



Circular No. 2012/08

TITLE	Implementation of criminal offences in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 - Offences of threatening with article with blade or point or offensive weapon and offence of causing serious injury by dangerous driving
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For more information contact:	See contact list at back of circular
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Implementation of criminal offences in the Legal Aid, Sentencing and Punishment of Offenders Act 2012

1. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”) creates five new criminal offences:
 - Section 142 – offences of threatening with article with blade or point or offensive weapon in public or on school premises (sec 142 creates two new offences)
 - Section 143 – offence of causing serious injury by dangerous driving.
 - Section 144 - offence of squatting in a residential building.
 - Section 146 - offence of buying scrap metal for cash etc.
2. The offences under sections 142, 143 and 146 are being brought into force on 3 December 2012. This circular provides summary and background information about sections 142 and 143 as well as details of the offence and penalties. For section 143 some frequently asked questions are also included at the back.
3. The purpose of this circular is to provide guidance and it should not be regarded as providing legal advice. Legal advice should be sought if there is any doubt as to the application or interpretation of the legislation.
4. Section 146, which makes the buying of scrap metal for cash an offence, is also being brought into force on 3 December 2012. Home Office guidance in relation to this offence can be found at:

www.homeoffice.gov.uk/publications/crime/scrap-metal-guidance?view=Binary

5. Section 144, which creates a new offence of squatting in a residential building, was commenced on 1 September 2012. The circular on the Offence of Squatting in a Residential Building can be found at:

www.justice.gov.uk/downloads/legislation/bills-acts/circulars/squatting-circular.pdf

Introduction

6. Section 142 creates two new offences that target those who use a bladed or pointed article or offensive weapon in a public place or school premises and go on to threaten and cause immediate risk of serious physical harm to another.
7. Section 143 makes it an offence to cause serious injury by dangerous driving. It will mean that causing serious injury by dangerous driving will be a criminal offence attracting a maximum five year prison sentence.
8. Further explanation of sections 142 and 143 of the 2012 Act can be found in the Explanatory Notes to the Act published around the time that the legislation was passed in May 2012 (see “Useful Links” section at the end of this circular).
9. These provisions apply only to acts taking place on or after 3rd December 2012.

Summary and background

Section 142

10. Section 142 creates new offences to cover those who have a bladed or pointed article or offensive weapon with them in a public place or school premises and go on to threaten a person with it in such a way as to cause immediate risk of serious physical harm to that person. The Government's aim in creating the new offences was set out by Ministers during the passage of the legislation through Parliament:

“Knives on our streets are a social scourge. That is why the unlawful possession of a bladed or pointed article or offensive weapon is already a serious criminal offence carrying a maximum custodial sentence of four years. Clause 113¹ goes further than those possession offences. Our aim, through the clause, is to send a clear message to those in possession of a bladed or pointed article or offensive weapon, that if they then go on to threaten and cause an immediate risk of serious physical harm to another person they can expect an automatic custodial sentence. [Hansard 13 October 2011: Column 803]”

11. The new offences are designed to strengthen the existing legislative framework by targeting behaviour that amounts to more than simple possession, but does not go so far as resulting in the injury of the victim (for which other existing offences would apply).
12. The offences under this section will apply in England and Wales; be triable either way, and subject to a maximum penalty of 4 years' imprisonment on indictment (or, where the offender is under 18, a 24 month Detention and Training Order (by virtue of the Sentencing Act 2000, s101(1)). Key to meeting the aim of the provisions is that the courts are required to impose a **minimum custodial sentence of 6 months for adults or a detention and training order of at least 4 months' duration for 16 and 17 year olds** (unless there are particular circumstances relating to the offence or offender which would make it unjust to do so in all the circumstances)².

Section 143

13. Section 143 creates a new offence of causing serious injury by dangerous driving, punishable by up to five years imprisonment. Dangerous driving is currently an offence under section 2 of the Road Traffic Act 1988 (The “RTA 1988”) and attracts a maximum penalty of two years' imprisonment. In addition, causing death by dangerous driving under section 1 of the RTA 1988 attracts a maximum penalty of 14 years' imprisonment.
14. There has long been pressure for change in road traffic law to close a perceived “gap” in sentences between the current two year maximum for dangerous driving and the 14 year maximum for causing death by dangerous driving.

