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# Fireworks and Pyrotechnic Articles (Scotland) Bill

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The Fireworks and Pyrotechnic Articles (Scotland) Bill was introduced in the Scottish Parliament on 1 February 2022 by the Cabinet Secretary for Justice, Keith Brown MSP. The Bill's objective is to protect public and community safety by ensuring that fireworks and pyrotechnics do not cause harm, distress or serious injury.

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# Introduction

The [Fireworks and Pyrotechnic Articles \(Scotland\) Bill](#) <sup>1</sup> (“the Bill”), along with its accompanying documents, was introduced in the Scottish Parliament on 1 February 2022 by the Cabinet Secretary for Justice, Keith Brown MSP. The Minister for Community Safety, Ash Regan MSP, was designated as the member in charge of the Bill. The Criminal Justice Committee has been designated as lead committee for scrutiny of the Bill.

The [Policy Memorandum](#) <sup>2</sup> to the Bill states that the overarching policy objective of the Bill is to protect public and community safety and wellbeing by ensuring that fireworks and pyrotechnics do not cause harm, distress or serious injury. It is intended that the provisions in the Bill will support a cultural shift in how fireworks and pyrotechnics are used in Scotland. The Policy Memorandum goes on to say that this will be achieved by altering how the general public can access and use fireworks and pyrotechnics, by making provisions for new restrictions to apply to their purchase, acquisition, possession and use, with new criminal offences to apply where these restrictions are not complied with.

Very briefly, the Bill introduces: a fireworks licensing system; restrictions on the supply and use of fireworks and pyrotechnic articles; firework control zones; and a new criminal offence to possess a pyrotechnic article, including a firework, at a designated venue or event, or at public processions or a public assembly.

This briefing sets out the current legislative context and background to the Bill; provides information on the consultation process which has led to the development of the Bill; and sets out some of the key provisions contained within the Bill.

# Background

## Legislative Context

The statutory control of fireworks and pyrotechnic articles consists of both primary legislation, and regulations (both UK and Scottish). The following paragraphs set out the main provisions pertaining to the sale, use and supply of fireworks.

While all fireworks are pyrotechnic products, the Bill uses the terms “fireworks” and “pyrotechnics” as distinct categories, in line with existing legislation. The Pyrotechnic Articles (Safety) Regulations 2015 sets out which pyrotechnic articles may be made available on the market in the United Kingdom, and how these must be categorised by manufacturers in general terms; and it is intended that any pyrotechnic articles intended for entertainment purposes shall be categorised as a firework, including pyrotechnic articles intended for entertainment and another purpose (such as a theatrical pyrotechnic articles):

- Category F1: fireworks which present a very low hazard and negligible noise level, and which are intended for use in confined areas, including fireworks are intended for use inside domestic buildings
- Category F2: fireworks which present a low hazard and low noise level, and which are intended for outdoor use in confined areas
- Category F3: fireworks which present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health
- Category F4: fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health

The sale and supply of fireworks is regulated by the Fireworks Regulations 2004 (which apply in England & Wales as well as Scotland), the Fireworks (Scotland) Regulations 2004, and the Pyrotechnic Articles (Safety) Regulations 2015.

Regulation 9 of the Fireworks Regulations 2004 limits the sale and supply of fireworks to certain religious and celebratory periods unless a retailer is in possession of a license issued by the relevant local authority, subject to strict criteria. Periods where selling without a license is permitted are:

- 5 November (from 15 October to 10 November)
- New Year (from 26 December to 31 December)
- Chinese New Year (on the first day of the Chinese New Year and the 3 days immediately preceding it)
- Diwali (on the day of Diwali and the 3 days immediately preceding it)

In addition, Regulation 3A of the Fireworks (Scotland) Regulations 2004 restricts the time of day fireworks can be supplied to the general public to during the daytime hours of between 7 a.m. and 6 p.m., with exemptions for professional firework operators/organisers, firework businesses and community groups.

Under regulations 31 and 32 of the of the Pyrotechnic Articles (Safety) Regulations 2015, a retailer must not sell:

- A Christmas cracker to anyone under the age of 12
- A category F1 firework to anyone under the age of 16
- A category F2 and F3 firework to anyone under the age of 18
- A category F4 firework to a member of the public

The Policy Memorandum to the Bill points out that it is not currently a legal requirement to have a licence or training to buy what are termed “consumer fireworks” (i.e. categories F1, F2 and F3). In addition, there is no such thing as a licence or training for members of the public to buy category F4 (professional display) fireworks. Category F4 fireworks are only available to people with specialist knowledge which includes a requirement to have undertaken recognised training, to have used the category of article before, and to hold valid liability insurance for the article in question.

With regard to the use of fireworks, under regulation 3 of the Fireworks (Scotland) Regulations 2004, the use of fireworks is permitted between 6 p.m. and 11 p.m., although this is extended to midnight on 5 November and 1 a.m. during Chinese New Year, Diwali and New Year’s Eve. These restrictions do not apply to public fireworks displays held by professional firework operators/organisers, firework businesses, community groups, and local authorities for the purpose of local authority firework displays, national public celebrations or national commemorative events.

There are other legislative measures which may apply to fireworks. For example, excessive and persistent noise from fireworks could potentially constitute a “statutory nuisance” under the Environmental Protection Act 1990. It is also an offence under the Explosives Act 1875 to let off fireworks in a public place.

The Fireworks Act 2003 also enables the police to search a person if they have reasonable grounds of suspecting that that person is in possession of fireworks in contravention of a prohibition imposed by firework regulations. The current prohibitions imposed by fireworks regulations, subject to certain exemptions, are:

- It is unlawful for someone under the age of 18 to possess a category F2 or F3 firework in a public place;
- It is unlawful to possess a category F4 firework;
- It is unlawful to use a category F2 or F3 firework after 11 p.m. and before 6 p.m., extended to after midnight on 5 November and after 1 a.m. following New Year’s Eve, Chinese New Year and Diwali;
- It is unlawful to supply a category F2 and F3 firework outside permitted hours (7 a.m. to 6 p.m.); and
- It is unlawful to supply more than the permitted quantity of 5 kg of fireworks at any one time.

Possession of some pyrotechnic articles, including fireworks, in a designated sports ground is an offence under Part 2 of the Criminal Law (Consolidation) (Scotland) Act 1995.

The 1995 Act also provides the power for the police to search a person if they have reasonable grounds to suspect that person is committing or has committed an offence under the 1995 Act. The current legislative provisions relate to searches of persons who are entering, or attempting to enter, designated sporting grounds.

# Scottish Government Consultation 2019

Following a number of high profile incidents during bonfire night in 2017, the Scottish Government undertook a [public consultation](#) which was carried out between February and May 2019. The consultation sought views on the sale of fireworks to the general public; how people use and enjoy fireworks; the impact of fireworks on people, communities and animals; and ideas on what action could be taken to ensure fireworks continue to be enjoyed safely and responsibly.

In total, the consultation received 16,420 responses, 16,322 of which came from individual members of the public, and 98 from groups or organisations including key stakeholders such as Police Scotland, local authorities, animal welfare organisations, individual retailers and the British Firework Association.

Responses to the consultation showed that:

- Almost all of those who responded to the consultation (94%) said they would welcome increased controls on the sale of fireworks; while a majority of adults in Scotland (71%) felt there should be more controls over the sale of fireworks.
- A strong majority of those who responded to the consultation (92%) felt there should be more control on how they can be used; while a majority of adults in Scotland (68%) felt there should be more control on how fireworks can be used.
- Over three-quarters of those who responded to the consultation (87%) said they would welcome a ban on the sale of fireworks; while over half of adults in Scotland (58%) supported a ban.

A number of key themes emerged from the consultation and some of those are summarised below.

Of those favouring more controls on the sale or use of fireworks, or a complete ban, frequent references were made to the harm that fireworks can do, particularly in relation to pets, wildlife and livestock. Particular references were made to dogs, cats and horses. Associated concerns about the period over which fireworks may be released, and that they are increasingly being used at any time of year, but in particular between October and January. The connection was sometimes made with the period over which fireworks are now on sale.

