



Prifysgol Cymru
Y Drindod Dewi Sant
University of Wales
Trinity Saint David

Burglary



By the end of this lesson, you will be able to:

1. **Identify** when an offence of burglary has been committed.
2. **State** the definition of burglary contrary to Sections 9(1)(a) and 9(1)(b) of the Theft Act 1968.
3. **Explain** the meaning of 'enters' as it applies to the Act.
4. **Explain** the meaning of 'building' and 'part of a building' as they apply to the Act.
5. **Explain** the meaning of 'trespasser' as it applies to the Act.
6. **Explain** the meaning of 'intent' as a necessary element of Section 9(1)(a) of the Theft Act 1968.
7. **Identify** whether an offence of burglary has been committed.
8. **Identify** whether an offence of aggravated burglary has been committed.

Burglary

Through the eyes of a Victim



Prifysgol Cymru
University of Wales
Cardiff, Aberystwyth

<https://www.youtube.com/watch?v=Bgqb55wkHRM>



The first offence we are going to look at is Burglary

Trainer to discuss how people stereotype burglary, image will float in.

- 1) Is the typical stereotype if you were asked what a burglar looks like.
- 2) A **burglar** who is especially skilled at stealthy or undetected entry of a premises. **cat burglar** is a **burglar** who enters buildings by climbing through upper windows, skylights, etc can also be know as creeper burglar.
- 3) Modern burglar but would he look suspicious if you seen him walking down street?
- 4) Woman with skate board, anyone can be a burglar no matter what they look like.
- 5) Man walking again indicating any person can be a burglar they do not come with rubber stamps on head.
- 6) Burglars from home alone.
- 7) Distraction burglary, discuss with students.
- 8) Oliver who was used in film as small boy to enter house to burgle, this method is still being used today.

(Either-way offence)

Burglary is a so-called 'volume' crime and can take various forms.

Burglary is a serious offence, which if tried on indictment carries a maximum penalty of 10 years.

This increases to 14 years if the building is a dwelling.

Aggravated burglary, which we will look at later, carries a maximum penalty of life imprisonment.

Offences against property and persons are generally regarded as more serious if the criminal entered premises where they had no right to be, in order to commit the crime.

You may deal with an offence of burglary very early in your career.

It is, therefore, essential that you are able to recognise the offence in order that you can effectively take the appropriate action.

Burglary....Section 9 (1)(a) Theft Act 1968

A person is guilty of burglary if he **enters** a **building or part of a building** as a **trespasser with intent to:**

Steal anything
therein OR

Inflict ***grievous
bodily harm*** on
any person therein
OR

Damage any
property therein



The offence of Burglary is contained within the Theft Act 1968

There are two types of burglary.

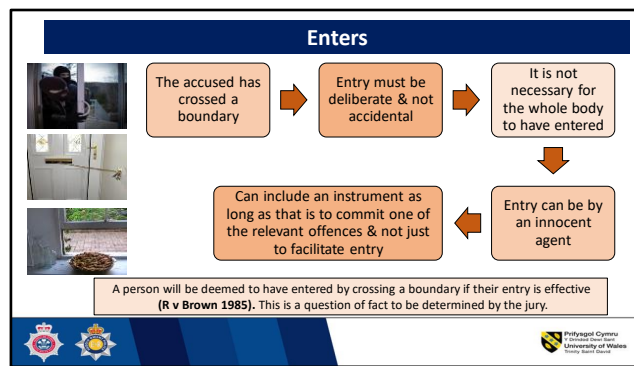
The first one is concerned with the defendant's intentions when entering a building or part of a building.

This is commonly referred to as 'burglary with intent' and is covered by Section 9(1)(a) Theft Act 1968

For an offence under this section the acts do not have to be committed, only intended.

As we have already discussed, proving 'intent' is sometimes difficult and whilst there may be some evidence which may assist, it is often only during interview that this is established.

We will look at the elements highlighted in red in more detail shortly.



