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Dear Convener

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

At the Committee's meeting of 3 May 2023, where it considered evidence on the secondary legislation required to commence the pyrotechnic possession provisions of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 ('the Act'), I gave a commitment to write to the Committee providing further information on two related issues.

Firstly, the Committee were interested to know of any powers to ban a person from entry to a venue (sporting or music) who has just been detained for a search under Section 41 of the Act and found in possession of prohibited articles.

The Act itself does not provide for this specific outcome (a ban on entry to a venue or event upon an individual being found to be in possession of a pyrotechnic in a public place). The process followed by Police Scotland upon detection of such an offence is an operational policing matter, and the Committee will understand that this is not something I can comment on, except in the most general terms.

In general terms, if a police officer has reasonable grounds for suspecting that a person has committed or is committing an offence under the Act, they can search the person using the power provided by section 41 of the Act. If the officer does not find anything during the search, and they have no other reason to detain the person, then the person will be free to go. However, if an item prohibited under the Act is found, it will be seized and retained, and the individual will most likely be taken into police custody. It is extremely unlikely that where an individual is taken into custody, that they would be processed and released in time to attend the event as planned. In addition, if released without charge under 'investigative liberation,' an individual may be given certain rules to follow (such as telling the person not to go to a certain place or speak to certain people) for a set period of time.

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It also remains the case that under conditions of ticket sale, the right of admission to a sporting ground or music event is reserved to the organiser.

Turning to the related issue of lengthy or lifetime banning orders as a deterrent on misuse of fireworks at sports or music events. Football Banning Orders (FBOs) can be an appropriate and effective measure for those engaging in football-related violence or disorder and can last for up to 10 years. While all offences are dependent on the individual circumstances as to whether an FBO can be issued in relation to it, it is a requirement that the offender has engaged in violence or disorder while committing the offence. Therefore, as the law stands, it would not be possible for an FBO to be issued solely in connection with a conviction for the offence of possessing a pyrotechnic where no violence or disorder was involved. To allow imposition of an FBO in such circumstances, provisions in the Police, Public Order and Criminal Justice (Scotland) Act 2006 which set out the threshold for making an FBO would require to be changed.

In relation to banning orders for other types of sporting events and music events, while nothing like an FBO exists for those situations, again, the organisers of events and management of venues have the right to refuse entry to, and/or eject individuals from, the event and/or venue in reasonable circumstances.

I understand why the ability to issue FBOs in wider circumstances involving pyrotechnics has been raised and I recognise the potential appropriateness of such a penalty when the possession offence is committed in relation to football. Therefore, as I said at Committee, my officials and I will be having further discussions with Police Scotland, football clubs and authorities, and other relevant stakeholders, about the effectiveness of FBOs more broadly and the potential for them to be relevant to a range of similar and/or comparable offences. I am happy to update the Committee when that work has progressed further.

I hope that the Committee find this information helpful.



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