

# Criminal Justice Committee

**13th Meeting, 2022 (Session 6), Wednesday, 3 May 2023**

## Subordinate legislation

### Note by the clerk

### Purpose of the paper

1. This paper invites the Committee to consider the following affirmative instrument:
  - [The Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022 \(Consequential Modifications, Saving and Transitional Provisions\) Regulations 2023 \(SSI/2023/Draft\)](#)

## Introduction

2. The instrument was laid before the Parliament on 27 March 2023 and is subject to the affirmative procedure. These Regulations repeal certain provisions of section 20 of the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”), in consequence of the commencement of provisions in Part 5 of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (“the 2022 Act”).
3. Further details on the purpose of the instrument can be found in the policy note attached in the **Annex**.

## Delegated Powers and Law Reform Committee Consideration

7. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 18 April 2023.
8. The DPLR Committee agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

## **Criminal Justice Committee Consideration**

9. **The Committee is required to report to the Parliament by 21 May 2023.**
10. Motion S6M-08408 has been lodged proposing that the Committee recommends approval of the instrument. The Minister for Victims and Community Safety is due to attend the meeting on 3 May to answer any questions on the instrument and to move the motion for approval.
11. **It is for the Committee to decide whether to agree to the motion, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instrument based on the Committee's recommendation.**
12. **The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.**

**Clerks to the Committee  
April 2023**

## **Annex**

### **Policy Note**

# **THE FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) ACT 2022 (CONSEQUENTIAL MODIFICATIONS, SAVING AND TRANSITIONAL PROVISIONS) REGULATIONS 2023**

## **SSI 2023/Draft**

The above instrument was made in exercise of the powers conferred by section 53 of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022. The instrument is subject to affirmative procedure.

## **Purpose of the instrument**

These Regulations repeal certain provisions of section 20 of the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”), in consequence of the commencement of provisions in Part 5 of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (“the 2022 Act”).

## **Policy Objectives**

This SSI is part of a package of 3 SSIs which together implement the provisions on possession of pyrotechnic articles within Part 5 of the 2022 Act.<sup>1</sup> Commencement and implementation of those provisions will specifically deliver on the will of the Scottish Parliament to create an offence of being in possession of a pyrotechnic article, without reasonable excuse, while at a designated music or sport event. This will add to the suite of powers available to Police Scotland to tackle pyrotechnic use at such events.

The overarching policy purpose of those provisions is the prevention of harm, with the aim to deter and prevent misuse of pyrotechnic articles.

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<sup>1</sup> The two other SSIs within this package are the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Commencement No. 2) Regulations 2023 and the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Designation of Events and Incidental Provision) Regulations 2023.

While existing legislation prohibits pyrotechnic articles at designated sports grounds (under Part 2 of the 1995 Act), those current regulations are limited to football venues. There is therefore no similar possession offence for those attending other sporting events, or music events.

Section 36 of the 2022 Act provides for an offence of possession of pyrotechnic articles at designated sports venues or events which replaces the existing offence relating to sports grounds under the 1995 Act. Repeal of the provisions of the 1995 Act is necessary to ensure clarity in the operation of the new offence under the 2022 Act and to remove duplication.

This SSI:

- repeals section 20(3) to (6) and parts of section 20(8) of the 1995 Act, in consequence of the commencement of provisions in Part 5 of the 2022 Act.
- provides that the repeal of those provisions is to take effect on 6 June 2023. This is the date on which the provisions of Part 5 of the 2022 Act are to commence, by virtue of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Commencement No. 2) Regulations 2023.
- makes transitional provision for proceedings relating to offences committed under the relevant provisions of the 1995 Act prior to 6 June 2023. The repealed provisions continue to apply for the purpose of those proceedings, however they are modified so that the defence of reasonable excuse, which is provided for in relation to the new offence under section 36 of the 2022 Act, also applies to those cases.

## **Consultation**

As part of the development of the Bill for the 2022 Act, the Scottish Government sought views on the misuse of pyrotechnics as part of a wider consultation on Fireworks and Pyrotechnics. The consultation ran between 8 June 2021 and 15 August 2021 and received over 1,700 responses.

Responses were independently analysed and published on 3 December 2021. The results showed that:

- 77% of respondents agreed with the introduction of a new offence for being in possession of a pyrotechnic article in a public place without reasonable excuse or lawful authority.
- 70% of respondents agreed that police stop and search powers should be extended to allow the police to stop and search where there is reasonable suspicion that an individual is in possession of a pyrotechnic article in a public place without a reasonable excuse.

A programme of communication and engagement took place to support the consultation, including virtual engagement events where individuals, communities

and stakeholders were invited to attend and share their views on the measures proposed in the consultation.

A desire to tackle misuse was similarly reflected in the 1,241 responses to the Scottish Football Supporters' Association (SFSA) survey (launched August 2021) on the use of pyrotechnics, with 74% of those responding wishing to see an organised, club managed use of pyrotechnics as the preferred approach, rather than uncoordinated usage by fans; and 60% stating they would feel safer attending matches if there was a controlled approach for pyrotechnics.

Engagement with Police Scotland has taken place as part of the development of these regulations for the purposes of their role in enforcing the new offences. This engagement will continue, ensuring that the police training needs, as well as wider communications around the commencement and implementation of the provisions in discussion with other key stakeholders, are considered.

Feedback on the policy approach to the pyrotechnic possession provisions has been broadly positive, with supportive comments from football authorities and the music events industry.

## **Impact Assessments**

The following impact assessments were carried out for the Fireworks and Pyrotechnic Articles (Scotland) Act 2022:

- An Equality Impact Assessment (EQIA)
- A Child Rights and Wellbeing Impact Assessment (CRWIA)
- A Business and Regulatory Impact Assessment (BRIA)
- A Fairer Scotland Duty Assessment (FSDA)
- An Island Communities Impact Assessment (ICIA).

All impact assessments include consideration of the pyrotechnic provisions within the Act. The policy aims and means of delivering those aims remains the same as they did when these assessments were carried out, and so it is not anticipated that there will be any change to these impacts. However, a review of the EQIA as it relates to the pyrotechnic provisions has been completed to ensure this is the case. This was completed on 22 March 2023 and the assessment has been published.

## **Financial Effects**

The Minister for Community Safety confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.