¹ Now clause 142 of the Act

² See para 32 below

15. The new offence responds to road safety campaign groups, victims and their representatives who have called for increased sentences to be made available for those who cause serious injury by driving dangerously.
16. Creating a new offence of causing serious injury by dangerous driving targets the extended sentencing powers at the most serious end of the spectrum of dangerous driving incidents. That will be reflected in the higher maximum penalty of five years' imprisonment.
17. The new offence will be committed when a person drives a mechanically propelled vehicle dangerously on a road or other public place causing serious injury to another person.
18. In England and Wales, the test for "serious injury" will be the same as for "grievous bodily harm". For the purposes of the Offences against the Person Act 1861, grievous bodily harm (GBH) has been given the accepted definition of "really serious harm".
19. The offence will apply to Scotland as to England and Wales. However, as Scottish law does not contain the same definition of GBH, the test for serious injury will be the same as that applied by Scottish courts to "severe injury" as that applied to "severe injury" in aggravated assault cases. The tests proposed will ensure that there is parity as to the severity of harm required in order for the offence to be made out.

The offences

Section 142

20. Section 142 creates offences related 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 and sections 139 and 139A of the Criminal Justice Act 1988 respectively.
21. *Subsections (1) and (2)* of the section insert the new offences into those Acts to become new section 1A of the 1953 Act and new section 139AA of the 1988 Act.
22. The following elements must be proved by the prosecution:
 - the person must have an offensive weapon or an article with a blade or point with him or her;
 - the person must have it in a public place or on school premises.

These elements replicate what is already set out in the possession offences in section 1 of the 1953 Act and sections 139 and 139A of the 1988 Act.
23. Further to this the person must be shown to have:
 - unlawfully and intentionally used the offensive weapon or article with a blade or point to threaten another; and

- done so in a way that creates an immediate risk of serious physical harm to that other person.
24. “Serious physical harm” is defined as harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.

Defences to the offence

25. The new offences require that use of the weapon must be unlawful. This allows the defendant to raise relevant defences to the use such as self-defence, defence of others or property, and the prevention of crime. This is important as the new offences and mandatory minimum sentence attached are not designed to punish those who act lawfully in self-defence.
26. The existing offences of possession of a bladed or pointed article or offensive weapon have defences of lawful authority or good reason/reasonable excuse for possession. These defences ensure that those who – for example - genuinely carry a knife for religious reasons or simply because they are on the way back from the shops with a new set of kitchen knives, will have a defence to possession.
27. However the defences of lawful authority or good reason/reasonable excuse will not be available to people who are prosecuted for new offences introduced by section 142 of the 2012 Act. This is because the new offences go further than mere possession and target those who use the offensive weapon or article with a blade or point to threaten and cause an immediate risk of serious physical harm to another. The legislation ensures that if people who started off by having lawful authority or good reason/reasonable excuse to be in possession of an offensive weapon or article with a blade or point, then go on to engage in very serious behaviour designed to intimidate and place people in harm's way, then they will be held accountable for that behaviour. It therefore does not matter if someone was in lawful possession of the article to start with – if the person then goes on to threaten and cause an immediate risk of serious physical harm, he will be now be subject to the new offences.
28. The defences will however continue to be available to the existing basic possession offences, including in cases where the defendant is charged with one of the aggravated offences, but an alternative verdict of guilty to the relevant possession offence is returned by the court.

Alternative verdict

29. Subsections 1A(10) of the 1953 Act and 139AA(12) of the 1988 Act clarify that if a defendant is found not guilty of the new aggravated offence, but it is proved that the defendant committed the relevant basic possession offence, the court can return an alternative verdict of guilty to the relevant possession offence.