Entry can be gained in a number of ways:

In person – either completely or by inserting a body part e.g. arm/leg through a window or letter box. The entry must be with intent to commit one of the offences mentioned in section 9(2). The entry must be effective otherwise it may only be an attempt.

Using a tool/article – as an extension of the burglar, e.g. a long stick pushed through the letter box in order to steal car keys from a table. However, if the tool or article is put through the letterbox to get the keys to open the door it will not be classed as entry. If the instrument is used merely to try to gain entry (e.g. a cordless drill being used to try to drill out a lock), then at that stage it may be no more than an attempted burglary.

Using an innocent agent – e.g. a child under the age of criminal responsibility (10yrs) or a trained animal e.g. a monkey, sent into a building to steal. If the ‘agent’ is used to open doors or windows to prepare entry and nothing stolen then offence is NOT committed (but may be an attempt).

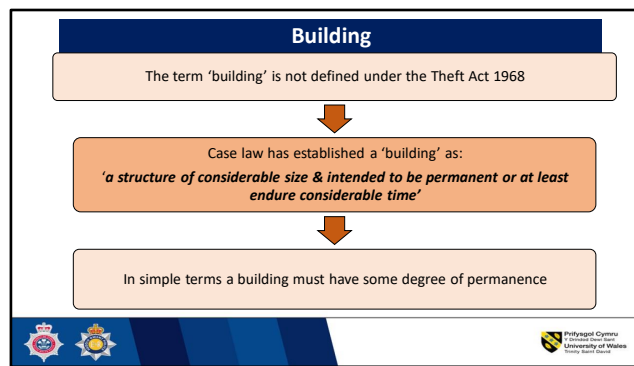
In **R v Brown** – Brown had broken into a shop having smashed the bottom panel of the door.

He was half way in through the broken door panel when he got stuck.

The shop owner caught him - half of his body inside the shop and half outside

He argued in Court that he hadn’t actually ‘**entered the building**’

The Court held that **yes he had** – you only have to show that entry had been ‘**effected**’ as per above.



The term 'building' is used in the Theft Act but not defined, however it is well established in case law as:

'a structure of considerable size and intended to be permanent or at least endure for a considerable time'

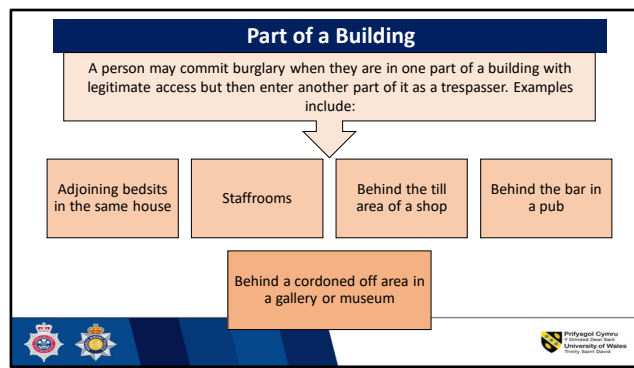
A tent, marquee, open-sided bus shelter or car port are **NOT** buildings for the purposes of Burglary.

Vehicles and vessels in use as a dwelling are classified as buildings

Static caravans are buildings whether occupied or not.

Touring caravans capable of being towed will only be buildings **when occupied**.

A touring caravan parked in its owners driveway is normally a vehicle, but, if, at the end of its touring days it is used as a store at the end of the garden, then it is being used as a building in the same way as a garden shed.



Part of a building:

This term is included to cover a situation where, in the same building, a person may have a right to be in one place, but not in another.

Examples of this may include:

1) As a general rule we all have permission to enter shops during their opening hours. This permission is what is known as 'implied' permission in that whilst there is not a member of staff or the owner outside the shop specifically telling people that they can go in, it is accepted that as it is a shop and is open then the public can enter.

