

# **FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Fireworks and Pyrotechnic Articles (Scotland) Bill introduced in the Scottish Parliament on 1 February 2022.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 10-EN);
- a Financial Memorandum (SP Bill 10-FM);
- a Delegated Powers Memorandum (SP Bill 10-DPM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP 10-LC).

3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **POLICY OBJECTIVES OF THE BILL**

4. The overarching policy objective of this Bill is to protect public and community safety and wellbeing by ensuring fireworks and pyrotechnics do not cause harm, distress or serious injury. The provisions included within the Bill will support a cultural shift in how fireworks and pyrotechnics are used in Scotland. This will be achieved by altering how the general public can access and use fireworks and pyrotechnics, by making provisions for new restrictions to apply to their purchase, acquisition, possession and use, with new criminal offences to apply where these restrictions are not complied with.

5. While all fireworks are pyrotechnic products, the Bill uses the terms “fireworks” and “pyrotechnics” as distinct categories, in line with existing legislation. The Pyrotechnic Articles (Safety) Regulations 2015 sets out which pyrotechnic articles may be made available on the market in the United Kingdom, and how these must be categorised by manufacturers in general terms; and it is intended that any pyrotechnic articles intended for entertainment purposes shall be categorised

as a firework, including pyrotechnic articles intended for entertainment and another purpose (such as a theatrical pyrotechnic articles).<sup>1</sup>

- Category F1 fireworks are fireworks which present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings.
- Category F2 fireworks are fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas.
- Category F3 fireworks are fireworks which present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health.
- Category F4 fireworks are fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health.<sup>2</sup>

6. The British Standards set out how a firework should be categorised in detail. For Category F1, F2 and F3 fireworks this is dependent on the type and composition of the firework, including the net explosive content (NEC), and the associated hazard and noise levels. While there are some exceptions, broadly speaking categories of firework can be described as:

- F1 fireworks are typically indoor or close proximity fireworks with lower minimum safety distances, for example 1 metre. Examples of common types of F1 products include small sparklers, ice fountains and party poppers.
- F2 fireworks are outdoor fireworks that have an NEC of up to 600g depending on their type and have a minimum spectator safety distance of 8 metres. Examples of common types F2 products include roman candles (up to 50g), rockets (up to 75g) and batteries (up to 500g) and combinations (up to 600g).
- F3 fireworks are outdoor fireworks that have an NEC up to 3000g. They have a minimum spectator safety distance of 25 metres. Examples of common types of F3 products include larger rockets (up to 200g), mines (up to 200g), batteries (up to 1000g) and combinations (up to 3000g).
- F4 fireworks present a high hazard and are for professional use only and are not available to members of the public.

7. While there are some items that can fall within more than one category (i.e. sparklers can be categorised as F1 or F2; and rockets categories F2 or F3), the categorisation of each individual item is dependent on the NEC. Batteries are collections of the same types of fireworks fused together. Combinations are collections of different types of fireworks fused together and the

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<sup>1</sup> European Commission Guidance - [DocsRoom - European Commission \(europa.eu\)](https://docsroom.europa.eu)

<sup>2</sup> Although the existing categorisation attached to fireworks refers to noise levels not being harmful to human health, the impacts of the noise of fireworks, in relation to firework control zones and restricted days of use, relate to a wide range of factors including repetitiveness, unpredictability and disruption.

standard only permits larger masses when a substantial proportion of the NEC is present in fountains rather than other types of fireworks.

8. Pyrotechnic articles that are not categorised as fireworks are given a different categorisation. This includes Theatrical Pyrotechnic Articles, often referred to as stage pyrotechnics proximity effects or special effects. These are items designed for use on stage and in theatres, including use by professionals for television shows, films, sporting events and concerts. Examples might include maroons and stage gerbs (theatrical fountains). There are also items considered Other Pyrotechnic Articles which are most often designed for outdoor use and can include devices designed for life saving such as distress flares and distress rockets, and paintball accessories such as smoke devices.

9. The Bill is in 7 parts:

- Part 1: Key concepts, including the meaning of fireworks and pyrotechnic articles and categories.
- Part 2: Fireworks licensing.
- Part 3: Restrictions on supply and use of fireworks and pyrotechnic articles including: prohibition on supply to children; and days of use and supply of fireworks.
- Part 4: Firework control zones.
- Part 5: Pyrotechnic articles at certain venues or events.
- Part 6: Exemptions and enforcement.
- Part 7: General provisions, including interpretation, regulations, ancillary provision, Crown application and commencement.

## **BACKGROUND**

### **Policy background**

#### **Fireworks**

##### ***2019 consultation and opinion poll***

10. Following high profile incidents during bonfire night in 2017 the Scottish Government undertook a range of activities to look at the position of fireworks in Scotland. A 14-week public consultation on the sale and use of fireworks<sup>3</sup> was carried out between February and May 2019. The consultation was an important step in gathering valuable evidence on the range of opinions and perspectives in relation to fireworks and sought views on: the sale of fireworks to the general public; how people use and enjoy fireworks; the impact of fireworks on people, communities and animals; and ideas on what action could be taken to ensure fireworks continue to be enjoyed safely and responsibly.

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<sup>3</sup> <https://consult.gov.scot/safer-communities/fireworks/>

11. A total of 16,420 formal responses were received, and, of these responses, 16,322 were submitted by individual members of the public while 98 were submitted by groups or organisations including key stakeholders, such as Police Scotland, local authorities, animal welfare organisations including the Scottish Society for the Prevention of Cruelty to Animals and the British Veterinary Association, and the firework industry, including individual retailers as well as representative bodies such as the British Firework Association. Twenty-seven public engagement events were also held – 24 open public events, and 3 events for specific population groups over the consultation period; and a range of social media platforms were used to seek people’s views. An independent, rigorous and systematic analysis of the consultation responses was carried out to identify the main issues and themes raised by participants across all ways of taking part in the consultation, and this was published in October 2019.<sup>4</sup>

12. The consultation and engagement events were supported by a programme of analytical work to ensure the outcomes of the consultation were considered alongside other forms of evidence. This included a nationally representative opinion poll<sup>5</sup> (with a sample of 1,002 responses) to ensure findings were available that represented the views of the wider public. This was carried out in May 2019 and provided findings representative of adults across Scotland. The report from this was published alongside the consultation analysis in October 2019.

13. Both the consultation and opinion poll demonstrated a strong desire for greater control on both the sale and use of fireworks in Scotland:

- Almost all of those who responded to the consultation (94%) said they would welcome increased controls on the sale of fireworks; while a majority of adults in Scotland (71%) felt there should be more controls over the sale of fireworks.
- A strong majority of those who responded to the consultation (92%) felt there should be more control on how they can be used; while a majority of adults in Scotland (68%) felt there should be more control on how fireworks can be used.
- Over three-quarters of those who responded to the consultation (87%) said they would welcome a ban on the sale of fireworks; while over half of adults in Scotland (58%) supported a ban.

14. The consultation identified a broad sense that fireworks can be good for the community when they are used at the right time, right place and used responsibly. There was little appetite to ban properly organised public displays and recognition that they can bring communities together and have positive community benefits. Responses from both individuals and stakeholder organisations indicated that there was broad support for more controls over the sale of fireworks in Scotland. Those individuals who were in favour of more controls tended to focus on general comments in support of a ban on the sale of fireworks to the public or greater restrictions on the general public having access to, and being able to use, fireworks. There were a range of drivers for this, including:

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<sup>4</sup> <https://www.gov.scot/publications/consultation-fireworks-scotland-experiences-ideas-views-analysis-responses-public-consultation-exercise/>

<sup>5</sup> [Public attitudes towards fireworks in Scotland: representative omnibus survey - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/public-attitudes-towards-fireworks-in-scotland-representative-omnibus-survey/)

- The noise and disturbance of fireworks, including on those with noise sensitivity.
- Additional resourcing of emergency services, local authorities and the NHS in preparing for and responding to the bonfire season.
- Firework related attacks on emergency service workers, some with life changing consequences.
- Anti-social behaviour and misuse of fireworks, and the effect on individuals and communities.
- Firework related injuries to the general public.
- Animal welfare concerns for pets, wildlife and livestock.
- Environmental impacts of fireworks use from discarded material to air pollution.

15. Similarly, those who supported either a ban on the sale of fireworks or greater control over their use in the representative opinion poll were asked, in an open-ended question, why they held this view. The most commonly cited reasons were because of firework related injury (56% of those who supported a ban and 31% of those who favoured greater control), animal safety (36% of those who supported a ban and 22% of those who favoured greater control) and the noise and disturbance that can be associated with fireworks (33% of those who favoured a ban and 20% of those who favoured greater control).

16. Among the individuals and stakeholders who did not support more controls, key arguments from the consultation and representative opinion poll centred around:

- Concerns that further controls would represent a curtailment of freedom of choice and would be a ‘nanny state’ solution to a relatively minor issue.
- That it is neither fair nor reasonable to penalise the responsible majority for the actions of the irresponsible few.
- Pet owners need to take responsibility for the care and training of their animals, including ensuring that they become used to loud noises.
- That the Scottish Government is listening to, or risks being swayed by, a small but vocal minority, including amongst them irresponsible pet owners who have not properly trained their animals.

### ***Evidence review***

17. An evidence review on the impact of fireworks in the context of international legislation and regulations was also carried out. This included a summary of current fireworks legislation and regulations internationally, and a review of the available evidence on the impact of fireworks relating to social and environmental factors. This was published alongside the consultation and representative opinion poll in October 2019.<sup>6</sup> The evidence review highlighted that:

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<sup>6</sup> <https://www.gov.scot/publications/fireworks-legislation-impacts-international-evidence-review/pages/2/>

- EU countries largely follow the guidelines set out in two EU Directives. These split fireworks into four categories and set minimum distances, maximum noise levels and minimum age limits for the sale of each. The UK has additional regulations that restrict sales to certain periods, raise minimum age limits and impose curfews on fireworks use; while further restrictions exist in Northern Ireland, which require those who both buy and sell fireworks to have valid licences. Other EU countries also have tighter regulations. For example, in Belgium, laws governing the types of fireworks legal to sell to the public are stricter than EU regulations, and both Germany and the Netherlands have restrictions on when and where fireworks can be used.
- In the US, legislation varies between states, with some imposing total bans and others permitting the sale and use of fireworks year-round. In Canada, fireworks regulations are set by individual provinces and territories; some have total bans on fireworks and others permit their sale and use around dates such as Canada Day and Halloween.
- Most states and territories in Australia completely outlaw fireworks. There are restrictions on when fireworks can be sold in New Zealand, but their use is permitted throughout the year.

