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The Scottish Parliament
Edinburgh
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Via: justice.committee@parliament.scot

24 May 2022

Dear Convener

FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) BILL

Following my written response to the Committee's Stage 1 report, and the subsequent Stage 1 debate on 3 May, there were a number of areas where I offered to provide further information to the Committee. These areas are as follows:

Firework Licence Application User Journey

The Committee asked the Scottish Government to set out how the licensing system will work and, in my response, I committed to providing a mock 'user' journey to set this out in more practical terms. This illustrative mock user journey is included at **Annex A** and sets out the key steps a person wishing to apply for a licence should go through, as well as the associated actions by the Scottish Government during this process, and indicates where regulations are required for commencement of the system to set out operational details. It also sets out the steps that would be taken should a licence be cancelled or revoked; and the information flows that will require to be established between the Scottish Government and other partners, including Police Scotland, the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service.

I would like to stress that this is an illustrative example only based on the requirements that are currently set out in the Bill, along with the intentions that have been set out in the accompanying documents with regard to other elements of the system. The system itself will be developed in close collaboration with stakeholders and the procurement of the most appropriate IT system; and will, of course, be fully informed and developed in line with the outcomes of the consultation which is required to take place under Section 19(1). This also means that by accepting the Delegated Powers and Law Reform Committee

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recommendation that section 18 is subject to affirmative, rather than negative procedure, regulations made using this power are now akin to a form of super affirmative procedure due to the requirement to consult that is set out in Section 19(1).

Black Market/Illegal Sales

The Committee raised concerns around the potential for measures within the Bill to lead to a growth in the black market for fireworks and an increase in illegal sales of fireworks. I agreed to provide the Committee with further information on the steps that will be taken to prevent this, should the Bill be passed.

As I outlined in my response to the Stage 1 report, the Bill has been carefully developed to mitigate against the displacement of fireworks sales in a range of ways. However, in order to provide additional reassurance around the practical steps that can be put in place to enhance existing enforcement processes, I have set out below further information that may be helpful.

In 2020/21, the Scottish Government provided additional funding to Trading Standards, via the Society of Chief Officers of Trading Standards in Scotland (SCOTSS), to carry out a targeted enforcement project to support the implementation of the Fireworks (Scotland) Miscellaneous Regulations 2021. This funding enabled a programme of comprehensive and effective education and advisory work to take place with firework retailers twinned with appropriate enforcement to support the implementation of the new regulations. This included advisory visits from local Trading Standards officers to provide advice and guidance on the new regulations to all retailers supplying fireworks in Scotland, research into both the illicit online sale of fireworks in Scotland and to identify the number and location of legitimate online suppliers into Scotland from the rest of the UK and Europe, and a programme of test purchasing to check compliance with the new regulations.

While this work was carried out to support implementation of the 2021 regulations, it was designed to ensure that the findings would be of wider value in relation to the enforcement of fireworks regulations more generally, and it will therefore be of ongoing value if the Bill is passed by Parliament and the measures within it come into force.

I can confirm that my officials are continuing to engage with Trading Standards on the learning from this work to discuss what additional steps could be put in place to mitigate against any potential increase in illegal/illicit fireworks and to track this going forward. This has identified a number of potential areas of work:

- **Illicit online sales.** As part of the funding that was provided, extensive and sophisticated online searches were carried by local authority e-crime specialists to identify the scale of illicit online sales of fireworks in Scotland. This research confirmed that not much illicit supply of fireworks happens within Scotland in this way, and that this is not a key source of fireworks. There is likely to be value in repeating this methodology at regular intervals, to coincide with the introduction of measures within the Bill, to identify any change in this as a source of illicit fireworks and to enable appropriate mitigations, if required, to be put in place.
- **Sales of legal firework products from outside of Scotland.** The research identified fifty businesses elsewhere in the UK that supply to Scottish buyers, and a further three in Europe. There is likely to be value in building on the engagement that took place to support the 2021 regulations with retailers and respective local Trading

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Standards officers in England, to ensure retailers have a full understanding of their duties in respect of supplying fireworks to consumers in Scotland. In addition, there is likely to be value in putting in place a programme of test purchasing to assess whether the advice and guidance provided has been acted upon.

- **Interaction with carriers and delivery companies.** In order to build on engagement with retailers outside of Scotland, it is likely that specific work in relation to the interaction with carriers and delivery companies would be of value – both in terms of the provision of information and guidance in relation to their duties, and in relation to test purchasing to ensure compliance.
- **Border Force.** SCOTSS have engaged in very initial discussions with Border Force to identify what proactive work could be undertaken at ports and Fast Parcel outlets to systematically look for imported fireworks that are falsely classified as other non-hazardous goods and use existing techniques to target packages for checks. I intend to follow this up with my counterparts in UK Government.

