

EXPLANATORY MEMORANDUM TO
THE POLICING AND CRIME ACT 2017 (POSSESSION OF PYROTECHNIC
ARTICLES AT MUSICAL EVENTS) REGULATIONS 2017

2017 No. 306

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations specify the description of musical events that amount to a qualifying musical event for the purposes of section 134 of the Policing and Crime Act 2017 (“the 2017 Act”). Section 134 sets out an offence of being in possession of a pyrotechnic article at a qualifying musical event or at an associated place.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The instrument is made under section 134(5) of the 2017 Act. Section 134 makes provision for an offence of possession of pyrotechnic articles at a qualifying musical event or at any other place being used by a person responsible for organising such an event for the purpose of: (i) regulating entry to or departure from the event, or (ii) providing sleeping or other facilities for those attending the event. A “qualifying musical event” is an event at which one or more live musical performances take place and which is specified, or of a description specified, in regulations. This instrument provides a description of the events that are to be considered a “qualifying musical event” in order to give effect to the new offence.
- 4.2 The offence will apply where a person is in possession of pyrotechnic articles (for example, fireworks, flares and smoke bombs) at a place where a qualifying musical event is being held or any other place where persons enter or exit that event, or any area used for providing facilities to those attending that event. The offence does not apply to the organiser of the musical event or to a person who is authorised to possess pyrotechnic articles by the organiser. The maximum penalty for the offence is three months’ imprisonment or a level 3 fine, or both.
- 4.3 This instrument sets out that a qualifying musical event is one that is provided to any extent for members of the public, or a section of the public, and takes place on premises where a premises license has been granted under the Licensing Act 2003

("the 2003 Act") that authorises the premises to be used for the provision of regulated entertainment in the form of a performance of live music.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The offence of possession of pyrotechnic articles at musical events addresses concerns raised by the music industry and others about the misuse of fireworks, flares and smoke bombs at festivals and other live music events. Such items are dangerous when misused. Current legislation does not prohibit pyrotechnics at music events. Section 80 of the Explosives Act 1875 makes it an offence to throw or discharge a firework in a street or public place, but the majority of live music events take place on private property. There is already an offence of possession of pyrotechnic articles at football matches (section 2A of the Sporting Events (Control of Alcohol etc) Act 1985).
- 7.2 These Regulations specify that the musical events which qualify for the purposes of the new offence, are events that the public may attend (whether following payment or otherwise) that take place on a premises licensed to provide live music under the 2003 Act. Defining a qualifying music event by reference to the licensing regime of the 2003 Act will provide legal certainty as it will be readily established whether the event is one that the public may attend, and whether it takes place at a location subject to a relevant premises licence. The direct link to premises licensed under the 2003 Act will make it easier for event organisers, law enforcement agencies and members of the public to determine whether the offence applies.
- 7.3 The effect of the approach taken in these Regulations is to target larger events where there is clear evidence of harm: data gathered by the crowd management organisation "Showsec" recorded 255 incidents (defined as a member of public discharging a flare or smoke bomb) at live music events in 2014, 229 of which occurred at seven major music festivals.

Consolidation

- 7.4 This is not applicable.

8. Consultation outcome

- 8.1 Consultation with the music events industry broadly welcomed the approach taken by these Regulations, although some would like to see the offence apply to smaller events.

9. Guidance

- 9.1 Guidance is not required for these Regulations.

9.2 The live musical events industry will be notified of the new offence prior to it coming into force. The industry is best placed to ensure that attendees at festivals and other live musical events are informed of the new offence.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is expected to be a small number of prosecutions. The cost of the new offence to the criminal justice system is estimated to be £0.3m per annum. The new offence will assist organisers of live music events to control the unauthorised use of fireworks, flares and other pyrotechnic articles at such events.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Home Office will keep the position under review in light of any new evidence of the misuse of pyrotechnic articles at live music events not covered by these Regulations.

13. Contact

13.1 Charles Goldie at the Home Office. Telephone: 020 7035 6773 or email: Charles.Goldie1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.