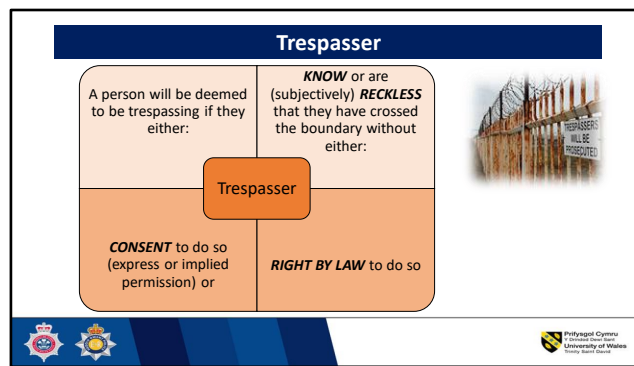
Whilst it is accepted that a person can enter the 'public' areas of the shop, should they go into an area where the public does not have permission to go, e.g. staff room, stock room or behind the shop counter, then they would be considered a trespasser and could commit the offence of burglary.

A physical division in a room (*such as in example (1) above*) is enough if it clearly marks out a part a building where a potential offender should not go.

R v Walkington 1979 - '**Staff only**' area may be part of a building in burglary and an attempt at theft can take place even if there is nothing to steal

2) Two lodgers share the same house. One lodger enters the other lodger's room without permission in order to steal.

He goes from the hallway where he has permission to be, into the other lodger's room, where he does not have permission to be, and is, therefore, a trespasser.



Subjective recklessness – they foresee a risk but go on to take that risk

To be guilty of burglary the defendant must know or be subjectively reckless to the fact they are entering as a trespasser i.e. they must know they are entering without a right by law or with express or implied permission – or being reckless as to that fact.

Sometimes a defendant may have a general permission to enter a building or part of a building for a legitimate purpose. However, the true intention of the defendant when entering is not for that legitimate purpose – but in order to steal / inflict GBH / cause damage.

As these intentions invariably form no part of the permission to enter – any entry in such circumstances means that the defendant becomes a trespasser the moment they enter the building or part of it because businesses, such as banks, only extend an invitation for individuals to be on their premises if they have legitimate business there.

In such circumstances the exceeding of the granted permission places the defendant in a position of being a trespasser from the outset.

The difficulty is proving their intentions, but the circumstances can sometimes help.

In order to prove a trespass for the criminal law, guilty state of mind, or (to use the Latin term) '[mens rea](#)', must be present. An offender must either know that he is a trespasser or be reckless as to whether the facts exist that make him a trespasser. i.e. **the person must have guilty knowledge that they are trespassing or not care whether they are or not.**

The general rule in law is that if a person enters a building/part of a building with consent, then they will not be a trespasser

There are, however, exceptions to this rule: e.g.

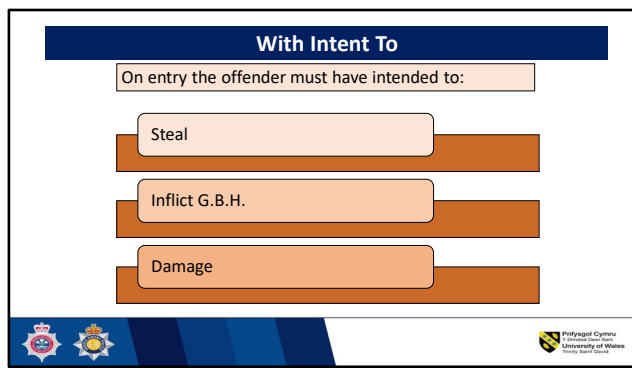
- **Exceeding the scope of the consent to enter:**

1) A consents to B entering their building as a guest for a specific purpose (e.g. to fix the boiler). At the point of entry, B had no intention of entering for the specified purpose but instead had the intention of either stealing / inflicting GBH / causing damage. B will have **entered** the building as a **trespasser** – as the initial consent to entry only related to the specified purpose and not their intended prohibited acts.

2) A neighbour is given house keys to check on their neighbour's house whilst they are away. If they enter during the night and steal the TV, they will commit burglary as the implied condition of entry was exceeded.