18. The evidence review also highlighted that:

- Research consistently finds a spike in fireworks related injuries around festivals; and the limited evidence available within the scope of the review suggested that the number of fireworks related injuries is not decreasing over time.
- Most fireworks related injuries occur at private displays (e.g. in gardens) or in streets and other public places, not at formally organised displays. Both bystanders and operators are at risk of injury, with young people and males consistently found to be most at risk. Common fireworks related injuries affect hands and heads, with mortars and rockets responsible for the majority of serious eye and hand injuries. However, sparklers, fountains and firecrackers are also frequent sources of injury. Fireworks related injuries often require specialist treatment and surgical intervention, and can sometimes be fatal.
- Fireworks can pollute the air with gases and particles, which can contain metals and other elements that are potentially harmful to human health. Local air pollution, the frequency of cultural traditions involving fireworks and meteorological factors can all influence the impacts of fireworks on the environment; and the extent of these impacts in Scotland is unknown.
- Fireworks can raise background noise levels by several dozen decibels (dB), and increased noise levels can cause particular distress to those with noise sensitivity, including autistic people. The extent of these impacts in Scotland is unknown.
- The fear response to noise from fireworks can have adverse impacts on animals, though most research is based on studies with dogs. If left untreated, fear of noise from fireworks can lead to phobias in dogs, but this varies between dog breeds. Cats, small mammals, such as guinea pigs and rabbits, horses and birds are also impacted by the noise from fireworks. Preventive measures to mitigate these effects include behavioural measures, medication and counter-conditioning, which are mostly successful. However, few animal owners seek professional help and instead try to self-

manage the problem. Ingesting fireworks and injuries from fireworks also present issues for animal welfare.

- Between 2002-03 to 2019-20 there were 167 people proceeded against in court in Scotland for fireworks related charges. The most common charge to be proceeded was throwing, casting or firing a firework in a public place, which accounted for 72% of all firework related proceedings.<sup>7</sup>
- Between 2010-11 and 2019-20, 249 people received a non-court disposal for a fireworks related charge. Almost half (49%) of these disposals were for underage possession of adult fireworks and another 43% were for throwing, casting or firing a firework in a public place.<sup>8</sup>

### ***Fireworks Action Plan and Review Group***

19. Following the consultation and related work, the Scottish Government published the Fireworks Action Plan: Promoting the safe and appropriate use of fireworks in Scotland<sup>9</sup>. This set out a series of actions to be taken forward in response to what was heard through the consultation, to ensure everything possible was being done to ensure fireworks are used safely and appropriately. This set out the Scottish Government's vision for fireworks in Scotland: for fireworks to be used safely and handled with care and to ensure fireworks do not cause harm, distress or serious injury. The Action Plan set out actions to be taken forward with national and local partners including: improved awareness raising and communication; support to publicly organised firework displays; and support to local communities.

20. As part of this, the Minister for Community Safety also appointed an independent Review Group of key stakeholders<sup>10</sup> to consider the legislative and regulatory options for change that emerged from consultation, scrutinise the evidence available, and make use of their professional judgement and expertise to set out clear recommendations on what change is required to current legislation and regulations.

21. Building on the strong message for change from the consultation and representative opinion poll and ideas on what action should be taken, the Review Group explored a number of options for legislative and regulatory change including:

- Restricting the use of fireworks on private property.
- Restricting the days and times fireworks can be set off.

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<sup>7</sup> Data supplied by COPFS from an analysis of their case management database.

<sup>8</sup> Data supplied by COPFS from an analysis of their case management database.

<sup>9</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2019/10/fireworks-action-plan-promoting-safe-appropriate-use-fireworks-scotland/documents/fireworks-action-plan-promoting-safe-appropriate-use-fireworks-scotland/fireworks-action-plan-promoting-safe-appropriate-use-fireworks-scotland/govscot%3Adocument/fireworks-action-plan-promoting-safe-appropriate-use-fireworks-scotland.pdf?forceDownload=true>

<sup>10</sup> Membership included: Police Scotland, Scottish Fire and Rescue Service, Scottish Ambulance Service, Local Authority Licensing, Trading Standards, Scottish Community Safety Network, British Pyrotechnics Association, British Fireworks Association, NHS Greater Glasgow and Clyde / Care of Burns in Scotland, Veterans Scotland and Community Representatives.

- Introducing a notification system before fireworks can be used.
- Introducing no firework areas or zones.
- Introducing a proxy purchasing offence.
- Restricting the times fireworks can be sold.
- Restricting the volume of fireworks that can be purchased.
- Introducing mandatory conditions at point of sale.

22. The Group used an Options Appraisal Approach to consider these potential options. This provided a framework for setting out the potential effects, trade-offs and overall impact of options and an objective evidence base for decision making; and provided assurance that all relevant issues were considered. The Group commissioned additional analytical work to look at the evidence internationally. The work was carried out by Justice Analytical Services and was published on 3 November 2020,<sup>11</sup> and indicated that:

- Evidence on the implementation and impact of fireworks regulations is often imperfect and incomplete, and there is often a lack of metrics in place to monitor and evaluate the impact of fireworks regulations, but the research moves us beyond relying on anecdotal evidence.
- Countries have introduced a range of different measures to tackle the negative consequences of fireworks use and there are indications that some may have had a positive impact. However, it can be challenging to establish the effect of these over the long term – especially if they are enacted alongside other initiatives or there is insufficient data.
- The majority of the evidence included does not concern the possible impact or effectiveness of a single regulation, given that a number of measures were enacted at the same time, as is more often the case with new regulations. Only studies in the Netherlands and Northern Ireland look at the impact of a single aligned legislative option. However, social policies are not introduced in isolation from external factors and activities. Consequently, the studies are not able to account for the possible influence of other factors, as is the case with most policy interventions.
- Although the evidence base does not allow us to categorically conclude that regulations alone have led to an observed change, there are a number of instances where it appears that there is a clear association between regulations being enacted and a change in relation to outcomes for people occurring.
- The majority of the available evidence examines the possible impact of regulations on fireworks-related injuries (as a whole and specific to eye injuries). It is likely that the police figures on firework crimes and offences only captures a portion of illegal firework activities.

23. In its final report<sup>12</sup> the Group reached a majority consensus that, in order to achieve the Scottish Government's vision for fireworks in Scotland (for fireworks to be used safely and

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<sup>11</sup> [Fireworks regulations - impact: case studies - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/fireworks-regulations-impact-case-studies/pages/11.aspx)

<sup>12</sup> [Firework Review Group: report to the Scottish Government - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/firework-review-report-to-the-scottish-government/pages/1.aspx)

handled with care and not cause harm, distress or serious injury), a fundamental shift is required in how fireworks are accessed and sold in Scotland through the introduction of a comprehensive set of measures, including:

- The introduction of mandatory conditions before consumers are able to purchase fireworks.
- Restricting the times of day fireworks can be sold and the volume of fireworks that can be purchased.
- Restricting the days and times fireworks can be set off.
- A provision for no fireworks areas / zones to be introduced within which it is not to be permitted for fireworks to be set off, with local communities having a key role in influencing this.
- The introduction of a proxy purchasing offence so adults are not able to give adult fireworks to persons under the age of 18 without prosecution.

24. While the British Fireworks Association<sup>13</sup> were represented on the Review Group, they did not agree with or endorse the Group's recommendations, and raised a number of concerns around the potential unintended consequences of the proposed measures. These centred on the view that none of the proposed measures would tackle the root cause of anti-social behaviour involving fireworks or fireworks misuse, as responsible consumers who comply with the conditions would not purchase fireworks to use them in an irresponsible manner. Specifically:

- The proposed licensing system will drive consumers to illegitimately purchase fireworks through illegal channels, bypassing safety messaging and potentially purchasing prohibited firework products.
- Restricting the days that fireworks can be used could encourage a 'use it or lose it' approach where consumers use fireworks in an unsafe way in order to meet restrictions around days; and / or leading to stockpiling of fireworks at home if consumers cannot use all of their fireworks on permitted days.
- The proposed no firework areas will displace firework issues by moving the problem and fireworks use to another area, and potentially encourage use of fireworks in a public place in that area.

25. In a statement to Parliament on 3 November 2020, the Minister for Community Safety welcomed the recommendations from the Review Group and indicated her intention to explore how these could be implemented in practice and bring forward legislation to make these recommendations a reality.<sup>14</sup> A formal response to the Review Group report and recommendations

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<sup>13</sup> The British Fireworks Association was established in 2002 and represents and guides the majority of the UK's importers of consumer fireworks. It has 16 members, who import over 95% of the legal consumer fireworks in the UK and supply retailers and manufacturers ranging from small corner shops to large multiples (such as supermarkets or chains).

<sup>14</sup> Official Report of meeting of the Parliament  
<https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=12914>

was published in December 2019<sup>15</sup> which outlined the Minister's intention to bring forward secondary legislation in January 2021 for those recommendations that could be taken forward in that way;<sup>16</sup> and for primary legislation to be taken forward as soon as practically possible for the remaining recommendations which require legislative change.

26. Three measures recommended by the Group have been progressed through the Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 which amended the Fireworks (Scotland) Regulations 2004. The changes came into effect on 30 June 2021 and:

- Restrict the times of day fireworks can be used by the general public to between 6 p.m. and 11 p.m., with the exception of 5 November (when they can be used from 6 p.m. until midnight), New Year's Eve, the night of Chinese New Year and the night of Diwali (when they can be used from 6 p.m. until 1 a.m.);
- Restrict the times of day fireworks can be supplied to the general public to during the daytime hours of 7 a.m. and 6 p.m., alongside existing requirements on retailers around sale and storage licences;
- Limit the quantity of fireworks that can be supplied to the general public to 5 kg at any one time.

