

Criminal Justice Committee

22nd Meeting, 2023 (Session 6), Wednesday, 20 September 2023

Fireworks and Pyrotechnic Articles (Scotland) Act 2022: Part 5 – Pyrotechnic Possession Offences

Background

1. In June 2022, the Scottish Parliament enacted the [Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022](#). The Act provides restrictions to the access and use by the public of various categories of ‘consumer’ fireworks in Scotland. These restrictions include the establishment of a public licencing system. The Criminal Justice Committee was the lead committee for the Stage 1 and 2 consideration of the Bill.
2. The 2022 Act provides restrictions for the possession and use of some other forms of specialist pyrotechnics, commonly known as distress flares.
3. The 2022 Act also prevents the supply of certain fireworks and pyrotechnic articles to persons under the age of 18 by addressing so called ‘proxy purchasing’. It limits the public supply of certain consumer fireworks by retailers to certain times of the year, as well as providing financial compensation for those specialist firework retailers whose business would be significantly impacted by the sale restrictions.
4. The 2022 Act also limits the use of certain fireworks by the public to particular days of the year, and it empowers local authorities to establish firework control zones in their area, if they so wish.

Revised timetable

5. On 14 February 2023, the then Minister for Community Safety, Elena Whitham MSP, [wrote to the Committee](#) setting out a revised implementation timetable for various provisions of the 2022 Act.
6. The Committee [considered this letter at its meeting on 1 March](#) and agreed to write back to the Minister with a series of questions on the revised implementation timetable. The Convener [wrote to the Minister on 8 March](#), setting out these questions.
7. On 22 March Minister Whitham responded, [in writing](#) to these questions.

Sporting and other events

8. At the Committee's meeting of 3 May 2023, the Committee [took oral evidence](#) from Siobhian Brown, the newly appointed Minister for Victims and Community Safety.

9. This evidence session was in connection with the [consideration of an affirmative instrument](#) which commenced various parts of the 2022 Act, relating to the possession of fireworks and pyrotechnic articles at certain sporting and other events.¹ The Committee also questioned Minister Brown on the revised implementation timetable and the letter from Minister Whitham of 22 March.

10. During the meeting, the issue of the process that would be followed if the police suspected a person was carrying a pyrotechnic device for prohibited purposes (e.g., to set off at a football match or music festival) was raised. Members questioned Minister Brown and her officials about whether it was possible to prevent a person found with such a device from continuing to access the event after the initial police process (e.g., a search) had been completed.

11. The Committee was interested to know of any powers to ban a person from entry to a venue (sporting or music) who has just been detained for a search under Section 41 of the Act and found in possession of prohibited articles.

12. Minister Brown undertook to consider this issue and write back to the Committee with further information. Minister Brown responded [in writing on 8 June 2023](#), with further information on this issue and the related matter of the use of Football Banning Orders.

13. The Committee [considered that letter](#) at its meeting on 21 June and agreed to write back to the Minister with further questions. The Convener's letter to Minister Brown of 28 June setting out these questions is attached in the annex to this paper, for information.

14. Minister Brown responded to the Convener's letter on 23 August 2023. That letter is also attached in the annex to this paper for information.

Action/recommendation

15. **Members are invited to discuss the correspondence received.**

**Clerks to the Committee
September 2023**

¹ The Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Consequential Modifications, Saving and Transitional Provisions) Regulations 2023: <https://www.legislation.gov.uk/sdsi/2023/9780111057087>

Annex

Letter from the Convener to Minister Brown (dated 29 June)

Dear Minister,

Fireworks and Pyrotechnic Articles (Scotland) Act 2022 – Offences around the possession of prohibited articles

Thank you for your letter of 3 May responding to the Committee’s most recent letter on the implementation of the provisions of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (‘the 2022 Act’).

The Committee [considered your letter](#) at its meeting on Wednesday 21 June and the [Official Report of that consideration](#) is available online. The Committee agreed that your letter was very helpful but is seeking clarification on the following issues.

Your letter refers to the detention by the police of someone found to be in possession of prohibited articles under Section 41 the 2022 Act, who is in the vicinity of a designated sporting or music venue. You state:

“In addition, if released without charge under ‘investigative liberation,’ an individual may be given certain rules to follow (such as telling the person not to go to a certain place or speak to certain people) for a set period of time.”

