

# Expert Panel – Age Restrictions

## Draft Statutory Guidance – Offensive Weapons Act 2019

To: Offensive Weapons Act Consultation Team

Serious Violence Unit, Home Office, 5<sup>th</sup> Floor, Fry Building, 2 Marsham Street, London, SW1P 4DF

On behalf of the Expert Panel – Age Restrictions, we are pleased to submit a response to the consultation on the draft statutory guidance issued under section 65 of the Offensive Weapons Act 2019.

The Expert Panel welcomes the ambition to provide comprehensive guidance on the new Offensive Weapons Act and related legislation and acknowledges the difficulty of the task in hand. The Panel has put together a detailed response on certain key areas, reflecting the breadth of knowledge and experience that exists across the Panel. This response is a collective view, but many of the organisations that participate in the Expert Panel may wish to submit their own views to the consultation or may wish to endorse or partially endorse this response. We hope that the feedback will be taken constructively and welcome any further discussions to help produce the finished statutory guidance.

### Summary of Recommendations

As an Expert Panel on Age Restriction, we make the following recommendations to the Home Office:

- R1. From experience with statutory guidance which works well in other areas, it is recommended that the guidance should not be structured and ordered around the sections of the Act. Instead, the guidance should be redrafted to be in functional order. This would include bringing together aspects relating to age restricted products, defences and age verification.
- R2. The guidance would benefit from editing, reducing the weight of text and introducing some illustrations, examples and images. In particular, the flowcharts at rear of the document (marked as Annex A, but not sequentially), are out-of-context in their current position. As a result, they are potentially misleading or incorrect. They would be more effective inline with the relevant text of the guidance. We propose a suitable 'style' template at Appendix One of our response.
- R3. The guidance should not try to cover the jurisdictions in both England & Wales and Scotland. If it is intended that Scottish Ministers will prepare guidance for Scotland, it will become simpler and clearer to make this guidance specifically for England and Wales.
- R4. The ambition to provide a list of items that are and are not likely to be considered bladed articles is welcome. However, as drafted, the lists do not add clarity. In fact, in places the lists are not correct, in places they are inconsistent or confusing, and in places they are not consistent with existing case law or established guidance. The drafted list would significantly expand the range of age restricted articles.

- R5. The conditions applicable to the reasonable precautions and due diligence defence in s.2 and s.35 of the 2019 Act should be explained in the guidance as only contributory measures for reliance on the defence. The broader case law on the application of the defence, including the leading case [Tesco Supermarkets Ltd v Natrass \[1971\] UKHL 1](#), continues to apply to the interpretation of these provisions.
- R6. The guidance should signpost to recognised, certified and robust approaches to age verification online. The draft guidance does not refer to BSI's PAS 1296:2018; or to ensuring a risk-based approach to securing the appropriate amount of confidence in automated age verification techniques.
- R7. The Home Office should liaise with the Health and Safety Executive to ensure that the duties on manufacturers, importers, distributors and downstream users with regard to safety data sheets or critical safety information set out in the [REACH Regulations 2006](#) are properly reflected in the draft guidance.

The Expert Panel expresses its thanks and appreciation to members of a sub-group who prepared this response:

- Tony Allen – Co-Chair, Expert Panel | Age Restrictions & CEO, Age Check Certification Scheme
- Julie Dawson – Age Verification Providers Association & Yoti
- Tim Gass – Primary Authority Supermarkets Group & Tesco
- Samuel Rowe – Yoti
- Rudd Apsey – Digital Policy Alliance & Verime (Age Verification Provider)
- John Bradbury – Trading Standards (Birmingham City Council)
- Jackie White – Office for Product Safety & Standards
- Tracey Glenn – Facilitator for Expert Panel | Age Restrictions & Office for Product Safety & Standards
- Rebecca Johnson – Local Government Association

## 1.0 About the Expert Panel | Age Restrictions

1.1 The [Office for Product Safety and Standards](#) (OPSS) is part of the Department for Business, Energy and Industrial Strategy (BEIS). The role of OPSS is to make regulation work, so that it protects people and enables businesses to understand their obligations. It has responsibility for trading standards policy locally and nationally, local better regulation, primary authority, business guidance and the UK's Quality Infrastructure (UKAS, BSI, etc).

1.2 As a part of its role, OPSS facilitates a series of Expert Panels. These are independently chaired, but subject focussed and include subjects like food standards, product safety, etc. One of those panels is related to Age Restrictions. OPSS leads on enforcement policy for age restrictions and the Expert Panel supports OPSS and other government departments to implement age restriction laws, policy and guidance that will work well in practice to protect children and young people.

1.3 The **Panel is not a campaigning voice**. It is a matter for Ministers and Parliament to determine what products, content and services should be age restricted and at what age. However, the Panel does have a role in helping government departments to implement age restriction policies in a way that works well. We take a practical and detailed approach. So, for instance, our response to this consultation exercise may, in places, venture into some very specific but, we hope, helpful detail.

1.4 Our aim is to draw on the collective expertise of around 50 participants in the Panel. These participants include local and national regulators, retail trade associations, the primary authority network, age verification providers, lawyers and those that work in this regulatory field. Our Panel includes senior staff from major retailers as well.

1.5 This response has been approved for submission by the whole Expert Panel, having been prepared by a sub-group of the Panel. That sub-group included a roundtable discussion with colleagues from OPSS and the Home Office Serious Violence Unit.

## 2.0 Scope of our response and recommendations

2.1 Please note that the Expert Panel has only considered the following aspects of the draft guidance:

- Part 1 – Sale & Supply of Corrosive Substances (pages 8 – 17 & Annex B of the guidance only)
- Part 3 – Sale & Delivery of Knives etc (pages 21 – 27 & Annex A of the guidance only)
- Part 7 – Enforcement (pages 35 – 36 of the guidance only)

2.2 The Panel has not considered any aspects of the guidance that relate to possession of corrosive substances, knives or bladed articles in a public place; nor any aspects that relate to threatening someone with corrosive substances, knives or bladed articles. The Panel has also not considered any aspects of the Act relating to Knife Crime Prevention Orders or the prohibitions on rapid firing rifles and bump stocks. All of those matters are outside the scope of the Expert Panel – Age Restrictions.

## 3.0 Layout of the Draft Guidance

3.1 We found the layout of the guidance had the potential to be confusing and not suitable for a non-legal audience. A good test for guidance aimed at non-legal professionals is, ‘can it be given to someone to read and it would be understood *without* further explanation’. The guidance, as drafted, fails this test.

3.2 It would appear that it has been drafted rather like an Explanatory Memorandum might be drafted to sit alongside secondary legislation. The structure of the guidance is aligned to the Offensive Weapons Act 2019 and, whilst that might be considered to be a good starting point, the aim of the guidance should be to bring the key principles in the legislation together to advise how compliance can be expected to be achieved.

### Recommendations

- R1. From experience with statutory guidance which works well in other areas, it is recommended that the guidance should not be structured and ordered around the sections of the Act. Instead, the guidance should be redrafted to be in functional order. This would include bringing together aspects relating to age restricted products, defences and age verification.
- R2. The guidance would benefit from editing, reducing the weight of text and introducing some illustrations, examples and images. In particular, the flowcharts at rear of the document (marked as Annex A, but not sequentially), are out-of-context in their current position. As a result, they are potentially misleading or incorrect. They would be more effective inline with the relevant text of the guidance. We propose a suitable ‘style’ template at Appendix One of our response.

3.3 We would like to highlight some approaches taken in other statutory guidance:

**3.3.1 Functional Layout** – The statutory guidance under [s.182 of the Licensing Act 2003](#), takes a different approach. It is set out by reference to key activities governed by the parent Act and helps to identify, draw together and elucidate on the application of the Act to the different key activities. This enables a reader to refer to the relevant sections that relate to their own activity.

The draft guidance being consulted on is structured around the order of the Offensive Weapons Act 2019. This approach is familiar to lawyers, but of little use to non-lawyers. This also makes the draft guidance unnecessarily repetitive. As an example, most of page 13 of the draft guidance is repeated word-for-word on page 22. If the guidance were presented in a functional way, then this repetition could be avoided. We propose a suitable template at Appendix One of our response.

**3.3.2 Use of Practical Examples** – We refer to the codes of practice under RIPA as evidence of how the provision of examples can help readers to understand how regulation applies in a practical situation. In particular see paragraph 3.12 of the [Covert Human Intelligence Sources Code of Practice](#) issued under s.71 of the Regulation of Investigatory Powers Act 2000.

