence conditions. Following conviction, the court may make a forfeiture order, forfeiting any items seized under warrant or which the offender had at the time of arrest or when cited in respect of the offence. The order deprives the offender of any rights he has in the property. Rights of third parties are protected by the inclusion of provisions for owners of goods to recover them.
144. Section 27L (Offences by partnerships) contains provisions about offences committed by partnerships which supplement the standard provisions of the 1982 Act.
145. Section 27M (Appropriate licence required) and 27Q (Duty to avoid conflict between conditions of licences) deal with the interaction between the new knife dealer licensing provisions and the existing provisions on second-hand dealers' licences in the 1982 Act. Section 27M makes it clear that where a person carries on business as a dealer in second-hand knives etc., then both a knife dealer's licence and a second-hand dealer's licence will be required (assuming that the licensing authority requires second-hand dealers' licences for these classes of item). Section 27P avoids any conflict between the requirements of these licences, effectively providing that the terms of the knife dealer's licence take precedence.
146. The licensing provisions in the 1982 Act are generally based on the location of business premises and the responsible local authority will therefore be clear where licensable activity takes place within Scotland. Section 27N (Remote sales of knives, etc.) deals with licensing requirements for remote sales, e.g. by mail order, telephone or internet. Section 27N provides that where orders are taken and articles are despatched from separate premises, and only the place of despatch is in Scotland, then that place is treated as the place where the sale happens and for which a licence is required.
147. Section 27P (Sales and dispatches in different local authority areas) provides that, where the sale and despatch of an item take place in Scotland but in separate premises in different local authority areas, the sale takes place at both locations. This means that a knife dealer's licence will be required for both locations.
148. Section 27R (Offences in relation to knife dealers' licences: exceptions) provides a power for Ministers, by order, to provide for exceptions to the new offences created in the Bill and to the existing offences in sections 5 and 7 of the 1982 Act as they relate to knife dealers' licences.
149. Section 27S (*Orders under sections 27A to 27R*) sets out the Parliamentary procedure for the five new order-making powers:

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- 27A(7) – power to modify the articles or classes of article for which a knife dealer’s licence is required;
- 27A(8) – power to modify the definition of “dealer” in section 27A(3);
- 27C(1)(a) – power to specify conditions to be attached to a knife dealer’s licence;
- 27K(7) – power to make provision for the disposal of property forfeited under a forfeiture order; and
- 27R – power to specify exceptions to the offences.

All orders under these powers are to be made by statutory instrument and are subject to negative resolution procedure in the Scottish Parliament, with the exception of orders made under section 27Q which are subject to affirmative resolution.

Section 59 - Knife dealers’ licences: further provision

150. This section makes a number of amendments to the provisions of the Civic Government (Scotland) Act 1982 to accommodate the new licensing provisions inserted by section 58.
151. **Section 59(2)** disapplies section 6 (powers of entry to and search of unlicensed premises) of the 1982 Act, as alternative provision has been made in new sections 27E to 27H.
152. **Section 59(3)** increases the penalties for offences set out in section 7 of the 1982 Act:
 - Paragraph (a) provides that dealing without a knife dealer’s licence is an offence punishable on summary conviction by imprisonment for up to 12 months or a fine up to the statutory maximum or both. The statutory maximum is currently £5,000, though section 48 of the Criminal Proceedings etc. Reform (Scotland) Act 2007 provides for it be increased to £10,000. The maximum penalty, on conviction on indictment, is imprisonment for up to 2 years or an unlimited fine or both. Paragraph (b) disapplies the general section 7(1) offence which is triable only summarily and for which the maximum penalty is a fine of level 4 on the standard scale (currently £2,500).
 - Paragraph (c) provides that a licence holder guilty of failure to comply with a condition attached to a knife dealer’s licence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (currently £5,000) rather than the usual maximum of level 3.
 - Paragraph (d) provides that a person who, in making an application for a knife dealer’s licence, knowingly or recklessly makes a false statement is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale rather than the usual maximum of level 4.

Sale etc. of weapons

Section 60 – Sale etc. of weapons

153. **Section 60** amends section 141 of the Criminal Justice Act 1988 in two ways. Section 60(1)(a) alters the statutory defences to an offence under section 141 of the 1988 Act by requiring an accused to ‘show’ that they have a defence, rather than prove it on a balance of probabilities.
154. **Section 60(1)(b)** inserts subsections (11A) to (11J) into section 141 of the 1988 Act. Subsections (11A) to (11E) provide for further statutory defences to an offence under section 141(1) and ensure that the new defences interface effectively with the import regime. Subsection (11F) supplements the changes made by section 60(1)(a) to make

clear that the burden of proof in relation to a defence to an offence under section 141 of the 1988 Act will be placed on the Crown.

155. Subsection (11G) provides that Scottish Ministers may make an order which modifies the application of section 141 of the 1988 Act in respect of specified weapons (for instance to provide for exceptions, exemptions and defences to an offence under that section). In terms of subsection (11J), all such orders are subject to affirmative resolution procedure in the Scottish Parliament.