R v Jones & Smith 1976

The defendant was convicted of burglary where he took 2 TV sets from his father's house. He had a key to the house and was free to come and go as he liked. However, when he entered his father's house at 3 a.m. (using the key) accompanied by a friend and stole the TV sets, he committed burglary as it was his intention to steal – such intent voids the general permission to enter.



Steals: On entry the offender must have intended to commit theft, satisfying each element of the definition - The suspect commits the full offence of theft.

Inflicts GBH: On entry the offender must have intended to inflict grievous bodily harm on a person therein.

The meaning of 'inflict' is not as narrow as 'assault' but is narrower than 'cause'. It includes situations where force is applied indirectly.

For example, a woman in her home is frightened by a burglar and as a result falls down the stairs and breaks her leg. Harm can be said to have been inflicted by the suspect inducing fear, even though there has been no application of force. **NOTE:** It is the intent to cause GBH that is the offence here, not the actually causing of the GBH.

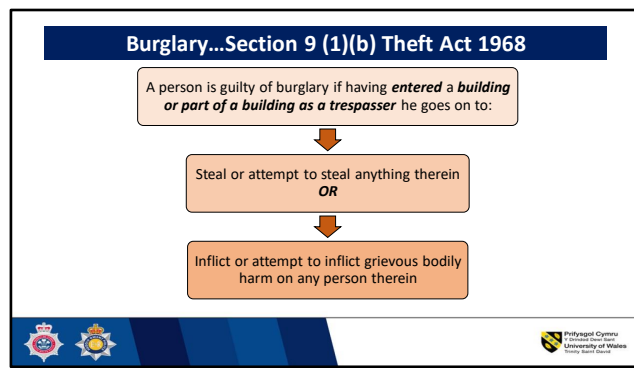
Damage: On entry the offender must have intended to destroy or damage the building or property in the building belonging to another.

An offence under 9(1)(a) will be complete as soon as the person crosses the boundary as a trespasser with the requisite intent (Mens Rea)

It does not matter if after crossing that boundary they subsequently have a change of heart and decide against carrying out the intended act.

Sentence: If violence is used inside a dwelling – Indictable offence – 14yrs imprisonment

Steals/Damage: Either way offence – 10 years imprisonment (Crown Court); 6 months and/or fine (Magistrates)



The second type of burglary involves a defendant's behaviour **after** having entered a building or part of a building.

This is covered by Section 9(1)(b) Theft Act 1968

This is often the easier offence to prove as it does not require proof of the 'mens rea' or state of mind of the offender.

Burglary 9(1)(a)			Burglary 9(1)(b)		
Step 1	Has the suspect made an effective entry into a building? E.g. Have they crossed a threshold?	If no – no offence If yes – proceed to step 2	Step 1	Has the suspect made an effective entry into a building? E.g. Have they crossed a threshold?	If no – no offence If yes – proceed to step 2
Step 2	At the time of crossing the boundary was the suspect a trespasser?	If no – no offence If yes – proceed to step 3	Step 2	At the time of crossing the boundary was the suspect a trespasser?	If no – no offence If yes – proceed to step 3
Step 3	At the time of crossing the boundary as a trespasser did the suspect intend to either commit... Damage Inflict GBH Theft	If no – no offence If yes – Burglary 9(1)(a) has been committed.	Step 3	At the time of crossing the boundary as a trespasser did the suspect go on to commit... Inflict GBH Theft	If no – no offence If yes – Burglary 9(1)(b) has been committed.



Question.....

BENNETT has nowhere to sleep and so enters an insecure boiler house intending to find a place to bed down for the night.

During the night, BENNETT is disturbed by the security guard so he seizes a hammer that is on a shelf, fracturing the guard's skull with it.

When does BENNETT first commit burglary?

- A. Upon forming the intention to break into the boiler house.
- B. Upon breaking into the boiler house.
- C. Upon making the decision to hit the security guard.
- D. Upon causing injury to the security guard.



Answer is **D** -Upon causing injury to the security guard.