The draft guidance does, occasionally, refer to ‘For example...’ but these do not relate to practical ‘real world’ examples. They are more an attempt to reiterate the previous sentence. The use of good practical real-world examples can help a reader to properly understand the application of the Act.

On page 21 of the draft guidance, the new provisions relating to age restrictions for previously exempted antique weapons are explained. A simple example could assist here:

*Example 1: An antique dealer buys a 1 metre long curved blade ceremonial sword that dates from the 1930's. Whilst that remains exempt from restrictions on the sale of weapons (subject to conditions), the Act makes it an offence to supply it to a person under the age of 18.*

**3.3.3 Use of Pictures and Illustrations** – Although no longer statutory guidance, the UK's [Pricing Practices Guide](#) is an excellent example of how some complex regulatory considerations are explained through the use of pictures and illustrations.

We address the definition of knives in our response below, but the section at page 23 – 24 could benefit from some pictures or illustrations.

**3.3.4 Flowcharts** – We will come back to the content of the flowcharts presented at 'Annex A & B' of the draft statutory guidance later in our submission. The use of flowcharts can be a useful addition to understand the inter-relationship of key points of the guidance. However, we do not think they should be presented as annexes – they ought to be presented in-line with the relevant text. Having to navigate around a document makes it harder to understand.

**3.3.5 Paragraph Numbering** – The draft guidance is not numbered. This makes it hard to refer to (both in this response, but also in general practical use). A Trading Standards Officer wanting to draw the specific attention of a business to a provision will want to refer them to 'paragraph 1.3.1' of the guidance.

**3.3.6 Check for Unnecessary Words** – The draft guidance has a few long-winded paragraphs that contain unnecessary words. The paragraphs could be expressed in much simpler language. As an example, the paragraph in the middle of page 11 states:

*“Retailers and collection points will need to apply their Challenge 21/25 policies and processes as appropriate when verifying age. As part of this, they will also need to consider how best to support their staff through their existing internal processes, such as till alerts, supervision, awareness raising that certain corrosive products are subject to age restrictions, and the inclusion of any corrosive products that they sell or handle as a collection point in age restricted sales training.”*

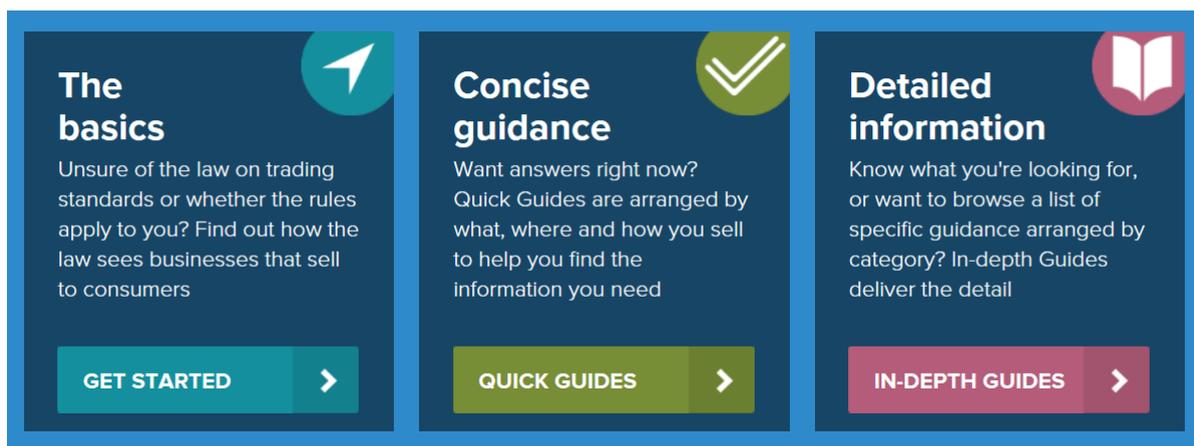
This could be better expressed as:

*“Staff working in stores or at collection points will need to verify the age of customers in accordance with the company's policies. This will need to form part of staff training, supervision and internal processes (such as till alerts).”*

### **3.3.7 Simple Structure to the Guidance**

The draft guidance is not reader friendly. The first page of the substantive information (page 8) heads into heavy technical detail of the weight in weight calculations of corrosive substances. To a casual reader, that gives an indication that this guidance is technical in nature.

The guidance should be structured to allow a simple review of the key points. The approach adopted by the BEIS-funded business guidance website ([www.business-companion.info](http://www.business-companion.info)) is to take a three-tier approach:



- The basics – a short upfront section that gets the key points across to a casual reader. Imagine a managing director of a medium sized business. They will not be building the online checkout tools themselves but need to have a brief overview to enable them to issue instructions to their staff and have a good understanding of the duties and responsibilities imposed by the Act.
- Concise guidance – a quick guide that might be used for staff training and supporting materials. Imagine a learning and development coordinator tasked with preparing a revised online training tool for staff.
- Detailed information – the specifics and technical information. Imagine a Regulatory Compliance Manager having to understand the detail of what is or is not an offensive weapon and taking decisions on application of systems and processes to preventing illegal sales of the product to underage customers.

### 3.4 Challenge 21/25 – Choice of Language

3.4.1 The Home Office will be aware of that there is a current [‘call for evidence’](#) on violence and abuse towards shop staff. A significant factor on this is the violence and abuse from customers when shop workers are asking for ID. In the retail sector, the policy of asking customers under 25 for ID when purchasing age restricted goods has become known as ‘Challenge 25’. In other sectors, like gambling and night-time economy venues, it is better known as ‘Think 25’.

3.4.2 The Retail of Alcohol Standards Group, who provide leadership and guidance on this policy, have suggested that retail move towards ‘Think 21/25’ as a policy position. This supports a clearer message for staff training that the job of checking ID is not a challenge or challenging. It is not intended to create friction or embarrassment for customers. Using the term ‘Think 21/25’ gives a clearer indication of the objective of the policy.

## 4.0 Jurisdictional Scope of Guidance

4.1 The introduction states that the guidance applies to England and Wales. However, it also suggests that the guidance covers sections 1 – 4 of the Act as they relate to Scotland. This is not helpful and makes the guidance confusing.

4.2 On page 21 of the draft guidance it refers to:

35. Defence to sale of bladed articles to persons under 18: England and Wales

On page 25, it then refers to:

29. Delivery of bladed articles to persons under 18 (seller based in the UK)

In that section, it refers to the penalty for a body corporate convicted ... in England and Wales, being to a fine.

4.3 Of course, we understand that these are references to different parts of the UK in different legal contexts. However, they create confusion to a reader that would not understand those contexts.

4.4 The legislation in Scotland is markedly different to England and Wales. The regulatory regime in Scotland is also different – particularly considering the licensing requirements of suppliers of non-domestic bladed articles under [s.27A of the Civic Government \(Scotland\) Act 1982](#).

4.5 For businesses that operate across the whole of the UK, there is no significant added benefit in having rolled up guidance for the two jurisdictions unless the differences are merely incidental. So, if it is necessary to refer to a ‘Sherriff’ instead of a ‘Magistrate’ an incidental note can be included. Where the legislation is substantially different, as it is for example on page 11 of the draft guidance, there is no benefit of attempting to explain them both alongside each other.

4.6 We understand that Scottish Ministers are planning to issue their own guidance under the Act as it applies in Scotland. We have experience of this being fraught with difficulty. Particular care needs to be taken that, where there is alignment of approaches, the guidance issued is not contradictory. When Scottish Ministers issued guidance under the [Tobacco Display Ban](#) legislation, it was identified that the equivalent guidance issued in England and Wales was, in fact, incompatible and had to be redrafted.

### Recommendations

R3. The guidance should not try to cover the jurisdictions in both England & Wales and Scotland. If it is intended that Scottish Ministers will prepare guidance for Scotland, it will become simpler and clearer to make this guidance specifically for England and Wales.

## 5.0 Definition of Bladed Articles

5.1 We have given detailed consideration to the provisions of the draft guidance (on pages 23, 24, 26 and 'Annex A') seeking to provide a definition of what bladed articles are and are not likely to be subject to the prohibition on sales to under 18's.

5.2 Ever since the Offensive Weapons Act 1996, when the prohibition for underage sale of knives was introduced (at that stage to under 16's), the definition of what is caught by the legislation has been problematic. It is one of the hardest definitions to understand and explain of all of the age restricted items.

