

Sale of knives etc to persons under eighteen - Individuals

Criminal Justice Act 1988, s141A

Effective from: TBC

Triable only summarily

Maximum: 6 months' custody

Offence range: Fine – community order

Use this guideline when the offender is an individual. If the offender is an individual please refer to the **Sale of knives etc to persons under eighteen – organisations** guideline.

Note: This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by traders who otherwise generally operate within the law or those employed by such traders. Cases of a different nature (such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children) should be sentenced outside the guideline

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Step 1 – Determining the offence category

The court should determine the offender’s culpability and the harm caused with reference **only** to the factors below.

CULPABILITY
<p>High</p> <ul style="list-style-type: none"> • Offender in a management position failed to put in place standard measures to prevent underage sales - <ul style="list-style-type: none"> ○ For in-store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts ○ For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection. • Offender in a management position failed to act on concerns raised by employees or others • Offender (whether or not in a management position) falsified documents • Offender (whether or not in a management position) failed to make appropriate changes following advice and/or prior incident(s) • Offender (whether or not in a management position) disregarded clear measures put in place to prevent underage sales
<p>Medium</p> <ul style="list-style-type: none"> • Offender in a management position put in place standard measures but these were not sufficiently adhered to or implemented • Offender (whether or not in a management position) failed to fully implement measures put in place to prevent underage sales

- Other cases that fall between categories A or C because:
 - Factors are present in A and C which balance each other out and/or
 - The offender’s culpability falls between the factors as described in A and C

Low

- Offender (whether or not in a management position) made significant efforts to prevent underage sales falling short of a defence

HARM

The harm caused by this offence relates to the risks associated with children and young people being in possession of knives. There is just one level of harm, as the same level of harm is risked by any such sale to a person aged under 18.

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Culpability		
A	B	C
<p>Starting point Medium level community order or Band E fine</p> <p>Category range Low level community order or Band D fine – High level community order or Band F fine</p>	<p>Starting point Low level community order or Band D fine</p> <p>Category range Band B fine – Medium level community order or Band E fine</p>	<p>Starting point Band A fine</p> <p>Category range Discharge – Band B fine</p>

The court should then consider adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed on bail

Other aggravating factors:

- Offence was a consequence of cost-cutting
- Obstruction of justice

- Failure to take up offers of training or other assistance from Trading Standards

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

Step 3 – Adjustment of fine

Where the sentence is or includes a fine, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should ‘step back’ and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain
- appropriate additional punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the financial position of the offender and the seriousness of the offence.

Where the offender is operating as a business, the fine must be substantial enough to have a real economic impact which emphasises the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offender to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

Factors to consider in adjusting the level of fine

- Fine fulfils the objectives of punishment, deterrence and removal of gain
- The value, worth or available means of the offender
- Impact of fine on offender’s ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders/ partners)

- Impact of fine on performance of public or charitable function

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 5 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 6 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 7 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation). (See Proceeds of Crime Act 2002 sections 6 and 13)

- [Ancillary orders – Magistrates' Court](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.