

Home office

# Consultation on new legislation on offensive and dangerous weapons

Summary of Consultation Responses

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# Summary of consultation responses to new legislation on offensive and dangerous weapons

## Overview

1. This is a summary of the responses to the consultation paper on new legislative measures on offensive and dangerous weapons which was published on 14 October 2017. The consultation closed on 9 December 2017. The consultation asked for responses on the following proposals:
  - a. Making it a criminal offence for knives purchased online to be delivered to a residential address (instead they would need to be picked up from a place where age can be verified);
  - b. Making it a criminal offence to possess certain offensive weapons in private;
  - c. Extending the offence of possessing a knife or offensive weapon on school premises to a wider range of educational institutions;
  - d. Amending the offences of threatening with an article with a blade or point or an offensive weapon;
  - e. Updating the definition of a flick knife;
  - f. Making it a criminal offence to sell products containing certain corrosive substances to the under 18s;
  - g. Making it an offence to possess a corrosive substance in a public place;
  - h. Prohibiting large calibre rifles and rapid firing rifles under section 5 of the Firearms Act 1968.
2. The consultation provided an opportunity for all those who were interested in the proposals to provide their comments. We also wrote to over 170 interested organisations directly inviting them to provide input.
3. The Government is committed to tackling violent crime which destroys the lives of so many young people and devastates communities. Alongside the Home Secretary's announcement on the 3 October to consult on new legislative measures, it was also announced that a new Serious Violence Strategy would be developed. The Strategy was published on 9 April. The Strategy responds to recent increases in serious violence, including increases in knife crime, gun crime and homicide. The new Strategy represents a step change in the way we think and respond to serious violence. There is considerable concern about violent crime following the recent rise in police-recorded knife and firearms offences, and the concern around the use of acid and other corrosive substances being used as a weapon in attacks to inflict serious harm and life changing injuries. There are a number of actions already being taken to address serious violent activity and the use of offensive weapons.
4. The impact of violent crime on society is huge, particularly to the lives of the individuals involved, from the victims, their families and the perpetrator. In the 12 month period ending December 2017, police recorded knife crime increased by 22%,

possession of knives has increased by 33%, offences involving firearms (excluding air weapons) increased by 11% and homicide has risen by 9% (excluding deaths from Hillsborough and terrorism). Tackling this increase in serious violence is a priority for this Government.

### The Responses

5. The total number of responses received was **10,712**. Approximately 60% of the responses were on the firearms proposals and 30% of the responses dealt with the online knife sales proposal. Not all responses provided a response against all proposals, with some only commenting on those that were relevant to them.
6. Responses could be made in a number of ways, online, by e-mail or post. Of the 10,712 responses received, 9,482 were received online, 980 by e-mail and 250 by post. Approximately 20% of the responses to the consultation were from organisations with the remainder being from individuals. Where we were able to identify locations we were able to record that responses were received from across the UK, and of those recorded the large majority were from respondents in England and about 5% were from Scotland and Wales.
7. We are very grateful for all the responses received, many of which came from organisations and individuals with an interest or expertise in the areas covered. We are unable to provide a detailed list of all those who responded, but would be happy to make available further details upon request, with the authorisation of the individual and/or organisation. The Government took careful consideration of the responses received, analysing views and evidence provided, taking these into account during the drafting and preparation of the Offensive Weapons Bill.

## **Creating offences to prevent knives sold online being delivered to a private residential address and ensuring age and identity of the purchaser are checked**