5.3 We welcome attempts by the Home Office to provide more definitive guidance on what bladed articles are or are not likely to be caught by the Act. However, this is fraught with difficulty. There are examples of items that the draft guidance envisages are caught, but which are not; examples of things that are unlikely to be caught, but which are in fact exempt and so never caught; and examples of things that are not likely to be caught, but which actually probably are caught.

5.4 We suggest that the definition of bladed articles ought to be upfront – before discussion about the offences, defences and age verification. It is so critical to the application of the Act in practice.

5.5 Providing a list of articles likely to be caught or not likely to be caught is courageous (and welcome). It cannot extend the statutory definition, nor add articles that the Home Office might like to consider as offensive weapons, but which are not caught by the legislation.

5.6 It should also be noted that there are many articles that have legitimate, non-violent uses and, when sold by a retailer, are not offensive weapons. However, when put to use by an offender become offensive weapons. That does not make them an offensive weapon at the point of sale.

5.7 It is also important to note that the definition of a 'knife' for the Act has been subject to judicial consideration over the last 30 years and, absent a legal change in definition, the draft guidance must reflect the way that this has been interpreted by the courts. We note, for instance, that the draft guidance does not refer to any of the leading cases on this matter.

5.8 The guidance must also be careful to distinguish between voluntary age restrictions imposed upon goods by responsible retailers and the legal definitions of goods caught by the prohibitions. It is welcome that responsible retailers will take action to protect young people in their local communities by going above and beyond the list of age restricted articles, but it does not follow that the statutory guidance should seek to extend the legal definition to articles that may be voluntarily restricted.

5.9 It is also important that Trading Standards Officers have solid, effective guidance on which articles are age restricted so that they can properly instruct and deploy test purchasers.

5.10 Ultimately, good statutory guidance in this regard should leave little or no doubt about what articles are likely to be caught by the Act. Whilst we fully accept and endorse that ultimately only the courts can decide, that is true of any legislation and guidance. It should be said upfront, but thereafter taken for granted.

5.11 We would draw the government's attention to the HMRC and UK Border Agency Guidance on Offensive Weapons [https://basc.org.uk/wp-content/uploads/downloads/2013/02/c2-26\\_offensive\\_weapons\\_1\\_.pdf](https://basc.org.uk/wp-content/uploads/downloads/2013/02/c2-26_offensive_weapons_1_.pdf) which leaves little room for interpretation on what is or is not likely to be regarded as an offensive weapons when considering articles being presented at borders.

## Recommendation

R4. The ambition to provide a list of items that are and are not likely to be considered bladed articles is welcome. However, as drafted, the lists do not add clarity. In fact, in places the lists are not correct, in places they are inconsistent or confusing, and in places they are not consistent with existing case law or established guidance. The drafted list would significantly expand the range of age restricted articles.

5.12 We also note that, during the passage of the Act, the government resisted an attempt by the opposition to amend the Act as follows:

*“(1A) For the avoidance of doubt, subsection (1) is intended to be interpreted widely, and includes but is not limited to—*

*(a) knives of any description other than those that are permanently blunt, and*

*(b) axes, spades, screwdrivers, saws, lawn mowers, food processors, paper guillotines, scissors and fans.*

*(1B) For the purposes of subsection (1A) knives which are permanently blunt include palette knives and fish knives.”*

5.13 Whilst that amendment (from Lord Lucas) would of itself created some difficulties, the government minister resisted it and, in the end, it was not moved. The government stated that it preferred to stick with the existing definition of a bladed article set out in the Act.

5.14 We agree that if something is called a ‘knife’, it is more likely than not to be regarded as a ‘knife’ for the purpose of the Act. It is worth noting though, that is not the approach taken by the courts.

In [R \(Windsor and Maidenhead Royal Borough Council\) v East Berkshire Magistrates’ Court \[2010\] WLR\(D\) 264](#), Sir Anthony May stated that:

*“Whether an article was a ‘knife’ within the meaning of s 141A(2)(a) of the Criminal Justice Act 1988 was not a pure question of fact, but a question of mixed fact and law; and the justices had erred in law in finding that s 141A did not apply to a grapefruit knife, notwithstanding that it was a cutting instrument consisting of a blade with a handle.”*

In his judgement, he referred to the Oxford English Dictionary ordinary meaning of a knife as:

*"A cutting instrument consisting of a blade with a sharpened longitudinal edge fixed in a handle either rigidly, as in a table knife, carving or sheath knife, or with a joint, as in a pocket or clasp knife. The blade is generally of steel, but sometimes of other material, as in the silver fish and fruit knives, the blunt edged paper knife of ivory, wood, etcetera, and the flint knives of early man."*

5.15 In October 2009, Vernon Coaker MP (then Minister of State in the Home Office) wrote to the Local Authorities Coordinators of Regulatory Services (LACORS) to set out the government of the day’s position that the legislation was not intended to cover:

- Skewers
- Screw drivers

- Scissors
- Pruning saws
- Plasterboard saws
- Peelers

This letter then formed the basis of a LACORS Circular on 12<sup>th</sup> November 2009 which has been used by local authority trading standards officers to provide [guidance to retailers](#) on the applicability of s.141A to these products.

This ‘non-statutory’ guidance remains current and forms the basis of understanding. As the Act does not extend the definition of a knife beyond the pre-existing definition, the draft statutory guidance represents a substantial change to the previously understood position and would significantly extend the range of age restricted articles on retail sale.

## **5.16 Articles likely to be captured by the legislation**

### **5.16.1 Cutlery Knives**

We note that the courts consider that a ‘butter knife’ is a bladed article. ([Booker v DPP 169 J.P. 368, DC](#)).

### **5.16.2 Cut-Throat Razors**

Whilst we agree that these are caught by the legislation, we question the wisdom of referring to ‘cut-throat’ as a descriptor of something in a policy area where the government intends to tackle serious violent crime.

### **5.16.3 Carpenter Adzes**

In our view, this is a type of axe. It is not clear why it has been singled out for mention, why not mention hatchets, throwing tomahawks or splitting mauls?

### **5.16.4 Gardening and Farming Tools**

The range of products given here include shears, secateurs, hooks, slashers and choppers. This significantly extends the range of potentially age restricted products from those identified in the 2009 LACORS Circular.

Although shears and secateurs comprise a blade, which may or may not be sharply pointed, they are not made or adapted for use for causing injury to a person. As they are not a knife, knife blade, razor blade or an axe, they would not be caught by the definition in s.141A.

The extension of the statutory guidance to gardening and farming tools is very broad. There are certain tools like cultivators (see image below) which are undoubtedly capable of being an offensive weapon. They are not, however, caught by the definition of s.141A. We would anticipate that a police officer seeing a person carrying a cultivator in the street might be expected to enquire into a reasonable excuse, but that does not make it an age restricted product.



#### **5.16.5 Scissors with sharp edges or points**

Scissors, as manufactured, are not caught by the definition in s.141A. Some products marketed as particularly suitable for food preparation may have detachable or separable blades (for cleaning purposes) and, in such circumstances could be considered to be a knife blade on their own.

The proposed amendment by Lord Lucas would have specifically included scissors in the definition, but as discussed previously, this amendment was resisted by government and not moved.

#### **5.16.6 Articles not on the list that should be**

The following may be considered to be articles that are caught by the legislation, but that do not appear on the list:

- Santoku Knife
- Boning Knife
- Nakiri Bocho
- Kukri
- Bushcraft Knives
- Bowie Knives
- Some (but not all) multitools
- Bayonets
- Medieval weaponry such as spears, lances, pikes, maces, caltrops, and halberd
- Karambits
- Diver Knives
- Scalpels
- X-Acto Knives
- Daggers
- Mezzalunas or rocking knives
- Frosting spatulas or palette knives

### **5.16.7 Antique Specified Weapons**

The effect of s.34(1) of the 2019 Act is to extend all of the specified weapons (listed in 'Annex 1' to the draft guidance) that are antiques or used for historical re-enactment, theatre or film production to be prohibited to supply to under 18's. For completeness, these should also therefore be referred to in this list.

### **5.17 Articles not likely to be captured by the legislation**

The draft guidance includes a list of bladed articles that are not likely to be captured by the legislation (at page 24). This list is misleading as it includes articles that are definitely exempt from the legislation. It would make more sense if these were presented in a separate list.