### ***Overall policy objectives of the Bill***

27. The Bill is intended to implement the remaining recommendations from the Fireworks Review Group to support a change in how fireworks are accessed and used by the general public in Scotland with the aim of protecting public and community safety and wellbeing. In particular, the overall objectives of the combination of firework related measures within the Bill are to:

#### ***Reduce the burden on emergency services in preparing for and responding to firework related incidents***

28. Data from Police Scotland indicates that around 900 'firework' related incidents were reported in the 2019-20 firework period, and there is no clear evidence that the number of firework related incidents reported to the police is changing. For the Scottish Fire and Rescue Service (SFRS), 342 incidents were identified with 'fireworks' as a contributing factor between 2009-10 and 2019-20 with around half of these incidents occurring on the days around bonfire night (from 4 to 6 November), and these incidents were more concentrated in more deprived areas. There are considerable financial cost and resource implications for Police Scotland and SFRS in order to plan and prepare for 5 November and the period leading up to it each year. SFRS estimate that approximately £66,000 was spent on preventative activity in 2019 while Police Scotland estimate the costs of covering 4 and 5 November in 2019 was approximately £98,000. The data available in relation to attacks on emergency service workers shows that between 2013-14 and 2019-20, there has been a 12% increase in the number of assaults on police officers during the firework period, which is in line with the figures across the whole year (up 11%). Two-fifths (40%) of the acts of violence directed against firefighters (physical abuse, verbal abuse, objects thrown at firefighters/appliances and other acts of aggression) which take place over the course of a year are recorded during the months of October and November, which only represents around 17% of the

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<sup>15</sup> [Response to Firework Review Group Recommendations - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>16</sup> This resulted in [The Fireworks \(Scotland\) Miscellaneous Amendments Regulations 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

year, although it is not possible to distinguish if assaults during the firework period are firework related.

*Reduce firework related harm and injury, and ensure fireworks are used safely by the general public*

29. Data collected on firework injuries in Scotland in 2019<sup>17</sup> shows most patients presented to minor injury units (MIU) and emergency departments (ED) in November, with a spike of 18 patients (44%) attending on the 5 November. The data shows a clear link between deprivation and firework injury, with eight times as many patients presenting from the most deprived areas in Scotland than the least deprived, as ranked by the Scottish Index of Multiple Deprivation (SIMD).<sup>18</sup> Of those attending, 26 (63%) were male and 23 (56%) were under 16 years of age. While the majority of patients were discharged following assessment and treatment, 15 patients (37%) required follow-up in hospital outpatients and three patients required admission by plastic surgery. In terms of the geographical location that injuries were sustained, the majority (19) happened on private property, with casual/street incidents (9) being the next most common location, with two injuries sustained at large public displays. Thirteen injuries were due to sparklers, with the majority (68%) caused by other fireworks. Further engagement with clinicians involved in treating firework related injuries has highlighted that the majority of sparkler related injuries are relatively minor with very few requiring surgery; whereas other firework injuries can range from minor to very significant. The study concludes that while firework presentations can change year on year, the data is consistent with historical data and demonstrates a ‘greater likelihood of physical injury from fireworks when they are handled or operated by untrained individuals in informal settings’.

30. Data relating to firework injuries in the Greater Glasgow and Clyde (GGC) NHS Health Board area was also collated, covering 2008-2019.<sup>19</sup> As with the national data, this shows a clear correlation between increased deprivation and firework injury. Between 2008-2019, 198 patients attended ED or MIU in the NHS GGC area for management of firework-related injuries to 251 bodily locations. Males were also disproportionately affected by injuries in comparison to females, with 200 of the 251 injuries being sustained by a male. 49% of injuries to males were in the over 18 age group, meaning 51% were spread out between child age groups. The two younger age groups with the highest number of injuries were 11-15 year olds (21%) and 16-17 year olds (14%). The estimated total health expenditure on treating firework injuries over the period 2008-2019 in Greater Glasgow and Clyde was £463,583, a mean cost of £38,632 per annum. The majority of this cost (£438,775) is incurred in treating patients admitted to hospital. There is no evidence of either an upward or downward trend in the costs data. This is likely to be an underestimate as the cause of injury is not always captured in the routine administrative records and certain resource use may not be captured. This data also does not capture those who attend General Practitioners or pharmacies for treatment and advice.

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<sup>17</sup> Evaluation of Firework Related Harm (2020) - <https://www.cobis.scot.nhs.uk/wp-content/uploads/2020/11/Evaluation-of-firework-related-harm-in-Scotland-October-2020-1.pdf>

<sup>18</sup> SIMD is a relative measure of deprivation across 6,979 small areas. SIMD looks at the extent to which an area is deprived across seven domains: income, employment, education, health, access to services, crime and housing - [Scottish Index of Multiple Deprivation 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/topics/similarity/similarity-2020)

<sup>19</sup> Evaluation of Firework Related Harm (2020) - <https://www.cobis.scot.nhs.uk/wp-content/uploads/2020/11/Evaluation-of-firework-related-harm-in-Scotland-October-2020-1.pdf>

*Reduce the volume of fireworks being set off outside of organised firework displays, and their associated noise and disturbance*

31. The 2019 consultation highlighted that, for some communities, fireworks are associated with celebration and important events that can bring friends, families and communities together. However, the consultation also highlighted distressing accounts of the impact fireworks can have, in relation to anti-social behaviour and the misuse of fireworks; as well as calls for fireworks not to be used 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. These findings are consistent with those from the representative opinion poll.

32. The impact of year round use of fireworks on individuals and communities came across strongly in the 2019 consultation, and respondents described concerns about the period over which fireworks may be used and that they are increasingly being used at any time of year, but in particular between October and January. The connection was made with the period over which fireworks are on sale. It was highlighted that the unpredictable nature of fireworks being set off all year round had a significant negative impact on people and animals; and ensuring those negatively affected by fireworks be better aware of where and when fireworks will be set off will better enable people to take preventative action

33. The evidence review<sup>20</sup> highlighted particular examples of negative impacts which can arise from frequent firework use. These include heightened background noise levels and high peak sound levels, and highlighted that increased noise levels can cause particular distress to those with noise sensitivity, including autistic people; as well as the fear response to noise from fireworks that can have an adverse impact on animals.

34. The representative opinion poll<sup>21</sup> highlighted animal safety and the noise and disturbance that can be associated with fireworks as two of the most common reasons for people supporting either a ban on the sale of fireworks or greater control over their use.

35. A key purpose of the Bill is to change how the general public can access and use fireworks. The Scottish Government does not consider it would be appropriate for these measures to apply to professional organisers or operators of firework displays, or to organisers of public fireworks displays. This is in line with the data that shows most firework injuries do not occur at public displays, and the findings from the 2019 consultation and representative opinion poll where there was little appetite to ban properly organised public displays with recognition that they can bring communities together and have positive community benefits. It is also considered that in the course of their roles, professional firework operators undertake training to ensure that they have sufficient knowledge on how to use fireworks in a safe and controlled manner.

## **Pyrotechnic articles**

36. Another purpose of the Bill is to tackle the misuse of pyrotechnic articles where it occurs, protecting public safety by deterring and preventing those who might misuse pyrotechnic articles from doing so. This reduces the risk to individuals themselves, other members of the public, and

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<sup>20</sup> <https://www.gov.scot/publications/fireworks-legislation-impacts-international-evidence-review/pages/2/>

<sup>21</sup> [Public attitudes towards fireworks in Scotland: representative omnibus survey - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/public-attitudes-towards-fireworks-in-scotland-representative-omnibus-survey/pages/1/)

those working in and around sporting stadia, music events and public assemblies/processions, such as stewards, event staff, and police officers.

37. The risks from misuse range from the potential for minor injury (such as a superficial burn) through to major injuries (such as maiming or disfigurement) or death. While the Scottish Government is not aware of anyone in the UK having died from the misuse of a pyrotechnic device, deaths have occurred in other countries. A preventative approach is favoured to avoid possible worst case scenarios.

38. In 2018, Police Scotland approached the Scottish Government with significant concerns about the dangers of pyrotechnic misuse and highlighted the work they had been undertaking in relation to it. This included identifying any improvements that might be made around the recording of pyrotechnic incidents, as well as establishing the need for further powers or other legislative change. Police Scotland had identified the need for further work to:

- Establish if legislative change was desirable/possible and how that might best be achieved.
- Implement joint safety messaging by all stakeholders in relation to pyrotechnics.
- Improve recording of incidents involving possession/use of pyrotechnics.

39. Following engagement with Police Scotland, in May 2019, the Scottish Government hosted a series of stakeholder discussions on the misuse of pyrotechnics to further identify actions that could be taken to tackle the issue and to gather more evidence. Discussions involved representatives from Police Scotland, Scottish Police Federation, British Transport Police, Crown Office and Procurator Fiscal Service and the Scottish Government.

40. In January 2020, the Minister for Community Safety publicly expressed Scottish Government support for joint actions to tackle the risk, welcoming a recent Police Scotland and Scottish Fire and Rescue Service campaign on this issue ('No Place for Pyro') and reiterating that keeping people safe is a priority for the Scottish Government and partner agencies.<sup>22</sup>

41. In September 2020, and in light of stakeholder discussions, the Scottish Government made the decision to consult more widely, through the 2021 consultation described in paragraphs 78 to 81 below, on the creation of a new offence relating to possession of a pyrotechnic article, and the extension of current police powers to allow a stop and search power for this offence.

42. The Bill creates a new offence of being in possession of a pyrotechnic article, including fireworks, while travelling to, in the immediate vicinity of, or attending a designated venue or event, without reasonable excuse. It also creates a new offence of being in possession of a pyrotechnic article, including fireworks, while travelling to, participating in, or otherwise attending a public procession or a public assembly. It also criminalises the non-retail supply of pyrotechnic articles to those under 18.

