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Audrey Nicoll MSP
Convener
Criminal Justice Committee
Scottish Parliament

By email

6 April 2022

Dear Convener,

Thank you for the opportunity for my officials and I to give evidence to the Committee on 30 March in respect of the Fireworks and Pyrotechnic Articles (Scotland) Bill, and for your follow-up letter. I have responded to the Committee's follow-up questions in the attached Annex and I hope my responses are helpful.

At the session, I committed to providing additional information from the Crown Office and Procurator Fiscal Service (COPFS) in relation to charges and convictions for firework related offences, as well as firework related incident data from Police Scotland. As I outlined at the session, the Scottish Government published an [evidence review](#) in 2019, to coincide with the publication of the 2019 consultation and representative opinion poll. Section 4.5 of the evidence review sets out that the most commonly reported fireworks related charges in Scotland are throwing, casting or firing a firework in a public place and underage possession of adult fireworks. It sets out the number of firework related charges between 2002/03 and 2018/19 and how these charges were dealt with by COPFS.

More recent available data from the COPFS and from National Statistics on Criminal Proceedings in Scotland show that:

- Over the last six years (2016/17 to 2020/21) the most common firework related charges relate to throwing, casting or firing a firework in a public place, under 18 in possession of an adult firework, and use of an adult firework at night. The table below sets out the number of charges annually over this period:

Year	Number of charges
2016/17	16
2017/18	35
2018/19	32
2019/20	24
2020/21	29
Total	136

Source: Crown Office and Procurator Fiscal Service

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- Between 2010/11 and 2019/20, representing the latest available data, 297 people were either proceeded against in court or given a non-court disposal (such as a fiscal fine, restorative justice or recorded police warning) for fireworks related offences.
- Between 2010/11 and 2019/20, 44 people were proceeded against in court for fireworks related offences, of which almost nine in ten (86%) were found guilty. Of the 38 people convicted of a fireworks related offence over this period, over three fifths (63%) were given a fine, over a quarter (26%) were issued other sentences (such as an admonishment). The average fine issued for these offences was £146. All convicted individuals were male with an average age of 22 years.
- Of the 253 people issued a non-court disposal, almost half (48%) were given an Early and Effective Intervention, with around fifth each issued a Fiscal Fine (21%) or Fiscal Warning (20%). The remaining 11% were issued either a Police Restorative Justice Warning (5%), Recorded Police Warning (4%) or Police Formal Adult Warning (2%).

I would like to highlight that it is not possible to directly compare the charges data from COPFS and the data on proceedings from the National Statistics on Criminal Proceedings.

In relation to firework related incidents reported to Police Scotland, data was published by the Firework Review Group in their [final report](#). Page 11 sets out that over the 2019-20 fireworks period there were around 900 firework related incidents reported to Police Scotland, and that there is no clear evidence that the number of firework related incidents reported to the police is changing.

In addition, data covering the 2021/22 fireworks season (15 October to 12 November) shows that there were 609 fireworks-related incidents reported to Police Scotland. This is 365 fewer incidents than in 2020/21 (when figures peaked), a fall of 36.6%. The 2021/22 figure is the lowest recorded for the time series (beginning 2015/16), and follows two consecutive increases, before which there was no clear trend.

Table 1: Firework-related incidents reported to Police Scotland, 2015/16-2021/22

	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
15 Oct – 12 Nov (inclusive)	798	732	924	885	911	974	609

Source: Police Scotland, STORM

Should the Committee need any further information please do not hesitate to contact me.



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Fireworks and Pyrotechnic Articles (Scotland) Bill

Criminal Justice Committee Evidence Session 30 March – follow up questions

Proxy purchase provisions

Q: At the meeting, you and your officials indicated that making this particular change to close the perceived loophole required primary legislation if done in Scotland and there were no alternative legislative avenues available to you under the powers available to the Scottish Parliament. Can you confirm that is the case?

A: The commercial supply of Category 2 or 3 fireworks to persons under 18 is prohibited under the Pyrotechnic Articles (Safety) Regulations 2010. It is also prohibited for any person under 18 to possess an adult firework in a public place under the Firework Regulations 2004. However, when an adult makes fireworks available to a person under 18 this criminalises the young person, via the prohibited possession offence. The introduction of this offence will ensure that adults who supply fireworks or pyrotechnic articles to children, under any circumstances, are held accountable.

