POLICY NOTE

THE OFFENSIVE WEAPONS ACT 2019 (PRESCRIBED DOCUMENTS) (SCOTLAND) (No. 2) ORDER 2022

SSI 2022/210

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 40(10)(c) and 42(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 2 new criminal offences under the Offensive Weapons Act 2019 operating in Scotland. That is, a section 39 offence relating to a delivery company delivering bladed products, sold by UK based sellers, to an under 18 at residential premises and a section 42 offence relating to a delivery company, who has entered into an arrangement with a seller based outside the UK, to deliver a bladed article to a person under 18.

Policy Objectives

1. Part 3 of the Offensive Weapons Act 2019 ("the 2019 Act") strengthens the law that prohibits the sale or the letting on hire of articles with a blade or sharp point to a person under the age of 18 years, and in relation to where the sale or letting on hire occurs between two parties who are not in each other's presence. These are known as "remote" sales or hires and can include online sales, mail order or over the telephone sales.

2. Section 39 of the 2019 Act will make it an offence for a delivery company to deliver bladed products, sold by UK based sellers, to an under 18 at residential premises. The delivery company will commit an offence if they do not deliver the bladed product into the hands of a person aged 18 or older. This offence applies to body corporates only.

3. There are defences available to delivery companies, under sections 40(8) to (12) of the 2019 Act, where the company took all reasonable steps to prevent the item being delivered to an under 18.

4. It is a defence for a person charged with an offence to show that they believed the person into whose hands the bladed product was delivered to be aged 18 or over and had either taken reasonable steps to establish the person's age or no reasonable person could have suspected from the person's appearance that the person was under the age of 18. The delivery company is to be treated as having taken reasonable steps to establish the person's age if and only if they were shown a passport or a European Union photocard driving licence or any such other document of such other description, as the Scottish Ministers may prescribe by order and the document would have convinced a reasonable person.

5. Section 42 of the 2019 Act will make it an offence for a delivery company, who has entered into an arrangement with a seller based outside the UK, to deliver a bladed article to a person under 18.

6. The criminal liability attaches to delivery companies who enter into arrangements with a non-UK based seller for the delivery of bladed articles. If the delivery company has not entered such arrangements, or they do not know when entering the arrangement that it covered the delivery of a bladed article, no offence is committed. This is a corporate criminal liability, not one with individual liability.

7. There is a defence available to delivery companies where they can show that they believed the person into whose hands the bladed article was delivered to be aged 18 or over and had taken reasonable steps to establish the person's age or alternatively no reasonable person could have suspected from the person's appearance that the person was under the age of 18.

8. The delivery company is to be treated as having taken reasonable steps to establish the person's age if and only if they were shown a passport or a European Union photocard driving licence or any such other document of such other description, as the Scottish Ministers may prescribe by order and the document would have convinced a reasonable person.

9. Following the UK's exit from the European Union, there is a need to prescribe 'UK driving licences as documents which an accused can be shown and said to have met the requirement of taking reasonable steps to verify a person's age. If this amendment is not made then a "UK driving licence" could not be used as a document to be used to show proof of age. This would not stop the offences from operating, but make it more difficult for delivery companies to prove they had taken reasonable steps to establish a person's age when delivering a bladed product or a bladed article.

Impact Assessments

10. 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

11. 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
June 2022