Question.....

(a) HALFPENNY wants to break into a shop to steal, so he inserts a bent wire coat hanger through the letterbox and uses it to try and release the door catch.

(b) WILLIAMS sees some keys on the floor just inside the door of a locked shop. He decides to take these keys and sell them to a person he knows would like to steal from this shop. He uses a length of wire to reach through the letterbox and pulls the keys out.

Which, if any, of the above cases would amount to a burglary?

1. (a) only
2. (b) only
3. Both
4. Neither.



Answer is **2** - (b) only

Question.....

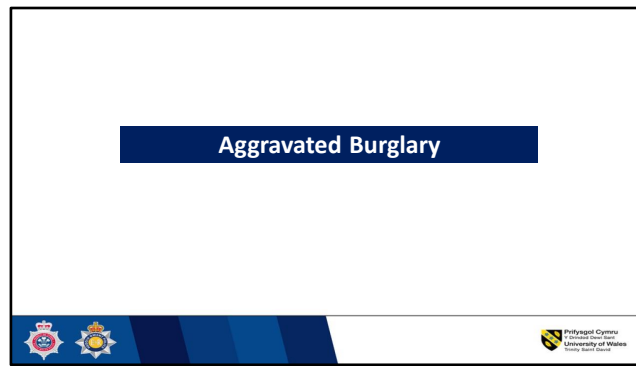
NEIL is at a party in a friend's house when he is asked by his friend to leave because he has become too drunk and noisy. NEIL refuses so his friend tells him that he is now trespassing and orders NEIL to leave. In which, if either, of the following circumstances does NEIL commit burglary?

- (i) NEIL steals a cigarette lighter from the room where the party is being held and then leaves.
- (ii) NEIL leaves the house via the kitchen when he sees several glasses on the draining board so he smashes them on his way out.

- a) (i) only
- b) (ii) only
- c) Both
- d) Neither.



Answer is **D** - Neither.



Aggravated Burglary – Triable on Indictment only
Maximum penalty on conviction of Life Imprisonment

Aggravated Burglary.....S10 Theft Act 1968

A person is guilty of aggravated burglary if he commits any burglary & at the time has with him

 W eapon of offence OR	 any I mitation firearm OR	 any F IREARM OR	 any E xplosive
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←————→

As you can see from the penalty, this offence is considered more serious than Burglary.

The difference between Burglary and Aggravated Burglary is simple.

We have just looked at the offence of Burglary and discussed how that offence is made out.

Aggravated Burglary has exactly the same elements as Burglary **PLUS** the additional evidence that, at the time of committing the offence, the accused person has with him one or more of the four named articles shown:

Weapon of Offence

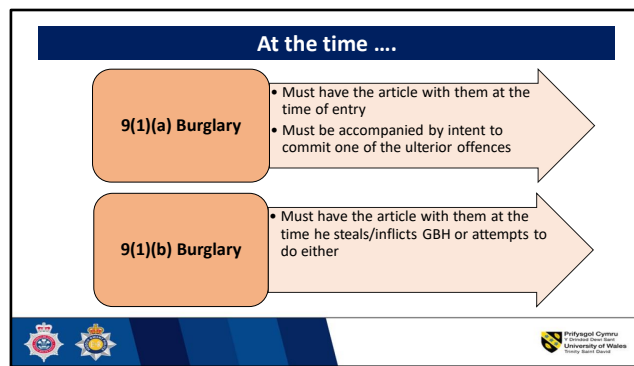
Imitation Firearm

Firearm

Explosive

Or in mnemonic form.....'**WIFE**' (Click to next slide)

