

POLICY NOTE

THE OFFENSIVE WEAPONS ACT 2019 (COMMENCEMENT NO. 3) (SCOTLAND) REGULATIONS 2023

SSI 2023/72

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 70(2) of the Offensive Weapons Act 2019. The instrument is laid with no procedure.

Purpose of instrument:

To bring into force the outstanding provisions of Part 4 of the Offensive Weapons Act 2019 which fall to the Scottish Ministers to commence.

Policy Objectives

1. In May 2019, the UK Government's Offensive Weapons Act 2019 ("the 2019 Act") received Royal Assent following its passage at Westminster.
2. The content of the 2019 Act can be summarised as providing for new restrictions in these four areas relating to the sale and supply of:
 - Corrosives such as acids;
 - Bladed articles such as knives;
 - Other offensive weapons; and
 - Firearms.
3. For Scotland, the 2019 Act covers both devolved and reserved matters. This legislation is extensive and provides a number of new restrictions in a wide set of linked but different policy areas. Much of the 2019 Act was for the UK Government to implement, but there were some areas (i.e. those that are devolved) that fall to the Scottish Ministers to implement.
4. This is the final in a series of three sets of Commencement Regulations in which the Scottish Ministers have used the power under section 70 of the 2019 Act to implement certain provisions. These are the final provisions that require to be commenced for Scotland to ensure all parts of the 2019 Act which fall to Scottish Ministers to commence are brought into force.
5. These Regulations bring into force sections 44, 46 and 47 (so far as they have effect in Scotland and are not already commenced) of the Offensive Weapons Act 2019 on 27 March 2023.

Section 44

6. Section 44 of the 2019 Act prohibits the possession, in public and in private, of a flick or gravity knife as described in section 1 of the Restriction of Offensive Weapons Act 1959

(as amended by section 43 of the 2019 Act). Any person who possesses such a knife is liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 4 on the standard scale or to both.

7. Defences are provided for museums and galleries and persons acting on behalf of a museum or gallery in order for them to hold items of historical importance as part of their collections for cultural, artistic or educational purposes. There is also a defence for those in possession of the dangerous weapons who can prove that they have the weapon in their possession in order to make it available to a museum or gallery (this defence applies to both possession and importation).

Section 46

8. Section 46 of the 2019 Act amends section 141 of the Criminal Justice Act 1988 (“the 1988 Act”) to make it a criminal offence to possess in private any weapon listed in the Schedule of the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (e.g knuckledusters, handclaws, disguised and stealth knives, and cyclone knives).
9. The way the law operates is that a person possesses a weapon in private if they possess the weapon on domestic premises. “Domestic premises” are defined as premises occupied as a private dwelling (including any stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling). The penalty for possession in private is, on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.
10. The effect of section 46 is (coupled with existing law) to make it an offence as to the possession in any place of these weapons.
11. The defences that already exist under section 141 of the 1988 Act (in relation to the manufacture, sale or hire or possession for any of those purposes) also apply to their simple possession. Some additional defences have been added by the 2019 Act. In relation to the new offence of possession, the defences available under section 141 of the 1988 Act are:
 - the weapon is of historical importance;
 - the person possessed it in their capacity as the operator of, or as a person acting on behalf of, a museum or gallery;
 - the person possessed it for education purposes only;
 - the person possessed the weapon for the purposes of theatrical performances and of rehearsals for such performances or for making it available for those purposes;
 - the person possessed the weapon for the purposes of the production of films or for making it available for that purpose; and
 - the person possessed the weapon for the purposes of the production of television programmes or for making it available for that purpose.

12. Antique weapons, over 100 years old, are exempted from section 141 of the 1988 Act. This exemption now also applies to the offence of possessing such antique weapons.

Section 47

13. Section 47 of the 2019 Act amends the Schedule of the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 to include weapons known as cyclone knives (also known as spiral knives). The effect of including these weapons is that, as offensive weapons, the sale, importation, supply and possession of these knives is now prohibited.

Impact Assessments

14. None for this instrument. The UK Government prepared an impact assessment, an equality statement and an ECHR memorandum for the introduction of the 2019 Act to the UK Parliament which cover the details which we would have provided in any impact assessments concerned with this instrument.

Financial Effects

15. 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
March 2023