#### **5.17.1 Plastic cutlery knives**

We agree that plastic cutlery knives intended for things like picnic sets are not likely to be captured by the legislation. We would add wooden cutlery to this definition. We urge the Home Office to take care not to give the impression that blades constructed of plastic, wood, ceramic or epoxy compounds are not caught by the legislation. There are examples of epoxy construct tactical bladed weapons that would be caught.

#### **5.17.2 Encased razor blades**

By virtue of Article 2 of the [Criminal Justice Act 1988 \(Offensive Weapons\) \(Exemptions\) Order 1996](#) razor blades permanently enclosed in a cartridge or housing where less than 2 millimetres of any blade is exposed beyond the plane which intersects the highest point of the surfaces preceding and following such blades are not covered by s.141A. As a result, they are definitely not caught by the legislation and it is misleading to suggest that they are not likely to be caught.

It is important that the statutory guidance cross references the Exemptions Order to ensure that retailers and manufacturers of safety razors are aware of the parameters of the exemption.

It is also worth noting that an 'ordinary razor' was not considered to be an offensive weapon by the courts in *Petrie* [1961] 1 WLR 358 – although that case pre-dates the specific exemption in the 1996 Order and the provisions of s.141A of the Criminal Justice Act 1988.

#### **5.17.3 Blades which are part of domestic appliances, such as food processors and blenders**

This is circumstantial. We agree that a knife blade or dough blade sold within the packaging of a food processor boxed unit to a person under 18 years of age is unlikely to be regarded as an underage sale of an offensive weapon. However, where that blade is a spare part sold alone and outside the context of a food processor boxed unit, it would seem more likely that the courts may well consider that to be a bladed article and caught by the legislation.

We would also take care not to specify all spare part blades of a food processor unit as likely to be caught. Whilst a circular knife blade may well be caught, a dough hook, shredding or slicing blade, grating blade, potato rasp, mill or whisk are unlikely to be caught.

#### **5.17.4 Blades which are part of lawn mowers or similar tools**

This is also circumstantial, and we would make the same point about spare parts for lawn mowers as we would for food processors.

### 5.17.5 Woodturning tools such as chisels

We think that this description is too wide. There are a number of chisels that are plainly bladed knife edges. Equally, there are some wood turning tools that are not caught by the legislation.

### 5.17.6 Articles that are not covered by the legislation that should also appear on this list

The following may be considered to be articles that are unlikely to be caught by the legislation, but that do not appear on the list:

- Screwdrivers – the courts have held that screwdrivers are not caught by the legislation ([R v Davis \[1998\] Crim L.R. 564 CA](#)).
- Folding pocket knives – The [Criminal Justice Act 1988 \(Offensive Weapons\) \(Exemptions\) Order 1996](#) specifically exempts a folding pocket-knife if the cutting edge of its blade does not exceed 7.62 centimetres (3 inches) from being caught by the legislation. However, the draft guidance should make clear that this does not include locking knives ([R v Deegan \[1998\] 2 Cr. App. R. 121 CA](#)).
- Skewers - This includes products where food is prepared and sold on skewers (such as barbeque chicken skewers).
- Saws (including Pruning Saws and Plasterboard Saws) – This would maintain the exempt list contained in the 2009 LACORS Circular
- Fruit peelers or vegetable scrappers – This might include straight, swivel, Y-shaped and rotary or industrial peelers – however, the guidance should also point out that the courts have held that a grapefruit knife is caught by the legislation ([R \(Windsor and Maidenhead Royal Borough Council\) v East Berkshire Magistrates' Court \[2010\] WLR\(D\) 264](#)).
- Pizza Cutters – there have been recent local cases on whether or not a pizza cutter is an offensive weapon. This has not been tested in the higher courts, but it is unlikely that a circular pizza cutter would be regarded as a bladed article. We note that pizza cutters (and cheese knives) are referred to in the list on page 26, but not the list on page 24.
- Pencil sharpeners and drawing implements (like compasses, pencils and pens) – although schools maths sets contain bladed and pointed articles which could be adapted or put to use as an offensive weapon, they are not likely to be considered as such at the point of sale.

### 5.17.7 Prohibited Articles

The guidance would be aided by reference to bladed articles that are prohibited for sale to any person (regardless of age). So, these include the prohibited weapons in 'Annex A' of the draft guidance.

We also include in this weapons that might be caught by other age restricted legislation, like the Firearms Act 1968 or the Crossbows Act 1987.

### 5.17.8 Definition of bladed articles as it relates to ss 38 & 39 of the Act

We note that the guidance has chosen to separately define knives and bladed articles as they relate to ss 38 & 39 of the Act (on page 26). We appreciate that the intention of the legislation is that the articles caught by the provisions relating to delivery to residential premises is to be a sub-set of the articles caught by the provisions relating to underage sales. However, the separation of these definitions is not helpful. The examples provided in the list are also not accurate or helpful.

There is no good rationale why a utility knife with a small cutting blade or a snap off cutter would not be considered to be a bladed article for the purposes of s.41(1) of the Act. There is also no logical

reason why the government have chosen to list pizza cutters and cheese knives here, but not in the definition of knives elsewhere.

## 6.0 Codification of the Statutory Defence

6.1 We note that sections 2 and 35 of the 2019 Act codify aspects of the statutory defence by imposing four conditions on being able to rely upon it. This is the first time that the familiar reasonable precautions and due diligence defence, which has existed in statute for over 50 years, has been codified in this way.

6.2 It is, therefore, important that care is taken to ensure that this codification is not misinterpreted. The reasonable precautions and due diligence defence has been subject to extensive judicial interpretation, particularly through the leading case of [Tesco Supermarkets Ltd v Nattrass \[1971\] UKHL 1](#). Whilst the statutory guidance is not intended to be a treatise on the reasonable precautions and due diligence defence, it ought not diminish the considerable breadth and latitude given to the courts in examining cases of defendants seeking to rely on it.

6.3 A significant risk of codifying the defence is that some readers may be led to believe that compliance just with the four conditions in sections 2 or 35 of the 2019 Act would be sufficient to establish the defence. They would certainly be a good start, but they may not be sufficient on their own.

6.4 Equally, another risk is that the flexibility of the defence is diminished through strict application of the codified provisions. A concept of reasonableness is, for instance, related to the relative size of a seller of goods. In *Garrett v Boots the Chemists Ltd* (1980) 88 ITSA MR 238, for instance, the courts held that ‘what might be reasonable for a corner shop could not be considered as what might be reasonable for an operator the size of Boots’.

6.5 The difficulty with the draft statutory guidance at page 12 (in relation to corrosives) and pages 21 & 22 (in relation to knives) is that it gives the impression that compliance with the four conditions is all that is required to satisfy the reasonable precautions and due diligence defence. That is an incorrect interpretation of the Act.

6.6 The Act, as it relates to England and Wales, still requires that all reasonable precautions and all due diligence are exercised in order to rely upon the defence. It goes on to say that if the four conditions are missing, then the defence is not available. It does not say that those four conditions amount to all of the reasonable precautions that could be applied. As an example, test purchasing of age restricted products is considered to be the exercise of due diligence (particularly for larger organisations following the *Garrett v Boots* precedent mentioned above). That is not one of the four conditions but is no less due diligence and the absence of test purchasing could be considered by the courts. This should not be taken to indicate that reliance on the four conditions on its own will necessarily defeat the reasonable precautions and due diligence defence. It is a question of fact for the Magistrates to determine.

### **Recommendation:**

R5. The conditions applicable to the reasonable precautions and due diligence defence in s.2 and s.35 of the 2019 Act should be explained in the guidance as only contributory measures for reliance on the defence. The broader case law on the application of the defence, including the leading case [Tesco Supermarkets Ltd v Nattrass \[1971\] UKHL 1](#), continue to apply to the interpretation of these provisions.

## **6.7 System in place likely to prevent delivery**

6.7.1 In both the sections relating to corrosive substances (on page 12) and knives (on page 21 & 22) reference is made to 'Condition A' for the statutory defence. This that the seller has a system in place to verify the age of the purchaser; that they are not under the age of 18; and that the system is likely to prevent the purchase of a corrosive product by a person under the age of 18.