Note that both Sec 9(1)(a) and 9(1)(b) burglaries can be aggravated



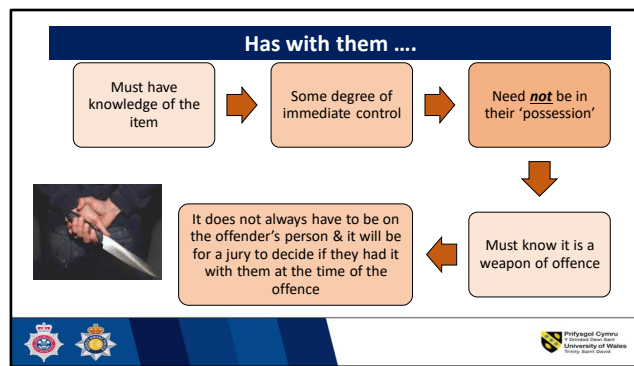
The important point here is the point in time when the 'burglary' is committed

The point in time when the offence is committed depends upon the subsection and the type of burglary:

For a **Sec 9(1)(a)** burglary, the time is when a person enters a building or part of a building with intent and has in his/her possession one of the articles listed

For a **Sec 9(1)(b)** burglary, the time is when he/she commits the theft or grievous bodily harm and has one of the articles in his/her possession, having entered a building or part of a building.

For a **9(1)(b)** burglary (having entered, commit theft/GBH or attempt to commit theft/GBH), that is at the time of the commission of the ulterior offence . If the weapon is discarded after entry and before the ulterior offence is committed, then there is no aggravated burglary. A jury would have to decide on the specific facts of the case.



From PNLD - The term 'has with him' is used in a wide range of offences where an offence is committed by an individual physically holding, or having at hand an article of some sort or other (depending on the offence).

Where the term is used there is a need to prove: a knowledge of the existence of the article; and that the article is 'to hand and ready for use' (*as well as holding the item, it may, for example,*

- (i) *be in the offender's pocket or backpack;*
- (ii) *in the offender's car parked on a side road next to a house targeted for a break in; or*
- (iii) *hidden a few feet away under a bush).*

It does not always have to be physically on the offender's person and it will be for a jury to decide if s/he had it with him at the time of the offence.

The trespasser must have a degree of immediate control and will normally be the same as carrying.

It would appear from the case law that the suspect must at least know they have an article with them and that the article is in fact a weapon of offence.

From the CPS website :-

'Has with him'

Where the same phrase has been used in other statutory offences, the courts have interpreted it to extend beyond physical carrying of the weapon. Relevant considerations include how immediately accessible the item is, how close it is, the context of any proposed criminal enterprise and the purpose of the legislation creating

the offence. (R v Henderson [2017] 1 Cr App R 4.)

In cases where a defendant has been found entering a building with a weapon, it will not be necessary to prove any intention to use that weapon during the burglary.

The term is more restrictive than possession. It will require the defendant to have some degree of immediate control over the item and will normally be the same as 'carrying'.

Instant arming-

Ordinary items can, instantaneously, change into weapons of offence; it is the intention of the person to use an item in a particular way that allows this to take place. Screwdriver to facilitate entry, confronted by person. Use of screwdriver.

Ordinary items can, instantaneously, change into weapons of offence; it is the intention of the person to use an item in a particular way that allows this to take place. Screwdriver to facilitate entry, confronted by person. Use of screwdriver.

Remember: 'What's in his head, what's in his hand ?' (R v KELLY)

R v Kelly [1993] Crim LR 763:

The defendant had broken into a house, using a screwdriver to effect entry. When surprised by the householder, the defendant told him to unplug the video and then pushed the screwdriver into his ribcage. On leaving the house, the defendant was apprehended by police, holding a video in one hand and the screwdriver in the other.

The Court of Appeal held that the defendant became guilty of aggravated burglary

when he used the screwdriver to prod the householder in the stomach. It was held that the focus of Sec.10 was use during burglary, so that the screwdriver taken into the house became a weapon of offence on proof that he intended to use it for causing injury to, or incapacitating, the householder at the time of the theft.

Weapon of Offence

A 'weapon of offence' is any article made or adapted for causing injury to, incapacitating a person or intended by the person having it with him for such use

The slide features a blue header with the title 'Weapon of Offence'. Below the header, a light orange scroll contains the definition. The bottom of the slide has a blue decorative bar with three police force crests on the left and the University of Wales logo on the right.

