

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 negative instrument:
 - [The Offensive Weapons Act 2019 \(Prescribed Documents\) \(Scotland\) Order 2022](#) (SSI 2022/148) [see page 3];
2. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by **6 June 2022**.

Delegated Powers and Law Reform Committee Consideration

2. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 10 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.

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
May 2022

Policy Note

The Offensive Weapons Act 2019 (Prescribed Documents) (Scotland) Order 2022

SSI 2022/148

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 1(5)(c) and 4(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 new criminal offences under the Offensive Weapons Act 2019 operating in Scotland relating to the sale and delivery of corrosive products to under 18s.

Policy Objectives

1. The provisions in Part 1 of the Offensive Weapons Act 2019 ("the 2019 Act"), commenced by the UK Government on 6 April 2022 (amongst other things) restricts access to those products containing the most harmful corrosive substances by prohibiting the sale and delivery of these corrosive products to under 18s.
2. Sections 1 to 5 of the 2019 Act restricts access to the most harmful corrosive substances by under 18s by making it an offence to sell a corrosive product, whether over the counter or online, to someone under 18 years of age. Section 1(1) of the 2019 Act makes it an offence to sell a corrosive product to a person who is under the age of 18. Section 4(4) of the 2019 Act makes it an offence for a body corporate to deliver a corrosive product if, when they deliver it, they do not deliver it into the hands of a person aged 18 or over.
3. There are defences available, under these sections, which require that all reasonable precautions are taken and all due diligence is exercised to avoid committing an offence.
4. In Scotland, the seller is required to have undertaken a number of specific steps in order to be able to make use of the defences under sections 1 and 4 of the 2019 Act. These would be that seller believed the person to whom the corrosive product was sold to or delivered to, was aged 18 or over, and either the seller or the person delivering the relevant corrosive product had taken reasonable steps to establish the purchaser's age or no reasonable person, based on the purchaser's appearance, could have suspected they were under 18.

5. Reasonable steps are prescribed as being that the seller or the person delivering the relevant corrosive product was shown any of the documents listed in section 1(5) and 4(8). That is, a passport, a EU photocard driving licence or such documents that Scottish Ministers may prescribe by order and the document would have convinced a reasonable person that the person was not under 18.

6. Following the UK's exit from the European Union, there is a need to add a 'United Kingdom photocard driving licence' to the list of prescribed documents set out under section 1(5) and 4(8) by using the order making power under sections 1(5)(c) and 4(8)(c) of the 2019 Act.

7. If this amendment is not made then a 'United Kingdom photocard driving licence' could not be used as a document to be used to show proof of age in Scotland. This would not stop the offence from operating, but make it more difficult for a person to prove their age in terms of purchasing corrosive products.

Impact Assessments

8. 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

9. The financial effects of this policy are set out under the financial memorandum which accompanied the Bill for the 2019 Act.

Scottish Government
Justice Directorate
April 2022