

Criminal Justice Committee

**18th Meeting, 2022 (Session 6),
Wednesday, 1 June 2022**

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following affirmative instruments:
 - [The Surrender of Offensive Weapons \(Compensation\) \(Scotland\) Regulations 2022 \[draft\]](#)
 - [The Criminal Justice Act 1988 \(Offensive Weapons\) \(Amendment, Surrender and Compensation\) \(Scotland\) Order 2022 \[draft\]](#)

The Surrender of Offensive Weapons (Compensation) (Scotland) Regulations 2022 [draft]

1. The above instrument is proposed to be made in exercise of the powers conferred by section 49(4) of the Offensive Weapons Act 2019.
2. The purpose of the instrument is to provide a compensation scheme to accompany a surrender scheme arranged by the Scottish Ministers under the Offensive Weapons Act 2019 to operate for three months beginning with 1 July 2022 for those offensive weapons that will become illegal to possess on domestic premises when Part 4 of that Act is commenced.

The Criminal Justice Act 1988 (Offensive Weapons) (Amendment, Surrender and Compensation) (Scotland) Order [draft]

3. The above instrument is proposed to be made in exercise of the powers conferred by section 141(2) of the Criminal Justice Act 1988.
4. The purpose of the Order is to add 'zombie knives' to the list of offensive weapons set out under Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 and to allow the Scottish Ministers to make arrangements for a surrender and compensation scheme for these knives which will run for the period of three months beginning with 1 July 2022.
5. Further details on the purpose of each of the instruments can be found in the policy notes attached in the Annex.

Delegated Powers and Law Reform Committee Consideration

6. The Delegated Powers and Law Reform Committee considered the instruments at its meeting on 17 May 2022. The DPLR Committee agreed that it did not need to draw either of them to the attention of the Parliament on any grounds within its remit.
7. However, in its consideration of the draft instruments, the DPLR Committee noted the challenge of defining the relevant knives in law, for the purposes of criminal offence provisions and compensation schemes for surrender of offensive weapons including those known as 'zombie knives'.

Criminal Justice Committee Consideration

8. The Committee is required to report to the Parliament by **7 June 2022**.
9. Motions S6M- 04246 and S6M-04247 have been lodged proposing that the Committee recommends approval of the instruments. The Minister for Community Safety is due to attend the meeting on 1 June to answer any questions on the instruments and to move the motions for approval.
10. **It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instruments.**
11. **The Committee is asked to delegate to the Convener authority to approve the reports on the instruments for publication.**

CJ/S6/22/18/1

Clerks to the Committee
May 2022

Annex

Policy Note

The Surrender of Offensive Weapons (Compensation) (Scotland) Regulations 2022

SSI 2022/XXX

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 49(4) of the Offensive Weapons Act 2019 and all other powers enabling them to do so. The instrument is laid subject to the affirmative procedure.

Purpose of instrument:

To provide a compensation scheme to accompany a surrender scheme arranged by the Scottish Ministers under the Offensive Weapons Act 2019 to operate for three months beginning with 1 July 2022 for those offensive weapons that will become illegal to possess on domestic premises when Part 4 of that Act is commenced.

Policy Objectives

1. The Offensive Weapons Act 2019 (“the 2019 Act”), amongst other things, includes new legislative measures to control the sale of offensive weapons (e.g. knives) and introduces new offences relating to their possession and use.
2. Under provisions in section 47 of the Criminal Law Consolidation (Scotland) Act 1995, it is currently unlawful to possess in a public place an offensive weapon as described under the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (“the 2005 Order”). Section 141 of the Criminal Justice Act 1988 also criminalises the sale, manufacture, importation etc. of the weapons described in the 2005 Order.
3. However, it is currently lawful to own and possess such an offensive weapon set out under the 2005 Order on domestic premises. When the measures in Part 4 of the 2019 Act are commenced it will become unlawful to own or possess such offensive weapons on domestic premises.
4. Sections 44 and 46 of the 2019 Act amend various pieces of legislation with the effect that it becomes an offence to own and possess certain dangerous knives and offensive weapons on domestic premises. Section 48 of the 2019 Act makes provision allowing for the Scottish Ministers to make arrangements for those who currently legally hold offensive weapons, the possession of which will become prohibited by the 2019 Act, to be able to surrender those weapons at designated police stations.