Penalties

30. The new offences introduced by section 142 of the 2012 Act are triable either way, and subject to a maximum penalty of 4 years' imprisonment on indictment (or, where the offender is under 18, a 24 month Detention and Training Order (by virtue of the Sentencing Act 2000, s101(1)). This is the same maximum penalty as exists for the basic possession offences. However the new offences also carry minimum sentence requirements for offenders aged 16 or over.
31. In the case of offenders 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 18 or over, the court must impose a minimum sentence of imprisonment (or detention in a young offender institution where the offender is aged 18 to 20) of 6 months.
32. In each instance the court may depart from the minimum sentence requirement if there are particular circumstances relating to the offence or the offender which would make it unjust to comply with the requirement. It will be a matter for the court to decide on a case by case basis whether to depart from the minimum sentence requirement. However, the discretion only applies where there are *particular* circumstances relating to the offence or offender that make the minimum sentence requirement unjust in all the circumstances.
33. For 16 and 17 year olds the courts must also when considering the particular circumstances have regard to the Children and Young Persons Act 1933, s. 44, which imposes on the court a duty to have regard to the welfare of the child.
34. Where the offender is 18 or over, a sentence of less than 2 years' imprisonment may be suspended if the court decides it is appropriate to do so. There is no power to suspend a sentence for an offender who is under 18.
35. Guilty plea discounts apply to the new offences. In relation to an offender who is 18 or over, a guilty plea cannot lead to a sentence which is lower than 80% of the minimum sentence requirement of 6 months. (This is the same as applies to minimum sentences for three strikes domestic burglary and drug trafficking provisions.)
36. In relation to an offender who is 16 or 17, the usual position on a guilty plea (that the court is to have regard to it, and must follow any relevant sentencing guideline) applies. The detention and training order is only available for fixed periods, the shortest of which is 4 months. It follows that a guilty plea will (if the 'starting point' is 4 months and credit is given for the plea) have the result that a period of detention is not imposed.

37. While the offences apply to juveniles under the age of 16 the minimum sentence does not. This does not mean that an offender who is under 16 cannot receive a custodial sentence for this serious offence, but simply that in these cases it will be for the courts to decide on the facts of the individual case and the circumstances of the offender whether a custodial sentence should apply. The maximum available sentence will remain a 24 month Detention and Training Order as is the case for offenders aged 16 or 17 years
38. Section 142(3) gives effect to Schedule 26, which makes minor and consequential amendments as a result of section 142. They include amendments to the Armed Forces Act 2006 to 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.

Section 143 subsections (2) – (7)

39. Section 143 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 inserts the new offence at Section 1A of the Road Traffic Act 1988.

Under the new Section 1A of the Road Traffic Act 1988, a person who causes serious injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.

40. For the purposes of the offence “serious injury” means:
- in England and Wales, physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861, and
 - in Scotland, severe physical injury.”

41. Under Section 2A of the Road Traffic Act 1988 a person is regarded as driving dangerously if -

“(1)(a)the way he drives falls far below what would be expected of a competent and careful driver, and

(b)it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(2)A person is also to be regarded as driving dangerously for the purposes of sections 1 and 2 above if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

(3) In subsections (1) and (2) above ‘dangerous’ refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(4) In determining for the purposes of subsection (2) above the state of the vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

Penalties

42. The new offence will be triable either way and subject to a maximum penalty of five years imprisonment, or a fine, or both. The maximum penalty on summary conviction in England and Wales will be six months' imprisonment or a £5,000 fine, or both.

43. In Scotland (due to the different allocation of business between the summary and solemn courts) the maximum penalty on summary conviction will be 12 months' imprisonment or a £10,000 fine, or both. In both jurisdictions, the maximum sentence on conviction on indictment will be five years' imprisonment or an unlimited fine, or both.

Frequently asked questions on causing injury by dangerous driving

Where can I find the new causing serious injury by dangerous driving offence?

The offence is introduced under Section 143 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which inserts a new Section 1A into the Road Traffic Act 1988.

(ref: Section 143)

What does the new offence capture?

A person who causes serious injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place will be guilty of the offence.

(ref: Section 143 (2))

How is “serious injury” defined?

For the purposes of this offence “serious injury” means—

(a) in England and Wales, physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861, and

(b) in Scotland, “severe physical injury.”

(ref: Section 143 (2))

Why have you used the Offences Against the Person Act 1861 as the test for serious injury in England and Wales?

The new offence is aimed at serious injuries caused by dangerous driving. Since the courts have determined that grievous bodily harm within the meaning of the Offences against the Person Act equates to really serious harm, this provides a definition that is well established in the English and Welsh courts.

Why have you used “severe physical injury” as the threshold for serious injury in Scotland?

The Offences against the Person Act 1861 does not extend to Scotland and so there is no direct statutory equivalent of “grievous bodily harm” in Scotland. Courts in Scotland, however, are used to determining whether injury amounts to “severe injury” in aggravated assault cases under the common law. The provision has therefore been drafted so that the same test can be applied to the new causing serious injury by dangerous driving cases.

