



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 11 May 2023  
SP Paper 364  
6th Report, 2023 (Session 6)

## **Criminal Justice Committee**

# **The Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Consequential Modifications, Saving and Transitional Provisions) Regulations 2023 [draft]**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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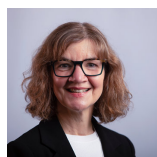
# Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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# Committee Membership



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# Introduction

1. At its meeting on Wednesday 3 May 2023, the Criminal Justice Committee considered the [Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022 \(Consequential Modifications, Saving and Transitional Provisions\) Regulations 2023 \[draft\]](#).
2. The instrument is subject to the affirmative procedure and was laid before the Scottish Parliament on 27 March 2023.
3. The SSI is part of a package of 3 which together implement the provisions on possession of pyrotechnic articles within Part 5 of the 2022 Act.<sup>i</sup>
4. The 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”).
5. 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.
6. The Regulations also make 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 The repealed provisions continue to apply for the purpose of those proceedings, however they are modified so that the defence of reasonable excuse, which is provided for in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.

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<sup>i</sup> The two other SSIs within this package are the [Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022 \(Commencement No. 2\) Regulations 2023 \(2023/99 C.10\)](#) and the [Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022 \(Designation of Events and Incidental Provision\) Regulations 2023 \(SSI/2023/98\)](#).

# Consideration by the Delegated Powers and Law Reform Committee

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.

# Consideration by the Criminal Justice Committee

9. Motion S6M-08408 was lodged proposing that the Committee recommends approval of the instrument. At its meeting on Wednesday 3 May 2023, the Committee took oral evidence from the Minister for Victims and Community Safety, Siobhian Brown ("the Minister"), Mary Hockenhull, Safer Communities Policy and Fiona McDiarmid, Unit Head, Building Safer Communities, Scottish Government.
10. During the [evidence session](#), the Minister outlined the purpose of the Regulations to the Committee, as set out above.
11. The Minister also set out the purpose of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Designation of Events and Incidental Provision) Regulations 2023. This negative instrument designates classes of sporting events and music events for the purposes of Section 36 of the 2022 Act.
12. When asked about the 1,000 attendee capacity threshold for designating a sporting or music event (as defined in the negative instrument), the Minister advised that the threshold was designed to provide certainty for organisers and attendees and for the police who are enforcing the law around the offences.
13. Larger-sized events are included because the available evidence suggests that pyrotechnic misuse is more likely at larger events. The risk of potential harm from pyrotechnic misuse in crowded places and larger groups also includes the risk of crowd panic and surge.
14. She went on to advise that the broader public place possession offence will provide a significant level of protection at all music events, regardless of whether they have been designated, because it prohibits the possession of most pyrotechnics, including fireworks, "without reasonable excuse".
15. When questioned on what would be considered a reasonable excuse, the Minister advised that while there is no reasonable excuse for using a pyrotechnic, there could be for being in possession of one. For example, if a security guard in a football stadium confiscates one and is en route to putting it in a safe place, he has a reasonable excuse for having it in his possession.
16. The Minister also confirmed that a public awareness campaign is currently being worked on with Police Scotland and all local authorities. It is due to be launched, in June of this year, to coincide with the commencement of the new offences.
17. In relation to the financial effect of the two SSIs, Mary Hockenhull confirmed that the Scottish Government understands, through discussions with Police Scotland, that there will be intelligence-led event policing and that there will be no significant additional policing costs involved. There will be no cost to the Scottish Government for enforcement, beyond what exists.
18. When asked what practical difference the new legislation will make in respect of policing powers, Mary Hockenhull advised that the powers police currently have only apply if the person is intending to enter a football ground. The public place



possession offence will prohibit all pyrotechnics, including all fireworks except for F1 fireworks, at any public place “without a reasonable excuse”, which should enable the police to make a much earlier intervention.

19. Members questioned the Minister as to whether the Scottish Government would support the provision of powers allowing for a "lengthy or lifetime ban" to be imposed on a person from entering a football stadium in Scotland, as a way of deterring people from seeking to bring fireworks or pyrotechnical articles in sports stadia.<sup>ii</sup>
20. The Minister told the Committee she was open to having a discussion on this suggestion, however, any such discussion would need to include the views of Police Scotland and football clubs.
21. The Minister also undertook to write back to the Committee on whether section 41 of the 2022 Act, which gives a constable power to detain a person for the purposes of a search, also provides for the police to ban someone found to be in possession of fireworks or pyrotechnic articles from subsequently entering the stadium they were attempting to take the fireworks or pyrotechnic articles into.<sup>iii</sup>
22. There being no further questions from Members on the instruments, the Minister moved the motion:
  - S6M-08408—That the Criminal Justice Committee recommends that the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Consequential Modifications, Saving and Transitional Provisions) Regulations 2023 [draft] be approved.
23. Motion S6M-08408 was agreed to without debate or dissent.
24. The Committee went on to agree to make no recommendations in relation to the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Designation of Events and Incidental Provision) Regulations 2023 (SSI/2023/98).
25. **The Criminal Justice Committee recommends to the Scottish Parliament that it approve the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Consequential Modifications, Saving and Transitional Provisions) Regulations 2023.**

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ii Criminal Justice Committee, Official Report Wednesday 3 May 2023, Cols 17-18:  
<https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=15283>

iii Ibid