5. Part 4 of the 2019 Act cannot be commenced until such time as these regulations are commenced and the surrender and compensation has been concluded.

Regulations

6. These regulations provide for the scheme of compensation in relation to the surrender of weapons under arrangements made by the Scottish Ministers under section 48 of the 2019 Act.

7. Regulation 2 and schedule 1 make provision as to the standard level of compensation payments which are to be made in respect of weapons surrendered in accordance with arrangements made under section 48 of the Act.

8. Regulation 3 makes provision as to eligibility for compensation. Regulation 4 provides for police officers accepting the surrendered items to issue a receipt. Regulation 5 provides for claims to be submitted where the items have been surrendered, and for claims forms to be transmitted to the Scottish Ministers (with schedule 2 setting out the claim form to be used). Regulation 6 provides for determination of claims and payment by the Scottish Ministers. No payment is to be due where the total claim for compensation is less than £30. When calculating the total claim for compensation, the Scottish Ministers may consider any zombie knives which are surrendered, and for which compensation is claimed, under arrangements made by the Scottish Ministers under the Criminal Justice Act 1988 (Offensive Weapons) (Amendment, Surrender and Compensation) (Scotland) Order 2022. It is the Scottish Ministers intention that both surrender and compensation schemes will be run together from 1 July 2022.

9. The standard level of compensation for a weapon, as specified in schedule 1, is the amount of compensation payable unless the person claiming the compensation contends that the value exceeds the standard level of compensation payable. If no standard level of compensation is specified for the weapon surrendered, or if the person claims that the value exceeds the standard level, valuation evidence must be submitted and the level of compensation payable is to be determined by the Scottish Ministers.

Impact Assessments

10. A Data Protection Impact Assessment Report, a Data Protection Impact Assessment for Legislation and a Joint Data Controller Agreement with Police Scotland have been completed. The UK Government also prepared an impact assessment, an equality statement and an ECHR memorandum for the introduction of the enabling Act of the UK Parliament which cover the details which we would have provided in any impact assessments concerned with this instrument. An impact assessment on the 2019 Act was published by the UK Government on the 2019 Act on the 12 October 2020.

Financial Effects

11. The financial effects of this policy are set out under the financial memorandum which accompanied the Bill for the 2019 Act. Further, Home Office officials informed the Scottish Government that the total amount of compensation paid out by the UK Government on offensive weapons under its surrender and compensation scheme was £247,295.30. The amount of compensation to be paid by the Scottish Government under its surrender and compensation scheme is going to be based on the same levels of compensation per type of weapon as the UK Government scheme, subject to Parliamentary approval. As such, it is estimated that the costs may be approximately £25,000 in Scotland, though this does depend on a number of unknown factors such as the level of ownership of relevant weapons in Scotland, the take-up of the compensation element of the scheme etc. The £25,000 figure is therefore an approximate estimate with a considerable degree of uncertainty.

Scottish Government
Justice Directorate
28 April 2022

Policy Note

The Criminal Justice Act 1988 (Offensive Weapons) (Amendment, Surrender and Compensation) (Scotland) Order 2022

SSI 2022/Xxx

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 141(2) of the Criminal Justice Act 1988 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Purpose of instrument:

To add 'zombie knives' to the list of offensive weapons set out under Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 and to allow the Scottish Ministers to make arrangements for a surrender and compensation scheme for these knives which will run for the period of three months beginning with 1 July 2022.