Swords

Section 61 – Sale etc. of swords

156. **Section 61** contains new provisions relating to restricting the sale etc. of swords. It adds a new section into the Criminal Justice Act 1988 which is to be read alongside section 141 of that Act. Section 141 contains the power to make restrictions on offensive weapons.
157. Section 141(1) of the 1988 Act provides that any person who manufactures, sells or hires, or offers for sale or hire, exposes or has in his or her possession for the purpose of sale or hire, or lends or gives to any other person, a specified offensive weapon is guilty of an offence. Section 141(4) also prohibits the importation of these weapons. The weapons to which the section applies are specified in the [Criminal Justice Act 1988 \(Offensive Weapons\) \(Scotland\) Order 2005 \(SSI 2005/483\)](#), and include knuckledusters, swordsticks, handclaws, stealth knives and push daggers. Antique items are excluded.
158. Section 61(2) of the Bill inserts a new section 141ZA (Application of section 141 to swords: further provision) into the 1988 Act. This new section provides that where Ministers make an order under section 141 directing that it shall apply to swords, they may include provision in the order to modify the effect of section 141. Section 141ZA(3) expands on the power to modify provided by section 141ZA(2) by setting out some of the modifications that may be made. The list of potential modifications in subsection (3) is not exhaustive.
159. Section 141ZA(3)(a) provides that the order may provide for defences to the offences under section 141(1), including in particular defences relating to religious, cultural or sporting purposes. Section 141ZA(5) provides that the defences may relate to swords in general or to classes of swords.
160. Section 141ZA(3)(b) provides that the order may increase the penalties specified in section 141(1). Currently this section provides that a person found guilty of an offence is liable on summary conviction to imprisonment for a term not exceeding six months and/or to a fine not exceeding level 5 on the standard scale. Subsection (3)(b) allows the order to provide for penalties of up to 12 months imprisonment and/or a fine not exceeding the statutory maximum on summary conviction, or up to 2 years imprisonment and/or an unlimited fine on conviction on indictment. The statutory maximum is currently £5,000, though section 48 of the Criminal Proceedings etc. Reform (Scotland) Act 2007 provides for it be increased to £10,000.
161. Section 141ZA(3)(c) provides that the order may create an offence where a person acquiring a sword provides false information. This will allow creation of an offence similar to that in section 27D(2) of the 1982 Act (inserted by section 58 of this Bill) where a person gives false information to a knife dealer. However, the offence that may be created by the order is not restricted to the seller being a knife dealer. The maximum penalty which may be provided by the order is specified by section 141ZA(6).
162. Section 141ZA(4) enables Scottish Ministers to make provision in relation to a defence under section 141ZA(3)(a) for authorisation to be granted by Ministers. Such authorisation may be made subject to conditions and breach of those conditions may

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be made an offence. The maximum penalty which may be provided by the order is specified by section 141ZA(6).

163. Section 141ZA(6) provides that the maximum penalty which may be provided for an offence under the powers granted by sections 141ZA(3)(c) and (4)(c) is 12 months imprisonment and/or a fine of level 5 fine on the standard scale on summary conviction.
164. [Section 61\(3\)](#) amends section 172 (extent) of the 1988 Act to provide that new section 141ZA extends only to Scotland.

Crossbows

Section 62 – Sale etc. of crossbows

165. [Section 62](#) amends sections 1, 2 and 3 of the Crossbows Act 1987 so as to raise from seventeen to eighteen the age at which a person may be sold or hired a crossbow, and at which a person may buy, hire or possess (in the latter case without supervision by a person aged 21 or over) a crossbow. This replicates for Scotland section 44 of the Violent Crime Reduction Act 2006, bringing the age of sale for crossbows into line with the age of sale for non-domestic knives, fireworks etc.

Possession of weapons in prisons etc.

Section 63 – Possession of weapons in prisons etc.

166. [Section 63](#) amends the Criminal Law (Consolidation) (Scotland) Act 1995 by inserting a new section 49C to provide for a new offence of having offensive weapons or articles with a blade or point (including knives) in a prison (as defined in section 49C(7)). Section 49C(2) provides a defence of ‘good reason or lawful authority’, which is exemplified by section 49C(3). Sections 49C(4) and 49C(5) replicate for prisons the provisions in sections 47(2) and 49(6) of the 1995 Act on forfeiture and disposal of weapons. Section 49C(6) provides for a maximum penalty, on summary conviction, of imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both. The statutory maximum is currently £5,000, though section 48 of the Criminal Proceedings etc. Reform (Scotland) Act 2007 provides for it be increased to £10,000. The maximum penalty, on conviction on indictment, is imprisonment for a term not exceeding 4 years or an unlimited fine or both. The provisions of this section are modelled on sections 49 and 49A of the 1995 Act which deal with possession of similar weapons in public and in schools.