

Criminal Justice Committee

13th Meeting, 2023 (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 negative instrument:
 - [The Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022 \(Designation of Events and Incidental Provision\) Regulations 2023 \(SSI 2023/98\)](#) [see page 3];
2. This instrument designates classes of sporting events and music events for the purposes of Section 36 of the Fireworks and Pyrotechnic Articles (Scotland) Act (“the 2022 Act”).
3. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by **21 May 2023**.

Delegated Powers and Law Reform Committee Consideration

2. The Delegated Powers and Law Reform Committee [sought written clarification](#) from the Scottish Government on the instrument, and considered the instrument at its meeting on 25 April 2023.
3. 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

4. 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.
5. 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).

6. 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.
7. 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.
8. 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.
9. 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.
10. 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

11. 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>

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

**Clerks to the Committee
April 2023**

Policy Note

The Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Designation of Events and Incidental Provision) Regulations 2023

SSI 2023/98

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.¹ 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 these provisions is the prevention of harm. The aim is to deter and prevent misuse of pyrotechnic articles by prohibiting possession of such articles at certain sporting and music events, places where evidence suggests misuse is most likely to occur.² This will reduce the risk of harm to individuals themselves, other members of the public, and those working in and around sporting and music events, such as stewards, event staff, and police officers.

This SSI:

- designates classes of sporting and music events for the purposes of Section 36 of the 2022 Act.
- defines the designated class of sporting events as events where all the following criteria are met:
 - where live sport is to take place
 - where members of the public are admitted as an audience
 - where the person responsible for organising the event can regulate entry to the event, and
 - where the venue at which the event is held has capacity for 1,000 or more attendees within the audience.

¹ 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 (Consequential Modifications, Saving and Transitional Provisions) Regulations 2023.

² police-scotland-report-on-illicit-use-of-fireworks-and-pyrotechnics.pdf (parliament.scot) – <https://www.parliament.scot/-/media/files/committees/criminal-justice-committee/police-scotland-report-on-illicit-use-of-fireworks-and-pyrotechnics.pdf>.

- defines the designated class of music events as events where all the following criteria are met:
 - where one or more live music performances are to take place
 - where members of the public are admitted as an audience
 - where the person responsible for organising the event can regulate entry to the event, and
 - where the venue at which the event is held has capacity for 1,000 or more attendees within the audience.
- makes incidental provision to ensure that accommodation or other facilities available to the audience at a music event (and controlled by the organiser) is covered by the definition of designated event.

The criteria for the designated classes of both sporting and music events are designed to ensure that larger sized events are included, as available evidence suggests pyrotechnic misuse is more likely at larger events. The risk of potential harm in crowded places and larger groups from pyrotechnic misuse also includes the risk of crowd panic and crowd surge. To provide certainty for organisers, attendees, and for police enforcing these offences, the designation applies by reference to the capacity of the venue where the event takes place. In practice, engagement with relevant stakeholders has shown that most such events already restrict any attempts to bring in and/or use pyrotechnic articles (for example, as a prohibited item listed as a condition of entry), meaning that the designation will not place any additional burden on those organising or managing such events.

While existing legislation prohibits pyrotechnic articles at designated sports grounds (under Part 2 of the Criminal Law (Consolidation) (Scotland) Act 1995), those current regulations are limited to football venues. There is therefore no similar possession offence for those attending other sporting events, or music events. These regulations ensure that the same protection under the criminal law against the harm caused by pyrotechnic misuse will be available for all large sporting and music events.

The decision to designate events by defining the designated class of event within these Regulations was to use the most straightforward approach possible, while achieving the policy aims. In defining designated events in this way, we aim to achieve consistency, transparency and clarity for venues, organisers, and attendees.

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.

As part of the development of these regulations appropriate early engagement has taken place with key stakeholders: Police Scotland, football authorities and members of the Events Industry Advisory Group (EIAG) which includes large event organisers. A targeted consultation has been the preferred approach given the operational nature of these regulations.

Feedback on the proposed policy approach to the pyrotechnic possession provisions has been broadly positive, with supportive comments from football authorities and the music events industry. As a result of that consultation the following specific points were made:

- suggestion to criminalise the possession of all firework and pyrotechnic articles by attendees of any size of music event (indeed, any event).
 - SG response: we agree that the misuse of pyrotechnics at any type and size of event is never acceptable. However, section 37 of the 2022 Act makes clear that the designation of events by regulations for the purpose of section 36 relates to music and sporting events only.
 - In developing the two distinct pyrotechnic possession offences in the 2022 Act, we listened to, and worked collaboratively with others, including Police Scotland, to ensure the offences would be appropriate, proportionate, consistent, and enforceable. Section 35 (offence of being in possession of a pyrotechnic in a public place) excludes F1 category fireworks, such as sparklers and party poppers, while section 36 (offence of being in possession of a pyrotechnic while at a designated sporting or music event) includes all firework categories.
 - Commencement of section 35 of the 2022 Act will make it a criminal offence for a person, without reasonable excuse, to possess a pyrotechnic article (with the exception of F1 fireworks) in a public place, including in places such as theatres or other venues.
 - The offence under section 35 of the 2022 Act will provide a significant level of protection at those music events - and other public events - which are not

designated under these regulations as it prohibits the possession of most pyrotechnics (including most fireworks) without reasonable excuse in a public place. Only the possession of F1 category fireworks (such as crackers, party poppers and sparklers) is exempt from the section 35 public place offence. In the view of the Scottish Government, the regulations, together with the provisions in the 2022 Act, achieve a proportionate approach which reflects the evidence of risks at different types and sizes of events.

- Need for exception for approved/licensed operators of fireworks/pyrotechnics at music events.
 - SG response: Schedule 1 of the 2022 Act includes exemptions for professionals at designated events. No specific provision is needed in the Regulations for this purpose.
- Suggestion that within the definition of ‘live music performance’ broadcasts of recordings of such events subsequently shown to a live audience could be included.
 - SG response: We do not believe that this type of, relatively rare, event would be appropriate to designate for the purpose of the section 36 offence. It is anticipated the protection given by section. 35 – the prohibition on possession of most pyrotechnics in public places – will be sufficient.

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 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 and published along with this policy note.

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.

Scottish Government
Safer Communities Directorate - 22 March 2023