I can also confirm that SCOTSS are in the process of engaging with local authorities to identify existing data in relation to seizures of illicit fireworks and the volume of legal fireworks that are either seized, destroyed or returned to the manufacturer. While this information is not currently routinely recorded and compiled, and there are inherent complexities in doing so in a robust and consistent matter, this will inform what process can be put in place to track and report on this on a regular basis to ensure any change in activity is identified and tracked as the measures within the Bill are implemented.

I hope this additional information in relation to the practical steps that can be put in place to both track and prevent the illegal acquisition of fireworks should the Bill be passed provide additional reassurance to the Committee as well as demonstrating the Scottish Government's ongoing commitment to continuing to support enforcement agencies to build on and enhance existing enforcement processes as regulatory changes are brought forward.

The Committee will also wish to be aware that I have written to Paul Scully MP, Minister for Small Business, Consumers and Labour Markets, to ask for an update on work underway by the Office for Product Safety and Standards and Local Authority Trading Standards to reduce the flow of unsafe goods into the UK, and to request a further discussion on what more can be done on this issue. I intend for this to cover the issue above in relation to Border Force, as the prevention and detection of illegal firework imports at borders and ports will be vital in ensuring such products do not make their way onto the black market. I also took this opportunity to ask for an update on the research programme that has been underway on the testing of the decibel limit of commonly used fireworks in order to progress further discussion about what more can be done to establish and promote the use of lower noise fireworks.

I have also written to the Chief Constable, Iain Livingstone QPM, Police Scotland, and to the Chair of SCOTSS, to ask for an outline of what steps will be put in place in relation to black market/illegal sales, in line with each organisation's respective enforcement duties, if the Bill is passed by Parliament and as the measures are implemented. In addition to what is outlined above, I will, of course, provide the Committee with appropriate updates as required.

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Compensation

This would be a targeted scheme and would be limited to only those businesses that are wholly or mainly concerned with the supply, distribution or importation of fireworks in Scotland; and, as I have previously set out, the Scottish Government is aware of 10 businesses in Scotland who either hold a licence to supply fireworks all year round or who import fireworks into Scotland, and who therefore may be eligible for support.

As I outlined in the Scottish Government's response to the Stage 1 report, I accept the Committee's recommendation that work on the scheme is commenced as soon as possible if the Bill is enacted, and in advance of the restricted days of supply and use provisions coming into force. As the Committee noted in its report, this will be important to lay the groundwork for how such support can be delivered in a timely and proportionate way, helping such businesses adapt and respond in light of this change.

This will, of course, involve working closely with such businesses to identify and understand any potential negative economic impact. Following this, the detail of the scheme will be developed and necessary regulations will be laid in Parliament.

During the Stage 1 debate, I was asked specifically whether any compensation scheme would recur annually or whether it be a one off payment. There are two fundamental issues that will be required to be worked through in order to provide this level of detail. The first will be to work with such businesses to identify and understand the potential negative economic impact of restricting the days of supply of fireworks, and the second will be to set out the detail of the scheme including: the criteria to whom and in what circumstances support is payable, the calculation of support, and the procedure to be followed in connection with claiming support. Should the Committee support the amendment that I have brought forward at Stage 2, on the recommendation of the Delegated Powers and Law Reform Committee, regulations made under section 24 of the Bill will now be subject to the affirmative procedure, affording a higher level of scrutiny to Parliament as these regulations – and therefore this detail – is set out and finalised.

Some of the businesses that may be affected are small, family-owned businesses and it is right that full consideration is given to how they might be supported as a result of any significant impacts brought by the restricted days of supply provision within the Bill.

Engagement with Major Retail Outlets

During Stage 1 the Committee asked the Scottish Government to set out how it plans to liaise with major retail outlets in Scotland on whether they will continue to sell fireworks once the permitted days of sale and use come into force, and report back to Parliament before Stage 3 on these discussions.

My officials have established a working group of major retail outlets and representative retailer bodies as a forum for ensuring the measures within the Bill are understood and to discuss their potential impact. This forum will also provide the opportunity to undertake interim discussions on implementation of the measures. The Group comprises representatives from Aldi, Asda, Lidl, Morrison's and Tesco, along with representative from the Scottish Grocers Federation and the Scottish Retail Consortium.

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The first meeting of the Group was held on 12 May. Members recognised the broad alignment of the new restricted days of supply with existing selling periods and a number of them indicated that, while the new permitted days are shorter over the bonfire period, they do not currently use the full selling window that is currently permitted. I can confirm that none of the representatives present indicated that they intend to cease supplying fireworks should the measures within the Bill be implemented.