There were also concerns about fireworks being set off in locations where it is not legal to do so, such as in streets or other public places, and reports of indiscriminate or dangerous use of fireworks in public spaces were often connected with a perception that young people and children have no difficulties in accessing fireworks - either because they are being sold to them in shops/pop-up shops or because adults are buying and passing them on.

The type of incidents respondents referred to included witnessing or hearing about fireworks being used as 'weapons' against the emergency services, seeing fireworks being thrown at cars or buses and reading about fireworks being used to injure/torture animals.

Respondents also commented that some types of people or people with particular experiences may find fireworks especially distressing or frightening. Examples given

included people with PTSD, autistic people, people with mental health problems, people with dementia, people with learning disabilities, some older people and those with a sensory impairment.

In terms of solutions other than a ban, respondents referred to allowing organised displays only, having a licensing or permit system for selling or purchasing fireworks, raising the age at which people can buy fireworks, reducing noise levels or only allowing silent fireworks and to increased penalties for misuse.

With regard to those respondents who did not favour more controls or a complete ban, there were concerns that a ban or further controls would represent a curtailment of freedom of choice and would be a 'nanny state' style solution to a relatively minor issue. There was also a view that it is neither fair nor reasonable to penalise the responsible majority for the actions of the irresponsible few.

It was also felt that pet owners need to take responsibility for the care and training of their animals, including ensuring that they become used to loud noises. There was also a view that the Scottish Government is listening to, or risks being swayed by, a small but vocal minority, included amongst them irresponsible pet owners who have not properly trained their animals.

Following the 2019 consultation, the Scottish Government also undertook an [evidence review](#) on the impact of fireworks in the context of international legislation and regulations. This included a summary of current fireworks legislation and regulations internationally, and a review of the available evidence on the impact of fireworks relating to social and environmental factors.

The Policy Memorandum to the Bill provides a brief summary of international legislation around fireworks:

- EU countries largely follow the guidelines set out in two EU Directives. These split fireworks into four categories and set minimum distances, maximum noise levels and minimum age limits for the sale of each. The UK has additional regulations that restrict sales to certain periods, raise minimum age limits and impose curfews on fireworks use; while further restrictions exist in Northern Ireland, which require those who both buy and sell fireworks to have valid licences. Other EU countries also have tighter regulations. For example, in Belgium, laws governing the types of fireworks legal to sell to the public are stricter than EU regulations, and both Germany and the Netherlands have restrictions on when and where fireworks can be used.
- In the US, legislation varies between states, with some imposing total bans and others permitting the sale and use of fireworks year-round. In Canada, fireworks regulations are set by individual provinces and territories; some have total bans on fireworks and others permit their sale and use around dates such as Canada Day and Halloween.
- Most states and territories in Australia completely outlaw fireworks. There are restrictions on when fireworks can be sold in New Zealand, but their use is permitted throughout the year.

Amongst other things, the evidence review also highlighted that:

- Research consistently finds a spike in fireworks related injuries around festivals; and the limited evidence available within the scope of the review suggested that the number of fireworks related injuries is not decreasing over time.

- Most fireworks related injuries occur at private displays (e.g. in gardens) or in streets and other public places, not at formally organised displays. Both bystanders and operators are at risk of injury, with young people and males consistently found to be most at risk. Common fireworks related injuries affect hands and heads, with mortars and rockets responsible for the majority of serious eye and hand injuries. However, sparklers, fountains and firecrackers are also frequent sources of injury. Fireworks related injuries often require specialist treatment and surgical intervention and can sometimes be fatal.
- Fireworks can raise background noise levels by several dozen decibels (dB), and increased noise levels can cause particular distress to those with noise sensitivity, including autistic people. The extent of these impacts in Scotland is unknown.
- The fear response to noise from fireworks can have adverse impacts on animals, though most research is based on studies with dogs. If left untreated, fear of noise from fireworks can lead to phobias in dogs, but this varies between dog breeds. Cats, small mammals, such as guinea pigs and rabbits, horses and birds are also impacted by the noise from fireworks. Preventive measures to mitigate these effects include behavioural measures, medication and counter-conditioning, which are mostly successful. However, few animal owners seek professional help and instead try to self-manage the problem. Ingesting fireworks and injuries from fireworks also present issues for animal welfare.
- Between 2002-03 to 2019-20 there were 167 people proceeded against in court in Scotland for fireworks related charges. The most common charge to be proceeded was throwing, casting or firing a firework in a public place, which accounted for 72% of all firework related proceedings.

# Firework Review Group

Following the 2019 consultation, the Scottish Government published a [Fireworks Action Plan: Promoting the safe and appropriate use of fireworks in Scotland](#). The Plan set out the Government's vision for fireworks in Scotland, that is, to be used safely and appropriately, and to ensure that they do not cause harm, distress or serious injury.

As part of this, the Minister for Community Safety also appointed an independent [Firework Review Group](#) ("the Group") of key stakeholders to consider the legislative and regulatory options for change that emerged from consultation, scrutinise the evidence available, and make use of their professional judgement and expertise to set out clear recommendations on what change is required to current legislation and regulations. The Group was chaired by former Chief Officer of the Fire and Rescue Service, Alasdair Hay, CBE, and its membership included representatives from Police Scotland, Scottish Fire and Rescue Service, the British Fireworks Association, CoSLA, community groups, and animal welfare organisations.

Taking into account the responses to the 2019 consultation, the Group explored a number of options for legislative change as part of its options appraisal approach and consideration of the evidence available including, amongst other things, restricting the use of fireworks on private property; restricting the days and times that fireworks can be set off; introducing no firework areas or zones; introducing a notification system before fireworks can be used; and introducing a proxy purchasing offence.

In its [final report which was published in November 2020](#)<sup>3</sup>, the Group reached a majority consensus that, in order to achieve the Scottish Government's vision for fireworks in Scotland, a fundamental shift would be required in how fireworks are accessed and sold in Scotland. The Group recommended, amongst other things:

- The introduction of mandatory conditions before consumers are able to purchase fireworks.
- Restricting the times of day fireworks can be sold and the volume of fireworks that can be purchased.
- Restricting the days and times fireworks can be set off.
- A provision for no fireworks areas/zones to be introduced within which it is not to be permitted for fireworks to be set off, with local communities having a key role in influencing this.
- The introduction of a proxy purchasing offence, so adults are not able to give adult fireworks to persons under the age of 18 without prosecution.

While the British Fireworks Association were represented on the Group, they did not agree with or endorse the Group's recommendations and raised concerns around potential unintended consequences of the proposed measures. Those concerns centred on the view that none of the proposed measures would tackle the root cause of anti-social behaviour involving fireworks or fireworks misuse, as responsible consumers who comply with the conditions would not purchase fireworks to use them in an irresponsible manner. Specifically:

- The proposed licensing system will drive consumers to illegitimately purchase fireworks through illegal channels, bypassing safety messaging and potentially purchasing prohibited firework products.
- Restricting the days that fireworks can be used could encourage a ‘use it or lose it’ approach where consumers use fireworks in an unsafe way in order to meet restrictions around days; and/or leading to stockpiling of fireworks at home if consumers cannot use all of their fireworks on permitted days.
- The proposed no firework areas will displace firework issues by moving the problem and fireworks use to another area, and potentially encourage use of fireworks in a public place in that area.

In November 2020, the Minister for Community Safety, Ash Regan MSP told the Parliament that she welcomed the recommendations from the Review Group and that it was her intention to explore how these could be implemented in practice and to bring forward legislation to do so. Specifically, the Minister stated that it was her intention to bring forward secondary legislation in January 2021 to take forward a number of the Group’s recommendations which could be implemented quickly.

To that end, three measures recommended by the Group have been progressed through the [Fireworks \(Scotland\) Miscellaneous Amendments Regulations 2021](#) which amended the Fireworks (Scotland) Regulations 2004. The relevant changes came into effect on 30 June 2021 and:

- Restrict the times of day when fireworks can be used by the general public to between 6 p.m. and 11 p.m., with the exception of 5 November when they can be used from 6 p.m. until midnight; the night of Chinese New Year and the night of Diwali when they can be used from 6 p.m. until 1 a.m.;
- Restrict the times of day when fireworks can be supplied to the general public to during the daytime hours of 7 a.m. and 6 p.m., alongside existing requirements on retailers around sale and storage licenses; and
- Limit the quantity of fireworks that can be supplied to the general public to 5kg at any one time.