Can you specify the relevant legislation that contains the “rules” you refer to when an individual is released by the police under ‘investigative liberation’? Are you referring to Section 16 of the Criminal Justice (Scotland) Act 2016?

Furthermore, on the issue of the use of lifetime Football Banning Orders (FBOs), it would be helpful to have some further clarification.

It is our understanding that FBOs can only be utilised if the individual found to be in possession of prohibited articles is in breach of [Section 51](#) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 in terms of conduct which was violent or disorderly.

Can you explain how you would expect an FBO to work if an individual is not desisting from a course of conduct such as seeking to take prohibited articles like fireworks or pyrotechnics into certain venues or events, i.e. they are not being violent or disorderly.

In these types of case, is it your view that an individual who is repeatedly found to be in possession of such prohibited articles would be considered to have reached the threshold of committing “violence or disorder” under the 2006 Act, if that individual had not actually used or discharged any of the prohibited articles?

If merely being found to be in possession of such prohibited articles does not constitute “violence or disorder” under the 2006 Act, does this mean it would not be possible for a court to impose a lifetime FBO on that individual under the 2006 Act?

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If this were the case, would the Scottish Ministers consider amending the provisions of the 2006 Act to ensure being repeatedly found to be in possession of prohibited articles under the 2022 Act in the vicinity of a sporting venue does meet the threshold for allowing a lifetime FBO to be imposed on that individual?

A response to this letter by Monday 28 August 2023 would be appreciated.

I look forward to hearing from you.

Best wishes,

Audrey Nicoll MSP
Convener, Criminal Justice Committee

Annex

Response from the Minister Brown (dated 23 August 2023)²

Dear Convener,

Fireworks and Pyrotechnic Articles (Scotland) Act 2022: Part 5 – Pyrotechnic Possession Offences

Thank you for your letter of 29 June 2023, seeking further clarification on points raised in my letter to the Committee of 8 June 2023. The Committee is interested in the imposition of conditions under investigative liberation, asking if Section 16 of the Criminal Justice (Scotland) Act 2016 is the relevant legislation. They are also interested in the use of Football Banning Orders (FBOs) as they relate to the pyrotechnic possession offences. I hope the following information is helpful and provides clarification on these points.

As I stated in my previous letter, specific operational policing matters are not matters I can comment on. When the Committee met on 3 May 2023, they asked about the process Police Scotland might follow upon detection of an offence being committed. Operationalising and enforcing the pyrotechnic possession offences in the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 is a matter for Police Scotland. However, I can confirm that the Committee is correct in their understanding of the legislation. Section 16 of the Criminal Justice (Scotland) Act 2016 enables an appropriate constable to impose conditions on a “Not Officially Accused Person” upon release from custody, if the appropriate constable considers it necessary and proportionate for the purpose of ensuring the proper conduct of the investigation (and providing certain other conditions as set out in that section are met). In addition, Section 26 of the Criminal Justice (Scotland) Act 2016 enables a constable of the rank of sergeant or above to impose conditions on an “Officially Accused Person” released from police custody on the terms of an undertaking to attend at court if considered necessary and proportionate.

Turning to the use of Football Banning Orders (“FBOs”) and the Committee’s question about their use for those committing pyrotechnic possession offences under the new legislation. While the interpretation of the law is a matter for the Scottish courts, as I said in my previous letter, it is unlikely that the offence of possessing a pyrotechnic article would meet the threshold for making an FBO under the current legislation. The Police, Public Order and Criminal Justice (Scotland) Act 2006 sets out the conditions necessary to make an FBO. For an FBO to be made in connection with a conviction for an offence, those conditions are that the offence relates to a football match, and that it involves the person who committed the offence engaging in violence or disorder. Therefore, change to the legislation would be needed if FBOs were to be an available tool in the situation outlined by the Committee.

² <https://www.parliament.scot/-/media/files/committees/criminal-justice-committee/correspondence/2023/firework-and-pyrotechnic-articles-scotland-act-prohibited-articles-response-23-august-2023.pdf>

That is why I have asked my officials to investigate the potential for expanding the conditions in which an FBO could be made, and specifically whether such an expansion should include circumstances such as repeated convictions for possession of pyrotechnic articles. This will include consideration of whether legislative change is necessary, appropriate and proportionate and I would not want to pre-empt the outcome of this work. I am happy to provide a written update to the Committee when work has progressed further.

I hope that the above information is helpful.

SIOBHIAN BROWN