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<sup>22</sup> <https://www.firescotland.gov.uk/news/2020/january/emergency-services-highlight-pyrotechnics-threat/>

43. Existing legislative provisions, as outlined in paragraphs 62 to 66 below, can only be applied in particular, and sometimes very specific, circumstances and are not sufficient to tackle the growing problem of misuse of pyrotechnic devices, including fireworks, in the situations outlined above. The lack of dedicated stop and search powers for pyrotechnic articles inhibits effective and early intervention by Police Scotland to prevent dangerous use of pyrotechnics and potential injury to the public.

## **Legislative background**

### **Fireworks**

#### ***Categorisation and control of firework supply***

44. Fireworks are categorised in schedule 1 of the Pyrotechnic Articles (Safety) Regulations 2015 as follows:

- Category F1: fireworks which present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings.
- Category F2: fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas.
- Category F3: fireworks which present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health.
- Category F4: fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health.

#### ***Supply of fireworks***

45. The sale and supply of fireworks is regulated by the Fireworks Regulations 2004, the Fireworks (Scotland) Regulations 2004, and the Pyrotechnic Articles (Safety) Regulations 2015.

46. In addition, regulation 9 of the Explosives Regulations 2014 prohibits the supply or acquisition of more than 50 kg of fireworks at a time, except to individuals licensed by a local authority. However, regulation 3B of the Fireworks (Scotland) Regulations 2004 places further restrictions on the “general public” by prohibiting the supply or acquisition of more than 5 kg of fireworks at a time, except to individuals licensed by a local authority, professional firework operators/organisers, firework businesses and community groups.

47. Regulation 9 of the Fireworks Regulations 2004 limits the sale and supply of fireworks to certain religious and celebratory periods unless a retailer is licensed. A licence is issued by a local authority, subject to strict criteria. Periods where selling without a licence is permitted are:

- 5 November (from 15 October to 10 November);
- New Year (from 26 to 31 December);

- Chinese New Year (on the first day of the Chinese New Year and the 3 days immediately preceding it); and
- Diwali (on the day of Diwali and the 3 days immediately preceding it).

48. Furthermore, regulation 3A of the Fireworks (Scotland) Regulations 2004 restricts the times of day fireworks can be supplied to the general public to during the daytime hours of between 7 a.m. and 6 p.m., with exemptions for professional firework operators/organisers, firework businesses and community groups.

49. Under regulations 31 and 32 of the Pyrotechnic Articles (Safety) Regulations 2015, a retailer must not sell:

- a Christmas cracker to anyone under the age of 12 years;
- a category F1 firework to anyone under the age of 16;
- a category F2 and F3 firework to anyone under the age of 18; and
- a category F4 firework to a member of the public.

50. It is not a legal requirement to have a licence or training to buy “consumer fireworks” (category F1, F2 and F3 fireworks). There is no such thing as a licence or training for members of the public to buy category F4 (professional display) fireworks. These are only available to people with specialist knowledge which includes a requirement to have undertaken training recognised in the fireworks business or industry, to have used the category of article before, and to hold valid liability insurance for the article in question.<sup>23</sup>

### ***Enforcement – commercial supply***

51. A regulatory authority (including, in particular, Trading Standards officers from a local authority) can carry out test purchases for underage sales in line with identified concerns where there is sufficient intelligence relating to specific premises. In doing so they must consider and, if appropriate, abide by the statutory framework set out in the Regulation of Investigatory Powers (Scotland) Act 2000 and its associated Codes of Practice.

### ***Enforcement – online commercial supply***

52. The online sales of fireworks are regulated by Trading Standards officers in the same way as conventional sales. All supplies of fireworks, irrespective of the medium of the supply, are governed by the relevant legislation. However, the nature of online sales can make enforcement challenging.

### ***Use of fireworks***

53. Under regulation 3 of the Fireworks (Scotland) Regulations 2004 the use of fireworks by the general public is permitted between 6 p.m. and 11 p.m., although this is extended to midnight

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<sup>23</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/950114/Guide-to-pyrotechnics-regulations-2015-tp.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950114/Guide-to-pyrotechnics-regulations-2015-tp.pdf)

on 5 November and 1 a.m. during Chinese New Year, Diwali and New Year's Eve. These restrictions do not apply to public fireworks displays held by professional firework operators/organisers, firework businesses, community groups, and local authorities for the purpose of local authority firework displays, national public celebrations or national commemorative events.

54. Enforcement of any contravention of the rules restricting the use of fireworks is a matter for the police and offences are punishable by a fine or up to six months imprisonment.

### ***Noise and misuse***

55. Excessive and persistent noise from fireworks could potentially constitute a "statutory nuisance" under the Environmental Protection Act 1990. Local Authorities are responsible for addressing such nuisances by issuing an abatement notice. Noise may also be addressed as a common law nuisance.

56. It is an offence under section 80 of the Explosives Act 1875 to let off fireworks in a public place. The offence is punishable by a fine. Offenders could also be charged with breach of peace.

57. The common law offence of culpable and reckless conduct is relevant where a person has set off a pyrotechnic article in circumstances where risk is involved. No expert evidence is required in this instance. In all crimes involving reckless conduct, the degree of recklessness required to constitute the crime is an "utter disregard of what the consequences of the act in question may be so far as the public are concerned".

### ***Stop and search powers for fireworks***

58. The Fireworks Act 2003 enables the police to search if they have reasonable grounds of suspecting a person is in possession of fireworks in contravention of a prohibition imposed by firework regulations. The current prohibitions imposed by fireworks regulations,<sup>24</sup> subject to certain exemptions, are:

- It is unlawful for someone under the age of 18 to possess a category F2 or F3 firework in a public place;
- It is unlawful to possess a category F4 firework;
- It is unlawful to use a category F2 or F3 firework after 11 p.m. and before 6 p.m., extended to after midnight on 5 November and after 1 a.m. following New Year's Eve, Chinese New Year and Diwali;
- It is unlawful to supply a category F2 and F3 firework outside permitted hours (7 a.m. to 6 p.m.); and
- It is unlawful to supply more than the permitted quantity of 5 kg of fireworks at any one time.

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<sup>24</sup> i.e. the Fireworks Regulations 2004 and the Fireworks (Scotland) Regulations 2004.

59. Breaching any of the above prohibitions is an offence under section 11 of the Fireworks Act 2003. If the police have reasonable grounds to suspect that a person possesses a firework in contravention of any prohibition imposed by regulations they may search that person.

### ***Public fireworks displays***

60. It is for each local authority to decide if it wishes to licence public fireworks displays under its public entertainment licensing regime. The coverage of the regime is set out in section 41 of the Civic Government (Scotland) Act 1982, and relies on the use of premises as a “place of public entertainment” for the requirement of a public entertainment licence. This means any place where “members of the public are admitted or may use any facilities for the purposes of entertainment or recreation”.

61. As a discretionary regime the local authority can limit the scope by resolution, so they can decide whether or not to licence certain public events. Private displays do not fall within the remit of the provision in the 1982 Act regarding fireworks displays.

### **Pyrotechnic articles**

#### ***Possession of a pyrotechnic article at sport grounds***

62. Possession of some pyrotechnic articles, including fireworks, in a designated sports ground is an offence under Part 2 of the Criminal Law (Consolidation) (Scotland) Act 1995.<sup>25</sup> The 1995 Act also provides the power for the police to search a person if they have reasonable grounds to suspect that person is committing or has committed an offence under the 1995 Act. The current legislative provisions relate to searches of persons who are entering, or attempting to enter, designated sporting grounds.

#### ***Carrying dangerous instruments or offensive weapons***

63. The Criminal Justice and Public Order Act 1994 provides stop and search powers where the police reasonably believe that people are carrying dangerous instruments or offensive weapons in any locality without good reason, and a sufficiently senior officer has authorised the use of such powers. However, pyrotechnic articles are not deemed in such instances to be “dangerous instruments”, which are defined as a sharply pointed instrument or one with a blade, but may be an “offensive weapon” if that is the purpose with which it is intended to be used. Anything found that was reasonably suspected to be an offensive weapon would be seized and appropriate charges made. However, these powers are used in very specific circumstances and the issue of such authorisations is not commonplace. Such authorisations also last for only a very limited time period.

64. If a person is stopped and searched under legislative powers for a different offence and found to be in possession of pyrotechnic articles away from a designated sporting event, offences under the Explosive Substances Act 1883 could potentially be used for the reporting and prosecution of individuals. Although the provision is intended for serious offences it could be

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<sup>25</sup> <https://www.legislation.gov.uk/ukpga/1995/39/part/II>.

argued that carrying a pyrotechnic article, which could cause severe harm, without a legitimate reason for doing so, is serious.

65. Culpable and reckless conduct provides an appropriate charge for those who use pyrotechnic articles in a situation where there is a safety risk generated by their use, such as in a public place or sporting venue. During the 2017-18 Scottish football season, culpable and reckless conduct was used on 10 occasions and in the 2018-19 football season on 15 occasions.<sup>26</sup> Police Scotland has reported that where a pyrotechnic article has not been activated it may be difficult to prove the necessary element of ‘recklessness’ to secure a conviction for culpable and reckless conduct.

66. Police Scotland has existing powers (under section 11A of the Fireworks Act 2003) to stop and search a person without warrant if the constable has reasonable grounds for suspecting that the person possesses a firework in contravention of a prohibition imposed by fireworks regulations.

67. This brief overview of existing powers available to address certain acts of pyrotechnic misuse demonstrates that, while some powers do exist, there are clear gaps in legislation that may inhibit Police Scotland from taking pro-active preventative action to protect the public against the potential harmful impact of pyrotechnic misuse. The Bill seeks to address this and enable preventative measures to be undertaken.

## **ALTERNATIVE APPROACHES**

68. The Bill introduces: a fireworks licensing system; restrictions on the supply and use of fireworks and pyrotechnic articles; firework control zones; and a new criminal offence to possess a pyrotechnic article, including a firework, at a designated venue or event, or at public processions or a public assembly. As part of the Bill development process, alternative approaches to the approach adopted in the Bill were considered.