The meeting provided a helpful opportunity to undertake interim discussions on detail that will need to be considered and worked through for implementation, including how retailers can update and amend their existing processes should the Bill be passed and provisions implemented. The Group were also keen to ensure that members of the public are aware of the law before they approach the store, so that any flash-points or unacceptable customer behaviour can be avoided.

This engagement was welcomed by the retail outlets and will continue to ensure ongoing discussion of the Bill as it progresses through Parliament and for further discussion on implementation should the Bill be passed. The Group were also keen to be involved in campaigns and messaging which will accompany the changes brought by the Bill and I am grateful, in advance, for their support in this.

I hope this additional information is helpful.



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FIREWORKS LICENCE USER JOURNEY

Attached as a separate document.

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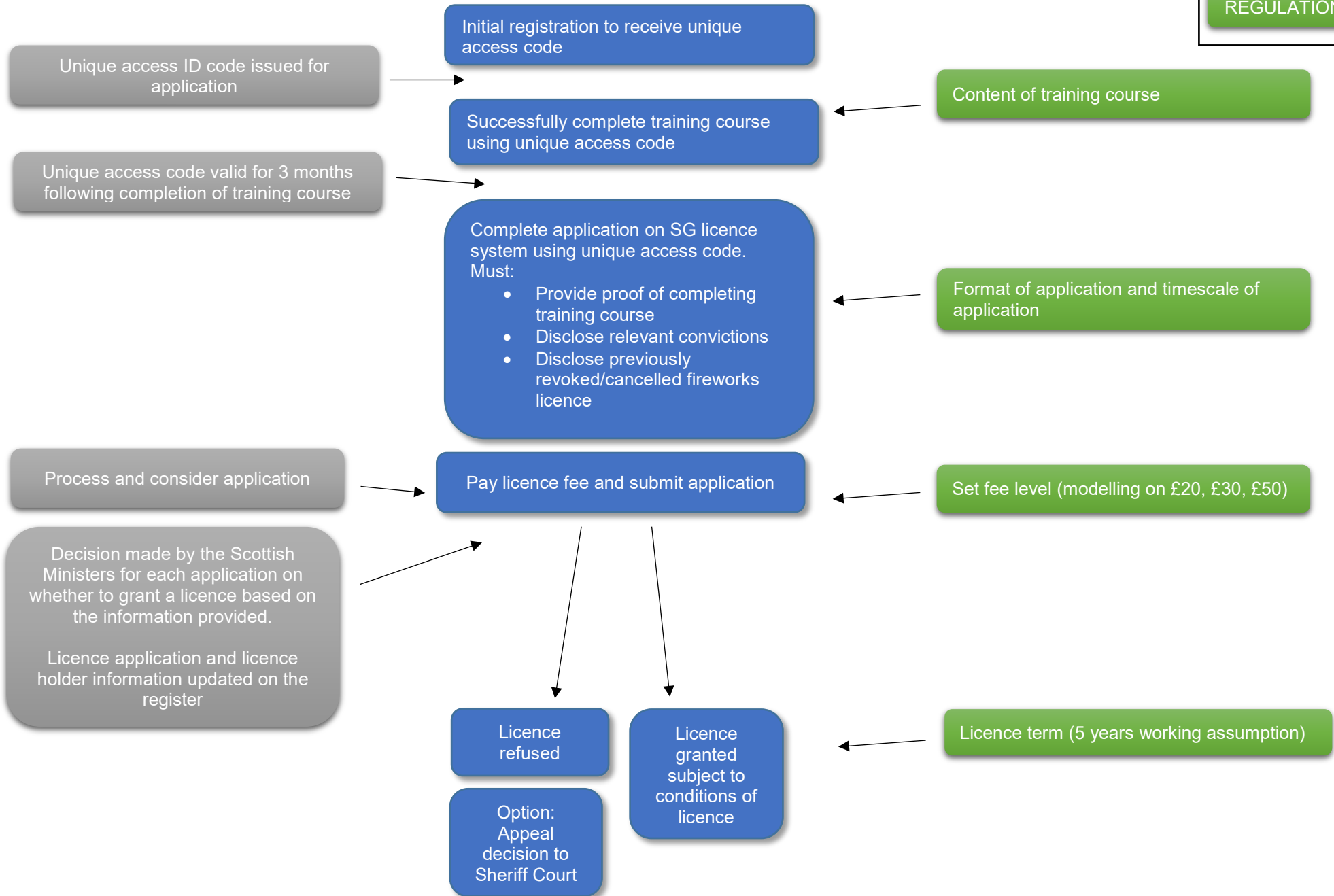


