

Criminal Justice Committee

23rd Meeting, 2022 (Session 6), Wednesday, 7 September 2022

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:
 - [The Offensive Weapons Act 2019 \(Prescribed Documents\) \(Scotland\) \(No. 2\) Order 2022](#) (SSI 2022/210) [see page 3];
2. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by **29 September 2022**.

Delegated Powers and Law Reform Committee Consideration

2. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 28 June 2022. The DPLR Committee agreed that it did not need to draw the instrument to the attention of the Parliament on any grounds within its remit.

Procedure for negative instruments

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.
4. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

5. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
6. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
7. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
8. Each negative instrument appears on the Criminal Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
9. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

10. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-delegated-powers-and-law-reform-committee>

11. **The Committee is invited to consider the instrument.**

Clerks to the Committee
September 2022

Policy Note

The Offensive Weapons Act 2019 (Prescribed Documents) (Scotland) (No. 2) Order 2022

SSI 2022/210

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 40(10)(c) and 42(8)(c) of the Offensive Weapons Act 2019 and all other powers enabling them to do so. The instrument is laid subject to the negative procedure.

Purpose of instrument:

To add a “United Kingdom photocard driving licence” as a valid form of ID for the purposes of a defence to 2 new criminal offences under the Offensive Weapons Act 2019 operating in Scotland. That is, a section 39 offence relating to a delivery company delivering bladed products, sold by UK based sellers, to an under 18 at residential premises and a section 42 offence relating to a delivery company, who has entered into an arrangement with a seller based outside the UK, to deliver a bladed article to a person under 18.

Policy Objectives

1. Part 3 of the Offensive Weapons Act 2019 (“the 2019 Act”) strengthens the law that prohibits the sale or the letting on hire of articles with a blade or sharp point to a person under the age of 18 years, and in relation to where the sale or letting on hire occurs between two parties who are not in each other’s presence. These are known as “remote” sales or hires and can include online sales, mail order or over the telephone sales.
2. Section 39 of the 2019 Act will make it an offence for a delivery company to deliver bladed products, sold by UK based sellers, to an under 18 at residential premises. The delivery company will commit an offence if they do not deliver the bladed product into the hands of a person aged 18 or older. This offence applies to body corporates only.
3. There are defences available to delivery companies, under sections 40(8) to (12) of the 2019 Act, where the company took all reasonable steps to prevent the item being delivered to an under 18.
4. It is a defence for a person charged with an offence to show that they believed the person into whose hands the bladed product was delivered to be aged 18 or over and had either taken reasonable steps to establish the person's age or no

reasonable person could have suspected from the person's appearance that the person was under the age of 18. The delivery company is to be treated as having taken reasonable steps to establish the person's age if and only if they were shown a passport or a European Union photocard driving licence or any such other document of such other description, as the Scottish Ministers may prescribe by order and the document would have convinced a reasonable person.

5. Section 42 of the 2019 Act will make it an offence for a delivery company, who has entered into an arrangement with a seller based outside the UK, to deliver a bladed article to a person under 18.

6. The criminal liability attaches to delivery companies who enter into arrangements with a non-UK based seller for the delivery of bladed articles. If the delivery company has not entered such arrangements, or they do not know when entering the arrangement that it covered the delivery of a bladed article, no offence is committed. This is a corporate criminal liability, not one with individual liability.

7. There is a defence available to delivery companies where they can show that they believed the person into whose hands the bladed article was delivered to be aged 18 or over and had taken reasonable steps to establish the person's age or alternatively no reasonable person could have suspected from the person's appearance that the person was under the age of 18.

8. The delivery company is to be treated as having taken reasonable steps to establish the person's age if and only if they were shown a passport or a European Union photocard driving licence or any such other document of such other description, as the Scottish Ministers may prescribe by order and the document would have convinced a reasonable person.

9. Following the UK's exit from the European Union, there is a need to prescribe 'UK driving licences as documents which an accused can be shown and said to have met the requirement of taking reasonable steps to verify a person's age. If this amendment is not made then a "UK driving licence" could not be used as a document to be used to show proof of age. This would not stop the offences from operating, but make it more difficult for delivery companies to prove they had taken reasonable steps to establish a person's age when delivering a bladed product or a bladed article.

Impact Assessments

10. The UK Government 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.

CJ/S6/22/23/1

Scottish Government
Justice Directorate
June 2022