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Scottish Parliament
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Dear Convener

Fireworks and Pyrotechnic Articles (Scotland) Act 2022: Part 5 – Pyrotechnic Possession Offences

Thank you for your letter of 29 June 2023, seeking further clarification on points raised in my letter to the Committee of 8 June 2023. The Committee is interested in the imposition of conditions under investigative liberation, asking if Section 16 of the Criminal Justice (Scotland) Act 2016 is the relevant legislation. They are also interested in the use of Football Banning Orders (FBOs) as they relate to the pyrotechnic possession offences. I hope the following information is helpful and provides clarification on these points.

As I stated in my previous letter, specific operational policing matters are not matters I can comment on. When the Committee met on 3 May 2023, they asked about the process Police Scotland might follow upon detection of an offence being committed. Operationalising and enforcing the pyrotechnic possession offences in the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 is a matter for Police Scotland. However, I can confirm that the Committee is correct in their understanding of the legislation. Section 16 of the Criminal Justice (Scotland) Act 2016 enables an appropriate constable to impose conditions on a “Not Officially Accused Person” upon release from custody, if the appropriate constable considers it necessary and proportionate for the purpose of ensuring the proper conduct of the investigation (and providing certain other conditions as set out in that section are met). In addition, Section 26 of the Criminal Justice (Scotland) Act 2016 enables a constable of the rank of sergeant or above to impose conditions on an “Officially Accused Person” released from police custody on the terms of an undertaking to attend at court if considered necessary and proportionate.

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Turning to the use of Football Banning Orders (“FBOs”) and the Committee’s question about their use for those committing pyrotechnic possession offences under the new legislation. While the interpretation of the law is a matter for the Scottish courts, as I said in my previous letter, it is unlikely that the offence of possessing a pyrotechnic article would meet the threshold for making an FBO under the current legislation. The Police, Public Order and Criminal Justice (Scotland) Act 2006 sets out the conditions necessary to make an FBO. For an FBO to be made in connection with a conviction for an offence, those conditions are that the offence relates to a football match, and that it involves the person who committed the offence engaging in violence or disorder. Therefore, change to the legislation would be needed if FBOs were to be an available tool in the situation outlined by the Committee.

That is why I have asked my officials to investigate the potential for expanding the conditions in which an FBO could be made, and specifically whether such an expansion should include circumstances such as repeated convictions for possession of pyrotechnic articles. This will include consideration of whether legislative change is necessary, appropriate and proportionate and I would not want to pre-empt the outcome of this work. I am happy to provide a written update to the Committee when work has progressed further.

I hope that the above information is helpful.



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