A 'weapon of offence' is any article made or adapted for use for causing injury to, incapacitating a person, or intended by the person having it with him for such use

Note: A weapon of offence is not an "offensive weapon" as the definition of an offensive weapon does not include the element of an item to incapacitate a person....



Weapon of offence includes:

Items **made** for causing injury , e.g. flick knife

Items **adapted** for causing injury – e.g. a piece of wood with nails in it

Items **intended** for causing injury – e.g. a cutlery knife is inoffensive in everyday use but can be ‘intended’ by a defendant



Weapon of offence includes:

Items **made**, **adapted** or **intended** to incapacitate a person – e.g. handcuffs, CS spray or rope.



Imitation firearm – anything that gives the appearance of being a firearm .

This definition obviously includes toy guns and replicas, but in certain circumstances, it includes other articles too.

The Act requires that the accused is carrying a 'thing' which is separate and distinct from his own person and therefore capable of being possessed.

As a result it **does not** include the defendants fingers inside a pocket to resemble a firearm, as a hand or finger is part of someone's body and cannot be possessed



Firearm – Includes airguns and air pistols

The legislation does not define the term 'firearm' itself.

The Courts will, therefore, have to apply the term realistically to anything that can be fired and can kill or wound.

Section 57 of the Firearms Act 1968 provides the interpretation of the terms firearm, ammunition, component part and accessory.

FIREARM

The expression 'firearm' (but *see note below*) means a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and includes -

- (a) any prohibited weapon, whether it is such a lethal weapon as aforesaid or not; and
- (b) any component part of such a lethal or prohibited weapon; and

(c) any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon;
and so much of [section 1](#) of this Act as excludes any description of firearm from the category of firearms to which that section applies shall be construed as also excluding component parts of, and accessories to, firearms of that description.

Notes

This is the general definition for all firearms, see also the specific concept of a '[section 1 firearm](#)' (the definition applicable only to firearms which require a firearms certificate).

In connection with the obligation by the prosecution to show that an air weapon is potentially lethal, see [Grace v DPP \[1988\]](#).

AMMUNITION

The expression means ammunition for any firearm. It includes grenades, bombs and other like missiles, whether capable of use with a firearm or not, and also includes [prohibited ammunition](#).

Note

This definition does not cover the ingredients and components of ammunition. The Firearms Act 1968 only controls assembled ammunition. Empty cartridge cases are not considered ammunition. (The only exception is the missiles for ammunition prohibited under [section 5](#) of the Firearms Act 1968, e.g. expanding or armour-piercing bullets. Such missiles are considered ammunition and therefore subject to control).

Blank cartridges

It is considered that blank cartridges are included under the general term 'ammunition'. (Cartridges containing only primer are ammunition, see [R v Stubbings \[1990\]](#)). However, in accordance with [section 1\(4\)](#) of the Firearms Act 1968, blank cartridges not more than one inch in diameter measured immediately in front of the rim or cannellure of the base of the cartridge, are exempt from the certification procedure. On the contrary, if the blank cartridges are greater than one inch in diameter they would be considered 'section 1 ammunition' and, consequently, subject to the certification controls.

COMPONENT PART

Component parts of firearms are any working part of the mechanism and subject to certificate control. The term may be held to include:

the barrel, chamber, cylinder;

frame, body or receiver;

breech, block, bolt or other mechanism for containing the charge at the rear of the chamber;

any other part of the firearm upon which the pressure caused by firing the weapon impinges directly.

Magazines, sights and furniture are not considered to be component parts (in connection with telescopic sights see *Watson v Herman* [1952] 2 All ER 70, 116 JP

395). Sound moderators on air weapons or [section 2 shot guns](#) are not considered to be component parts. Where a weapon is incapable of discharging a missile because the barrel is solid but can be adapted to fire missiles by boring the barrel may fall within the definition of 'firearm' as being a part of a firearm (see [Cafferata v Wilson \[1936\]](#)).