### **Do nothing**

69. Given the potentially serious repercussions of inaction on this issue, doing nothing was not considered a viable option. In relation to fireworks, the evidence provided through the 2019 consultation and related analytical work of the impact that fireworks can have in a range of areas, as outlined in paragraphs 10 through to 35, meant that doing nothing was not appropriate. Similarly, in relation to pyrotechnic articles, the evidence provided by Police Scotland shows a growing prevalence of pyrotechnic incidents at sporting grounds, music concerts and festivals, and at gatherings in public. A number of police recorded incidents and near misses that could potentially have been caught at an earlier stage, thus reducing risk, also demonstrates the gap in current legislation. Combined with Police Scotland’s strong view based on their operational expertise regarding the lack of necessary powers, this evidence means that doing nothing would not deliver the policy objectives.

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<sup>26</sup> Based on information provided by Police Scotland

### **Non legislative actions only**

70. This legislation, while necessary and proportionate, is only one part of the solution – as is the case with any societal issue involving behaviour change. This Bill will strengthen legislation to help promote the safe and appropriate use of fireworks and to tackle the misuse of pyrotechnic articles through prevention and deterrence, but non-legislative actions, such as public awareness and communication campaigns and education and preventative work, will continue to be important. However, legislation is still required to deliver the policy objectives in this area. It sends a clear signal as to what is and is not acceptable and reflects the growing public desire to support firm action, enabling preventative action to be enforced, as well as condemning antisocial and dangerous misuse. Enhancing and clarifying the legislation ensures strong preventative action is prioritised and the harm which could be caused to individuals and communities is minimised.

### **Alternative legislative solutions**

#### **Fireworks**

71. As set out in paragraph 22, the Fireworks Review Group used an Options Appraisal Approach to consider these different legislative options and solutions. Three legislative solutions were considered as alternatives, or in addition, to the measures within the Bill, including:

- Completely restricting the use of fireworks on private property;
- The introduction of a notification system before anyone is able to use fireworks; and
- A ban on the sale of fireworks to the general public.

72. In relation to the first two options, the Fireworks Review Group recommended that these were not considered further. In relation to completely restricting the use of fireworks on private property, while this was viewed as having the potential to significantly reduce the volume of fireworks used and their associated noise, disturbance and harm, it was considered that all other options should be exhausted first. In relation to introducing a notification system before anyone is able to use fireworks, the Group recognised this could enable those most affected to be more aware and take preventative action, but concerns were raised around the financial implications of developing and delivering an adequate system. As part of the case study research the Group commissioned, no international examples or evidence could be sourced on the effectiveness of these two measures; and they were therefore discounted from further consideration.

73. In relation to the third option, the 2019 consultation and representative opinion poll indicated support for a ban on the sale of fireworks (87% and 58% respectively). The international case studies commissioned by the Fireworks Review Group explored the experience of the Republic of Ireland and Australian states where a ban on the sale of fireworks to the public is in place; although there was not enough evidence to say definitively what impact this has had. The case studies identified some data that pointed to a reduction in firework related injuries and offences, but identified concerns around the availability of fireworks on the internet and in relation to the creation of a black market of firework sales. The Review Group therefore recommended that a complete ban on the sale of fireworks is not introduced at this time given the risk of unintended consequences. It is also the view of the Scottish Government that implementing a ban

on fireworks is reserved to the UK Government, and this was therefore not included in the 2021 Bill consultation.<sup>27</sup>

## **Pyrotechnic articles**

74. A proposed offence of being in possession of a pyrotechnic article in a public place, without reasonable excuse or lawful authority, was initially considered. This proposal was consulted on as part of the 2021 consultation. However, as part of the Bill development process, and the related stakeholder consultation, it became clear that there were some risks attached to this approach. It was always the policy aim of the legislation to tackle the misuse of pyrotechnic devices, not impede their legitimate use, and the potential for a wider provision to bring unintended consequences, including the potential to deter the legitimate and necessary use of pyrotechnic articles for personal safety purposes (such as visual distress devices), was taken into consideration when developing the more specific offence now included in the Bill.

## **CONSULTATION**

### **Fireworks**

75. A public consultation<sup>28</sup> ran from 20 June to 15 August 2021 seeking views on proposals to be included within the Bill to deliver on the remaining recommendations of the Review Group. Some policy proposals within the consultation varied from the Review Group recommendations. This included:

- Expanding the proposal for mandatory conditions before fireworks can be purchased to cover purchase, possession and use in order to bolster the connection between the measure and the objective of safe use; and
- Introducing restrictions on the days fireworks can be supplied to the general public to broadly coincide with the changes to when they can be used to avoid any confusion which may arise if products can be supplied but not used during much of the year.

76. Most responses (1,680) were submitted by individual members of the public, while 64 responses were submitted by groups or organisations including the emergency services, local authorities, fireworks industry representative bodies, firework retailer or events companies, community councils and animal welfare groups.

77. An independent, rigorous and systematic analysis of the consultation responses was commissioned to identify the main issues and themes raised by participants across all ways of taking part in the consultation, and this was published in December 2021.<sup>29</sup> Results of the consultation showed majority support among respondents for each of the measures included, although not all measures were supported equally:

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<sup>27</sup> <https://consult.gov.scot/justice/use-and-sale-of-fireworks-in-scotland/>

<sup>28</sup> [Published responses for Use and Sale of Fireworks in Scotland, and tackling the misuse of pyrotechnics - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

<sup>29</sup> [Fireworks and Pyrotechnics Bill: consultation analysis - gov.scot \(www.gov.scot\)](#)

- A large majority (84%) agreed that a fireworks licensing system should be introduced.
- A majority (67% and 64% respectively) agreed with the proposed restrictions on the days fireworks can be used by and sold to the general public.
- A large majority (83%) agreed with the introduction of no-firework areas.
- A very substantial majority (92%) agreed with the introduction of a proxy purchasing offence to criminalise the supply of fireworks to young people under the age of 18.

### **Pyrotechnic articles**

78. Pyrotechnic articles were also included in the public consultation which ran from 20 June to 15 August 2021, seeking views on proposals to be included within the Bill.

79. Analysis of consultation responses confirmed strong overall support for measures to tackle the misuse of pyrotechnic articles, although at different levels and with some mixed views from respondents. For example, the danger of irresponsible pyrotechnic misuse was the most frequently-raised concern for those agreeing with the introduction of a new offence, with individual, community council, community group and emergency service respondents amongst those highlighting this issue. These views were compounded by a perception that incidence of use of pyrotechnics had increased in recent years, particularly at sporting events. Community safety partnership, emergency service, local authority and professional or representative body respondents were amongst those taking this view. On the other hand, both of the football campaign group respondents - 'Fans Against Criminalisation' and 'Pyro crew' - disagreed with the introduction of a new offence, as did the individuals submitting campaign-style responses, stating concerns that extended stop and search powers could be used unfairly by the police to target specific groups, including football supporters. Their opposition also reflected a view that misuse of pyrotechnics is not sufficiently widespread or serious to warrant additional legislation. Overall:

- 76% of respondents had concerns about pyrotechnic devices being misused.
- 77% agreed with the introduction of a new offence for being in possession of a pyrotechnic article in a public place without reasonable excuse or lawful authority.
- 70% agreed that police stop and search powers should be extended to allow the police to stop and search where there is reasonable suspicion that an individual is in possession of a pyrotechnic article in a public place without a reasonable excuse.
- 65% thought that police stop and search powers should be wide enough to allow the police to stop and search a vehicle where there is reasonable suspicion that there are pyrotechnic articles contained without a reasonable excuse.

80. The proposed offence consulted on was for being in possession of a pyrotechnic article in a public place without reasonable excuse or lawful authority. The Bill instead makes it an offence to possess, without reasonable excuse, a pyrotechnic article while (a) travelling to, in the immediate vicinity of, or attending a designated venue or event, or (b) travelling to, participating in or otherwise attending public processions or a public assembly. The Scottish Government believes that the strong support for the introduction of an offence to appropriately tackle misuse where it takes place is clearly demonstrated, and that concerns expressed during consultation about

unintended consequences or the proportionality of the legislation are addressed by this narrower offence.

81. The proxy purchase provision as it relates to pyrotechnic articles was not consulted on in the Scottish Government consultation paper, as it was a provision developed from subsequent policy development. However, there is wide-spread support for a proxy purchase offence in relation to fireworks (92% of respondents), and the Scottish Government believes there will be similar support to extend the general principles of this measure to pyrotechnic articles.

## **PART 1 OF THE BILL – KEY CONCEPTS**

82. Section 1 sets out the meaning of “firework” and “pyrotechnic article”. For the purposes of the Bill, a “firework” refers to a pyrotechnic article which is a firework for the purposes of two British Standards, namely BS EN 15947:2015 or BS EN 16261:2012 (or any British Standards that replaces them). It also includes a pyrotechnic article that would be a firework for those purposes if it was intended as a form of entertainment. The definition of “pyrotechnic article” is the same as the definition given in the Pyrotechnic Articles (Safety) Regulations 2015, but without any exclusions. The section enables the Scottish Ministers to make regulations to modify the meaning of “firework” to provide consistency with section 1 of the 2003 Fireworks Act as well as futureproof the provision to allow for any other changes which may impact on the meaning of firework in the Bill and undermine the policy intention or effectiveness of the provisions included in the Bill. This power does not extend to the definition of a pyrotechnic article and, as such, any future definition of “firework” will still need to be consistent with the definition of a “pyrotechnic article”.

83. Section 2 defines the different types of fireworks by reference to categories. These categories match those used in the two British Standards referred to in the definition of “firework” in section 1; and are the same categories used elsewhere in existing fireworks legislation.

84. Section 2 also allows the Scottish Ministers to make regulations modifying the categories of fireworks set out in subsection (1) by adding, amending or removing categories etc. of fireworks to take account of future developments in fireworks technology. In addition, it allows the Scottish Ministers to make regulations specifying the requirements for “specialist knowledge” for the purposes of the definition of a “category F4 firework” in subsection (1).

