

POLICY NOTE

THE SURRENDER OF OFFENSIVE WEAPONS (COMPENSATION) (SCOTLAND) REGULATIONS 2022

SSI 2022/219

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 49(4) of the Offensive Weapons Act 2019 and all other powers enabling them to do so. The instrument is laid subject to the affirmative procedure.

Purpose of instrument:

To provide a compensation scheme to accompany a surrender scheme arranged by the Scottish Ministers under the Offensive Weapons Act 2019 to operate for three months beginning with 1 July 2022 for those offensive weapons that will become illegal to possess on domestic premises when Part 4 of that Act is commenced.

Policy Objectives

1. The Offensive Weapons Act 2019 (“the 2019 Act”), amongst other things, includes new legislative measures to control the sale of offensive weapons (e.g. knives) and introduces new offences relating to their possession and use.
2. Under provisions in section 47 of the Criminal Law Consolidation (Scotland) Act 1995, it is currently unlawful to possess in a public place an offensive weapon as described under the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (“the 2005 Order”). Section 141 of the Criminal Justice Act 1988 also criminalises the sale, manufacture, importation etc. of the weapons described in the 2005 Order.
3. However, it is currently lawful to own and possess such an offensive weapon set out under the 2005 Order on domestic premises. When the measures in Part 4 of the 2019 Act are commenced it will become unlawful to own or possess such offensive weapons on domestic premises.
4. Sections 44 and 46 of the 2019 Act amend various pieces of legislation with the effect that it becomes an offence to own and possess certain dangerous knives and offensive weapons on domestic premises. Section 48 of the 2019 Act makes provision allowing for the Scottish Ministers to make arrangements for those who currently legally hold offensive weapons, the possession of which will become prohibited by the 2019 Act, to be able to surrender those weapons at designated police stations.
5. Part 4 of the 2019 Act cannot be commenced until such time as these regulations are commenced and the surrender and compensation has been concluded.

Regulations

6. These regulations provide for the scheme of compensation in relation to the surrender of weapons under arrangements made by the Scottish Ministers under section 48 of the 2019 Act.
7. Regulation 2 and schedule 1 make provision as to the standard level of compensation payments which are to be made in respect of weapons surrendered in accordance with arrangements made under section 48 of the Act.
8. Regulation 3 makes provision as to eligibility for compensation. Regulation 4 provides for police officers accepting the surrendered items to issue a receipt. Regulation 5 provides for claims to be submitted where the items have been surrendered, and for claims forms to be transmitted to the Scottish Ministers (with schedule 2 setting out the claim form to be used). Regulation 6 provides for determination of claims and payment by the Scottish Ministers. No payment is to be due where the total claim for compensation is less than £30. When calculating the total claim for compensation, the Scottish Ministers may consider any zombie knives which are surrendered, and for which compensation is claimed, under arrangements made by the Scottish Ministers under the Criminal Justice Act 1988 (Offensive Weapons) (Amendment, Surrender and Compensation) (Scotland) Order 2022. It is the Scottish Ministers intention that both surrender and compensation schemes will be run together from 1 July 2022.
9. The standard level of compensation for a weapon, as specified in schedule 1, is the amount of compensation payable unless the person claiming the compensation contends that the value exceeds the standard level of compensation payable. If no standard level of compensation is specified for the weapon surrendered, or if the person claims that the value exceeds the standard level, valuation evidence must be submitted and the level of compensation payable is to be determined by the Scottish Ministers.

Impact Assessments

10. A Data Protection Impact Assessment Report, a Data Protection Impact Assessment for Legislation and a Joint Data Controller Agreement with Police Scotland have been completed. The UK Government also 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

11. The financial effects of this policy are set out under the financial memorandum which accompanied the Bill for the 2019 Act. Further, Home Office officials informed the Scottish Government that the total amount of compensation paid out by the UK Government on offensive weapons under its surrender and compensation scheme was £247,295.30. The amount of compensation to be paid by the Scottish Government under its surrender and compensation scheme is going to be based on the same levels of compensation per type of weapon as the UK Government scheme, subject to Parliamentary approval. As such, it is estimated that the costs may be approximately

£25,000 in Scotland, though this does depend on a number of unknown factors such as the level of ownership of relevant weapons in Scotland, the take-up of the compensation element of the scheme etc. The £25,000 figure is therefore an approximate estimate with a considerable degree of uncertainty.

Scottish Government
Justice Directorate
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