With regard to the primary legislation that the Minister for Community Safety intended to give effect to other recommendations made by the Group, the Scottish Government undertook a [further consultation](#) which ran from 20 June to 15 August 2021. The consultation sought views on proposals to be included within the Bill to deliver on the remaining recommendations of the Group.

The consultation received 1,680 responses from individual members of the public, while 64 responses were received from groups or organisations including the emergency services, local authorities, fireworks industry representative bodies, firework retailers, community councils and animal welfare groups.

An [independent analysis of the consultation responses](#)<sup>4</sup> was undertaken and the results of the analysis were published in December 2021. In addition to the main online consultation, 12 online workshop events were held. Eight of these events were open to anyone who wished to attend and four were for specific groups, namely: the community in Pollokshields; specialist firework retailers; sight loss organisations; and Trading Standards.

The analysis of consultation responses was broken down into various sections reflecting the proposals being brought forward.

### **Fireworks – mandatory conditions at point of sale**

- A large majority of those who answered the question, 84%, agreed that a fireworks licensing system should be introduced in Scotland.
- A large majority, 85%, agreed that any licensing system should cover possession and use of fireworks in addition to their purchase.
- A majority, 76%, agreed that there should be a fee to obtain a fireworks licence.
- A majority, 74%, agreed that successful completion of an online safety course should be a condition of obtaining a fireworks licence.
- In terms of who would be best placed to run and administer the proposed licensing system, the most popular choice overall, with support of 38%, was the Scottish Government.

Frequently given reasons for why there should be a licensing system for fireworks included that fireworks are potentially dangerous and can cause injury; they can also cause nuisance and anxiety; fireworks can and are misused, for example to attack emergency services; they can also cause harm and distress to animals, particularly in relation to noise.

The most common reason amongst those respondents who felt that there should not be a licensing system, was that it was unnecessary or would be a disproportionate response to an issue that was often not seen as a significant problem. Other reasons included that the proposed approach is a “nanny state” response that compromises personal freedom and civil liberties; many people enjoy fireworks and the proposals would penalise law abiding users; and that existing legislation is sufficient and should be better enforced.

### **Covering the possession and use of fireworks as well as purchase**

The most frequently given reasons in support were that purchase, possession and use of fireworks are interlinked and that not including both possession and use would leave significant loopholes. The most frequently given reasons against were that licences are unnecessary or disproportionate and that existing legislation is sufficient.

### ***A fee for a licence***

The most frequently given reasons for supporting a fee were that it could promote a responsible approach, encouraging those with good intentions to apply and can discourage casual applicants and those who would misuse fireworks. Reasons given for there not being a fee included that licences are not necessary.

### **Requiring successful completion of an online safety course**

The most frequently given reasons in favour of an online safety course were that the proposed training can improve understanding of the risks posed by fireworks, promote responsible behaviour and, as a result, lead to improved firework safety. However, there were also concerns that the course should be suitably rigorous.

### **Restrict the days fireworks can be sold and set off**

- A majority – 67% – agreed with the proposed restrictions on the days fireworks can be used by the general public.
- A majority – 64% – agreed with the proposed restrictions on the days fireworks can be sold to the general public.

### **Reasons for supporting restrictions on the days fireworks can be used by or sold to the general public**

It was suggested that it is logical to assume that restricting the days fireworks can be used by the general public will reduce the number of days on which they are used. It was also suggested that restrictions on the days fireworks can be bought should reduce the amount of spontaneous or unplanned purchasing and use of fireworks.

A frequently-made point was that if people know that fireworks can only be used on certain days, they would be able to plan and take mitigating actions. There were references to making provision for pets, guide dogs or livestock and to people who find fireworks distressing and/or frightening being able to prepare themselves.

### **Reasons for not supporting restrictions on the days fireworks can be used by or sold to the general public**

The most frequently-raised concern about the proposals was that the proposed dates are too long and, in particular, that the number of days on which fireworks can be used or sold in October/November is too long.

Other respondents stated that they did not agree with there being restrictions. A frequently made comment was that there are a range of other celebratory events, such as weddings or birthdays, when people may wish to use fireworks, and that the proposals would prevent them from doing so.

### **No-Firework Areas/Zones**

- A significant majority of respondents, 83%, agreed with the introduction of no-firework areas.
- A majority of respondents – 69% – agreed that consideration, introduction and management of no-firework areas should be led by local authorities.

### **Arguments in favour of the introduction of no-firework areas**

The most frequently made point was that no-firework areas should be used to protect animals, including pets. Another common view was that no-firework areas have the potential to reduce the impact of anti-social behaviour and firework misuse and improve the lives of many; in particular they would improve the lives of those living in communities that are currently blighted by firework misuse.

Many comments focused on the type of locations which should be no-firework areas, with some appearing to suggest blanket bans in certain types of area (in contrast to the locally-driven approach proposed).

### **Arguments against the introduction of no-firework areas**

General comments tended to focus on disagreeing with no-firework areas along with any other proposal that would add restrictions to where, how or by whom fireworks can be

used. There were also general observations that no-firework areas are: simply a bad idea; would not work; or would be unfair on and discriminate against those living in a no-firework area but who use fireworks responsibly.

### **Local authorities leading**

The most frequently made comment in support of local authorities leading on no-firework areas was that they are best placed to take this role, including because they will know their own area better than any other organisation. The most-frequently made argument against was that they would be unlikely to perform well or take any proactive or constructive action. The other frequently-made point was that a national, standardised approach would be preferable to a locally-led one.

### **Proxy Purchasing Offence**

- A very substantial majority of respondents – 92% – agreed with the introduction of a 'proxy purchasing' offence in relation to fireworks to criminalise the supply of fireworks to young people under the age of 18.

The most frequently-made comment was a general statement of support for the introduction of a proxy purchasing offence. It was also suggested that the proposal would bring the approach to fireworks in line with that for other restricted products. There were references to alcohol, tobacco and nicotine vaping products and it was noted that proxy purchasing prohibitions are already in place for other age-restricted products.

### **Tackling misuse of pyrotechnic devices**

- A majority of respondents – 76% – had concerns about pyrotechnic devices being misused.
- A majority of respondents – 77%– agreed with the introduction of a new offence for being in possession of a pyrotechnic in a public place without reasonable excuse or lawful authority.
- A majority of respondents – 70% – agreed that police stop and search powers should be extended to allow the police to stop and search where there is reasonable suspicion that an individual is in possession of a pyrotechnic device in a public place without a reasonable excuse.
- A majority of respondents – 65% – thought that police stop and search powers should be wide enough to allow the police to stop and search a vehicle where there is reasonable suspicion that there are pyrotechnic devices contained without a reasonable excuse.

### **Concerns about pyrotechnic being misused**

The danger of irresponsible use was the most frequently-raised concern. It was suggested that any use of pyrotechnic devices in public spaces has the potential for serious injury – to members of the public, police and members of other emergency services. Respondents referred primarily to the misuse of pyrotechnics at sporting events and specific concerns were raised regarding misuse in football stadia.

For those who indicated that they are not concerned about misuse of pyrotechnics, the most common reason cited was that misuse remains rare and any issues have been blown

out of proportion. It was also suggested that the use of stop and search powers for pyrotechnics would lead to unfair targeting of football supporters.

### **A new pyrotechnics offence**

The most frequently-given reason for supporting a proposed new offence was that it has the potential to mitigate the negative impacts of pyrotechnics. It was suggested that possession of pyrotechnics without reasonable excuse or lawful authority presents an unnecessary risk to public safety, and that a new offence would be a proportionate response to this risk.

Opposition to the proposed new offence most frequently related to concerns around extending the use of stop and search powers and there were specific concerns that extended powers could be used unfairly by the police to target specific groups, including football supporters.