The Scottish Ministers have limited powers to make secondary legislation under the Fireworks Act 2003. The powers under sections 2 and 4 (and related ancillary powers in sections 11 and 12) of that Act were conferred on the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2004.

Section 2 of that Act provides for the making of Fireworks Regulations, and section 4 sets out detail of the provision that may be included in such Regulations. Section 3 of the Fireworks Act 2003 provides that Fireworks Regulations may include provision restricting the supply of fireworks to persons under a certain age. However, section 3 is not a power that has been transferred to the Scottish Ministers as outlined above.

Even were the powers in section 3 exercisable by the Scottish Ministers, Section 1 of the 2003 Act provides that references in that Act to “supply” of fireworks do not include supply other than in the course of a business. These powers also relate only to fireworks, and do not apply to the supply of other pyrotechnic articles.

Q: Your officials stated though, that such a change could be made by the UK Government (I believe they said by secondary legislation). Have you discussed such a change with the UK Government? If so, what was their response? If not, can you outline the reason there was no engagement.

A: I met with my counterparts from UK Government (Paul Scully MP, Minister for Small Business, Consumers and Corporate Responsibility) and Welsh Government (Lesley Griffiths MS, then Minister for Environment, Energy and Rural Affairs) in January 2021 to discuss the work I am progressing in Scotland following the recommendation of the Firework Review Group. At this meeting, in the absence of a commitment by the UK Government to tighten firework regulations in England and Wales, the Welsh Government requested that the UK Government consider transferring the relevant powers to Welsh Ministers to enable Wales to take forward regulatory change in relation to fireworks; and it is my understanding this has not been forthcoming as yet. We have engaged with the UK Government

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throughout our journey on firework safety but these engagements have not prompted the UK Government to bring forward any changes to existing legislation.

As set out above, the powers of the Scottish Ministers are limited compared to the powers of the UK Government under the 2003 Act. It would, of course, be a matter for the UK Government to reach a final view on how they could exercise those powers.

Delivery and implementation

The Bill will establish a package of detailed systems to address firework and pyrotechnic use and misuse. These will require substantial further guidance and consultation, and involve multiple stakeholders (including the police and fire services, local authorities, the fireworks and pyrotechnic retail industry, trading standards, community safety partnerships).

Q: How do you plan to effectively coordinate the logistical delivery and implementation of these systems and clearly communicate them to the public? How will Ministers monitor the delivery and implementation and report to Parliament and the wider public?

A: The Bill has been developed over the course of 3 years with significant public consultation, evidence gathering and involvement of stakeholders. As with all new legislation and new processes and procedures we will continue that approach in taking forward implementation. In terms of communication, this will be vital. People need to clearly understand when changes in the law are implemented and what this means for them. A key part of this will be utilising and building on the three established annual communication campaigns the Scottish Government runs every year; alongside the networks and routes of communication of our partner agencies, including local authorities and community councils. As set out in the Business and Regulatory Impact Assessment, it is intended that a review of the measures introduced will be undertaken within 3-5 years of implementation to check that requirements are being met and that the legislation is working effectively. This will, of course, be in addition to regular monitoring of the impact of the provisions by partners such as Police Scotland and Trading Standards.

Firework control zones

Q: How do you envisage firework control zones contributing to a reduction in the unpredictable use of fireworks? Is there evidence that such zones have been effective in reducing unpredictable use of fireworks in other jurisdictions?

A: The Bill provides local authorities with the power to designate a place, or places, within its area as a firework control zone, where it will be an offence for the general public to use F2 and F3 fireworks, including on private property. It will still be possible for public firework displays, whether organised by a professional firework operator or by a community group, to take place within a firework control zone, subject to local licensing arrangements. This is to ensure that well organised public displays can continue. This is in line with the clear message from the 2019 public consultation where the value of well organised public displays was highlighted in bringing communities together and having positive community benefits.

It will also be possible for members of the public to arrange for a professional to organise and put on a private display within a firework control zone. I consider that this represented a balance between allowing certain firework events to continue and reducing the impact on

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businesses involved, while reducing high levels of unpredictable firework use. However, as I outlined to the Committee, I remain open to the views of the Committee on this; and I am open to considering whether this exemption should be retained.