6.7.2 The draft guidance then offers no additional guidance on that aspect of the defence. There is little point in just restating the statutory provision. The draft guidance could usefully offer some tips on securing compliance with this provision. The guidance should also be careful to distinguish between when it is re-stating a statutory provision and when it is offering optional, but useful, tips and guidance:

- The seller should record their age verification system in a written policy (called an Age Check Practice Statement in PAS 1296 – explained further in s.7 below).
- By the term 'likely to prevent' the courts will seek to establish that the seller, on a balance of probabilities, implemented a system that was more likely than not to identify a potential purchaser that was under the age of 18 and to prevent them from progressing with the sale.
- Any system should be visible to the consumer, taking particular note to ensure that their personal data is processed with their consent and in accordance with data protection legislation.
- A court is unlikely to be satisfied that a system put in place that has not been tested would be likely to work and prevent the purchase of the age restricted products.
- The legislation accepts that no system is 100% reliable. A determined and organised young person may be able to evade the system put in place. Provided the system was likely to be effective, then it is likely to be acceptable for this section.

6.7.3 We discuss age verification systems in more detail in section 7 below.

## **6.8 Clearly marked packaging for delivery**

6.8.1 The draft guidance refers to packaging labelling (at page 14 for corrosives and at page 23 for knives). We note that the Home Office do not want to provide a definitive label, but we believe that an example of an effective label would be helpful for readers of the document. It could be couched in terms that it was only an example and the legislation did not require the label to be in a particular format.

6.8.2 The draft guidance also states:

*"The final arbiter in any particular case will be the courts. However, in the Home Office view, it is unlikely that electronic labels used on handheld signature devices often used by delivery companies and couriers would satisfy the requirement to label the product. The Act says that the package itself must be clearly labelled. Clear and visible labelling will be important for retail and delivery staff and couriers so that they are fully aware that the package contains a corrosive product and must not be handed over to someone under 18."*

The first sentence is superfluous, but the remainder of the paragraph potentially seeks to discourage a reasonable precaution adopted by delivery companies that may be additional or supplementary to package labelling.

6.8.3 We suggest that this paragraph would be improved if it read:

*“The Act says that the package itself must be clearly labelled. This does not prevent additional or supplementary measures to secure that electronic warnings associated with packages are shown on handheld signature devices often used by delivery companies and couriers. Using a mixture of physical product labelling and electronic reminders would help retail and delivery staff and couriers to be fully aware that the package contains a corrosive product and must not be handed over to someone under 18.”*

6.8.4 It could also be useful to cross reference the fact that handheld signature devices could also be linked to electronic proof of age systems.

## **6.9 Precautions on handing over package**

6.9.1 We note that the draft guidance has sought to identify three issues that are not likely to be able to satisfy the court that reasonable precautions and due diligence are in place for package delivery. These are (on page 13):

- *Relying on the person purchasing the corrosive product ticking a box confirming that they are over 18;*
- *Relying in any other way on information provided by the purchaser that they are over 18 without conducting additional checks;*
- *Using payment systems that may require the customer to be over 18, but which do not verify their age at the point of purchase.*

Although these are relevant during the online transaction process, they do not seem to be relevant to the point of package delivery. We discuss age verification and processes in more detail in section 7 below.

## **6.10 No deliveries to a locker**

6.10.1 The description of lockers includes a statement that ‘these do not easily enable age verification to be carried out at the point of collection.’ That gives an indication of a current ‘state-of-the-art’ but potentially discourages innovation and investment in solutions to that problem. A [video](#) prepared by Strongpoint and Yoti demonstrates a potential solution for age verification integrated to locker systems. It is one of a number of providers entering this market place.



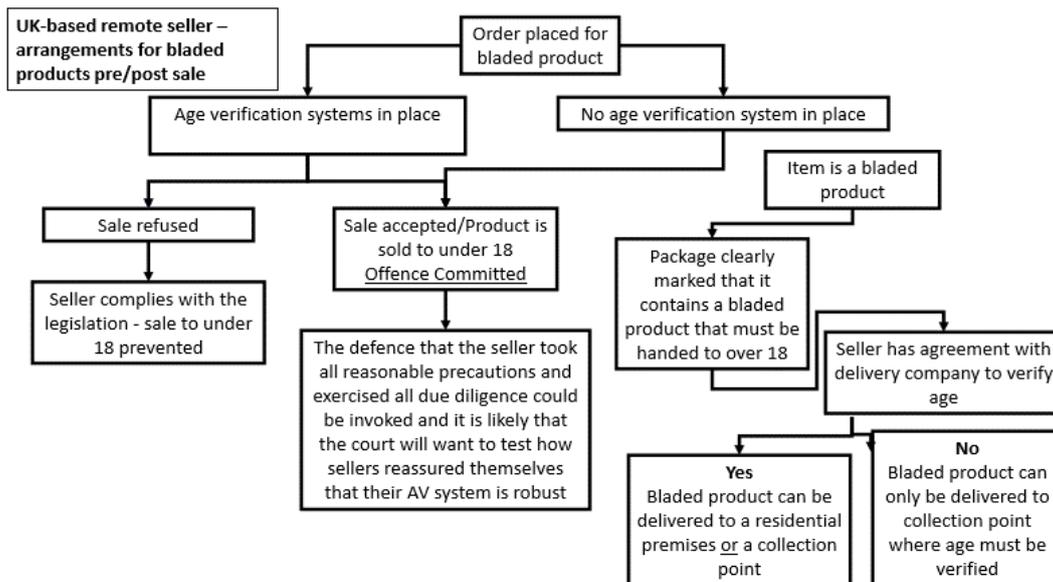
## **6.11 Flowcharts**

6.11.1 The flowcharts shown in ‘Annex A & B’ on pages 39 to 49 are potentially misleading and difficult to understand out of the context of the text they relate to. They would be better placed,

once corrected, in-line with the text. They are also mis-numbered and not all directly referred to in the body text of the draft guidance.

6.11.2 Flowcharts can be a useful tool to explain and simplify the processes being described. They can also easily confuse and mislead.

6.11.3 The flowchart at page 42 relating to ‘UK-based remote seller – arrangements for bladed products pre/post sale’ would seem to inadvertently indicate that a seller with no age verification in place at all, but who refuses the sale, would nevertheless be compliant with the legislation.



## 7.0 Age Verification Systems

7.1 The sections on age verification (on page 13 for corrosive substances and on page 22 for knives) should be brought together and developed further. Whilst we accept that the Home Office are not intending to set out standards of age verification, there are certain enabling factors that would be helpful for retailers and commissioners of age verification services.

7.2 It is worth noting that the innovation and creativity in age verification systems is moving at pace. Multiple industries, regulators and providers are supporting age verification throughout the world. The UK is already a world leader with the majority of international age verification service providers being UK-based.

7.3 Protecting children from harm is a fundamental role of governments and society throughout the world. Providers of age restricted content, goods and services need new innovative, technologically advanced methods to make instant age eligibility decisions in a digital world.

7.4 The embryonic building blocks and ideas to put the UK at the heart of this data revolution are all there. With coordinated and effective effort, we can use our advanced thinking on age verification in a digital world as a beacon of best practice for the UK as the world's most innovative economy, supporting the government's Industrial Strategy.

7.5 As a part of this, the age verification industry, with government and others, have already developed:

- New PAS 1296:2018 Code of Practice for Online Age Verification published
- New [Age Check Certification Scheme](#) for online and offline independent 3rd party validation of age verification systems established
- New [Age Verification Trade Association](#) established
- New Legislation passed including the Digital Economy Act, GDPR and changes to Gambling Codes of Practice

7.6 There are challenges though:

- No cross-governmental coordinated approach to age restrictions or digital age verification
- Lack of effective understanding of law enforcement techniques including test purchasing in a digital age
- Lack of international standards on age verification
- Lack of consistency of approach, locally, nationally and internationally
- Piecemeal and layered legislation which focus on offline problems without effective understanding of online supply channels

7.7 The problem with the draft statutory guidance is that it is a missed opportunity to build on the good work with development of supporting guidance. Working across government, statutory guidance on age verification can help to support and embed:

- A common approach to digital age verification across government as a world-leading regulatory regime
- Supporting industry-led international standards (ISO) for age verification
- Facilitating the development of a regulatory eco-system, with a focus on earned recognition through independent, 3rd party certification, to demonstrate implementation of effective digital age verification

- Promoting the UK's global leadership role in innovative data solutions for age verification throughout the world
- Significantly enhancing the protection of children from harm in a digital world
- Leading the world in effective age verification online
- Reducing burdens on business through effective, coordinated government approaches to age restricted sales legislation – especially as multiple strands of new restrictions are already announced
- Enhancing the capability of law enforcement to test purchase digitally and understand online age verification processes

## **7.8 PAS 1296:2018 – Code of Practice for Online Age Verification**

7.8.1 Fundamental to securing an effective regulatory eco-system are the development of recognised and applicable standards that regulators and industry can have confidence in. The British Standards Institution have developed PAS 1296:2018. It was created as a response to the Government's pledge to tackle online harms with the strong ambition of making the UK the safest place in the world to be online. This objective sits at the heart of the Government's Digital Charter, which brings together efforts to tackle online harms. It came into effect on 19th March 2018.