8. The intention of this proposal is to legislate to ensure that the existing offence which prohibits the sale of knives (and certain other articles) to any person under 18 applies effectively where knives are sold online and delivered to a private address. Of those who responded online to this question, 60% disagreed with the proposal to prohibit delivery of knives bought online to a residential address. Main concerns focused on the potential impact to businesses, particularly those responses received from online retailers and manufacturers of cutlery and specialist knives, saying that this would make their business model unviable.
9. Smaller businesses were concerned that the proposal would leave them at an unfair business disadvantage compared to larger retailers. A number of the responses said that the arrangements being proposed for delivery and age checks would be too costly particularly for smaller businesses and those who sold specialist knives. Those responses from small businesses and manufactures of specialist knives raised concerns that, by preventing delivery of knives to residential addresses it could result in some small businesses going out of business, in particular those who operate an online only model.
10. However, a number of the written responses received, including those from the charity and legal sector supported this proposal, but focused on the sale of knives online to under 18s. They agreed further action was needed. They also said this should go hand-in-hand with strengthening the educational awareness amongst young people and the harm knives cause. Responses, particularly from the justice sector, whilst supportive, did raise concern of extending the offences relating to possession of offensive weapons and the potential increased risk this could have on criminalising children.
11. Those responses received from representatives of carriers were supportive of overall aims of the proposals. However, some raised concerns regarding the requirement for verification of age should an agreement be entered into between the retailer and the collection point or delivery service. It was considered that there needs to be a clear defence in place that retailers have taken all reasonable precautions to ensure a criminal offence is not committed by those delivering the product on the retailers' behalf.
12. A number of respondents said the proposals would impact on the disabled and those who lived in isolated areas as travelling to a collection point might be difficult. Respondents also queried the additional burden placed on an individual when having to collect the item and prove that they were the purchaser.

13. Respondents also questioned what would be done by authorities to restrict the activities of overseas online retailers of knives given the proposed restrictions on UK based online retailers.

## **Making it an offence to possess certain weapons in private**

14. The aim of the proposal is to amend existing legislation so that it is an offence to possess any of the weapons specified under section 141 of the Criminal Justice Act 1988 or the Restriction of Offensive Weapons Act 1959 in private. The proposal would allow the police to take action where they come across such a weapon but where there is no evidence of its use in an existing offence. We want the police to be able to seize the weapons and have the ability to arrest and to charge an individual with an offence of possessing the weapon in private, where at present they can only take action if the offensive weapon is considered to be evidence in a criminal investigation.
15. 87% of those responses received online who responded to the question opposed the prohibition on possessing certain offensive weapons in private. The main concerns focused on those individuals that held items in private that were for historical or antique reasons. This included those that were from groups who used weapons in certain sports, such as martial arts organisations (both members and those employed as teachers), re-enactment groups (both historical and educational), collectors and use in television and film production, who were worried that under this proposal the weapons they owned could be made illegal and criminalise the owners.
16. Concerns were also raised by those who owned certain weapons privately which were used in other hobbies – for example enthusiasts engaged in bush craft or country pursuits.
17. Respondents stated that there was a need to ensure there was a defence for those that hold items that encompass antique and historical value. It was also noted that there would be a need to ensure that like the current defence of 'reasonable excuse', applied as a defence for those who also hold these items in private.
18. The proposal was supported by many who expressed views that those items, such as zombie knives, should be captured in a new offence. By extending the powers and banning items that are already banned in public it would provide the additional message that these weapons are not accepted.