Overall, firework control zones will mean that the use of fireworks may still take place, but their use overall within any designated area will reduce, along with the associated noise and disturbance including, for example, within set distances of specific locations such as animal shelters, livestock or hospitals to protect those who may be adversely impacted by the noise and disturbance of fireworks. In operation, clear communication will be vital to ensure that people understand if they are in a control zone and the implications of that, as well as to ensure an understanding of existing legislation (i.e. that they are not able to use fireworks in a public place in any area – whether it is designated as a zone or not).

[International case study research](#) was commissioned by the Firework Review Group while it was undertaking its work. This was to consider the approaches that were in place internationally to, where possible, identify the actual benefits and drawbacks experienced by other countries with similar measures in place to those being considered by the Review Group. There were two countries included within the international case study research where restrictions were introduced on the use of fireworks within certain areas – Germany and the Netherlands. In Germany, firework free zones were introduced in 2019 in Berlin and Munich. While indications are they were successful, they are not directly comparable to what is included within the Bill, as they included restricting the use of fireworks in public places which is already illegal here. In the Netherlands, a number of areas have introduced restrictions on the use of fireworks near shopping centres, nursing homes, animal shelters, and historic buildings and monuments. These have been introduced alongside a range of other restrictions so it is not possible to determine any definitive impact.

Q: Similarly, how do you envisage firework control zones contributing to a reduction in the misuse of fireworks?

A: Local authorities will be able to take into account particular vulnerable populations, as well as concerns about disorder and anti-social behaviour connected with firework use in a particular area, when determining whether to designate an area. While existing legislation is in place, and will remain in place, prohibiting the use of fireworks in a public place; firework control zones provide an additional tool for national and local community safety partners when considering the range of preventative and diversionary strategies they utilise in planning and preparing for the safe and considerate use of fireworks within communities.

Q: Can you expand on the criteria for, and consultation process to be undertaken prior to an area being designated as a firework control zone? For example, who will be consulted and who will make the decision on whether an area is to be designated as a firework control zone?

A: The Bill sets out a robust process for designating a firework control zone that requires a local authority to:

- Set out and publish its proposal for designating a zone, including the days the zone is to have effect;
- Undertake consultation on these proposals before a zone can come into effect;

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- Publish its decision following the consultation and do this at least 60 days before the zone can come into effect; and
- Carry out a review of the operation and effectiveness of its zones, and publish the findings from this.

The ultimate decision on designating a zone lies with the local authority; and the Bill sets out a robust process that a local authority must follow when considering and making such a designation. The Bill does not set out any specific mandatory consultees, but sets out that this should include people who live or work in the proposed area, other members of the local community who live in or near the proposed area and any other bodies the local authority considers relevant before making a designation in respect of that area.

Section 30 of the Bill enables further requirements to be set out, if required, in relation to the consultation process and the reviewing and reporting on the operation and effectiveness of zones by local authorities. It is intended that the guidance will be developed to provide further detail to local authorities on operationalising firework control zones and that this will cover issues such as:

- The types of issue which may be suitable to be addressed through firework control zones;
- The evidence that a local authority may consider in deciding whether to designate an area as such a zone;
- The criteria to determine whether a control zone is necessary and proportionate; and
- Examples and good practice in relation to those who should be consulted as part of the process of considering designation.

Q: The Bill provides that local authorities will be required to review the operation and effectiveness of firework control zones, but it does not specify when such reviews should be carried out. Could you confirm whether there will be a limit on the length of time that an area can be designated as a firework control zone? Could you also confirm the criteria that will be used to determine whether a firework control zone is still required in a certain area? Will that criteria be uniform across the whole country, or will local authorities be given the power to determine such criteria at a local level?

A: The Bill sets out a robust process that a local authority must follow for designating a firework control zone, including mandatory consultation and review processes, as outlined above. While the Bill does not set a maximum time a control zone can be in place for, these requirements mean that the evidence and impact will be reviewed regularly, ensuring that control zones are in place only while there is a strong justification to have them. Section 29 (4) of the Bill sets out that the Scottish Ministers have the power to impose and specify a minimum frequency for reviews, if this is required.

As outlined above, it is intended that guidance will be developed to provide further detail to local authorities on operationalising firework control zones and that this will cover issues such as the criteria to determine whether a control zone is necessary and proportionate both in relation to the initial designation and to the review of such zones.