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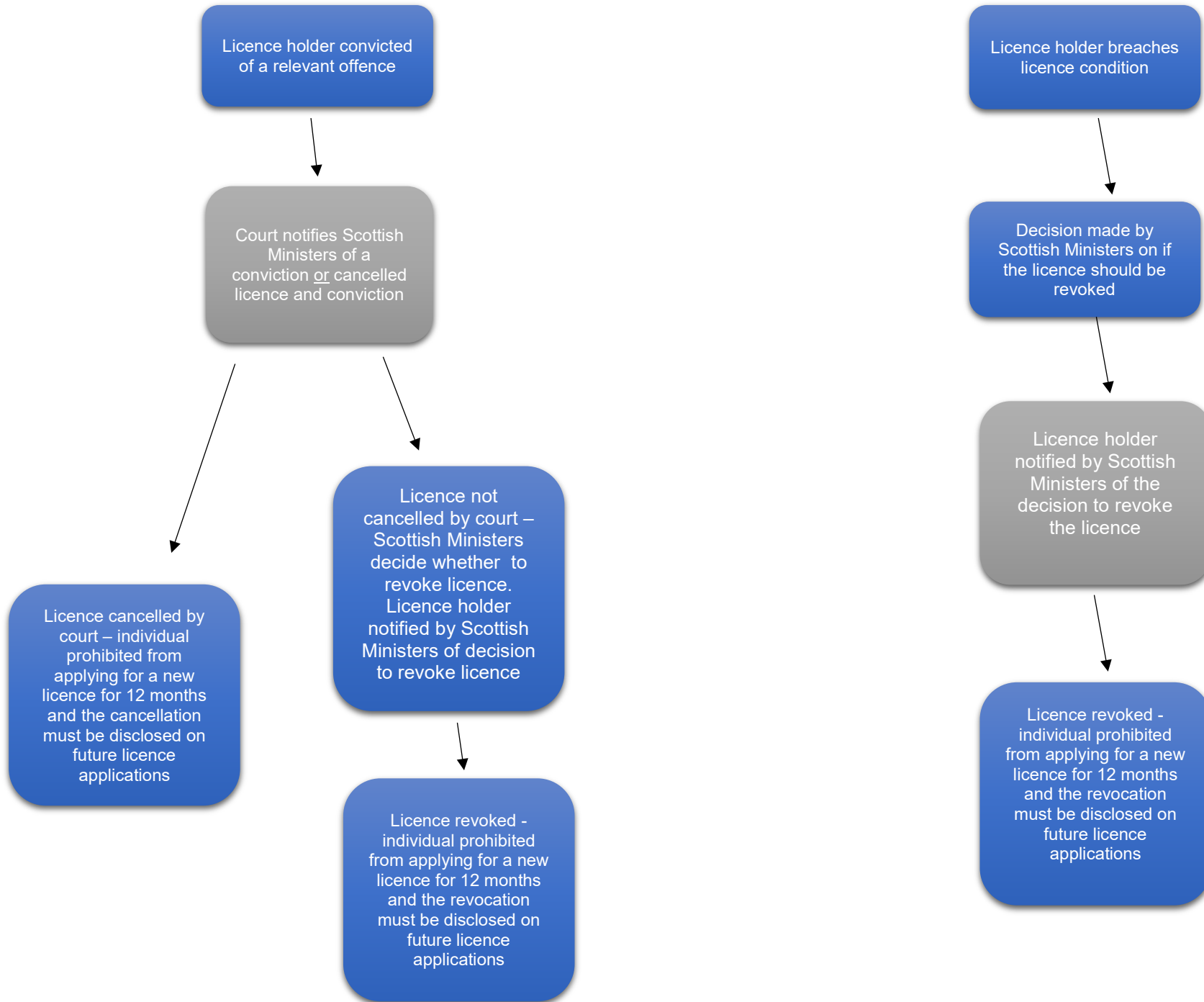
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FIREWORKS LICENCE – STANDARD USER JOURNEY

