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DRAFT STATUTORY INSTRUMENTS

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2008 No.

**CRIMINAL LAW, ENGLAND AND WALES**

**CRIMINAL LAW, NORTHERN IRELAND**

**The Criminal Justice Act 1988 (Offensive Weapons)(Amendment) Order 2008**

*Made* - - - - - 2008

*Coming into force* - - - - - 6th April 2008

The Secretary of State makes the following Order in exercise of the powers conferred by section 141(2) and (11D) of the Criminal Justice Act 1988(a).

In accordance with section 141(11E) of that Act(b), a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Criminal Justice Act 1988 (Offensive Weapons) (Amendment) Order 2008 and shall come into force on 6th April 2008.

(2) This Order extends to England and Wales and Northern Ireland.

**Amendment of the Criminal Justice Act 1988 (Offensive Weapons) Order 1988**

2. (1) The Schedule to the Criminal Justice Act 1988 (Offensive Weapons) Order 1988(c) (which specifies offensive weapons for the purposes of section 141 of the Criminal Justice Act 1988) is amended as follows.

(2) In paragraph 1, after sub-paragraph (q) insert—

“(r) a sword with a curved blade of 50 centimetres or over in length; and for the purposes of this sub-paragraph, the length of the blade shall be the straight line distance from the top of the handle to the tip of the blade.”.

(3) After paragraph 2 insert

“3. It shall be a defence for a person charged—

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(a) 1988 c.33. Section 141(11D) is inserted in relation to England and Wales by section 43(4) of the Violent Crime Reduction Act 2006 (c.38) and in relation to Northern Ireland by paragraph 11(3) of Schedule 2 to that Act.  
(b) Section 141(11E) is inserted in relation to England and Wales by section 43(4) of the Violent Crime Reduction Act 2006 (c.38) and in relation to Northern Ireland by paragraph 11(3) of Schedule 2 to that Act.  
(c) S.I. 1988/2019, amended in relation to England and Wales and Northern Ireland by S.I. 2002/1668 and 2004/1271.

- (a) with an offence under section 141(1) of the Criminal Justice Act 1988; or
- (b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979(a).

in respect of any conduct of his relating to a weapon to which section 141 of the Criminal Justice Act 1988 applies by virtue of paragraph 1(r) to show that the weapon in question was made in Japan before 1954 or was made in Japan at any other time according to traditional methods of forging swords.

**4. It shall be a defence for a person charged**

- (a) with an offence under section 141(1) of the Criminal Justice Act 1988; or
- (b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979,

in respect of any conduct of his relating to a weapon to which section 141 of the Criminal Justice Act 1988 applies by virtue of paragraph 1(r) to show that his conduct was for the purpose only of making the weapon available for the purposes of the organisation and holding of a permitted activity for which public liability insurance is held in relation to liabilities to third parties arising from or in connection with the organisation and holding of such an activity.

**5. For the purposes of paragraph 4 –**

“historical re-enactment” means any 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;

“insurance” means a contract of insurance or other arrangement made for the purpose of indemnifying a person or persons named in the contract or under the arrangement;

“permitted activity” means an historical re-enactment or a sporting activity;

“sporting activity” means the practising of a sport which requires the use of a weapon described in paragraph 1(r);

“third parties” includes participants in, and spectators of, a permitted activity and members of the public.

**6. For the purposes of paragraphs 3 and 4, a person shall be taken to have shown a matter specified in those paragraphs if –**

- (a) sufficient evidence of that matter is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved beyond a reasonable doubt.”.

Home Office

Minister of State

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

Section 141 of the Criminal Justice Act 1988 (“section 141”) provides that any person who manufactures, sells or hires or offers for sale or hire, exposes or has in his possession for the purpose of sale or hire, or lends or gives to any other person, a weapon to which that section applies shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both. The importation of any such weapon is prohibited.

(a) 1979 c.2 Relevant amendments are section 114 of the Police and Criminal Evidence Act 1984 (c.60), regulation 4(1) of S.I. 1996/2686 and section 12 of the Finance Act 1988 (c.39)

The Criminal Justice Act 1988 (Offensive Weapons) Order 1988 (the "1988 Order") specifies descriptions of weapons to which section 141 applies. This Order adds swords with a curved blade of 50 centimetres or over in length to the list of specified weapons contained in the 1988 Order. In relation to such swords, this Order also provides for defences to an offence under section 141(1) and section 50(2) or (3) of the Customs and Excise Management Act 1979. These defences apply in relation to certain swords made in Japan or where the conduct which gave rise to the offence was undertaken for the purposes of certain historical re-enactments and sporting activities. The Order also makes provision for the standard of proof in relation to these defences.