The accompanying guidance will be important in supporting local authorities to deliver a degree of consistency of approach between different areas, while having discretion to apply

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their own approaches to reflect local circumstances. This guidance will be developed in collaboration with local authorities, community groups and other relevant stakeholders.

Q: Can you set out the Government's timeline for having the necessary regulations in place to allow local authorities to designate areas as firework control zones?

A: If the Bill is passed, time will be required to develop and publish guidance, and prepare any required secondary legislation, to support local authorities. It is therefore expected that local authorities will have the power to consider designating firework control zones during the 2023/24 financial year.

UK Internal Market Act 2020

Q: Can you confirm if discussions have taken place with counterparts in the UK Government on the possibility of the Bill engaging provisions within the UK Internal Market Act 2020? ('the 2020 Act')

A: As highlighted earlier, I met with my counterparts from UK Government (Paul Scully MP, Minister for Small Business, Consumers and Corporate Responsibility) and Welsh Government (Lesley Griffiths MS, then Minister for Environment, Energy and Rural Affairs) in January 2021 to discuss the work I am progressing in Scotland following the recommendation of the Firework Review Group. At that stage, the UK Government were working on a proposal for the way in which the exclusion process within the 2020 Act may operate. Given the lack of tangible progress following the request from the Welsh Government for the transfer of relevant powers in relation to fireworks, and our fundamental opposition to an Act that was imposed without consent, undermining the devolution settlement, I did not consider an exemption to the Internal Market Act to be an option. My priority was to progress the legislation that is required in a timely and effective way.

Q: Has the UK Government raised any concerns with Scottish Ministers about the provisions in the Bill possibly interacting with the 2020 Act, and if so, what are they, and how will they be resolved?

A: I can confirm that no concerns have been raised with me from my counterparts at Westminster in relation to the Bill provisions interacting with the 2020 Act.

Q: Are you confident that the provisions in the Bill will not be subject to challenge with regard to the provisions of the 2020 Act?

A: The potential impacts of the Internal Market Act have been fully considered as the Bill has been developed; and we are confident that the provisions within the Bill adhere to the requirements that are set out in that Act. For example, the licensing system has been designed specifically to ensure that it does not engage the mutual recognition principle which sets out that goods that have been produced or imported into the UK should be able to be sold in any other part of the UK, free for any relevant requirement.

Financial issues and delegated powers

During our visit to Blackburn the Committee heard of the importance of proper funding for community police and fire liaison officers, community safety partnerships and local community groups to deliver on effective culture change around the

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misuse of fireworks.

Q: Could you please confirm whether you will be seeking additional funding from Government for the period of implementing and delivering the new fireworks provisions to support these partners in implementing the provisions, or will key partners be expected to find resources from within their existing budgets?

A: Additional funding has been included in the Safer Communities budget line for 2022/23 to support immediate development and implementation of the measures within the Bill. The main anticipated costs will be commissioning the IT licence system for the fireworks licensing system and managing this process; and, of course, careful consideration will be given to other partners and agencies that may require additional funding.

In their report to the Committee on the Bill, the Delegated Powers and Law Reform Committee has recommended that four of the order making powers in the Bill which are subject to negative procedure be amended to affirmative procedure so that they receive a more detailed level of parliamentary scrutiny.

Q: Could you please confirm whether you accept these recommendations and, if so, whether you intend to bring forward the necessary amendments at Stage 2?

A: I welcome the report from the Delegated Powers and Law Reform Committee, and thank them for their consideration of the regulation making powers contained within the Bill. I am carefully considering the recommendations made by the committee which relate to amending regulation making powers from the negative to affirmative procedure; and will make a decision on this in due course. I accept, and understand, that Parliament may wish to undertake more detailed scrutiny of how the fireworks licencing system operates as well as the compensation scheme; and will give this very careful consideration.

The Finance and Public Administration Committee highlighted comments to the Committee which it received from the Scottish Fire and Rescue Service on a factual error in the Financial Memorandum.

Q: Could you please confirm whether you intend to amend the Financial Memorandum at Stage 2 to clarify the issue raised?

A: I am aware of an error within the Financial Memorandum in relation to the number of fire incidents with fireworks as a contributing factor and I thank the Scottish Fire and Rescue Service for highlighting this. The Policy Memorandum has the correct figure of 342 incidents over the last 10 years while the Financial Memorandum incorrectly states this as an average of 342 incidents annually. I will arrange to have the Financial Memorandum corrected as soon as possible.

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