



Home Office

# **Consultation on draft statutory guidance on the Offensive Weapons Act 2019**

**Summary of Consultation Responses  
and the Government Response**

**January 2022**

# CONTENTS

<b>INTRODUCTION</b> .....	3
<b>OVERVIEW OF RESPONSES AND GOVERNMENT RESPONSE</b> .....	3
Age Verification/labelling/delivery to residential addresses .....	4
The definition of a bladed product/legislative status of cutlery/ clarification around the status of folding pocket knives .....	5
The labelling and identification of corrosive products to indicate the content of the product/relationship between the Offensive Weapons Act and the Poisons Act in terms of corrosives .....	6
Sales from overseas and enforcement of measures in the Act .....	7
General comments and observations in relation to the content, format and coherence of the guidance.....	8

# Summary of consultation responses received on the draft statutory guidance in relation to the Offensive Weapons Act 2019 and the Government Response

## INTRODUCTION

The consultation on the draft statutory guidance on measures in the Offensive Weapons Act 2019 (“the Act”) in relation to the sale, delivery and possession of bladed articles, bladed products and corrosives was launched on the 15<sup>th</sup> August 2019 and the consultation closed on 9<sup>th</sup> October 2019. This document provides an overarching summary of the consultation responses and outlines the Government’s response.

The draft statutory guidance on the Act, produced by the Home Office, provided advice for those required to comply with, or enforce, the measures in the Act which were brought into force on 14 July 2021 (in relation to the prohibitions on certain offensive weapons in Part 4 excluding the prohibition of offensive weapons on further education premises) and which we expect to commence in Spring 2022 (in relation to Parts 1 (corrosive products and substances) 3 (sale and delivery of knives etc), Part 4 (prohibition of offensive weapons on further education premises), Part 5 (threatening with offensive weapons) and Part 7 (enforcement) and with certain other legislation as amended by the Act in England and Wales. It also provided advice in respect of sections 1 to 4 of the Act in Scotland in relation to the sale and delivery of corrosive products.

The guidance is primarily for the police, retailers, delivery companies and Trading Standards Authorities. However, it will also be of interest to the Crown Prosecution Service, Her Majesty’s Courts and Tribunals Service, manufacturers and suppliers of bladed articles, bladed products, and corrosives, as well as members of the public and the consultation was open to all to comment on.

The guidance sets out how duties imposed by the Act may be complied with, and what factors may be taken into account when making decisions on whether and how to proceed with individual cases that are concerned with the possession, sale and delivery of knives, corrosives and offensive weapons, and the use of these to threaten others.

## OVERVIEW OF RESPONSES AND GOVERNMENT RESPONSE

The total number of responses received to the consultation was 76.

Responders were asked for their comments in relation to the content of the draft guidance and all comments, opinions and suggestions have been considered in the development of this response. The responses represented both independent views

and those submitted as a collective view of organisations or businesses. We would like to take this opportunity to thank all respondents who have contributed to this consultation.

The responses provided a wide range of views. The majority of responses fell broadly into five main areas:

- Sales from overseas and enforcement of measures in the Act;
- Age Verification (AV) procedures and systems, the processes of labelling packages and arrangements with courier/delivery firms to deliver bladed products to residential addresses;
- The definition contained in the guidance in relation to a bladed product, clarification around the legislative status of cutlery and clarification around the status of folding pocket knives;
- The labelling and identification of corrosive products to indicate the content of the product in relation to the prohibitions under the Act and the relationship between the Act and the Poisons Act 1972 in terms of corrosives;
- General comments and observations in relation to the format and coherence of the guidance with requests for a much simpler and easier to follow format.

## **Age Verification/labelling/delivery to residential addresses**

### **Summary:**

1. A number of respondents queried, or commented on, the application of measures in the Act requiring the process of age verification. A number of responses also sought clarification on the requirements around labelling packages to indicate that they contained either a corrosive product or bladed article and needed to be marked to indicate that, when delivered by a courier or delivery company, it should only be handed over to someone aged 18 or over.

### **Government response:**

2. The legislation does not prescribe what system should be used in respect of the verification of an individual's age and there are a range of age verification processes or systems available on the market. As the guidance has set out, the Government is of the view that it does not want to issue standards for systems for electronic age verification. This is because decisions on which systems, or courier/delivery companies, to procure and use to meet the requirements of the law must be a matter for the relevant seller and it will be a defence for sellers to demonstrate that they took all reasonable precautions and exercised all due diligence to avoid committing an offence. Therefore sellers will wish to decide themselves which system or arrangement works best for them to allow them to rely on this defence.