### **Recommendation:**

R6. The guidance should signpost to recognised, certified and robust approaches to age verification online. The draft guidance does not refer to BSI's PAS 1296:2018; or to ensuring a risk-based approach to securing the appropriate amount of confidence in automated age verification techniques.

7.8.2 The PAS assists online service providers to verify an individual's age without being able to access their full identity. It provides recommendations to prevent ineligible users from:

- Buying age-restricted goods online
- Accessing age-restricted content online (e.g. adult content)
- Using age-restricted online services (e.g. dating agencies)
- Accessing harmful content on platforms and apps

7.8.3 The PAS is written to assist those businesses that are mandated to comply with legal requirements in conducting age checks. It provides recommendations on the due diligence businesses can exercise to ensure that age check services deliver the kind of solution that meet a business's specific regulatory compliance needs. It is intended to assist providers of age restricted products and services online (e.g. gambling, adult content or goods) with a means to adopt and demonstrate best practice as well as compliance with regulators, such as local trading standards officials.

7.8.4 In addition to the PAS, the government should acknowledge outcome-based standards as they develop. Outcome-based standards can provide a quicker route to market for operationally compliant innovative products against a purely process-based approach.

## **7.9 Electronic and digital age verification**

7.9.1 It would be helpful if the guidance could give some tips on commissioning electronic age verification systems. This will not only help retailers implementing the legislation, but also help the rapidly developing age verification industry to rise to the challenge.

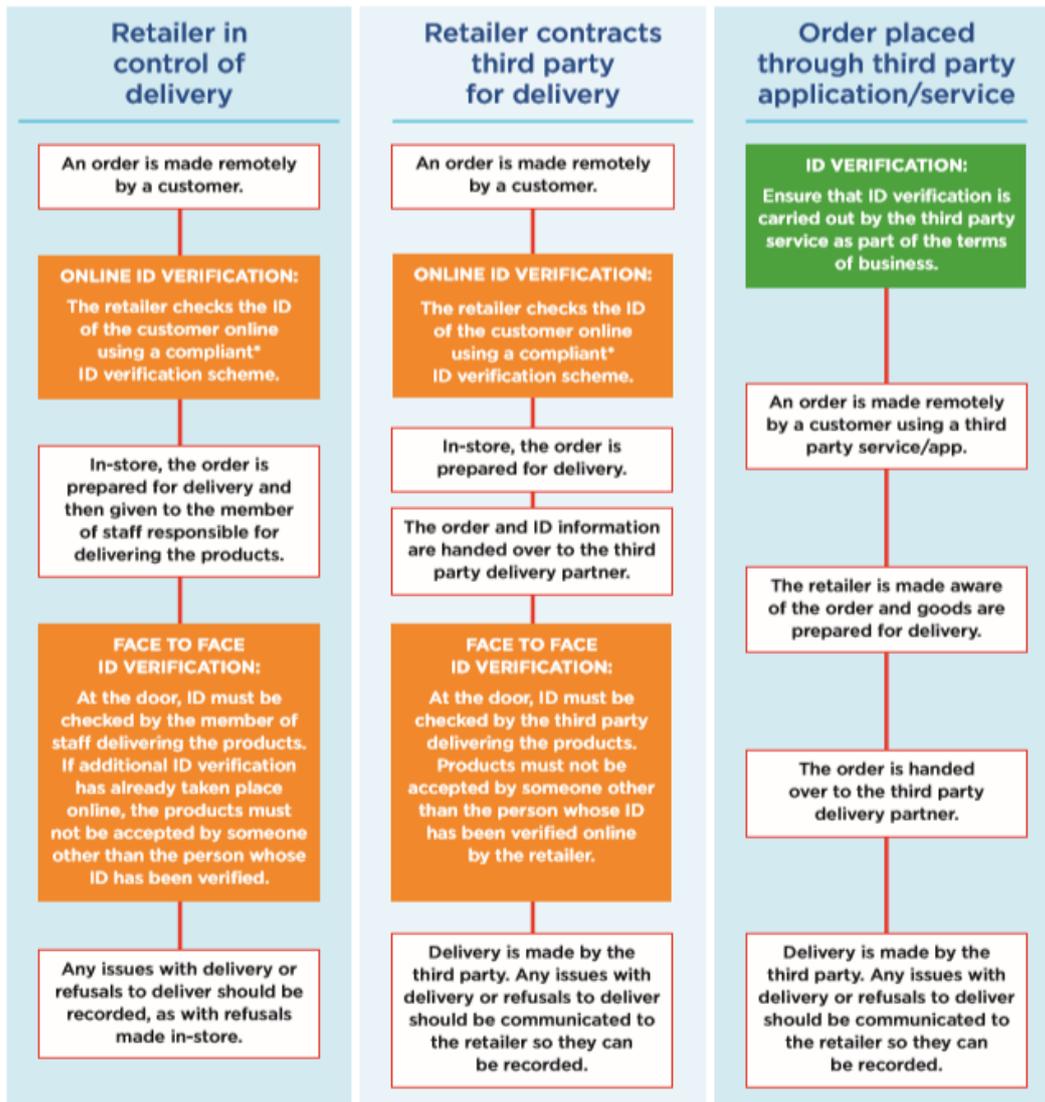
7.9.2 Some of the features of electronic and digital age verification that commissioners of these services should look out for:

- There are a range of age verification systems available on the market. Those commissioning these services should firstly consider the checkout methods that customers will use to order and obtain products caught by the legislation and select suitable systems for those methods.
- Those commissioning these services (and regulators) will want assurance that the age verification systems work in practice. Systems that are developed and certified in accordance with PAS 1296:2018 – Code of Practice for Online Age Verification are more likely to have demonstrable evidence that they work in practice.
- You may want to consider providers of age verification systems that have signed up to industry ethics, such as members of the Age Verification Providers Association ([www.avpassociation.com](http://www.avpassociation.com)).
- In implementing age verification systems, you will need to make sure that it is applied to all of the relevant age restricted products.
- You will need to secure that any age verification systems that you implement are compliant with data protection law. For these reasons, asking customers to submit ID through insecure electronic mail may not be a compliant way to address the requirements.
- You should carry out a risk-assessment of the type of products that you are supplying, the methodology that your customers access the products, the scale of the business and the likelihood that young people will be accessing the products. Whilst all supplies must be subject to age verification, the risk assessments will dictate the acceptable levels of confidence about the accuracy of electronic age checks. High risk products and methodologies should demand higher levels of confidence.
- You should avoid accepting age verification methods that only deliver a low level of confidence – such as self-declared age attributes. You should avoid systems that:
  - Relying on the person purchasing the product by ticking a box confirming that they are over 18;
  - Relying in any other way on information provided by the purchaser that they are over 18 without conducting additional checks;
  - Using payment systems that may require the customer to be over 18, but which do not verify their age at the point of purchase;
  - Asking for a 'year of birth' during the checkout process;
  - Using a general disclaimer such as 'anyone purchasing this product will be deemed to be over 18'.

7.9.3 In particular, we would refer the Home Office to the [Assured Advice](#) issued under the coordinated Primary Authority arrangement with the Association of Convenience Stores. This helpfully sets out some parameters for securing compliance with age restricted sales legislation during online and distance sales. It includes a helpful illustration as follows<sup>1</sup>:

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<sup>1</sup> We are grateful to the Association of Convenience Stores for their kind permission in allowing us to use the image from their Assured Advice © ACS 2019



\* The operator of the digital verification scheme can demonstrate compliance with BSI PAS 1296 – Online Age Checking: Provision and Use of Online Age Check Services.

7.9.4 Whilst we recognise that this extract is from the current Assured Advice provided by the Association of Convenience Stores, we anticipate that it may need to be revised in light of the approach to ‘double age verification’ adopted by the Offensive Weapons Act 2019. In particular, the line “Products must not be accepted by someone other than the person whose ID has been verified online by the retailer” tends to indicate that the person receiving the goods, must be the same person that ordered the goods. If a retailer adopts ‘double age verification’ at the point of sale and the point of delivery, it does not need to be the same person at each.

