

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 9: Offences

Section 142 and Schedule 26: Offences of threatening with article with blade or point or offensive weapon in public or in school premises

768. **Section 142** creates offences relating to the aggravated use of an offensive weapon or an article with a blade or point, as defined in the offences relating to the possession of such articles under section 1 of the Prevention of Crime Act 1953 (“the 1953 Act”) and section 139 of the 1988 Act respectively.
769. *Subsections (1) and (2)* of the section insert the new offences into those Acts to become new section 1A of the 1953 Act and section 139AA of the 1988 Act. The offences are committed where a person (A) has an offensive weapon or an article with a blade or point with him or her and intentionally uses the weapon or article to threaten another (B) creating an immediate risk of serious physical harm to B.
770. A’s use of the weapon must be unlawful, allowing A to raise relevant defences to the use such as self-defence, defence of others or property, and the prevention of crime. If raised, the burden of rebutting those defences will rest on the prosecution. “Serious physical harm” is defined as harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.
771. Like the offences relating to possession of such articles, the offence must be committed in a public place or on school premises, as defined in relation to the relevant possession offences.
772. The offences under this section will be triable either way, and subject to a maximum penalty of 4 years’ imprisonment on indictment. These offences carry a minimum custodial sentence for offenders aged 16 and over. In the case of an offender aged 16 or 17 on the date on which they are convicted, the court must impose a detention and training order of at least 4 months’ duration. For those offenders who are over 18, the court must impose a sentence of imprisonment (or detention in a young offenders institution where the offender is aged 18-20) of 6 months. In each instance the court may depart from the specified minimum sentence if there are particular circumstances relating to the offence or offender which would make it unjust to impose such a sentence. In the case of a 16 or 17 year old the court is required to have regard to its duties pursuant to section 44 of the Children and Young Persons Act 1933 when considering whether such circumstances arise. Section 44 imposes on the court a duty to have regard to the welfare of the child.

These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

773. The section also provides expressly that if a person is found not guilty of the new aggravated offence but it is proved that the person committed the relevant possession offence the court can return an alternative verdict of guilty to the possession offence.
774. *Subsection (3)* of section 142 gives effect to Schedule 26 which makes minor and consequential amendments as a result of section 142. The amendment made by paragraph 16 to section 142 of the 1991 Act will allow a court, where a person pleads guilty to the new offences created by section 142, to reduce the sentence of imprisonment it would otherwise have passed; but it may not reduce it to below 80% of the minimum term referred to in the new section 1A(6) of the 1953 Act and the new section 139AA(8) of the 1988 Act. The amendments made by paragraphs 23 to 29 to the Armed Forces Act 2006 make equivalent provision in respect of sentencing by a service court to that made in section 142 and Schedule 26 in respect of sentencing by a civilian court. The amendment made by paragraph 30 to the Armed Forces Act 2006 includes in Schedule 2 to that Act an offence under section 42 of that Act as respects which the corresponding offence under the law of England and Wales is an offence under section 1A of the 1953 Act and an offence under section 42 of the 2006 Act as respects which the corresponding offence under the law of England and Wales is an offence under section 139AA of the 1988 Act. Schedule 2 to the Armed Forces Act 2006 lists those serious offences to which section 113 and 116 of the 2006 Act apply.