3. The Government's position is similar on the requirements in relation to labelling packages under measures in the Act. The Act requires that, where a package is to be collected from a collection point, a package containing a bladed or sharply pointed article, or corrosive product, must be clearly marked to indicate that it contains an item with a blade, a sharp point or a corrosive product and that it should only be delivered into the hands of a person aged 18 or over. The legislation does not stipulate the type of labelling or any of its characteristics, and so sellers will need to determine how best to comply with the labelling requirement. We have, however, stated in the guidance that, in the Government's view, it is unlikely that electronic labels used on handheld signature devices as often used by delivery companies and couriers would satisfy the requirements of the Act, and that clear and visible labelling will be important for retail and delivery staff and couriers so that they are fully aware that the package contains an article that must not be handed to someone under 18. If the package is not labelled as required by the Act for the sale of a bladed article, then the defence to the offence of selling a bladed article to a person under 18 will not be available.
4. In relation to residential delivery of a bladed product there is no requirement for the package to be labelled but the seller needs to prove that they had procedures in place which were likely to ensure that any bladed product would be delivered into the hands of a person aged 18 or over, and that they have taken all reasonable precautions and exercised all due diligence to ensure that the package has not been delivered to someone aged under 18. The Government's view is that the seller may be able to satisfy this requirement by following measures in respect of an adequate age verification system, labelled packaging and ensuring age checks are undertaken at the point of delivery.

### **The definition of a bladed product/legislative status of cutlery/ clarification around the status of folding pocket knives**

#### **Summary:**

5. A number of responses were received requesting further clarification on what a "bladed product" was, what items this definition might prescribe. A further number of responses requested clarification on whether cutlery was caught by measures within the Act and whether the guidance could be clearer on the status of folding pocket knives. Several responses that we received asked about the legal status of pocket knives and the measures in the Act.

#### **Government response:**

6. The Government has made changes to the guidance to set out more clearly its view on the definition of a bladed product under the Act and what items may be captured by this definition. The Act builds on existing legislation in relation to a 'bladed article' as set out under section 141A of the Criminal Justice Act 1988 (CJA 1988) which applies to three separate categories of items: knives, knife blades and razor blades; axes; and any other article which has a blade or is

sharply pointed and which is made or adapted for causing injury to the person. These items must not be sold to under 18s. 'Bladed products', as introduced by the Act are a subset of bladed articles and must not be delivered to residential premises unless certain conditions are met if sold remotely (online, over the phone or by post).

7. To fall within the definition of a bladed product within the meaning of the Act the item must have a blade and be capable of causing serious injury to a person that involves cutting that person's skin. This means that knives that could not cause such an injury will not fall within the definition of bladed product and can be delivered to residential premises. Most cutlery knives, for example, are therefore unlikely to be considered as bladed products but would be a "bladed article" for the purposes of the Act and sellers would therefore need to carry out age verification checks, both in-store and online, in relation to sales of these items but they would not be subject to age verification checks on delivery to residential addresses. The main change from the draft guidance is that we have removed from the suggested list of items that may be a "bladed article" those items that have sharp blades, such as scissors or garden shears, that do not fall within the confines of age restricted sales legislation under the CJA 1988 and, therefore, cannot be considered as a "bladed product". There is already legislation in place to cover the possibility that items such as scissors or garden shears cannot be carried in public when a person intends to use them as a weapon.
8. In relation to cutlery knives, section 141A of the CJA 1988 provides that a bladed article includes any knife. The legislation is not prescriptive as to what kinds of knives are covered, what they are constructed of or any other description. In the absence of any case law exempting cutlery the Government's view is that a cutlery knife is still caught by the definition in section 141A as a knife and is therefore a bladed article for the purposes of the Act – but it is unlikely to be a bladed product as it is unlikely to meet the definition of such an item.
9. In respect of folding pocket knives and their legal status, the guidance now contains references to the effect that section 141A of the CJA 1988 provides that it is not an offence to sell or supply a pocket knife to someone under the age of 18 providing that the knife in question has a folding blade which is 3 inches (7.62 cm) or less in length and, therefore, pocket knives are not caught by any of the measures in the Act.

### **The labelling and identification of corrosive products to indicate the content of the product/relationship between the Offensive Weapons Act and the Poisons Act in terms of corrosives**

#### **Summary:**

10. Some responses to the consultation raised points about the inclusion of information around the identification and labelling of corrosive products to indicate the content of the product in relation to the prohibitions under the Act and the relationship between the Act and the Poisons Act 1972 in terms of corrosives.

### **Government response:**

11. The Government has considered these areas and we agree that there needs to be additional information provided in order to help inform retailers. We have therefore incorporated additional guidance into the final version of the statutory guidance. We have suggested that the content of various corrosive products is clarified by manufacturers through the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 which will be of assistance in helping sellers identify products. It places a specific duty on suppliers (whether manufacturers, importers or distributors) of hazardous chemical substances or mixtures to provide a Safety Data Sheet where the substance or mixture is placed on the market and this allows information to be passed down through the supply chain to ensure that these chemicals are safely managed.
12. Additions to the guidance have also been made to clarify the relationship between the Act and the Poisons Act 1972 and these additions remind businesses, who sell or supply regulated and reportable substances, that they must report any suspicious transactions to the national contact point and any significant disappearances and thefts of these chemicals to their local police force.