## **PART 2 OF THE BILL – FIREWORKS LICENSING**

### **Background**

85. The Fireworks Review Group recommended the introduction of mandatory conditions at the point of sale of fireworks on the basis that it will support the purchase of fireworks being a well thought out and planned, rather than spontaneous, transaction firework retail transactions and the use of fireworks at inappropriate times and locations. The Scottish Government propose to deliver this by creating a new licensing requirement for the purchase, acquisition, possession and use of fireworks.

## **Policy objectives**

86. The overarching policy objectives of Part 2 of the Bill are to:

- Encourage the safer use of fireworks and reduce firework related harm and injury by ensuring the general public demonstrate sufficient safety knowledge as part of the licence application process.
- Reduce the inconsiderate use and misuse of fireworks by requiring the general public demonstrate sufficient knowledge as to the rules relating to firework use and the effect that their use can have as part of the licence application process prior to purchasing, acquiring, possessing and using fireworks.
- Ensure that the purchase and use of fireworks is a well thought out and planned process, reducing spontaneous firework retail transactions and use of fireworks at inappropriate times and locations.

## **2021 Consultation**

87. There was strong support from the public and stakeholder organisations for the introduction of a licensing system. The majority (84%) of respondents agreed that a fireworks licensing system should be introduced; and that this should cover the possession and use of fireworks in addition to their purchase (85%). Over three-quarters (76%) of respondents felt that a fee should be introduced to obtain a fireworks licence; and almost three-quarters agreed the successful completion of an online safety course should also be necessary (74%).

88. Strong stakeholder support was also demonstrated in the responses to the 2021 consultation for the introduction of a licensing system. This includes from the emergency services, animal welfare organisations, and community councils; while most local authorities who responded also indicated their agreement. The reasons for supporting a firework licensing system centred around:

- The potential to ease the burden on emergency services during particularly busy points of the year, such as the bonfire night period, when fireworks can be used in an anti-social manner and operational pressures increase on emergency services, such as the Scottish Fire and Rescue Service and Police Scotland.
- Promoting the safer use of fireworks through an online training course will ensure that people have a better understanding on how to use fireworks in an appropriate and considerate manner, and will mitigate against potential risks of using the products in an unsafe or dangerous way.
- Reducing the negative impact of fireworks on people and animals, who are particularly sensitive to the noise created by fireworks, through an online training course by ensuring that those able to purchase and use fireworks demonstrate a level of understanding of the rules and responsibility of firework's effects as part of the licence application process.

89. One of the most frequently given reasons why there should not be a licensing system was that it is unnecessary or would be a disproportionate response to an issue that was often not seen

as a significant problem and that the system will penalise law abiding users, and will have no effect on the misuse or unsafe use of fireworks.

90. The fireworks industry were very strong in their opposition to the proposed licensing system as they indicated that, in their view, such a system would have no impact on reducing the misuse of fireworks and would only negatively impact law abiding citizens that use fireworks in a proper manner. Three local authorities who responded disagreed with the introduction of the licensing system, two of which raised concerns about proportionality.

91. The purpose of the licensing system is to ensure that all members of the public that purchase, acquire, possess and use fireworks have a good understanding of the essential safety elements to be considered and complied with when using fireworks and have a good understanding of the rules which apply to proper use and the effects that the use of fireworks can have. The licensing system will ensure the purchase of fireworks is a well thought out and planned transaction undertaken by responsible members of the public, rather than a spontaneous decision with no consideration given to safety, proper use, or impact on others. The Scottish Government has also considered the risk of the proposed licensing system on encouraging members of the public to buy fireworks through illegal means and create a black market. There are existing enforcement processes and routes in place to stop the flow of prohibited and dangerous products into Scotland and the UK through enforcement by local authority Trading Standards officers, Police Scotland and Border Control. This includes illegal and unsafe firework products that are already banned in the UK, such as bangers. Enforcement practices will continue to work in the same manner if the licensing system, and other new measures restricting the sale of fireworks in Scotland, are introduced.

92. The Scottish Government is aware that arguments can also be made that the introduction of a licensing system does not go far enough in restricting the sale of fireworks to the public. Strong support for a ban on the sale of fireworks came across in the 2019 public consultation and representative opinion poll. However, whilst the Firework Review Group was not asked to specifically consider the potential for a ban on the sale of fireworks, the Group came to a general consensus that there was not sufficient evidence to recommend an outright ban and such a measure could result in significant unintended consequences, such as driving the sale of fireworks underground leading to the creation of a black market. Therefore, the Scottish Government does not consider that a ban on the sale of fireworks should be progressed at this time.

93. The Scottish Government therefore considers that the introduction of the licensing system covering the purchase, acquisition, possession and use of fireworks is a proportionate and balanced way to encourage a safer and more appropriate use of fireworks in Scotland. The licensing system will provide a robust measure which will enable members of the public to enjoy fireworks more safely and in considerate manner.

### **Related Bill content**

#### **The requirement for a fireworks licence**

94. Part 2 of the Bill makes provision for a fireworks licence. It requires an individual to have a fireworks licence before they can purchase, acquire, possess or use a category F2 and F3

firework. An individual will commit an offence if they purchase, acquire, possess or use such a firework without a valid fireworks licence.

### **General requirements for applying for and granting a licence**

95. Key features of the design and operation of the licensing system are:

- Individual members of the public aged 18 years or over may apply.
- Licences will be administered by the Scottish Government, or under arrangements made by it, on a central register of applications and licence holders. The Scottish Ministers will set out in subordinate legislation detail of the central register including information on applications required to be kept on the register and the material changes in circumstance which licence holders will be obligated to inform the Scottish Ministers of.
- The criteria for a licence being granted are focussed on demonstrating that an individual is able to use fireworks in an appropriate, safe and responsible manner. These mandatory requirements are set out in the Bill and applicants are required to complete these during application before they are able to be granted a licence. There will be a requirement to successfully complete a fireworks training course (with an ability for the Scottish Ministers to prescribe required content for the course through regulations), an obligation to disclose past unspent criminal convictions for offences related to fireworks and an obligation to disclose details of any previously revoked or cancelled fireworks licences. The Scottish Ministers will be able to specify additional mandatory requirements that must be met during the application through regulations should it be considered that additional requirements are necessary.
- It is currently intended that a licence will be valid for 5 years, unless revoked. This will be set out in regulations and Scottish Ministers will have the ability to amend this if it is considered an alternative licence term is more appropriate. This aims to ensure that individuals are required to keep their knowledge up to date (by repeating the course every 5 years), whilst ensuring that the licence requirement is not overly restrictive.
- In the 2021 consultation paper, the licence term was initially proposed to be 12 months. However following consideration of consultation responses received and engagement with members of the public and stakeholders, the intended licence term was revised to 5 years to strike the balance in a measured and proportionate way.
- The operation of the licence system will be supported by new criminal offences. In particular, it will be an offence for an individual to purchase, acquire, possess or use a firework without holding a valid fireworks licence. It will also be an offence for fireworks to be supplied (e.g. by a retailer or by a person with a fireworks licence) to an unlicensed person.

96. Detailed provisions around these processes will be subject to further discussion with stakeholders, including Police Scotland and local authority Trading Standards officers, and will be set out in secondary legislation.

## **Fee**

97. A fee will be charged which covers the safety course and application process for a licence. This will be set at a level which is not intended to present an excessive cost barrier to users of fireworks. Fireworks licensing will come at a cost in terms of processing the application, issuing licences, maintaining the database, monitoring existing certificate holders and prosecuting those who contravene the law. As such, it is right that the process for obtaining a licence should incur a fee. While cost recovery will be a key determinant of the fee level, a fee should generally be chargeable in order to ensure that applications are made with due consideration of the responsibilities involved in holding a fireworks licence. The Scottish Government believes that it is appropriate to charge applicants regardless of the outcome of their application as costs are incurred in considering unsuccessful applications as well as successful ones. This is in line with comparable processes, such as air weapons certificates, where the fee is paid on application and there are no refunds if the application is refused.

98. Illustrative fees are set out and discussed in the Financial Memorandum which accompanies the Bill. The fee will be set out in subordinate legislation.

## **Mandatory requirements**

99. Applicants are required to complete a number of mandatory requirements before they can obtain a firework licence. Applicants must disclose any unspent convictions of firework-related offences, disclose details of any previously revoked or cancelled fireworks licences and provide evidence of having completed a firework training course within specified time limits. The mandatory requirements are set out in the Bill, and Scottish Ministers will have the ability through regulations to specify any additional mandatory requirements that an applicant must meet in order to obtain a licence.

100. Requiring applicants to successfully complete a fireworks training course is a core element of the licensing system with the purpose of ensuring that individuals who will have the ability to purchase, acquire, possess and use fireworks in Scotland are aware of how to do so in an appropriate, safe and responsible manner. Whilst the requirement to successfully complete such a course is set out in the Bill, the Scottish Ministers will set out in regulations the detail of the course and how it will operate, such as its content and the minimum criteria for successful completion.

## **Applying conditions to a licence**

101. Firework licences will be subject to the conditions that a licence is valid only for the named individual, is not transferrable to another individual, the licence is valid only for the period specified on the licence (which will be set out by Scottish Ministers), and that a licence holder must inform the Scottish Ministers of a change of circumstances. The circumstances that licence holders will be required to notify Scottish Ministers about will be set out in regulations, for example advising of a change of address, change of name or a new firework related conviction.

## **Fireworks register**

102. Scottish Ministers will establish and maintain (or secure the establishment and maintenance of) a register of firework licence applications and licence holders. It is currently intended that the register will be centrally administered and operated by the Scottish Government on behalf of Scottish Ministers. Further provision will be made by regulations about the details to be kept on the register, such as information on licence holders and details of applications.

## **Revocation of a fireworks licence**

103. The Bill includes provisions for Scottish Ministers to revoke a fireworks licence so that anyone who is misusing fireworks can be prevented from doing so. Revocation may occur if the licence holder breaches any conditions of the licence or is convicted of a firework related offence. Where a licence is revoked, provision is made to prohibit the individual from applying for a new fireworks licence within 12 months. Individuals will be able to appeal the decision to revoke their licence through an appeal by way of summary application to a Sheriff. The process is outlined below in paragraph 104.