### **Extending stop and search powers**

The most frequently-given reason in favour of extending stop and search powers was the danger associated with the misuse of pyrotechnics, with reference to the risk of serious injury or fatalities. Respondents often suggested that the potential to avoid serious injury or fatalities is sufficient to justify the use of stop and search.

The most frequently-raised argument against extending stop and search powers was that they could be used to target particular groups of people. Objections to the principle of stop and search included reference to infringing civil liberties and not being compatible with a free society.

### **Stop and search powers applying to vehicles**

Comments included that vehicles could pose a significant safety risk given their potential to carry a volume of pyrotechnics, and that including vehicles in stop and search powers would be essential to maintaining public safety. There was also a view that extending stop and search powers to vehicles would be required for effective enforcement.

The most frequently-raised concern was that stop and search powers could be abused to unfairly target specific groups. There was a view that existing stop and search powers have been misused to target people from black and minority ethnic communities. There was also a concern that the provision would result in bus loads of football supporters being routinely stopped and searched without due cause.

# The Bill

The overarching policy objective of this Bill is to protect public and community safety and wellbeing by ensuring fireworks and pyrotechnics do not cause harm, distress or serious injury. The Bill seeks to achieve this by restricting the sale of certain categories of fireworks to the public, as well as creating powers to limit the days and locations where such fireworks can be used. The Bill also establishes controls on the sale and use of pyrotechnic articles, such as distress or signal flares. The Bill also sets out a number of new criminal offences which will apply where relevant restrictions are not complied with.

The Bill is in 7 parts:

- Part 1 of the Bill introduces key concepts, including the meaning of fireworks and pyrotechnic articles
- Part 2 deals with fireworks licensing
- Part 3 places restrictions on supply and use of fireworks and pyrotechnic articles including prohibition on supply to children; and days of use and supply of fireworks
- Part 4 deals with firework control zones
- Part 5 deals with pyrotechnic articles at certain venues or events
- Part 6 deals with exemptions and enforcement
- Part 7 includes general provisions, including interpretation, regulations, ancillary provision, Crown application and commencement

## Part 1 – Key concepts

This part of the Bill sets out the meaning of “firework” and “pyrotechnic article”. For the purposes of the Bill, a “firework” refers to a pyrotechnic article which is a firework for the purposes of two British Standards, namely BS EN 15947:2015 or BS EN 16261:2012 (or any British Standards that replaces them). It also includes a pyrotechnic article that would be a firework for those purposes if it was intended as a form of entertainment. The definition of “pyrotechnic article” is the same as the definition given in the Pyrotechnic Articles (Safety) Regulations 2015, but without any exclusions.

In the Bill:

- a “category F1 firework” means a firework which presents a very low hazard and negligible noise level, and which is intended for use in confined areas, including a firework which is intended for use inside domestic buildings;
- a “category F2 firework” means a firework which presents a low hazard and low noise level, and which is intended for outdoor use in confined areas;
- a “category F3 firework” means a firework which presents a medium hazard, which is intended for outdoor use in large open areas and whose noise level is not harmful to human health,

- a “category F4 firework” means a firework which presents a high hazard, which is intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health.

Section 2 of the Bill allows the Scottish Ministers to make regulations to add, amend or remove categories, types, classifications or descriptions of fireworks. This will also allow the Scottish Ministers to take account of, for example, developments in fireworks technology, standards or specifications. Section 2 also allows the Scottish Ministers to make further provision about the requirements a person must meet to demonstrate “specialist knowledge” for the purposes of the definition of a category F4 firework.

## Part 2 – Fireworks licensing

Part 2 of the Bill deals with fireworks licensing and makes provision for a licensing system as a means of regulating the purchase, acquisition, possession, use and supply of certain fireworks. The overall effect of this part of the Bill is that only adults (i.e. those aged 18 or over) who have a fireworks licence may buy (or otherwise acquire), possess or use fireworks, unless an exemption exists, or the person otherwise has a reasonable excuse.

Individuals must be in possession of a licence before they can purchase, acquire, possess or use a category F2 and F3 firework. An individual commits an offence if they purchase, acquire, possess or use such a firework without the necessary licence.

This part of the Bill also makes it an offence for a person, without reasonable excuse, to supply F2 and F3 fireworks to a person who does not have a fireworks licence. With regard to the reasonable excuse provision, it is a defence to show that a person took reasonable steps to establish that the person to whom the firework was supplied had a fireworks licence or was exempt under schedule 1 of the Bill. (Schedule 1 of the Bill sets out a number of exemptions from the requirement to have a fireworks licence). Under the Bill, it will be for local weights and measures authorities to enforce the provision making it an offence to supply fireworks so far as it relates to the supply of fireworks by a person in the course of business.

In this part of the Bill, “supply” of a firework includes:

- selling it
- exchanging it for a consideration other than money
- giving it as a prize or otherwise making a gift of it
- otherwise making the firework available

Part 2 of the Bill also sets out the general requirements for applying for a fireworks licence.

Individual members of the public must be over 18 years to apply for a licence, and licences will be administered by the Scottish Government (or under arrangements made by it) on a central register of applications and licence holders. The criteria for a licence being granted are focussed on demonstrating that an individual is able to use fireworks in an appropriate, safe and responsible manner. The Bill contains a number of mandatory requirements which must be adhered to and which applicants are required to complete before being granted a licence.

When applying for a licence, applicants must disclose any convictions in relation to a relevant offence under existing fireworks legislation, or any other offence where the misuse of fireworks or pyrotechnic articles has been a factor. (Should the Bill be passed, applicants would also be required to disclose any convictions under the relevant Act when making future applications).

There is also a requirement to successfully complete a fireworks training course, the content of which will be set out by the Scottish Ministers in regulations. The Scottish Ministers will, by regulation, also be able to set out any additional mandatory requirements during the application process should they be deemed necessary.

The Bill also provides for conditions to be attached to fireworks licences. All licences will be subject to the following conditions:

- a licence is only valid for the person named on it and is not transferable
- a licence is only valid for the period specified on the licence
- a licensed person must inform the Scottish Ministers of any changes to circumstances which will be specified by the Scottish Ministers in regulations

The current intention is that a fireworks licence will be valid for 5 years unless it is revoked. Again, the duration of a licence will be set out in regulations under which Scottish Ministers will also be able to amend the duration of the licence.

Section 12 of the Bill provides for the revocation of licences in certain circumstances. These include where an individual breaches any conditions of the licence or is convicted of a relevant offence. A “relevant offence” means:

- an offence under the Act (should the Bill be passed)
- an offence under the Fireworks Act 2003 and any regulations made under that Act; the Pyrotechnic Articles (Safety) Regulations 2015 (S.I. 2015/1553); the Explosives Substances Act 1883; the Explosives Act 1875; and any other offence where the misuse of fireworks or pyrotechnic articles has been a factor

The Bill also provides that the courts can cancel a person’s firework licence where they are convicted of a relevant offence.

The Scottish Ministers may only grant a fireworks licence where a valid application and any applicable fees have been received, all the relevant requirements have been met, and they are satisfied that the applicant can be permitted to possess and use fireworks safely and appropriately. The Policy Memorandum to the Bill states that a fee will be charged which covers the safety course and application process for a licence. This will be set at a level which is not intended to present an excessive cost barrier to users of fireworks. Fireworks licensing will come at a cost in terms of processing the application, issuing licences, maintaining the database, monitoring existing certificate holders and prosecuting those who contravene the law. As such, the Scottish Government believes it is right that the process for obtaining a licence should incur a fee.

The actual fee to be paid by applicants will be set out in secondary legislation. Modelling undertaken in assessing the level of income which would be generated by fees used the options of fee levels at £20, £30, and £50. The Financial Memorandum to the Bill states that in developing these options, other licensing schemes were considered. This included

the approach taken in Northern Ireland to fireworks licensing, where the fee is dependent on the size of the display and ranging from £30 to £160. In northern Ireland, the fee is set according to the number of people attending the event. Under the Explosives (Fireworks) Regulations (Northern Ireland) 2002 the firework licence fees are set as: £30 not exceeding 100 attendees; £80 not exceeding 1,000; and £160 exceeding 1,000.