## 7.10 In store age verification

7.10.1 Retailers are already very familiar with in-store age verification and have adopted a number of measures in order to prevent age restricted sales. The draft guidance seems to work on the assumption that is the case, but the role of statutory guidance is to set out what is required, not simply to take best practice for granted. We suggest that the guidance includes the key principles of in-store age verification:

- Retailers should make clear which products are age restricted and set out their store accordingly. This would include creating an expectation that young consumers will be asked for ID in order to purchase age restricted products.
- Retail staff should receive specific age restrictions training, ideally to the requirements of the Retail Skills Framework NVQ on Preventing Underage Sales. A record of the training should be kept, and it should be regularly refreshed.
- You should adopt a clear policy on acceptable forms of ID, which should include for UK passports, UK & EU driving licences, Proof of Age Cards carrying the Proof of Age Standards Scheme (PASS) Logo and Military ID (on or near to military bases). Where in-store electronic proof of age systems are adopted, the extent of their validity and use should be set out in the policy.
- Electronic point-of-sale systems with a facility to prompt or remind staff of age restricted items when barcodes are scanned.
- Keeping an appropriate record of refusals and challenges for ID (either electronically or on a document kept for that purpose) where this is appropriate and reasonable for the retail setting.

## 8.0 Corrosive Substances

8.1 We found the guidance on corrosive substances (at pages 8 – 10) to be adequate, if technically detailed. As mentioned before, we recommend removing any reference to the provisions in Scotland from this guidance and allowing Scottish Ministers to issue their own guidance on the applicability of the Act in Scotland.

8.2 On page 8, the guidance contains the following statement:

*“We know from a voluntary data collection from police forces undertaken by the National Police Chief’s Council (NPCC) between November 2016 and April 2017 that 39 forces reported that there had been 408 attacks using corrosive substances and that, where the age of the offender was known, 21% of offenders were under 18. A further voluntary data collection was undertaken by the NPCC and it has been estimated from this collection that there are currently 800 corrosive attacks per annum in England and Wales. We also know that while use of corrosives as a weapon in Scotland is rare, it has happened on occasion, with devastating results.”*

Whilst we do not doubt that this statement is true, it is justification of government policy and should not be part of statutory guidance. It is not relevant to the interpretation and application of the provisions of the Act. It will also become quickly dated.

8.3 Similarly to our observations on knives, we suggest that the guidance would be more easily followed and understood if it followed a logical sequence (rather than the sequence of the Act).

It should follow the thread:

- What corrosive products are caught by the legislation?
- What do I need to do if I plan to sell corrosive substances?
- What do I need to do if somebody wants to buy corrosive substances from me?
- What age verification processes are appropriate?
- How do I arrange for delivery of corrosive substances?

### 8.4 Definition of corrosive products

8.4.1 The draft guidance goes into unnecessary detail and justification of why the identified strengths in Schedule 1 have been set. That is not relevant to statutory guidance. The fact of the matter is that Parliament have set the strengths as outlined in Schedule 1 of the Act. Whilst Ministers have a delegated power to amend that Schedule, it is what it is. The fact that it is based on sound scientific advice is not relevant.

8.4.2 We would suggest that the following paragraphs be deleted:

~~*The substances and concentrations limits have been set based on scientific advice from the Defence Science and Technology Laboratory (and previously from the Home Office Centre for Applied Science and Technology). The corrosive products set out in Schedule 1 includes those which we know have been used in attacks and also those which have the potential to be used as a weapon to inflict serious harm and life changing injuries on people. The concentration limits have been set based on advice from the Defence Science and Technology Laboratory on the thresholds at which these substances can cause permanent and life changing injuries.*~~

~~The link below is to the paper provided by the Defence Science and Technology Laboratory (DSTL) during the House of Commons Committee stage of the Bill, which summarises the scientific advice to the Home Office on the type and identity of corrosive substances used in attacks.~~

~~[http://data.parliament.uk/DepositedPapers/Files/DEP20180883/Scientific\\_Advice\\_to\\_Offensive\\_Weapons\\_Bill.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP20180883/Scientific_Advice_to_Offensive_Weapons_Bill.pdf)~~

8.4.3 The products that are caught by the legislation are relatively straightforward for retailers and manufacturers to identify. The statutory guidance should, therefore, be straightforward and to the point. You may want to refer here to the fact that the Schedule can be amended subject to the requirements set out in the Act (instead of making this statement at the end of this section (on page 12)).

8.4.4 The Home Office could achieve this as follows:

*You should identify if any products that you sell are caught by the substance identifier and concentration strengths specified in Schedule 1 of the Act.*

*[We would recommend showing the Schedule 1 table as an illustration or side box alongside the text]*

*These corrosive substances, at the strengths specified, are likely to only be found in products such as high-strength drain cleaners/unblockers, paint strippers, brick and patio cleaners, cleaning products, rust removers and limescale removers.*

*Normal strength household cleaners, like bleach, are unlikely to be caught by the age restrictions as they tend to be more of an irritant and do not usually contain corrosive chemicals at the strengths specified in Schedule 1.*

*The provisions of Schedule 1 will be kept under continuous review and can be amended by Ministers subject to the requirements set out in the Act.”*

That text covers the necessary points from the bottom of page 8 to the bottom of page 9.

## **8.5 Identification of corrosive substances**

8.5.1 The guidance should then continue with tips on how retailers and manufacturers can identify corrosive substances, before moving on to potential exemptions.

8.5.2 The draft guidance makes a statement (on page 10) that:

*“Retailers and sellers need to be confident that none of the products that they sell contain these substances at the concentration levels which means that they would be caught by the definition of a corrosive product.”*

8.5.3 This is potentially misleading. It would tend to indicate a preference that retailers ought to seek to avoid any substances that are above the concentration levels. Whilst that may be the strategy adopted by some retailers, there is no prohibition in the Act on retailers being able to sell these products (to over 18's).

8.5.4 The draft guidance indicates that there is no requirement on manufacturers and wholesalers to tell retailers or sellers what substances and concentration limits are within their products. We do not believe that this is correct or in accordance with the [Reach Regulations \(EC 1907/2006\)](#).

8.5.5 Under [Title IV](#) of the Regulations, suppliers of corrosive substances have a duty to prepare and distribute a safety data sheet for the product. By article 32, even if a supplier has no duty to prepare a safety data sheet, they nevertheless have a duty to prepare and distribute critical safety information for the product.

8.5.6 The term 'suppliers' are not restricted to EU manufacturers (as indicated in the draft guidance). A supplier includes a manufacturer, importer or any distributor (which includes retailers) or downstream user that mixes the product or affixes their own brand label to the product.

**Recommendation:**

R7. The Home Office should liaise with the Health and Safety Executive to ensure that the duties on manufacturers, importers, distributors and downstream users with regard to safety data sheets or critical safety information set out in the [REACH Regulations 2006](#) are properly reflected in the draft guidance.

8.5.7 The Health and Safety Executive have published [guidance](#) that states:

*“A SDS should be provided to the recipient free-of-charge, on paper or electronically, e.g. by postal delivery, fax or email. A system that merely requires customers to obtain a SDS from a company's website or from a catalogue of SDS is not considered appropriate. A SDS should be provided either before or at the time of first delivery of the substance or mixture.”*

We suggest that the draft guidance on corrosive substances should match or reflect the guidance issued by the HSE.

## 8.6 Voluntary Arrangements

8.6.1 The draft guidance refers to the British Independent Retailers Association (Bira) and Association of Convenience Stores (ACS) voluntary commitments on corrosive substances. Whilst we fully support and endorse these voluntary commitments, they have no place in statutory guidance. Those voluntary commitments should now become obsolete, to be replaced with the statutory requirements in the Act, as supported by the guidance.

8.6.2 The fact that certain identified retailers have signed up to those voluntary commitments will become dated very quickly and has no place in statutory guidance.