ACCESSORY

Whether a silencer is an accessory to a firearm for the purposes of section 57(1) is a question of fact which must be answered by considering whether the silencer could be used with that firearm and whether the defendant had it for that purpose.

In the case of *R v Buckfield* [1998] Crim LR 673:

"The police (*searching on a warrant*) found and took possession of, a shotgun and a rifle and a silencer. The silencer had not been manufactured for either the shotgun or the rifle, but the rifle had been modified so that the silencer could be screwed onto an adapter which was welded to the end of the rifle barrel. The appellant had a shotgun certificate for the shotgun and a firearm certificate for the rifle, but there was no certificate for the silencer.

Firearm is defined by section 57(1) to include "(c) any accessory to any such weapon designed or adapted to diminish the noise or flash caused by the firing of the weapon". This says that **it is the accessory which must be so designed or adapted** (*not the weapon*).

Where the silencer had been manufactured for use on a particular firearm in the defendant's possession, no further evidence would be required to establish that the silencer was an accessory to that weapon and should be shown on a firearm certificate. Where the silencer, as in the present case, was manufactured for a weapon other than that in the defendant's possession then, in order to obtain a conviction under section 1(1)(a), the prosecution would have to prove that the device could be used with the defendant's firearm and that the defendant had the device for that purpose. The fact that the silencer might have been designed for quite a different weapon, such as a shotgun, did not prevent it from being an accessory to a firearm if it could be used as such and if the person having it in his possession had it for the purpose of using it as such."

For other useful firearms subjects see also -

[Firearms Act 1968](#)

[Imitation firearms](#)

[Firearms Act 1968 - index: offences](#)

[Firearms Act 1968 - interpretation](#)

Source

[Firearms Act 1968](#)

National Region

England and Wales

Explosive

Any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with them for that purpose



The slide features a blue header with the word 'Explosive' in white. Below it, a light orange box contains the legal definition. A large orange arrow points from this box to three images: a homemade explosive device with a digital display showing '15:43', a standard military grenade, and a small explosive device in a field. The footer includes logos for the Welsh Fire Service, the Welsh Ambulance Service, and the University of Wales.

Explosive

Explosive means 'any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with them for that purpose'

The word 'explosive' therefore has a broad meaning.

In addition to the more obvious items such as TNT and Dynamite, it can include grenades, thunder flashes, home made explosive devices.



Click on Kahoot to link to site (this will take you straight to the quiz as long as you have your account) If not the link to the quiz is at the bottom of the notes. It is also on the LP.

Kahoot Quiz Instructions

Kahoot Points of Interest –

1. crime, Burglary etc .
2. You need one device and one website for the presentation machine. This is where the trainer controls the game.
3. To get a free account to create a Kahoot go to this website.
<https://www.getkahoot.com/>

Kahoots Solo – If students play on their own, they will each need a game response board like this. Each player submits their own player name and votes for each question.

Kahoots – In Partners –

Partners Select a name -

If Students play in partners, you may consider using

- One device for researching the answers to the quiz. Keep this window open on that one device so that they can search for answers.
- And one device to input the partnership response.
- You might have students research the answers on Pioneer Online, or on a .pdf or website, primary source material, or information you have provided.

Kahoot Quiz Instructions

Kahoot – To Play

1. Open the game on your presentation machine.
2. Student devices Go to kahoot.it.com – or down load app, They will be asked for a Game Pin.
3. Students refer to the presentation board (in front of room) for a Game Pin.

Game

1. Students Enter the Game Pin – Click Enter
2. Students enter their name, or their anonymous name or their partnership name.
3. The player names will show up on the screen on the presentation machine. The game board on your 2nd device will look like this.
4. The length of time you will have to answer each question will depend on the question. (Quiz creators make this decision as they create the quiz.) It could be from 5 seconds to 60 seconds.

<https://create.kahoot.it/share/burglary-aggravated-burglary/c139554e-2e95-4f9f-982b-bb91cc5b4c33>