The Bill does provide that appeals can be made to a sheriff against a decision of the Scottish Ministers relating to a refusal to grant a fireworks licence, a decision to attach a condition(s) to a licence, or the revocation of a licence.

There are offences contained in the Bill with regard to fireworks licences. The first of these is in relation to false statements whereby it is an offence to knowingly or recklessly make a false statement for the purposes of obtaining a fireworks licence. The offence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both. The Bill also makes it an offence to produce a false fireworks licence or a false document that claims to prove that the person is exempt from the requirement to have a fireworks licence. The punishment for this offence is the same as that for making false statements.

## **Part 3 – Restrictions on supply and use of fireworks and pyrotechnic articles**

Part 3 of the Bill deals with restrictions on the supply and use of fireworks and pyrotechnic articles.

In this part of the Bill, section 21 applies to all pyrotechnic articles other than category F1 fireworks, and percussion caps for toys that are intended for use by children under the age of 14, while sections 22 and 23 apply to category F2 and F3 fireworks.

Section 21 of the Bill sets out a prohibition on providing fireworks or pyrotechnic articles to children. The Explanatory Notes to the Bill state that currently, there is nothing preventing a person who is not an economic operator from making fireworks and pyrotechnic articles available contrary to the minimum age limits. To that end, section 21 of the Bill makes it an offence for a person to knowingly buy or attempt to buy a firework or other pyrotechnic article for a person under the age of 18 – that is, a proxy purchase. It also makes it an offence for a person to give or otherwise make them available to a person under the age of 18. A person who commits an offence under this section is liable (on summary conviction) to a fine not exceeding level 5 on the standard scale (£5,000), or to a term of imprisonment not exceeding 6 months, or both.

Whilst it is unlawful for category F4 fireworks to be sold to the general public, they are included for the purposes of section 21 to make it clear that a person (who may have legally acquired category F4 fireworks) cannot give them to a child. Category F1 fireworks are not included here as it is not an offence for a child to possess a F1 firework. Similarly, as percussion caps intended for use by children under the age of 14 are excluded from the definition of “pyrotechnic article” in the relevant pyrotechnic article regulations, they may be sold to children directly.

The Bill makes it clear that a person does not commit an offence under these sections if the pyrotechnic article in question was designed to be used as a visual distress signal, and

the person providing the pyrotechnic article intended that the recipient (the person under the age of 18) used it only in appropriate circumstances. For example, if a person who is under 18 is going for a hill walk, and they are given a safety flare to use in case they need to signal for help, the person giving them the flare does not commit an offence.

Section 22 of the Bill builds on current legislation restricting the days and hours of the day during which category F2 and F3 fireworks may be sold by unlicensed suppliers. Section 22 provides that the supply of fireworks is only permitted between the following days (inclusive of the first and last day specified):

- 7 April to 14 April
- 27 October to 10 November
- 26 December to 31 December
- the first day of Chinese New Year and the 3 days immediately preceding it
- the first day of Diwali and the 3 days immediately preceding it

The Policy Memorandum to the Bill points out that the additional period of 7 to 14 April has been included following discussions with faith groups to ensure that important festivals or events, where the use of fireworks already forms an important element of celebrating such festivals, are included. The Sikh festival of Vaisakhi was highlighted through this process, which takes place on 13 April annually, although it is typically celebrated on the preceding Sunday.

A person who supplies a category F2 or F3 firework on a day that is not specified commits an offence and is liable, again, on summary conviction to a fine not exceeding level 5 on the standard scale (£5,000), or to a term of imprisonment not exceeding 6 months, or both.

The Bill also sets out the permitted days when category F2 and F3 fireworks can be used. As with the days of supply, an additional period has been included to cover the Sikh festival of Vaisakhi, and the dates provided for in the Bill are in line with the ten day period fireworks are also available to be used over Chinese New Year and Diwali. The Bill sets out the following dates where fireworks can be used:

- 7 April to 16 April
- 27 October to 12 November
- 26 December to 2 January
- The 3 days immediately preceding the first day of the Chinese New Year to the seventh day after the first day of the Chinese New Year
- The first 3 days immediately preceding the first day of Diwali to the seventh day after the first day of Diwali

It should be noted that the permitted days for use extend slightly beyond when fireworks can be supplied. This is to avoid a situation where people may buy fireworks towards the very end of the supply period and are then not able to use them on that day. The slight extension of the use period will also minimise the likelihood of people storing fireworks for a long period e.g. from the last day of one permitted use period to the beginning of the next permitted use period.

The Bill provides for a number of exemptions where the restricted days for the use and supply of fireworks do not apply, and the Scottish Ministers will be able to add, amend or remove exemptions by regulations.

Some exemptions in relation to days of supply include businesses engaged in the supply of fireworks; professional organisers or operators of firework displays; and organisers of public firework displays. The exemption will also apply to purchasers who are outside of Scotland provided that the fireworks are to be delivered outside of Scotland.

In relation to days of use, exempt groups include: businesses engaged in the supply of fireworks; professional organisers or operators of firework displays; and organisers of public firework displays. Regulatory authorities, or someone acting under their direction will also be exempt – this is to ensure that enforcement bodies are able to continue to carry out their duties as required outside of the permitted days. This could include testing by use of fireworks and controlled disposals.

The Bill includes provision for a compensation scheme to be brought forward by regulations to address the potential for a negative economic impact of restricting the days of supply for specialist firework businesses whose business is wholly or mainly concerned with the supply, distribution or importation of fireworks in Scotland. The regulations may make further provision about who qualifies for compensation, set out the circumstances in which compensation is payable, the process for calculating it, claiming it and for having decisions reviewed or appealed.

## **Part 4 - Firework control zones**

This part of the Bill provides local authorities with the power to designate a place or places or within its area as a “firework control zone”. During consultation on proposals for the Bill, the term “no-firework area” was used, but this has been amended to “firework control zone” to more accurately reflect that this will not result in a blanket ban on fireworks within the area given that certain types of fireworks displays will still be permitted. An area designated by a local authority as a firework control zone could include restricting the use of fireworks on private land.

Part 4 of the Bill applies to category F2, F3 and F4 fireworks and again, the Bill provides that Scottish Ministers may add, remove or amend categories, types, classifications or descriptions of fireworks by regulation.

The Bill provides that local authorities may, at any time, designate a place or places within its area as a firework control zone, and also allows local authorities to amend a zone, including the period for which it is to have effect or the days on which it is to operate. It would be an offence for a person to use a category F2, F3 or F4 firework within a firework control zone unless they are exempt. (The use of category F1 fireworks is still permitted in a firework control zone).

The Policy Memorandum to the Bill points out that while category F4 fireworks can only be used by those with specialist knowledge, they are included here to make it clear that the restrictions on the use of fireworks in designated areas covers category F2, F3 and F4 fireworks other than for those in an exempt group. Exempt groups include: professional organisers or operators of firework displays; organisers of public fireworks displays; regulatory authorities; and businesses engaged in the supply of fireworks. Scottish

Ministers will be able to add, amend, or remove any exemption by way of regulations. In effect, this means that any display – whether public or private – can take place in an area that is designated as a firework control zone if it is organised by a professional firework operator, as well as public displays organised by community groups. The 2021 consultation proposed that no-firework areas should not extend to community groups at publicly organised events or to professional firework operators.

While the default position is that a zone operates throughout the period it has effect, local authorities will also be able to specify that a control zone will only operate on particular days. This will allow local authorities to ensure that zones take account of local circumstances and only operate when required. The Bill places a duty on local authorities to prepare and publish key details of any proposal for the designation of a firework control zone, or any plans to amend or revoke any zone. Proposals must set out the reasons behind what is proposed, the boundaries of the zone, the date from which it is to have effect, how long it is to have effect, and details of the consultation which must take place prior to a zone being designated.

A local authority consultation is required to consult people who live or work in the place to be designated as a firework control zone; other members of the local community in or near the place to be designated; and any other persons or bodies that the local authority considers to have a connection with, be interested in, or affected by the proposal. Following consultation, local authorities must publish a document which confirms whether or not the proposed control zone is to proceed. The document should also include any changes to the proposal, whether these have come about as a result of the consultation or not, and also explain how the local authority had regard to the views expressed during the consultation process.