## **Appeals**

104. Individuals will be able to appeal a decision made by Scottish Ministers, or a third party authorised by them, to refuse to grant a fireworks licence, to attach a condition to the fireworks licence, or to revoke a fireworks licence. Appeals will be made to the appropriate Sheriff. Similar appeals processes are included in existing licensing regimes in Scotland, including in the Air Weapons and Licensing (Scotland) Act 2015.

## **False statements**

105. The Bill provides that it is an offence for a person to knowingly or recklessly make a false statement with a view to procuring a fireworks licence, to produce a false licence, or to produce a false document with a view to claiming an exemption from the need for a licence. This will help to guard against fraudulent applications and purchases.

## **Enforcement**

106. The Bill includes a number of provisions to allow for the robust and effective enforcement of the new licensing regime. An individual will need to provide evidence of having a licence (e.g. display it in physical or electronic form) at the point of purchasing fireworks to the retailer. For the purpose of establishing whether an individual holds a licence which entitles them lawfully to possess, acquire, purchase or use fireworks, a central database will be created which can be checked by those responsible for enforcement. An individual can be asked for personal details by those responsible for enforcement to enable this database to be checked, but will not be required to display or provide a copy of their licence documentation at this point.

107. Provision is also made to give a court the discretion to cancel any fireworks licence held by the person on conviction of a fireworks-related offence.

### **Time limit for offences**

108. Summary criminal proceedings must ordinarily be commenced at any time within six months from the time when an offence was committed but for firework offences under the Bill, they must be commenced at any time within 12 months from the time when the offence was committed. The Fireworks (Scotland) Regulations 2004 make provisions for summary proceedings, in relation to offences under the Fireworks Act 2003, to be commenced at any time within 12 months from the time when the offence was committed. The same approach is being taken in the Bill to ensure consistency in practice for prosecution of firework offences.

### **Power to make further provision**

109. The Bill provides for the Scottish Ministers to make regulations on conditions, application forms and documents to be submitted for licences. The intention here is to provide flexibility and future proofing in the regime by allowing process changes to be made more quickly through subordinate legislation. It is intended that this power will enable a single set of regulations to be made for the processes underpinning the licensing regime. The licensing system will not commence until these regulations have been made and have undergone parliamentary scrutiny.

### **Transitional arrangements**

110. It is intended that transitional arrangements will be put in place for commencement of the licensing system. This will mean that the end date for licences issued in the first year of commencement of the system will be staggered to ease the, likely significant, pressure on resources at licence renewal periods and allow licences to be renewed within agreed timescales.

### **Exemptions**

111. Some individuals are exempt from the need to obtain a licence to purchase, acquire, possess or use fireworks. The Scottish Ministers will be able to amend the list of exemptions through regulations to react to any future changes in circumstances around licensing, for example if through operation of the system it is considered that an additional exemption is needed.

112. Schedule 1 sets out the exemptions. This includes persons employed by professional firework operators and those involved in a relevant trade or business. The purpose of the licence is to ensure that members of the public, with little to no knowledge on fireworks, gain essential knowledge on how to use fireworks more safely and appropriately. The Scottish Ministers may, by regulations, make further provision about the requirements that a person must meet in order to be treated as a professional operator or organiser of a fireworks display for the purpose of these exemptions.

113. Paragraphs 1 and 2 of Schedule 1 set out that it is not an offence for a regulatory authority, or a person acting under their direction, to purchase, acquire, possess or use a firework without a fireworks licence. This is to ensure that officers of regulatory authorities, and those acting under their direction, are not required to hold licences for the purpose of their regulatory functions relating to fireworks. In particular, this ensures they are able to investigate or bring proceedings following a “test purchase” exercise where a supplier makes a sale to an unlicensed person.

## **PART 3 OF THE BILL – RESTRICTIONS ON SUPPLY AND USE OF FIREWORKS AND PYROTECHNIC ARTICLES**

### **Prohibition on providing fireworks or pyrotechnic articles to children**

#### **Background**

114. It is already unlawful for category F2 and F3 fireworks and other pyrotechnic products to be supplied to persons under 18 on a commercial basis,<sup>30</sup> and it is unlawful for a person under the age of 18 to possess a firework in a public place.<sup>31</sup> The Fireworks Review Group recommended that a proxy purchasing offence is introduced criminalising the non-retail supply of fireworks to people under the age of 18. The Review Group noted that a recurring theme in their discussions was the misuse of fireworks and the impact this can have on individuals and communities, and there was general consensus that there would be value in making the existing legislation clearer on adults giving or supplying fireworks to those under the age of 18. The key objective is the protection of children from harm.

115. Data from the Crown Office and Procurator Fiscal Service shows that between 2002-03 and 2019-20 the most commonly reported fireworks related charges in Scotland were throwing, casting or firing a firework in a public place and underage possession of adult fireworks. Between 2010-11 and 2019-20, 249 people received a non-court disposal order for a firework related charge; and almost half (49%) of these disposals were for underage possession of an adult firework by a person under 18 years of age. This demonstrates that, despite existing legal restrictions on commercial supplies, young people are able to obtain adult fireworks.

116. Young people are one of the groups found to be most at risk of firework related injuries. Data relating to firework injuries in the Greater Glasgow and Clyde NHS Health Board covering 2008-2019<sup>32</sup> shows young people (aged 0-17 years) were disproportionately affected by injuries, with this age group experiencing 51% of injuries while only accounting for 19% of the population. Studies<sup>33</sup> also find that young people, often defined as those under 18 or aged 5-20 years, sustain most fireworks related injuries.

117. In relation to pyrotechnic articles, the decision to extend this proxy purchase and supply offence to include pyrotechnic articles followed discussion with Police Scotland. They confirmed that in order to prevent children and young people from potential harm from the misuse of pyrotechnic articles, potential supply chains to young people must be interrupted. As with other age restricted products, children and young people will often look to adults to supply them with a product which would otherwise be difficult for them to obtain. Without such legislation, enforcement options would be more limited, which would in turn limit the ability of police to prevent children and young people from being exposed to the potential harms posed by pyrotechnic articles.

118. The inclusion of pyrotechnic articles in this offence tackles the issue of ‘muling’ whereby children and young people are forced to hold pyrotechnic articles, including fireworks, for adults

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<sup>30</sup> By virtue of regulation 31 of the Pyrotechnic Articles (Safety) Regulations 2015

<sup>31</sup> By virtue of regulation 4 of the Fireworks Regulations 2004

<sup>32</sup> [Evaluation-of-firework-related-harm-in-Scotland-October-2020-1.pdf](#)

<sup>33</sup> [Fireworks legislation and impacts: international evidence review - gov.scot \(www.gov.scot\)](#)

or are passed such products to carry to an event on behalf of adults. The proxy purchase and supply offence ensures that this type of behaviour can be tackled, without criminalising the children and young people being exploited.

### **Policy objectives**

119. The introduction of a proxy purchase and supply offence is intended to reduce the ability of under 18 year olds to access pyrotechnic articles, including fireworks, by ensuring that adults do not purchase such products on behalf of, or otherwise make these available to, children and young people. In relation to pyrotechnic articles, the Bill sets out the lawful reasons when people under the age of 18 can be given certain pyrotechnic articles.

120. It is intended to ensure that those under the age of 18 cannot be used to carry potentially dangerous pyrotechnic articles and fireworks on behalf of adults, for example, in order to bring them to an event illegally.

### **Consultation**

121. A very substantial majority of respondents to the 2021 consultation (92%) supported the introduction of a proxy purchasing and supply offence in relation to fireworks. The proxy purchase and supply provision as it relates to pyrotechnic articles was not consulted on in the consultation, as it was expanded from subsequent policy development and discussion with stakeholders. However, the wide-spread support evidenced by the 2021 consultation for a proxy purchase and supply offence in relation to fireworks, and the strong backing from Police Scotland to extend this to include pyrotechnic articles when consulted with as part of the engagement process, means the Scottish Government believes there is similar broad agreement on this measure.

### **Related Bill content**

122. The Bill makes it an offence for a person to knowingly buy or attempt to buy, give or otherwise make available a firework or pyrotechnic article to a person under the age of 18. The inclusion of ‘knowingly’ is consistent with existing proxy purchase offences for the supply of cigarettes and the supply of alcohol to a young person, and requires criminal intent within any charge. This will prevent cases where someone accidentally supplies a firework or pyrotechnic article from being reported to Police Scotland and the Crown Office and Procurator Fiscal Service.

123. This provision extends to category F4 fireworks – that is those fireworks that are intended for use only by persons with specialist knowledge and which present a high hazard. While existing legislation could be used to prosecute an adult if they were to supply a category F4 firework to a person under 18,<sup>34</sup> the general consensus of the Fireworks Review Group was that there would be value in making the existing legislation clearer on adults giving or supplying fireworks to those under the age of 18 years. This provision extends to category F4 fireworks to provide that clarity.

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<sup>34</sup> It is an offence for a person to possess a category F4 firework by virtue of regulation 5 of the Fireworks Regulations 2004, unless exempt under regulation 6 which provides exemptions to possession if it is for the purposes of their employment. If an adult was to supply a category F4 firework outwith these exemptions to someone under 18 years old they would be guilty on an art and part basis of an offence under regulation 5.

### **Exemptions**

124. The Scottish Government does not wish to criminalise an adult who buys, gives or otherwise makes available fireworks or pyrotechnic article to someone under the age of 18 when this is done in the course of their employment. Employment covers both work as a professional organiser or operator of a firework or pyrotechnic display, and someone who is employed by a business engaged in the supply of fireworks and pyrotechnics. Schedule 1 of the Bill provides an exemption to the offence in these circumstances.

125. Similarly, the Scottish Government does not wish to criminalise or otherwise deter a person under the age of 18 from carrying or using a pyrotechnic for use as a visual distress signal or from those over the age of 18 from providing such devices, provided this is their intended legitimate use. The offence therefore does not apply in such circumstances.

