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OFFENSIVE WEAPONS BILL - Online platforms and the law

During the committee session on the Offensive Weapons Bill on 11 September, I agreed to write to the Committee setting out the legal position in relation to online platforms which advertise or sell offensive weapons in contravention of section 141 or section 141A of the Criminal Justice Act 1988.

At the outset I should say that the interpretation of Acts of Parliament is a matter for the Courts and the decision on whether to prosecute is for independent prosecutors. The Crown Prosecution Service (CPS) will only bring a prosecution where it is satisfied that there is sufficient evidence to provide a realistic prospect of conviction and a prosecution is in the public interest.

Section 141 of the Criminal Justice Act 1988 states 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 this section applies shall be guilty of an offence.” A list of such weapons is set out in Schedule 1 to the Criminal Justice Act 1988 (Offensive Weapons) Order 1988/2019 (“the Order”).

Section 141A of the 1988 Act makes it an offence to sell certain articles with a blade or point to anyone under 18.

As is clear from the above anyone who sells or hires or offers for sale or hire, exposes or has in his possession for the purpose of sale or hire, anything contained in the Order is guilty of an offence under section 141. This would apply to individuals but 'a person' can also include a body of persons, corporate or unincorporate.

Where the user of a website places advertisements for anything contained in the Order on that website, the website service provider may be able to rely on the defence under regulation 19 (hosting) of the Electronic Commerce (EC Directive) Regulations 2002 (S.I. 2002/2013). Whether regulation 19 will apply will depend on the facts of the case. There may also be jurisdictional issues if the service provider is based overseas.

Regulation 19 will not apply where the provider of the website is offering the items for sale directly and where the provider had actual knowledge of the unlawful activity and upon obtaining that knowledge did not act expeditiously to remove or disable access to the information.

The government therefore considers that the provider of a website who sells items on it directly would be likely to be caught under the wording of the legislation. Where the provider of the website is enabling advertisements to be placed by others the defense under regulation 19 may be available. My officials have discussed prosecutions with the CPS and they are of the view that these provisions can be used to prosecute where appropriate. However, the CPS have not been able to identify any criminal prosecutions undertaken to date.

I am copying this letter to the Clerk to the Committee and to the members of the Public Bill Committee and I am placing a copy of this letter in the House Library.



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