Local authorities must also carry out reviews of the operation and effectiveness of any firework control zones in its area. Reviews may be in respect of one or more control zones and be combined with any proposals to amend or revoke a zone. Once a review is complete, the local authority concerned must prepare and publish a report of the review's findings and make any proposals in relation to the zone(s) in question it considers to be appropriate.

The Bill also includes a provision for the Scottish Ministers to make further provision by regulations to set requirements which will apply to a local authority that has taken a decision to designate a firework control zone. The Policy Memorandum to the Bill states:

“The Bill includes a provision conferring a power for the Scottish Ministers to make further provision by regulations to set requirements which will apply to a local authority that has taken a decision to designate a firework control zone.

The regulations may provide for the manner in which that decision is to be given effect to, and the local authority must comply with the regulations in order for a firework control zone to be validly established.

Under this power, Scottish Ministers will include regulations in relation to requirements for the local authority to specify, when a firework control zone is designated, certain matters in relation to the zone in question, such as the size, location, boundaries of the zone, length of time for which the area can be designated as a firework control zone; as well as further requirements in relation to reviewing and reporting on the operation and effectiveness of zones.

The power to designate firework control zones will not commence until these regulations have been made”.

## **Part 5 – Pyrotechnic articles at certain places or events**

The Policy Memorandum to the Bill states that in recent years, the misuse of pyrotechnics and fireworks at events in Scotland has become more prevalent, presenting a risk of serious injury or death. Places where misuse has occurred include at sporting events, festivals and public gatherings and protests. While it is already an offence to use a firework in a public place and illegal to be in possession of a pyrotechnic article in a designated sporting venue, and there are powers to stop and search while entering the venue in relation to that offence, there is no existing power that enables police to act at an earlier stage on any intelligence regarding the possession of pyrotechnic articles, including fireworks, before entering the venue or without the device being used. The intention is that the proposed offence in the Bill will facilitate a more preventative approach to public safety.

Part 5 of the Bill prohibits the possession of any pyrotechnic article without reasonable excuse while a person is:

- travelling to, in the immediate vicinity of, participating in, or attending a designated venue or event; or
- travelling to, participating in, or otherwise attending a public procession or a public assembly.

The Bill makes it clear that travelling to a designated venue or event, or public procession or public assembly, includes situations where a person is travelling there but does not intend to enter the venue, attend the event, or participate in the procession or assembly.

A person convicted of the offence is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (£5,000) or both.

There are some exemptions in relation to this offence. In particular, it is not an offence if the person in question is employed by a regulatory authority and acting in that capacity; employed by, or in business as, a professional organiser or operator of firework displays, or pyrotechnic displays and the firework or pyrotechnic article is possessed in connection with that business. The Bill also provides an exemption for situations where the organiser of a public fireworks display (or other individuals assisting an organiser) is in possession of a firework or pyrotechnic article and it is used for the purposes of putting on a public fireworks display on behalf of a charitable, religious, youth, recreational, community, political or similar organisation. Again, the Scottish Ministers will be able to add, amend or remove an exemption by regulations.

## **Part 6 – Exemptions and enforcement**

This part of the Bill makes provision for exemptions to certain offences under parts 2 – 5 of the Bill (as set out above), and in relation to enforcement of offences under the Bill. The

following paragraphs outline the enforcement provisions in the Bill.

The Bill provides officers of each local weights and measures authority (Trading Standards officers) powers to enforce the offences of supplying unlicensed persons with fireworks and supplying fireworks otherwise on the permitted days on a commercial basis. Trading Standards officers already have powers in relation to the sale of fireworks, particularly in connection with sales to underage persons (section 12 of the Fireworks Act 2003), and the intention is that enforcement of these new offences will sit alongside those existing powers.

Schedule 2 of the Bill sets out the various investigatory powers that will be afforded to Trading Standards officers when enforcing the relevant provisions in the Bill. The Bill provides that a Trading Standards officer can require a retailer to produce any relevant document, records or other information held by them, and to take copies, if they have reasonable grounds to suspect that an offence has been committed in the course of supplying fireworks. Trading Standards officers will also be able to enter premises without a warrant (other than those that are used wholly or mainly as a dwelling), and in other cases, with a warrant.

The Bill also includes provisions for Trading Standards officers to inspect products, for example, to satisfy themselves that what is being sold is a category covered by the legislation; require the production and seizure of documents, for example, where there is a suspected breach of the legislation; and to seize and detain goods or documents which may provide evidence of the commission of an offence.

Under the Bill, Trading Standards officers can also purchase fireworks or pyrotechnic articles while entering into agreements which may involve an individual acting under the direction of the local authority to enable test purchasing as an enforcement mechanism.

The Explanatory Notes to the Bill state that Constables of Police Scotland have general powers of enforcement across the Bill, but by virtue of section 31 of the Railways and Transport Safety Act 2003, the powers can also be exercised by a constable of the British Transport Police if the offence is being committed in a railway context.

The Bill includes provision to allow constables to have powers of search without warrant in order to investigate and prosecute offences within the Bill. This would apply where a constable has reasonable grounds to suspect that a person has committed or may be committing an offence under the Bill and provides that the constable can stop and search the person, and if relevant, a vehicle. This relates particularly to the possession of fireworks or pyrotechnic articles in circumstances where such items are prohibited such as at designated sporting events or public assembly. The power may also be used where a person is suspected of having acquired fireworks without a licence.

The Bill also provides that where a constable has reasonable grounds to suspect that an offence has been, or is being committed, a sheriff, summary sheriff, or justice of the peace may grant a warrant authorising a constable to enter and search premises including houses, vehicles, and moveable structures like a tent.

# Written evidence

The following paragraphs set out some of the key issues raised in written evidence from a number of stakeholders.

## Police Scotland

Police Scotland have stated that they are fully supportive of the Scottish Government's plans to restrict the sale and use of fireworks and pyrotechnic articles in Scotland as this will be a crucial step towards making events safer for those in attendance. Police Scotland have serious concerns that these articles present a very real risk to life and have been working on addressing this issue for the past five years.

Police Scotland hope that the provisions within the Bill will help to bring about a cultural change amongst those who currently misuse these articles by educating and persuading them to use these articles responsibly while also providing police officers with new powers to better deal with those individuals who refuse to acknowledge the risk at which they are placing themselves and others.

With regard to individuals having to complete a training course in order to obtain a fireworks licence, Police Scotland state that they are supportive of any training being offered to the public that would encourage the safe and responsible use of such fireworks.

Police Scotland are also supportive of the proposed restrictions on the sale and use of fireworks as set out in the Bill, stating that they welcome clearly defined dates and times for the purposes of applying the proposed legislation.

With regard to Firework Control Zones, Police Scotland generally supports the introduction of zones in order to limit any adverse impact of fireworks in communities provided the use of such zones is proportionate in responding to community concerns. Police Scotland may have further comment on this once the national framework of regulations is published. Police Scotland also note that section 27 of the Bill requires Local Authorities to consult "any other persons or bodies that the local authority considers to have a connection with, be interested in or affected by the proposal", and although zones are a matter for Local Authorities, state that any further clarification on specific responsibilities expected of other agencies in the planning or application stage would be welcomed.

With regard to restrictions on the use of fireworks and pyrotechnic articles at certain events, and the restricted use of pyrotechnic articles more generally, Police Scotland are of the firm view that restrictions are required in order to bring about a change in behaviour and culture amongst those who put themselves and others at risk. Police Scotland recognises that proposals in the Bill seek to provide a proportionate response to the identified risks surrounding the illicit use of fireworks and pyrotechnics. Police Scotland also recognises that in the absence of evidence justifying wider offences or wider police powers at this time, the Bill has been drafted to address the current identified risks posed by the illicit use of fireworks and pyrotechnics. As such, it is therefore crucial that the Bill and any subordinate regulations or orders are capable of being readily amended to address emerging issues or changes to behavioural patterns within a reasonable timescale.