Policy Objectives

1. The Offensive Weapons Act 2019 ("the 2019 Act"), amongst other things, includes new legislative measures to control the sale of offensive weapons (e.g. knives) and introduces new offences relating to their possession and use.
2. Section 141 of the Criminal Justice Act 1988 ("the 1988 Act") criminalises a person who manufactures, sells or hires or offers for sale or hire, exposes or has in their possession for the purpose of sale or hire, or lends or gives to any other person any of the weapons listed under the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 ("the 2005 Order"). It is also an offence to possess any offensive weapon' in a public place under section 47 of the Criminal Law (Consolidation) (Scotland) Act 1995.
3. Section 46 of the 2019 Act will amend section 141 of the 1988 Act to make it an offence to possess a weapon to which section 141 of the 1988 applies on domestic premises. The schedule of the 2005 Order specifies the descriptions of weapons to which section 141 of the 1988 Act applies.
4. Section 47 of the 2019 Act (as it applies to Scotland) amends the weapons listed in the 2005 Order to include a type of weapon which is commonly known as a 'spiral/cyclone knife'. Therefore, as a result of this amendment, a 'spiral/cyclone knife' will be part of the general restrictions on the supply, sale, importation etc. of such weapons and it will also mean it will be a criminal offence to possess such a weapon on domestic premises in Scotland by virtue of the 2019 Act.

5. However, section 47 of the 2019 Act (as it applies to England and Wales) amends the weapons listed in their equivalent of the 2005 Order (the Criminal Justice Act 1988 (Offensive Weapons) Order 1988) to include 'spiral/cyclone knives' and 'zombie knives'.

6. As 'zombie knives' are not included in the section 47 amendments (as it applies to Scotland) we considered this left a gap in the law. Therefore, the purpose of this instrument is to close this gap and amend the 2005 Order to include 'zombie knives'. This will ensure a 'zombie knife' will be treated in the same way as other offensive weapons set out under the 2005 Order in Scotland when Part 4 of the 2019 Act is commenced.

7. Section 46 of the 2019 Act also added new subsection (12A) to section 141 of the 1988 Act. This provides that when a weapon is added to the list of weapons described in the 2005 Order the Scottish Ministers may make arrangements for the surrender of such a weapon and for a compensation scheme to be run in respect of that surrender.

8. This Order therefore provides that the Scottish Ministers may make arrangements for the surrender of zombie knives. That surrender will be accompanied by a compensation scheme set out in the Order. The Order provides the standard level of compensation payments which are to be made in respect of a zombie knife surrendered in accordance with arrangements made by the Scottish Ministers. It also makes provision as to eligibility for compensation and for police officers accepting the surrendered items to issue a receipt. It further provides for claims to be submitted where the items have been surrendered, and for claims forms to be transmitted to the Scottish Ministers (with the schedule setting out the claim form to be used).

9. The Scottish Ministers will make arrangements for a surrender scheme for zombie knives which will run for 3 months from 1 July 2022. The Scottish Ministers will determine claims and, where they consider a claim is eligible, make payment. No payment is to be due where the total claim for compensation is less than £30. When calculating the total claim for compensation, the Scottish Ministers may consider any offensive weapons which are surrendered, and for which compensation is claimed, under arrangements made by the Scottish Ministers under the section 48 of the 2019 Act and the Surrender of Offensive Weapons (Compensation) (Scotland) Regulations 2022. It is the Scottish Ministers intention that the surrender and compensation schemes will be run together so they are presented to the public as one overall scheme.

Impact Assessments

10. A Data Protection Impact Assessment Report, a Data Protection Impact Assessment for Legislation and a Joint Data Controller Agreement with Police Scotland have been completed. The UK Government also prepared an impact assessment, an equality statement and an ECHR memorandum for the introduction of the 2019 Act of the UK Parliament which cover the details which we would have provided in any impact assessments concerned with this instrument. An impact assessment on the 2019 Act was published by the UK Government on the 2019 Act on the 12 October 2020.

Financial Effects

11. The financial effects of this policy are set out under the financial memorandum which accompanied the Bill for the 2019 Act. Further, Home Office officials informed the Scottish Government that the total amount of compensation paid out by the UK Government on offensive weapons under its surrender and compensation scheme was £247,295.30. A detailed breakdown for the cost associated with zombie knives for the UK Government scheme is not known. For illustrative purposes only, if 5% of the costs of the UK Government scheme had arose in connection with zombie knives, this would have amounted to approximately £12,500. This would equate to an estimated £1,250 through the Scottish scheme.

Scottish Government
Justice Directorate
28 April 2022