## **Making it an offence to possess a knife or an offensive weapon in education institutions other than schools**

19. Responses received to this proposal were generally in favour of extending the existing offence of possession of a knife or an offensive weapon in a school to further education establishments such as sixth form colleges and further education colleges. Of the online responses received, 54% supported the proposals.
20. A number of responses, particularly from catering colleges and manufactures of knives, although recognising that it would be within the public interest to extend the offence, did question how this would impact on those who had legitimate purpose for having such items. This included those students attending courses such as catering, carpentry and joinery, agricultural and other apprentices who require similar tools for their studies. It was regarded that provisions should be put in place to ensure these students would not be committing an offence due to legitimate reasons for having these items.
21. Currently powers exist that enable school staff to search without consent, where they have reasonable grounds for suspecting a pupil has a prohibited item, with the powers to confiscate items found during searches. Respondents expressed the need to ensure clarity on whether these statutory powers would also extend to colleges, where currently a search can only be undertaken if a student agrees. It was also raised that there needs to be further clarification on whether colleges would also be reclassified as public spaces. Other respondents, whilst saying the proposals should be extended, considered the searching for such items should remain the responsibility of the police and not staff.
22. There was overwhelming support for this proposal from charity sectors and those working with young people who had been impacted by knife crime. It was stated that those involved in knife crime or affected by it were more likely to be attending the higher educational premises. It was therefore essential that individuals could feel safe whilst attending them and have the same level of protection offered as when attending school. The majority of responses from the criminal justice sector were also supportive, setting out there was a duty to ensure individuals were safe and that it should allow for the police to hold increased powers to enter and search the premises, thus reducing potential incidents and helping to keep citizens safe.
23. Further clarity was sought by respondents on what would be considered as educational establishments, as this could also take into account museums, which can be used for educational reasons, but may contain military equipment where bladed weapons would be held. Responses on behalf of re-enactment and historical societies also raised concerns regarding how this proposal could impact on visits by such groups for educational purposes, where items can be used in displays. Without a clear defence for possession, transportation and carrying of weapons to such



premises could result in the closure of some societies and clubs, or cause impact to the authenticity of the historical event being portrayed.

24. Respondents who did disagree with the proposal raised concern to those sports, usually undertaken in universities and college for sport, martial arts and historical reasons, such as fencing. Therefore, there were calls to ensure that exemptions were in place for sporting equipment.

## **Amending the offences of threatening with an article with a blade or point or an offensive weapon**

25. Responses received to this proposal were generally in favour of amending the existing offence of threatening an individual (53% of respondents online supported the changes). The current requirement is that the prosecution must show that there is an immediate risk that the other person will actually suffer serious physical harm, so that the offence is committed when the victim reasonably fears they would be likely to suffer serious physical harm.
26. The Crown Prosecution Service agreed with the proposal which would strengthen the current offence. Those in favour, also viewed that amending this offence would mean that those threats made with a knife or other offensive weapon could be more sensibly dealt with in court, ensuring a greater degree of justice for the victim and more successful prosecutions. However, The Bar Council and Criminal Bar Association both questioned the need for an amendment to the current offence given that an individual guilty of possessing a blade would face a custodial sentence and the offence of possession was easier to prove than the proposed amended offence.
27. The test to prove 'reasonable fear' was also queried as to how this could be applied. In particular, the individuals perceptions of fear are subjective, as well as the problematic application to children, who may judge the intention of others and what is reasonable "fear" differently to adults. Respondents raised concern that this proposed change would result in making false accusations harder to disprove.
28. The charity sector provided differing responses the proposal, stating that it shouldn't have to be for the victim to prove how fearful they were. However, another stated that victims often express their frustrations and feeling of powerlessness when cases are presented to courts and there is no acknowledgement of the impact they have felt from being threaten with a knife or offensive weapon. It raised the potential risk that some victims may feel disillusioned with the criminal justice system, therefore leading to them being less likely to report future incidents.

## **Updating the definition of a flick knife**

29. Responses received online to this proposal were generally against the proposal to update the current definition of a flick knife (57%). Respondents felt that either these particular knives were not the type being used in criminal activity, as well as the consultation proposal having not clearly set out what the new definition would be. However, a large majority of responses in writing, which included organisations, charity and legal and criminal justice sector, did agree with the proposal.
30. The majority of reservations, from retailers and individuals, were around the possibility that the revised definition could capture knives that could be opened with one hand that were used in everyday life by those pursuing a hobby. For example rock climbers or those who would require such a knife for their work.
31. Concern by respondents on the definition proposed focused on the potential risk of misinterpretation by the courts, with some knives inadvertently being caught that are used as a functional tool, such as a Leatherman multi-tool. However, many responses, including those manufactures of multifunctional tools, agreed with the proposal to update the definition. Respondents felt that the current legislation was out of date and needed to keep up with the changes that had been made to certain knives, ensuring fit for purpose legislation.
32. Supporters of this proposal responded to say that an updated definition would mean that those manufacturing and importing 'flick knives' would find it hard to circumvent the law through the changes in their design.