Police Scotland do, however, have some practical concerns regarding how police officers will evidence the fact that a suspect was *'travelling to, in the immediate vicinity of... a*

*designated venue or event*, and the definition of possession of a pyrotechnic article at a 'public assembly', particularly where there are fewer than 20 persons already participating in an assembly when a suspect is detected, given the provisions within Section 16 of the Public Order Act 1986 ("the 1986 Act"). Section 16 of the 1986 Act provides that a public assembly means an assembly of 2 or more persons in a public place which is wholly or partly open to the air. Similarly, Police Scotland have concerns about the position in relation to fireworks and pyrotechnics at assemblies which do not meet the definition within Section 16 of the 1986 Act i.e. are not in a public place or are wholly or partly open to the air.

### **Scottish Police Federation**

The Scottish Police Federation (SPF) are very supportive of the intent of the Bill but make a number of observations in relation to it.

The SPF is supportive of a licensing scheme for fireworks, however, given the dependency on police officers to enforce the legislation, it will be essential for officers to have access to live licensing systems. For it to be effective and deterring the SPF also believe the Financial Memorandum understates the costs of this legislation as unless people know there is a reasonable chance that they will be caught, there is less likelihood of them complying. The Financial Memorandum should capture proactive costs, not just reactive ones. This is a problem that will hamstring all new legislation given the chronic shortage of uniformed resources working in local policing.

With regard to pyrotechnic articles, the SPF state that this is legislation that police officers desperately need. At many football games there are fan "corteos" (processions) where pyrotechnics are indiscriminately thrown within the crowd. Police officers have had to remove ignited pyrotechnics from hoods of other supporters and from the gardens of residents where childrens' play equipment sits. We have also seen people losing fingers from pyrotechnics and are aware of photographers, stewards and football players who have been injured. In short many believe these are toys and despite repeated communications, continue to treat them as such.

Whilst the SPF understands the theory behind the "watering down" of the Section 33 offence (pyrotechnic articles at certain places or events) from "public place" to (travelling to) a designated sporting event, music event, procession or assembly, they believe that it is not practical and will result in poor legislation. In the SPF's view, all a perpetrator need say is that they were going somewhere else and no offence would be committed. It is not clear how Police Officers can prove where somebody is going. Also, the omission of a "traveling from" clause is odd and limits the opportunities to deal with people who we believe may have been using pyrotechnics. The SPF state that they can't think of a legitimate reason for anybody having a pyrotechnic on their possession in a city centre, leaving an event.

The SPF also notes that pyrotechnic use is not limited to these scenarios. They are aware of them being held or thrown from cars. Some can be propelled some distance away from an event, or assembly, without the perpetrator being in the immediate vicinity of or travelling to a designated event.

The SPF states that the pyrotechnics sections in the Bill as currently drafted have become so convoluted, it is "a defence lawyers dream" as many points of appeal would make it quite unworkable. The SPF are in dialogue with Scottish Government to clarify some of their definitions which the SPF believe are at best ambiguous and at worst flawed, but for

example, haven't at the time of writing had clarification as to what number constitutes a public assembly.

### **Scottish Fire and Rescue Service**

The Scottish Fire and Rescue Service (SFRS) supports the introduction of a fireworks licensing system in Scotland. They state that misuse of fireworks can cause severe injury, are extremely dangerous if used incorrectly, or as part of anti-social behaviour activity.

SFRS are adversely affected by the misuse of fireworks and deliberate fire setting every year around the 5 November period. This significantly increases operational demand and crews have also been the victims of direct attacks through the misuse of fireworks. Fireworks bring enjoyment to the public and help to celebrate a range of cultural and religious events. However, if used too often/inappropriately it is recognised they can have negative effects on animal welfare, cause public nuisance and can affect particular individuals (PTSD sufferers, and those with neurological differences such as autism for example) and communities more adversely than others. By introducing a licensing system this will help to control the use of fireworks. It will assist in deterring those under 18 from using them, and subsequently help to reduce incident demand for SFRS, violence to crews and injury to members of the public.

With regard to charging a fee for a licence, SFRS state that the introduction of a fee will assist to ensure that only those serious about facilitating a safe display (personal or private) will purchase fireworks. This will contribute towards ensuring those using fireworks in private homes are familiar with relevant safety advice and help to deter individuals from buying small quantities, in turn reducing the number being used as part of anti-social behaviour activity. Similar to the purchasing of alcohol, it is important to try and deter people from buying fireworks on behalf of others. Only those who are licensed should be using them. SFRS also state that an online safety course will help to ensure people store and use fireworks safely.

The SFRS are also supportive of the restriction on the days on which fireworks can be used as this will hopefully, reduce the number of incidents which SFRS attend, reduce antisocial behaviour, and reduce the number of injuries caused by fireworks. Also, having identified and clearly communicated dates when fireworks can be used will assist people to plan and prepare. Some members of communities are adversely affected by fireworks e.g. if they have pets that get stressed due to fireworks, or fireworks can "trigger" mental health related issues with individuals. If they know fireworks are likely to be set off over identified dates, then individuals can make adjustments over this period.

With regard to firework control zones, the SFRS state that such zones may be beneficial in communities where they have experienced anti-social behaviour due to the misuse of fireworks or where there are individual properties that are affected. For example, animal rescue centres or residential home for veterans. It is important that communities have a strong voice in expressing their concerns and rationale for any control zones. In relation to anti-social behaviour, it is important to understand why there may have been previous incidents in an area and try to tackle the underlying issues.

The introduction of firework control zones may not solve the issue of anti-social behaviour, it could simply move incidents to a different area. SFRS also state that consideration is required to ensure members of the public and businesses will know they are in a firework control zone. This needs to be clearly communicated, in sufficient time, to avoid fireworks being purchased which cannot then be used, or people are penalised for using fireworks

when they were unaware of any restrictions.

The SFRS are also supportive of the proposals to control the use of pyrotechnic articles as these can reach temperatures of 1200 degrees and can continue to burn when discarded. There have been examples of flares being thrown onto pitches or towards individuals at sporting events. Being struck by such an item can inflict life-threatening injuries. Consideration should be given to delivering awareness raising campaigns to highlight the dangers of pyrotechnics. Members of the public often see their use as a way of adding atmosphere to a sporting event but may not realise the potential risks they pose. In addition to the risk of injury and exposure to toxic substances detailed above, the use of pyrotechnics also creates an ignition risk that may lead to fire and the associated risks to public safety and therefore the service would support consideration of further controls.

### **Scottish Community Safety Network**

The Scottish Community Safety Network (SCSN) is the strategic voice for community safety in Scotland and working with partners, champions community safety and influences the shaping and development of national policy and local delivery.

SCSN agrees that a licensing system could help to reduce illegitimate, irresponsible purchasing of fireworks, and improve general awareness of the risks that fireworks pose through completion of mandatory training courses for members of the public who wish to purchase fireworks in Scotland. However, SCSN points to a number of issues which might also be considered.

SCSN states that the proposals in the Bill seem largely, to be a response to antisocial behaviour and that a more effective response might be to tackle the root causes of such behaviour, focussing on education, prevention and culture change, instead of tightening regulation, restrictions and punishment. SCSN also points to existing restrictions, specifically, the Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 which came into force in June 2021 and suggests that these should be given time to bed-in and take effect. This could allow the Scottish Government, local authorities and industry measure the impact of those regulations and inform any future proposals for future action.

SCSN also states that citizens may view this type of regulation as overreach by central government. As such, they suggest that any evidence in support of fireworks licensing is published and unambiguous, to help demonstrate the need, and win the approval of the public and the industry, which will be vital for uptake and success. This could be anticipated positive impacts in relation to number of hospital visits due to fireworks etc. and the savings to the public purse.

With regard to restriction periods, SCSN states that these could help to prevent the misuse of fireworks throughout the year, however, they have identified what they see as two important issues which may need to be addressed before restrictions on use of fireworks can be realised. With regard to the exceptions to the dates on which fireworks can be used, they point out that this caters for some religious festivals (e.g. Chinese New Year, Diwali and Vaisakhi) but perhaps not all, and may not take account of Scotland's numerous other religions and beliefs, potentially discriminating against those excluded.