### **Sales from overseas and enforcement of measures in the Act**

#### **Summary:**

13. A number of responses cited observations in relation to the measures in the Act concerning overseas sales compared to the legal obligations placed on UK based sellers in relation to corrosives and bladed articles and products. Respondents were concerned that the lack of legal obligations on overseas sellers provided an unfair advantage over sellers based in the United Kingdom.

### **Government response:**

14. The Act makes it an offence for a delivery company, who has entered into an arrangement with a seller based outside the UK, to deliver a corrosive product (section 4) or a bladed article (section 42) to a person under 18. The criminal liability attaches to delivery companies, rather than the overseas seller, who enter into arrangements with a non-UK based seller for the delivery of corrosive products or bladed articles. For England and Wales and Northern Ireland, there is a defence in relation to both these offences which is available to delivery companies where they can prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence of delivering a corrosive product, or bladed article to a person under the age of 18. For Scotland, there is a defence to both these offences which is available to delivery companies where they can prove that they believed the person they delivered the corrosive product or bladed article to was 18 or over, that they had taken reasonable steps to establish the purchaser's age and that no reasonable

person, based on the purchaser's appearance, could have suspected they were under 18. A person is to be treated as having taken reasonable steps if (and only if) they are shown a passport, EU photocard driving licence or such documents that Scottish Ministers may prescribe by order, and if the document would have convinced any reasonable person. Following the UK's exit from the European Union, there is a need to add UK driving licences to the list of prescribed documents. The Scottish Government intends, subject to approval being received from the Scottish Parliament in due course, to add them to the list once the Act has been commenced.

15. The reason that the liability is placed upon the delivery company rather than the overseas seller is that there is no extraterritorial jurisdiction to prosecute overseas sellers and so the Government is not able to impose similar conditions set out in the Act in relation to underage sales in the UK. This was made clear during the passage of the legislation in Parliament.
16. In addition, in respect of overseas sellers, the Act sets out that such an arrangement would need to be in place for the delivery to a residential address in respect of any bladed article and not just the subset of bladed products which only applies to sellers based in the UK.

## **General comments and observations in relation to the content, format and coherence of the guidance**

### **Summary:**

17. There were a number of general comments received about the content of the guidance that have not already been addressed in the paragraphs above. A number of comments related to the format of the guidance.
18. Some responses questioned guidance available to other organisations, such as the police, in relation to measures in the Act.
19. There were a number of requests for an expansion of information in relation to the defences available to businesses to avoid committing the offences in relation to the sale and delivery of corrosive and bladed products.
20. A small number of respondents questioned the content, or lack of content, of the guidance in relation to the measures in the Act applicable in Scotland.
21. Some responses commented about the availability of future technology that may mean prohibitions currently in the Act become outdated.

### **Government response:**

22. In relation to the format and content of the guidance the Government have addressed some of the concerns raised and made amendments or changes to the guidance where it is able to within the confines of the legislation. This



includes changes to areas of the guidance to incorporate a more comprehensible format.

23. In respect of guidance available to the police service this would be a matter for the College of Policing and we will be working with them and other key stakeholders in relation to any guidance that is applicable.
24. On the requests made by respondents for an expansion of information in relation to the defences available to businesses to avoid committing the offences in relation to the sale and delivery of corrosive and bladed products, the Government considers that the statutory guidance provides a useful overview of the principles of the legislation, but for obvious reasons cannot specifically cover every potential factual scenario that might arise. Ultimately, it will be for the courts to decide if an offence has been committed. In addition, the Act provides for a Primary Authority to issue guidance around the sale and delivery of bladed articles and corrosive products so further, non legislative, guidance will be available to manufacturers and businesses alike in relation to the measures in the Act that bring in new legal obligations.
25. In relation to the requests for clarification on the position of guidance for measures in the Act that affect Scotland, the statutory guidance covers sections 1 to 4 of the Act in relation to the sale and delivery of corrosive products in Scotland as this is a reserved matter. In relation to other measures in the Act that relate to Scotland in respect of the sale, delivery and possession of bladed articles and the possession of corrosives these are devolved matters and, as such, the Act allows for Scottish Ministers in the Scottish Government to publish their own guidance on these areas.
26. In response to the points raised by respondents in relation to the availability of future technology that may mean prohibitions currently in the Act become outdated the Government will, as with any legislation and guidance, keep this area under review. Where it is within the bounds of the legislation, the Secretary of State can issue further statutory guidance if required.