### **Making it an offence to sell products containing certain corrosive substances to the under 18s**

33. The proposal to introduce a new offence to prevent the sale of the most harmful corrosive substances to under 18s received very strong support (84% of the online responses supported this proposal). With a number stating that following the volume of incidents reported in the media recently, that action needed to be taken.
34. The intention of the proposal is to put in place legislative measures similar to that of the existing knife legislation. Respondents from the criminal justice sectors supported this proposal, and said that it should also apply for online sales. It was considered appropriate to use similar provisions as set out for knives. This included defences for retailers in respect of taking reasonable precautions and exercising due diligence and that the proposed penalties are also similar for the new offence. Similar to those responses received on the online sale of knives to under 18s, respondents questioned on whether the restrictions will also apply to overseas sales or just those online sales within the UK.
35. Respondents stated that proposals needed to ensure they were practical and proportionate, with clear clarification on the definitions and clear guidance for retailers of age specification and the products that would be within scope. There was support for defining corrosive substances that would be restricted through an order making power, to allow flexibility to amend if necessary, although it was stated that this should not be amended too frequently and that changes should be based on scientific data.
36. Respondents stated there should be flexibility to amend the list of restricted substances through either an order or statutory guidance. Respondents said this should not be extended to impose additional restriction or conditions of sale that are not contained in the primary legislation, such as introducing mandatory age of challenge, which would make these provisions inconsistent with other age restricted legislation. Whilst many were supportive, concerns were raised that consideration would need to be given in putting the proposal in place to any additional burdens this would place on businesses and retailers and possible additional training that would be required.
37. In January 2018 the Home Office announced a set of voluntary commitments to restrict the sale of products that contain harmful levels of acid or other corrosive substances to under 18s. Respondents representing retail industry supported the new proposal, and although supportive of the voluntary commitment, felt that by introducing regulations was a stronger approach than asking retailers to voluntarily sign up.
38. Some respondents felt that it was not just reliant on introducing stronger legislative measures, but improving the education and awareness around corrosives and their

use that would help drive down the impact of their use. There was a view that young people struggle to anticipate the consequences of their actions and judge the seriousness of the risky behaviour associated with this act.

39. There was also support for this proposal from the charities that responded to the consultation. One charity highlighted that this proposal would not only protect individuals from attack but address a concern that they have about young people using acid as a means of self harm or suicide.

## **Making it an offence to possess a corrosive substance in a public place**

40. There was strong support for this proposal. 67% of the online responses who answered the question supported the proposed offence of prohibiting possession of a corrosive substance in a public place. There were, however, a number of responses that called for more clarification around the proposed offence particularly around the sale and possession in a public area i.e. where a purchase had been made by someone over the age of 18 from a shop or supermarket for a legitimate use.
41. Those who agreed with the offence commented that there would still be a need to ensure that corrosive substances are identified sufficiently. The inability to identify substances raised concern in that it could lead to possession of a number of legitimate substances potentially criminalising members of the public. Respondents would welcome a list of those most harmful corrosive substances in statutory guidance or through an order-making power to clarify those that would be captured and reduce criminalising individuals for having everyday household items for legitimate use in public. Some respondents commented that possession of a corrosive substance should be brought into line with those relating to pointed and bladed articles, and due regard must be given to ensuring that frontline police officers are equipped and trained to enable them to reliably detect such substances.
42. Some respondents who agreed with this proposal, such as those in the charity sector working with young people, supported it as young people tended to choose to carry acid due to the belief that they will not face the same penalties that they would if they were caught in possession of carrying a knife. In applying legislative measures comparative to that of possessing a knife, it would indicate that the possession of acid would be treated as severely as that of knife possession.
43. Whilst recognising the concerns following the increase of acid attacks, some respondents felt that the current proposed legislation was unnecessary. They considered that significant amendments to satisfy the requirement of legal certainty and avoid unjust and unintended prosecutions would be needed. Section 1 of the Prevention of Crime Act 1953 provides that an offensive weapon is any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or another person. Respondents queried that those found in possession of corrosive substances, where there is proven intent to cause injury, could be prosecuted under this legislation. It was commented that a rationale for introducing new legislation would be that in order to prove the corrosive substance is an offensive weapon it must be shown that the individual intended to cause injury, thus putting the onus on the person in possession of the corrosive to show they had good reason for being in possession of it. However, there was concern that the absence of a definition in place could lead to confusion.