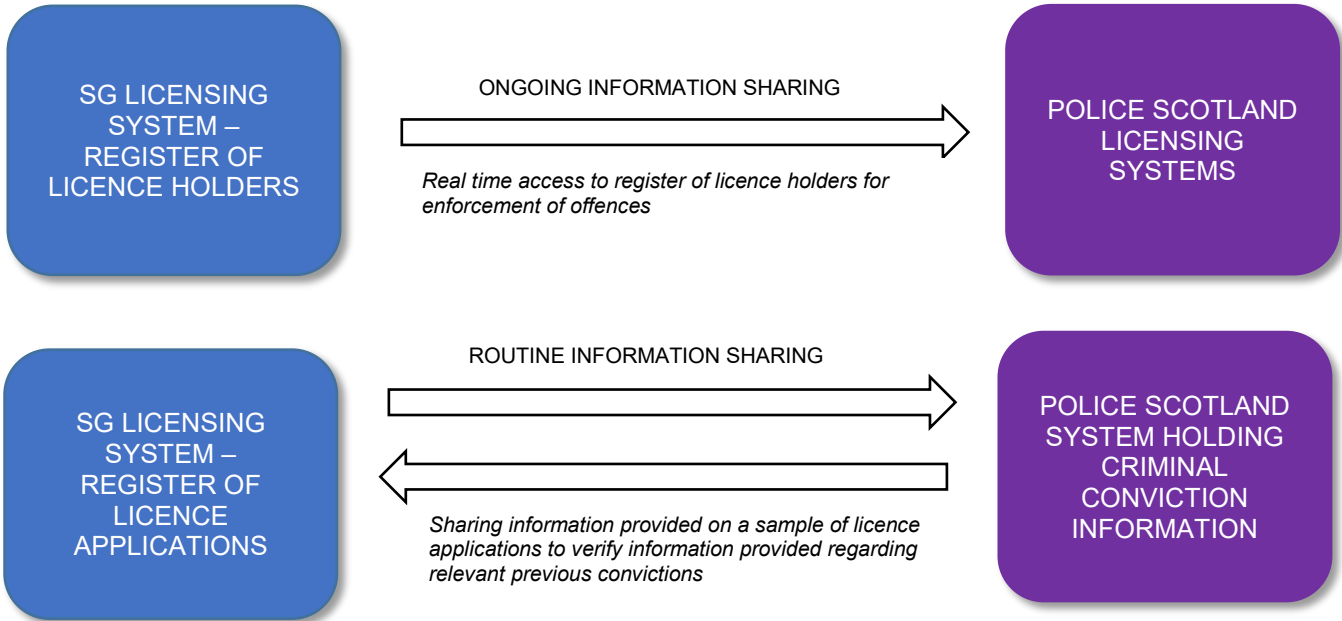


ADDITIONAL STEPS – WHEN A LICENCE IS CANCELLED OR REVOKED

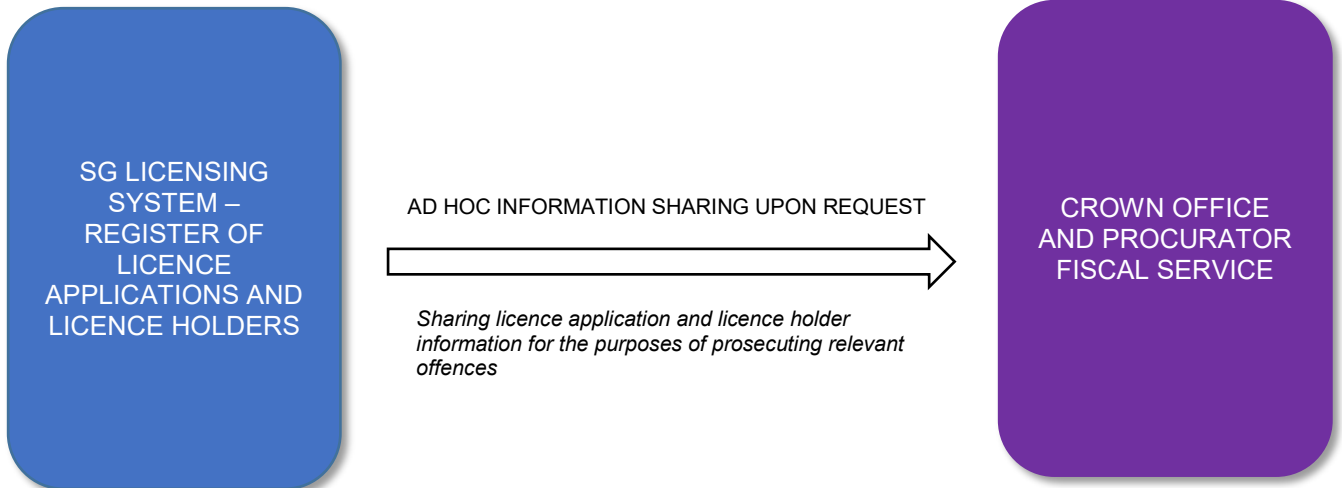


LICENSING – INFORMATION FLOWS

SG / Police Scotland



SG / COPFS



SG / Scottish Courts and Tribunals Service

