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Audrey Nicoll MSP
Convener, Criminal Justice Committee
Justice Committee Clerks
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By email

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Dear Convener,

FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) BILL – POLICE SCOTLAND SUPPLEMENTARY INFORMATION

I refer to the ongoing scrutiny of the above Bill by the Criminal Justice Committee and wish to bring to your attention some additional information to supplement the oral evidence given recently by Chief Inspector Nicola Robison.

In relation to the illicit use of fireworks and pyrotechnics, Police Scotland's preferred solution is the use of education and engagement to promote a prevention message and to encourage users to act responsibly. It is therefore important to note that we do not seek additional police powers without a firm belief that they are necessary and proportionate to the risks posed by fireworks and pyrotechnics. However, it is our belief that for those individuals who remain resistant to prevention messaging, additional enforcement options are necessary.

Police Scotland's view is that current legislation has gaps which, if filled, would allow our officers to deal with the illicit use of fireworks and other pyrotechnics more proactively and more safely. As such, Police Scotland has for over five years been exploring the potential for the introduction of a possession offence in relation to pyrotechnics, along with an associated search power. Similarly, Police Scotland has been working with Scottish Government and other partners for many years to enhance the safe use of fireworks.

At the Committee session on 21 March 2022 there was discussion regarding the options for legislative change in relation to pyrotechnics. This firstly related to the possession offence as published in the Bill in relation to specific types of event and secondly there was discussion regarding a 'simple possession' offence in relation to public places with a 'lawful authority / reasonable excuse' clause, as favoured by the Scottish Police Federation (and referred to as a blanket ban during the evidence session). It is anticipated both would be accompanied by an

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associated search power and it is desirable that both would be accompanied by a presumption of contents clause.

Police Scotland acknowledges the care that has been taken to ensure the provisions within the Bill are proportionate and also concedes that the evidence available from police systems is largely limited to the risk of fireworks and pyrotechnics at various events, rather than across society more generally. As an evidence and rights-based organisation, Police Scotland must be mindful that, while having the wider powers referred to as a blanket ban is attractive in terms of being a practical method of reducing the impact of the illicit use of such articles, the majority of people use these articles safely and responsibly.

However, Police Scotland in its previous submission to the Committee highlighted that its own short life working group in 2017 identified that a 'simple possession' offence with a 'lawful authority / reasonable excuse' clause would be beneficial. Police Scotland also highlighted that there may be operational challenges with the Bill as published around, for example, the definition of a public assembly, evidencing that a person is in the immediate vicinity of an event and the need for the legislation to be readily amended to address other emerging problematic classes of events or patterns of behaviour.

It is likely that a 'simple possession' offence for pyrotechnics in a public place with a 'lawful authority or reasonable excuse' clause would be more straightforward for Police Scotland to apply than the provisions in the Bill and we are confident that this would still strike a balance between continuing to permit legitimate use of pyrotechnics, whilst addressing their illicit use.

Restricting the 'simple possession' offence to public places provides a safeguard against any over-reach into individuals' private space, while the 'lawful authority / reasonable excuse' clause gives scope for professionals to continue to use these articles and for leisure users such as sailors, to have the safety equipment they need. This type of clause is well-established in policing and it is therefore anticipated that it could be implemented without any need for extensive additional training or any significant change to operational practices. A wider 'simple possession' offence also removes concerns over the timescales for reacting to emerging patterns of behaviour in circumstances where additional types of event or other societal contexts see an increase in the illicit use of pyrotechnics.

For these reasons, Police Scotland would welcome any proposals to amend the Bill to include a 'simple possession' offence and our position on this has been communicated to the Scottish Government for consideration.

In relation to cross border matters, the introduction of new legislation as outlined in the Bill, may generate occasions where individuals will attempt to circumnavigate the restrictions to their own advantage. An example of this could be cross border supply, where individuals or businesses may look to other areas within the United Kingdom to obtain fireworks out with the restricted dates imposed by regulations outlined in this Bill, resulting in potential stock piling. If intelligence of this nature were received, Police Scotland would work with partners, primarily Local Authority Trading Standards, to assess the circumstances and take appropriate and proportionate action.

The potential for cross border movement to circumvent legislation in Scotland is not new and was recently considered in relation to the Minimum Unit Pricing of alcohol where Public Health Scotland found there was little evidence of this affecting alcohol consumption in Scotland ([Cross-border purchasing unlikely to affect alcohol consumption - News - Public Health Scotland](#)).

Similarly, differing regulations in Scotland and England, introduced to reduce the spread of Coronavirus, created a potential for cross border displacement. This was monitored by Police Scotland and partners and any issues were addressed as and when they were identified. Any

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cross border issues which arise as a result of the regulations proposed in the Fireworks and Pyrotechnic Articles (Scotland) Bill will also be considered and addressed through a multi-agency approach, as appropriate through established channels.

If you require any further information, please do not hesitate to contact me.

Yours sincerely

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