SCSN also state that limiting the day's fireworks can be used, to a small window of dates each calendar year will present opportunity and challenge. Namely, Police Scotland will be able to plan deployments, ahead of time to help enforce these restrictions. However, competing, large scale events will stretch and perhaps undermine policing plans.

Therefore, perhaps the Scottish Government might consider increased, dedicated and ring-fenced police deployments to communities, to ensure support to enforce is always available.

### **NJE Firework Displays**

NJE Firework Displays (“NJE”) is a family-run fireworks business which has been operating from its premises in Aberdeen for the past six years. The business sells fireworks all year round, and also provides professional fireworks displays for all occasions. NJE has a number of concerns about the proposals brought forward by the Bill.

With regard to restricting the use and supply of fireworks, NJE states that this will create a black market where fireworks will not be regulated, profit those operating the black market, and “be highly dangerous”. They are also concerned that this will lead to them (and others) being put out of business.

With regard to the proposed licensing scheme, NJE state that this would discriminate against low income families. They estimate that most families only spend around £30 per year on fireworks and the imposition of a licensing scheme would put fireworks out of their reach. With regard to firework control zones, NJE state that these will be “impossible to police”. NJE concludes that the Bill will not, in any way, prevent the misuse of fireworks, it will put people out of business, and could see black market fireworks “flooding Scotland” with the potential for an increase in firework-related injuries.

### **Scottish Society for the Prevention of Cruelty Animals**

The Scottish Society for the Prevention of Cruelty to Animals (SSPCA) is Scotland’s principal animal welfare charity. The organisation has enforcement powers to report directly to the Procurator Fiscal. An average of 200,000 calls are made to its animal helpline each year and the organisation also attends around 90,000 incidents each year.

The overall view of the SSPCA is that the proposals as set out in the Bill will ensure further protections from the suffering caused by fireworks and pyrotechnic articles for animals and people across Scotland.

The SSPCA is particularly pleased to see that the use of fireworks will need to be licensed as in their view, this will ensure that the sale, supply and use will be better regulated and will also discourage irresponsible use. With regard to restrictions around the days fireworks and pyrotechnics can be sold and set off by licensed persons, the SSPCA state that this also help people to implement safeguarding measures for people or animals who may be adversely affected by the sight and sound of fireworks. The biggest challenge for animal owners, for example, is the unpredictability of when fireworks will be set off.

With regard to firework control zones, the SSPCA states that these will be beneficial in proximity to hospitals, care homes, animal shelters, zoos, housed livestock, grazing animals or anywhere animals and people may suffer stress or injury due to the negative effects of fireworks. The SSPCA states that local communities should be actively involved in considering the feasibility and introduction of firework control zones. As part of the local community consultation process, the SSPCA states that it will be crucial that the impact of fireworks on animal health and welfare in the local area is evaluated and given due consideration. To ensure consistency in decision-making regarding firework control zones across Scotland, the SSPCA suggest that clear guidance or criteria are provided to local authorities and that depending on the operating model adopted, a central body has oversight of then decision-making process. This approach should maximise sharing of

knowledge and expertise and minimise any potential inconsistencies across different local areas.

The SSPCA highlight one of the exemptions in the Bill in relation to fireworks control zones whereby it is not an offence for a person to ignite a firework in a control zone if the person is employed by, or in business as a professional operator or organiser of fireworks displays and the firework is used for the purposes of putting on a display. The SSPCA would like to see firework control zones where there are year round restrictions on the use of fireworks in areas where humans or animals may suffer with no exemptions.

## **Blue Cross**

Blue Cross is a pet welfare charity that has been helping sick, injured, abandoned and homeless pets since 1897, helping thousands of pets in need every month, providing veterinary care, expert behaviour help and find them homes, as well as advice and education for current or future pet owners and pet bereavement support.

Blue Cross states that easy access to fireworks and poor enforcement of existing legislation is having a detrimental impact on animal welfare. A recent survey of 2,000 pet owners by Blue Cross found 70% of pets were affected by fireworks with dogs topping the list (64%) followed by cats (42%) and horses (17%). Owners reported their pets trembling with fear and being physically sick, while 45% said the unexpected bangs and noises left their pet hiding away for hours and 21% said their pets had been left scared to go outdoors for days afterwards.

Overall, Blue Cross welcomes the Fireworks and Pyrotechnic Articles (Bill) and we commend the Scottish Government for introducing it and for its long-term commitment to tackling the problems which can be caused by fireworks.

Blue Cross believes that the proposed licensing system, together with the mandatory online safety course and Firework Control Zones, could have a beneficial impact on pet welfare in Scotland. If administered and enforced efficiently and comprehensively, it should help to ensure safer use of fireworks, a greater appreciation of the adverse effects they can have on animals, and a reduction in the number of pets who are injured or even killed by fireworks in Scotland. The Bill is therefore a step in the right direction. However, Blue Cross would ultimately like to see a situation where fireworks are limited purely to licensed, public occasions and organised events.

With regard to the licensing system, Blue Cross has raised a number of questions which it would like the Scottish Government to address including:

Blue Cross would like more information on why the Scottish Government has decided to set the proposed license period at five years. Blue Cross are of the opinion that five years is too long and could be set instead at twelve months, as originally stated in the 2021 consultation paper.

The Bill allows for exemptions for “public fireworks display on behalf of a charitable, religious, youth, recreational, community, political or similar organisation.” Blue Cross states that “this seems a very capacious definition” and could prove a potential loophole. Would the Scottish Government clarify which organisations will qualify as meeting this description? How will their status be ascertained? Blue Cross does not want a situation to develop whereby a group of people can abuse the exemption by claiming to be an organisation simply in order to evade the licensing system and the Fire Control Zone restrictions.

## Professor Colin T. Reid

Professor Reid responded to the call for views as an individual and raised one particular issue with the Bill which he feels would benefit from some clarity being provided by the Scottish Government.

Professor Reid notes “with surprise” that neither the Bill nor the Policy Memorandum, makes any reference to the potential impact on the Bill’s proposals of the United Kingdom Internal Market Act 2020 (“the 2020 Act”). He points out that the overall purpose of the 2020 Act is to prevent restrictions in any one part of the UK from limiting access to the market for goods lawfully available in any other part, the “mutual recognition principle” at section 2 of the 2020 Act. He states that the exact application of the 2020 Act’s provisions are complex, particularly in identifying what counts as a “relevant requirement” (s.3) restricting the sale of goods in a way that is prohibited as contrary to that principle (s.2) and what may instead qualify as a “manner of sale requirement” (s.3(4)) that is permitted.

Professor Reid states that he can claim no great expertise on the application of the 2020 Act, but says that it seems at the very least, there should be some explanation and exploration of either a) how the provisions in the Bill that limit access to fireworks and other items do not fall foul of the 2020 Act’s limitations on new restrictions on sale or b) the likely impact in practice of the interaction between the market access provided by the 2020 Act and the provisions in the Bill.

A [recent report on the 2020 Act](#) published following an inquiry undertaken by the Scottish Parliament’s Constitution, Europe, External Affairs and Culture Committee, states that the 2020 Act has increased tension within the devolution settlement arising from the UK leaving the EU. The 2020 Act has also been rejected by the Scottish Government and the Welsh Government and by the Scottish Parliament, Welsh Senedd and Northern Ireland Assembly as imposing limitations on devolved competence without consent.

The Welsh Government sought a Judicial Review of the effect of the 2020 Act on devolved legislation. The Court of Appeal recently refused permission to bring that challenge, on the basis that the Court would not consider the impact of UKIMA on competence in the abstract, in the absence of specific Senedd legislation in which the issue arose. The Scottish Government has indicated that it supports the legal challenge.

The Cabinet Secretary for the Constitution, External Affairs and Culture told the Committee inquiry that the Scottish Government “have argued from the outset that it represents a fundamental change to the devolution settlement.” The Scottish Government’s view is that “it is a change that was achieved by stealth, and that it is chipping away at the powers and responsibilities of the Scottish Parliament.”

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