8.6.3 The following paragraphs should be deleted:

~~*We have already put in place in advance of this legislation a set of voluntary commitments on the responsible sale of corrosive products to help restrict the sale of corrosive products which contain harmful levels of acid and other corrosives and help prevent attacks by prohibiting sales to under 18s. These commitments were developed with the British Retail Consortium and were tested out with the British Independent Retailers Association (Bira) and the Association of Convenience Stores to ensure that there were both proportionate and that they worked in the retail environment. The voluntary commitments can be accessed at the following link:*~~

~~*<https://www.gov.uk/government/publications/sales-of-acid-voluntary-commitments-for-retailers/responsible-sales-of-acid-and-corrosive-substances-voluntary-commitments>*~~

~~Major retailers have signed up to the voluntary commitments and to date these are: Wickes, B&Q, Screwfix, Homebase, Wilko, Co-op, Morrisons, Waitrose, John Lewis, Tesco, Lakeland, Asda and Aldi UK. We also have a number of small, independent retailers signed up and have continued to work with Bira to encourage smaller independent retailers to sign up to these commitments. Section 1 of the Act effectively places these voluntary commitments on a statutory footing which applies to all retailers.~~

## **8.7 Batteries**

8.7.1 The draft guidance (at page 10) indicates that the legislation exempts any form of battery. It indicates that there is no evidence that battery acid has been used in any attacks. Whilst this second sentence is superfluous in statutory guidance, we also do not believe that the legislation exempts battery acid. Section 1(15) excludes a substance or product which is contained in a battery, but it does not exempt battery acid sold separately.

## **8.8 Sales to Company Employees under 18 years of age**

8.8.1 The draft guidance (at page 10) makes the following statement:

*“The provisions are about the sale of corrosive products to individuals who are under 18. In the case of a company buying corrosive products or corrosive chemicals, the sale will not be made to a person under 18. It would only be in exceptional cases where a business is run by a sole trader who is under 18 that the sole trader would need to make arrangements for the corrosive products to be purchased by, and delivered to, a person who was over 18. The requirement would in effect require the sale to be made to another person.”*

8.8.2 This is a risky statement to make. It would be very fact specific, but a person under the age of 18 acting as an agent of another (be that a legal person or an employer) would still be likely to face restrictions on purchasing the product. If a painter and decorator, established as a company, were to send a 16-year-old apprentice to purchase a corrosive substance from a local retailer out of petty cash, the law would regard the sale as taking place with the apprentice not the company. An offence would be committed.

8.8.3 It could be argued that if a company purchased the corrosive substance on account, but then sent their 16-year-old apprentice to collect it, then an offence would not be committed, but that then stands at odds with provisions elsewhere in the guidance regarding collection points.

## **8.9 Defences**

8.9.1 The provisions relating to defences should be drawn together with the provisions relating to defences for knives. It makes no sense separating them out in the guidance.

8.9.2 We have already mentioned in paragraph 3.3.7 on the layout of the guidance, that the wording of this section on statutory defences could be simplified and improved.

## **8.10 Penalties**

8.10.1 The section on penalties is confused, unnecessarily complicated and refers to matters that should not appear in statutory guidance.

8.10.2 If a section on penalties is necessary at all, it should be limited to a statement that an offender could face a term of imprisonment or a fine or both. It is not necessary to be precise about the term of imprisonment that could be imposed, particularly as it is complicated by the coming into force of other unrelated legislation.

8.10.3 The following paragraph is unnecessary and should be deleted:

~~“The link below is to the news release which referenced the legislation which came into force on 12 March 2015 which removed the £5,000 cap that previously limited the maximum fines in England and Wales that magistrates’ courts could impose.~~

~~<https://www.gov.uk/government/news/unlimited-fines-for-serious-offences>”~~

## 8.11 Amending Schedule 1

8.11.1 The paragraphs presented here are a statement of government policy, not statutory guidance. Whilst that might be appropriate in a briefing note or explanatory note, they should be deleted.

~~The legislation provides the relevant national authority with a power to be able to amend, add or remove substances and concentration limits in Schedule 1 through secondary legislation. In the case of England, Wales and Scotland this would be the Secretary of State. We have placed a requirement on the face of the legislation that the national authority would only make any changes following consultation with persons likely to be affected by the regulations and whom the Secretary of State considers that it is appropriate to consult.~~

~~We will keep the substances and concentration limits under review by working closely with the National Police Chief’s Council and forensic providers on the substances and concentrations that police forces are reporting finding either in relation to actual attacks or individuals being found in possession of a corrosive substance. We will also continue to work closely with retail trade associations and manufacturers as well as with our scientific advisors at the Defence Science and Technology Laboratory as part of this process.~~

## 10.0 Enforcement and Primary Authority

10.1 We note that pages 35 & 36 of the draft statutory guidance describe the extension of powers for local trading standards authorities. It also covers the extension of the Primary Authority Scheme to cover corrosive substances and offensive weapons. However, we do not consider that the draft guidance adds any particularly helpful guidance on this. This is an opportunity to more fully explain the role of Primary Authority, particularly to enforcement bodies that are less familiar with the way that the system works – particularly police officers.

10.2 The text under Part 7: Enforcement is quite legalistic, possibly being targeted at lawyers or enforcement professionals rather than business. The paragraph under s.64 Enforcement of offences relating to sale etc of offensive weapons could be substantially improved by describing the provisions in plain language:

### Enforcement of offences relating to offensive weapons and corrosive substances

*Section 64 of the Act extends the role of local trading standards officers to enforce within their area a broader range of offences relating to the sale and supply of offensive weapons and corrosive substances.*

*This includes providing officers with powers under Schedule 5 of the Consumer Rights Act 2015 including –*

- *the power at any reasonable time enter premises to observe the carrying on of a business, to inspect goods or documents or to make a test purchase. Refusal of entry could be viewed as obstructing an officer, which is a criminal offence*
- *the power to enter your home, or any other premises used solely or mainly as a dwelling, but only with a warrant issued by a court. An officer can also obtain a warrant to enter any premises by force if necessary, and this might be done, for example, where it is expected that entry will be refused or obstructed*
- *if the entry is for a routine inspection then the TSO must give you two days' written notice of the inspection before entering your premises. However, notice is not needed if:*
  - *you have waived the need for it to be given to you*
  - *the officer has reasonable suspicion that you have broken the law*
  - *giving notice would defeat the purpose of the visit*
  - *it is not practicable to give you notice (for example, there is an imminent risk to public health or safety)*
  - *the entry is for the purposes of market surveillance activities under certain European safety legislation*
- *where a breach of trading standards law is suspected, an officer can seize goods and documents*

# Appendix 1 – Proposed Layout Template

The layout of the guidance should be simple, easy to read and follow. It should be directed at a non-legal audience, ideally at the specific practitioners that it is intended for.

## 4. Definition of a bladed article

4.1 This section will help you to understand the types of articles that are caught by the legislation. It includes a description of the knives, knife blades, razor blades and axes considered to be offensive weapons. It describes articles that have blades or sharp points that are made or adapted for use for causing injury to the person.

- A knife should be given its ordinary meaning
- Whether something is or is not a knife or knife blade should be obvious
- Encased safety razor blades are exempt
- Items other than knives, razor blades and axes that are not made or adapted for use for causing injury to the person at the time the sale takes place are not caught by the legislation

**Approach to identifying bladed articles**

4.2 You should carefully consider whether any articles on sale are bladed, contain blades or sharp points and could, therefore, be caught by the legislation. If something is described as a blade, knife or axe in its marketing materials then it is more likely than not that it will be caught. However, just because it isn't described as such, does not mean that it is not caught.

*Example 1:*  
A product with a handle on both ends intended for chopping vegetables with a sharp blade in a rocking motion – although not usually called a knife, this would still be regarded as a knife blade and caught by the legislation.

Is it clearly a knife or knife blade or razor? YES

NO

Is it an axe or any type of similar cutting tool? YES

NO

Has it been made or adapted to cause injury to a person before the point of sale? YES

NO

Yes – it is caught by the legislation and is age restricted.

No – it is not likely to be age restricted

4.3 There are many articles that are caught by the Act, but some that are specifically exempt, have previously been considered by the courts not to be caught or are less likely to be caught. It is a question that ultimately only a court can decide, but this guidance provides some examples of articles that fall into each category.

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A short paragraph telling the reader what this section is about helps to know if it is relevant to their needs.

A 'bitesize briefing' can help if the reader doesn't need a detailed explanation.

Practical real world examples can help to put the provisions in context.

Text that is not legalistic and does not refer to section 141A(1)(a) is easier to understand. If a reference is needed, it can be put in a footnote.

A simple flowchart, ideally with Yes/No answers can help the reader follow through the logic of an approach to interpreting the legislation.

Logical and sequential page numbering can help direct a reader to a relevant section of the guidance.

The use of pictures, icons and illustrations can help readers to pick out the key points of a statement.

Colours can assist to differentiate, but be careful that they are properly contrasted to the text and will work online.