How is “dangerous driving” defined?

“Dangerous” driving is driving which falls “far below” that which would be expected of a competent and careful driver, such that it would be obvious that driving in that way would be dangerous. Danger refers to the danger of injury to a person or serious damage to property. The CPS charging standards include examples such as highly inappropriate speeds, texting or using hand-held mobile phone while driving, racing, aggressive driving and disregard for traffic lights.

(ref: Road Traffic Act 1988 Section 2A)

Prior to the new offence what offences were available to prosecute dangerous driving?

There are already two offences in force in relation to dangerous driving: dangerous driving under section 2 of the RTA 1988 with a maximum penalty of two years’ imprisonment and causing death by dangerous driving (under section 1 of the Road Traffic Act 1988) which attracts a maximum penalty of 14 years’ imprisonment.

Why not just charge the dangerous driver under section 20 of the Offences against the Person Act 1861 [(or with common law offences in Scotland)]?

In the past, there have been some dangerous driving cases, where injury has been caused, which have been prosecuted in England and Wales under section 20 of the Offences against the Person Act 1861, which has a maximum penalty of five years’ imprisonment. This offence has been used in dangerous driving cases in England and Wales where serious injury has been caused and the Crown Prosecution Service consider that the higher maximum penalty of five years should be available to the court. The Court of Appeal has confirmed the merits of this approach, as long as the defendant should be sentenced concurrently for any driving offence which arises out of the same incident. Similarly, in Scotland, it would (in appropriate cases) be possible to prosecute a person for the common law crime of “culpable and reckless conduct” or “culpable and reckless injury” for which the sentence would be limited only by the sentencing power of the court. However, it has been decided that a more targeted approach is appropriate. The new offence should be easier to understand, especially for those who are not legal practitioners, and it makes for clearer law.

Won’t the new offence lead to confusion about which dangerous driving offence to charge?

The Crown Prosecution Service (or, in Scotland, the Procurator Fiscal) will apply the established prosecution codes to decide whether to prosecute and on what charge. They will consider the sufficiency of evidence, including the extent of any injury caused, in order to make a judgment about which charge is most appropriate.

What is the penalty for committing the new offence?

The offence carries a maximum penalty of five years’ imprisonment in the Crown Court, or six months in the magistrates’ court (12 months in Scotland)

What about disqualification and endorsement's for the new offence?

Consequential amendments in Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 amend the Road Traffic Offenders Act 1988 to provide that a person convicted of the new offence will:

- be subject to a maximum penalty of five years' imprisonment in the Crown Court, or 6 months in the magistrates' court (12 months in Scotland);
- be subject to an obligatory disqualification period of at least two years (unless there are special reasons for disqualifying for a lesser or no period);
- be disqualified until he passes an extended driving test;
- have his licence endorsed with the conviction and either disqualification or penalty points for a period of four years.

(ref: Schedule 27 Section 143 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012)

Useful links

- Legal Aid, Sentencing and Punishment of Offenders Act 2012 - www.legislation.gov.uk/ukpga/2012/10/contents
- Legal Aid, Sentencing and Punishment of Offenders Act 2012 -Explanatory notes - www.legislation.gov.uk/ukpga/2012/10/notes/contents
- Prevention of Crime Act 1953 - www.legislation.gov.uk/ukpga/Eliz2/1-2/14/contents
- Criminal Justice Act 1988 - www.legislation.gov.uk/ukpga/1988/33/contents
- Road Traffic Act 1988 - www.legislation.gov.uk/ukpga/1988/52/contents

Contacts:

Clause	Topic	Official	Contact details
142	The offences	Chiara MacCall	e-mail: Chiara.maccall@jusice.gsi.gov.uk
142	Penalties (adults)	Julia Gerrard	e-mail: Julia.gerrard@justice.gsi.gov.uk
142	Penalties (juveniles)	Philippa Goffe	e-mail: Philippa.Goffe@justice.gsi.gov.uk
143	Dangerous driving offence	Dave Pearson	e-mail: dave.pearson@justice.gsi.gov.uk
144	Squatting offence	Robin Edwards	e-mail: robin.edwards@justice.gsi.gov.uk
146	Scrap metal offence	Larissa Cesar	e-mail: larissa.cesar@homeoffice.gsi.gov.uk