## **Prohibit .50 calibre rifles and rapid firing rifles under section 5 of the firearms act 1968**

44. 78% of the online responses who responded to the question opposed the prohibition of large calibre rifles and rapid firing rifles, along with a majority of the email and postal responses received. A large number of the responses received opposing these changes cited the lack of any evidence that these particular weapons had ever been used in crime and that only one (.50 calibre) weapon had ever been stolen. Responses also focused on the fact that the proposed prohibition would stop the use of these weapons where they were used in recreational or representative sport. There was also concern that firearms enthusiasts were being targeted despite firearms already being strictly controlled and rigorously regulated. Respondents commented that currently all those using these weapons can only do so through the granting of a Firearms Certificate.
45. There were some respondents though that commented that the risk to public safety from these weapons was high, and that the police have no suitable body armour to protect themselves against such high-powered rifles, should they fall into criminal or terrorist hands. It was felt that prohibiting these weapons needed serious consideration so they could no longer be possessed in private.
46. However, the majority of the respondents commented that where the consultation referred to prohibiting ownership of .50 calibre 'material destruction' rifles, due to the ability to penetrate police body armour if used in criminal activity, was inaccurate and misleading. The ability to do so does not stem from the rifle but the special effects ammunition used, all of which are currently prohibited under Section 5 of the Firearms Act, and therefore unavailable to civilian shooters.
47. It was generally referred to that the number of .50 calibre weapons in the UK was relatively small. These firearms are of high value, with the rifles, ammunition and their ancillary equipment being expensive. Therefore, any scheme to compensate for the prohibition of such weapons would be disproportionate. A general point was made that the prohibition of these weapons, which are large and heavy to transport, would do nothing to stop terrorists/illegal use of firearms, due to them being an unlikely weapon selected for such activity. However, some respondents did state that should this be of concern to the Government, then an alternative to prohibition would be to make these rifles subject to enhanced security measures, such as the type of storage facilities in which rifles were kept or their location.
48. Respondents commented that the consultation provided limited explanation on why these types of firearms had been identified and captured as part of the proposals. There were also responses that purported that these weapons were described in the consultation in a misleading way and that it was unclear what would ultimately be captured. Respondents focussing on the .50 calibre, felt that should the legislative

measures be developed, it would cause risk of including a wide range of calibres. Respondents referred to having heard that the legislation would extend to potentially those firearms with the muzzle energy in excess of 10,000 ft/lbs, which would capture not just the .50 calibre but also others, a number of which that are historic firearms of a collectable nature. This was raised by respondents from historical and re-enactment societies who were concerned with the potential impact it may have on them. Some also commented that should this proposal be enforced then there would be a risk that it would capture many historical military and hunting rifles.

49. Some of the respondents commented that the proposal groups the two weapons together and that they should be treated differently. It was claimed that the manually activated release type rifles, are particularly well suited to disabled shooters and therefore any such restrictions on this category of firearm would be a risk of being considered discriminatory towards disabled shooters. There was concern that the MARS rifle was not a rapid fire rifle as presented in the consultation and that a definitive description of the MARS was not provided and therefore the consultation was not clear on precisely which rifles were at risk of prohibition.
50. A large number of the responses on this proposal referred to the cost implications that had been used as part of the Impact Assessments as being considerably underestimated. Respondents stated that many of the rifles are more costly than indicated and that the costs given do not take into account any of the ancillary gear that would also need to be compensated for. It was also viewed that the costs did not take into account other .50 calibre rifles that might be caught as well as those rifles, should the proposals extend to include firearms over 10,000 ft/lbs.

**Home Office**

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