

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 3 – Weapons

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 to be increased to £10,000.

*These notes relate to the Custodial Sentences and Weapons (Scotland)
Act 2007 (asp 17) which received Royal Assent on 19 April 2007*

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 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.