



# Offensive Weapons Act 2019

## 2019 CHAPTER 17

### PART 3

#### SALE AND DELIVERY OF KNIVES ETC

#### **40 Defences to offence under section 38 or 39**

- (1) It is a defence for a person charged with an offence under section 38 to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (2) It is a defence for a person (“the seller”) charged with an offence under section 38(2) of delivering a bladed product to residential premises to prove that—
  - (a) at the time the offence is alleged to have been committed, the seller had procedures in place which were likely to ensure that any bladed product delivered by the seller to residential premises would be delivered into the hands of a person aged 18 or over, and
  - (b) the seller took all reasonable precautions and exercised all due diligence to ensure that the product to which the charge relates would be delivered into the hands of a person aged 18 or over.
- (3) It is a defence for a person (“the seller”) charged with an offence under section 38(2) of arranging for the delivery of a bladed product to residential premises to prove that—
  - (a) the arrangement required the person with whom it was made to have procedures in place which were likely to ensure that any bladed products delivered to residential premises pursuant to the arrangement would be delivered into the hands of a person aged 18 or over, and
  - (b) the seller took all reasonable precautions and exercised all due diligence to ensure that the product to which the charge relates would be delivered into the hands of a person aged 18 or over.
- (4) It is a defence for a person charged with an offence under section 38 to prove that the bladed product was designed or manufactured for the buyer in accordance with specifications provided by the buyer.

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*Changes to legislation: There are currently no known outstanding effects for the Offensive Weapons Act 2019, Section 40. (See end of Document for details)*

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- (5) It is a defence for a person charged with an offence under section 38 to prove that—
- (a) the bladed product was adapted for the buyer before its delivery in accordance with specifications provided by the buyer, and
  - (b) the adaptations were made to enable or facilitate the use of the product by the buyer or its use for a particular purpose.
- (6) It is a defence for a person charged with an offence under section 38 to prove that they reasonably believed that the buyer bought the bladed product for use for relevant sporting purposes or for the purposes of historical re-enactment.
- (7) It is a defence for a person charged in England and Wales or Northern Ireland with an offence under section 39 to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (8) It is a defence for a person (“the accused”) charged in Scotland with an offence under section 39 to show that—
- (a) the accused believed the person into whose hands the bladed product was delivered to be aged 18 or over, and
  - (b) either the accused had taken reasonable steps to establish the person's age or no reasonable person could have suspected from the person's appearance that the person was under the age of 18.
- (9) For the purposes of subsection (8)(b), the accused is to be treated as having taken reasonable steps to establish the person's age if and only if—
- (a) the accused was shown any of the documents mentioned in subsection (10), and
  - (b) the document would have convinced a reasonable person.
- (10) Those documents are any document bearing to be—
- (a) a passport,
  - (b) a European Union photocard driving licence, or
  - (c) such other document, or a document of such other description, as the Scottish Ministers may prescribe by order.
- (11) In the application of this section to Scotland references to a person proving a matter are to be read as references to a person showing a matter.
- (12) A person is to be taken to have shown a matter for the purposes of subsection (8) or (11) if—
- (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (13) The appropriate national authority may by regulations provide for other defences to an offence under section 38 or 39.
- (14) In this section—
- “the appropriate national authority” means—
  - (a) in relation to England and Wales, the Secretary of State,
  - (b) in relation to Scotland, the Scottish Ministers, and
  - (c) in relation to Northern Ireland, the Department of Justice in Northern Ireland;

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**Changes to legislation:** There are currently no known outstanding effects for the Offensive Weapons Act 2019, Section 40. (See end of Document for details)

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“the buyer” has the same meaning as in section 38;

“historical re-enactment” means a presentation or other event held for the purpose of re-enacting an event from the past or of illustrating conduct from a particular time or period in the past;

“residential premises” has the same meaning as in section 38.

(15) For the purposes of this section a bladed product is used by a person for relevant sporting purposes if and only if—

- (a) the product is used by the person to participate in a competitive sport involving combat between individuals, and
- (b) use of the product is an integral part of that sport.

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**Commencement Information**

**I1** S. 40 in force at 6.4.2022 for E.W. by S.I. 2022/418, regs. 1(2)(5), **2(b)** (with reg. 3)

**I2** S. 40 in force at 28.6.2022 for S. by S.S.I. 2022/150, reg. **2(d)**

**Changes to legislation:**

There are currently no known outstanding effects for the Offensive Weapons Act 2019, Section 40.