### **Restricting the days of use and supply of fireworks**

#### **Background**

126. The Fireworks Review Group recommended that restrictions are introduced on the days fireworks can be used by the general public. In addition to implementing this recommendation, the Bill introduces changes on the days fireworks can be supplied to the general public to broadly coincide with the changes to when they can be used.

127. The rationale for this recommendation was that reducing the periods during which fireworks may be used has the potential to ease the burden on emergency services and reduce the noise and disturbance that fireworks can cause. Those particularly negatively impacted would be able to have advance notice of the dates to expect fireworks to be used and therefore put safeguarding measures in place. The Scottish Government believes that restricting supply outside of these periods is necessary in addition to restricting use by the public in order to avoid potential confusion which may arise if products can be supplied but not used during much of the year. It is also considered that allowing the supply of fireworks year-round, when these cannot be used, could lead to members of the public storing high volumes of fireworks at home for relatively long periods until they are able to be used. Evidence from stakeholders such as the Scottish Fire and Rescue Service points to the risks to individuals and property associated with storage of fireworks in domestic premises; and the Scottish Government considers that measures which could increase the likelihood of this occurring should be avoided. The availability of fireworks for purchase at any time may also increase the likelihood of fireworks being used outside permitted use periods.

#### **Policy objectives**

128. The overarching policy objectives of this part of the Bill are to:

- Reduce the noise and disturbance of fireworks among those who are negatively affected, including those with noise sensitivity and among animals.
- Make the use of fireworks more predictable, enabling those negatively affected by fireworks to be better aware of when fireworks will be set off therefore enabling them to take preventative action to mitigate such impacts.

129. The effect of the Bill will be to ensure that the use of fireworks takes place at organised events or by professional firework operators at any time of the year, or by the general public only during specific periods of the year which align with long established traditional or religious firework events.

130. The provisions of the Bill will mean that any display – whether public or private – can take place outside of permitted days if it is organised by a professional firework operator; as well as public displays organised by community groups (or similar). A member of the public will be able to arrange for a professional to organise and put on a display outside of the permitted days. This is in line with the proposal set out in the 2021 consultation that the restricted days for supply and use do not extend to community groups at publicly organised events or to professional firework operators. While this will mean that the use of fireworks on private property is not completely eradicated outside of the permitted days, it is anticipated it will drastically reduce the volume of fireworks that are used in these settings. A regulation-making power is included within the Bill to amend the exemptions if required.

## **Consultation**

131. Responses to the 2021 consultation show that a majority of those who responded agreed with restrictions being introduced on the days fireworks can be used by (67%) and sold to (64%) the general public. Responses from most stakeholder groups demonstrated relatively strong support:

- There was strong and unanimous support among the emergency services who responded, with all agreeing that restricted days for use and sale should be introduced. The primary reason for this was it will enable those who are adversely impacted by fireworks to better plan and prepare for their use.
- Responses from local authorities were more mixed with around half agreeing with the proposed restrictions to use and supply. Reasons for agreeing with the proposals centred around providing more clarity to the public as to when fireworks are likely to be used and to enable people to better predict their use and plan and mitigate accordingly. For those who did not agree, the main reasons were questions around whether the proposals are necessary and proportionate to the issues faced by people and communities, whether it could lead to a compressed burden on local authorities (including Trading Standards to carry out store visits), stockpiling and people purchasing illegal firework products.
- Of the three fireworks industry responses, two did not agree with these restrictions. Reasons for this include that they felt that the use of fireworks outside the seasonal periods is not a big issue and that there was a concern that at least some of the general public may not comply with the restrictions, which could make it very difficult to enforce. While one did agree on the basis that they are already restricted to these dates for the majority of firework retailers.
- The majority of animal welfare organisations and community councils who responded also indicated their support, although a small number within each group did not agree. Some animal welfare organisations did not agree on the basis that the proposed days are too long and should be restricted further.

132. The most frequently-raised concern about the proposals, including by animal-related third sector respondents, was that the proposed dates are too long and, in particular, that the number of days on which fireworks can be used or sold in October/November is too long. However, other respondents, including individual respondents and firework industry stakeholders, did not agree with there being restrictions at all and raised concerns that a range of other celebratory events, such as weddings or birthdays, when people may wish to use fireworks would be prevented if these fall outside of the permitted days. However, it is these sorts of events that are more individual and unpredictable in nature where many of the issues around noise and disturbance were raised during the 2019 consultation.

133. The intention here is to address many of the negative impacts of unpredictable year-round firework use, while retaining periods during which fireworks may be used appropriately by the general public. This will allow public displays, whether organised by a community group or involving a professional fireworks organiser, to continue at other times of the year. The results of the 2019 public consultation indicated that, for organised community or public displays, there are positive community benefits and the negative impacts associated with unpredictable use and noise are perceived as less significant. This will also allow members of the public to arrange for a professional to organise and put on a display outside of the permitted days. The Scottish Government is aware that will mean those who have the ability to pay to engage a professional firework organiser will be in a position to use fireworks outside of the permitted days for celebratory events, while those who do not will be unable to. It is considered that this represents a balance between allowing certain fireworks events to continue year-round and reducing the impact on the businesses involved, while preventing high levels of unpredictable firework use outside of organised events and those involving professionals during the bulk of the calendar year.

134. Data provided by local authority Trading Standards teams covering the bonfire period 2019 indicated that there were 650 licensed retailers selling fireworks across Scotland. Separately, responses to a survey issued to these Trading Standards teams in 2019 identified that, out of the total of 269 temporary storage licences granted across 19 local authorities, the majority of applications (70%) were for large supermarkets and superstores, followed by 18% for smaller independent stores, 9% for ‘pop up’ shops and 3% for firework specific stores. Further, most applications are for a temporary storage licence for a short period of time in order to be able to store (and therefore be able to sell) fireworks for only a few weeks before and after the traditional 5 November fireworks evening (currently 15 October to 10 November). The Scottish Government is aware of nine firework retailers who are licensed to sell fireworks all year round. There is a possibility that these retailers could be significantly impacted by restrictions on the days of supply, and this is discussed in the accompanying Business and Regulatory Impact Assessment.

## **Related Bill content**

### ***Restrictions on days of supply of fireworks***

135. The Bill sets out the permitted days when category F2 and F3 fireworks can be supplied. Category F4 fireworks are already only available to those with specialist knowledge. They are therefore not included in the restricted days of supply provisions as this may give the appearance of implying that category F4 fireworks can be supplied on permitted days which is not the case. In addition to the dates outlined in the 2021 consultation, an additional period of 7 to 14 April has been included following discussion with faith groups to ensure that important festivals or events,

where the use of fireworks already forms an important element of celebrating such festivals, are included. The Sikh festival of Vaisakhi was highlighted through this process, which takes place on 13 April annually, although it is typically celebrated the preceding Sunday. The Bill therefore sets out the following dates where fireworks can be supplied:

- 7 April to 14 April;
- 27 October to 10 November;
- 26 December to 31 January;
- The first day of Chinese New Year and the three days immediately preceding it;
- The first day of Diwali and the three days immediately preceding it.

### ***Restrictions on days of use of fireworks***

136. The Bill sets out the permitted days when category F2 and F3 fireworks can be used. Category F4 fireworks are already only available to those with specialist knowledge. They are therefore not included in the restricted days of use provisions as this may give the appearance of implying that category F4 fireworks can be used on permitted days which is not the case. As with the days of supply outlined in paragraph 135, an additional period has been included to cover the Sikh festival of Vaisakhi; and the dates provided for the in Bill are in line with the ten day period fireworks are also available to be used over Chinese New Year and Diwali. The Bill therefore sets out the following dates where fireworks can be used:

- 7 April to 16 April;
- 27 October to 12 November;
- 26 December to 2 January;
- The 3 days immediately preceding the first day of Chinese New Year to the seventh day after the first day of Chinese New Year; and
- The 3 days immediately preceding the first day of Diwali to the seventh day after the first day of Diwali.

137. The permitted days for use extend slightly beyond when fireworks can be supplied. This is to avoid a situation where people buy fireworks towards the very end of the supply period and then are not able to use them on that day, for example due to bad weather. This will also minimise the likelihood of circumstances arising where individuals will need to store fireworks for a long period (for example from the last day of one permitted use period to the beginning of the next permitted use period), due to safety concerns around storage of fireworks in domestic premises.

138. The Scottish Ministers will be able to add, amend or remove days or a period of days to react to any changes in circumstances.

### ***Exemptions***

139. There is a category of exemptions where the restricted days for the use and supply of fireworks do not apply, and the Scottish Ministers will be able to add, amend or remove exemption by regulations.

140. Schedule 1 of the Bill sets out the exemptions from the restrictions on days of supply and use. In relation to days of supply this includes: businesses engaged in the supply of fireworks; professional organisers or operators of firework displays; organisers of public firework displays; as well as purchasers who are outside of Scotland (provided the fireworks are to be delivered outside of Scotland). In relation to days of use, exempt groups include: businesses engaged in the supply of fireworks; professional organisers or operators of firework displays; organisers of public firework displays; as well as regulatory authorities, or someone acting under their direction. This will ensure that enforcement bodies are able to continue to carry out their duties as required outside of the permitted days. This may include testing by use of fireworks and controlled disposals, and there may be occasions where other organisations – such as the Scottish Fire and Rescue Service or specialist contractors – are asked to carry this out on behalf of enforcement bodies such as Trading Standards or Police Scotland. Similarly, in relation to businesses engaged in the supply of fireworks, this is to ensure that any safety checks carried out on fireworks, as part of due diligence, can continue to take place.

141. The Scottish Government considered the possibility of exempting quieter or low noise fireworks from this provision given its focus on addressing noise and disturbance, as it was highlighted through the 2021 consultation that some firework products are available that are lower noise. However following engagement with a range of stakeholders, including industry experts, there is no recognised standard or specification for identifying, and therefore distinguishing, such fireworks. The Bill includes a regulation making power to enable the Scottish Ministers to amend this in future should such standards or specifications make this possible.

### ***Compensation***

142. The Bill includes a regulation making power to introduce a compensation scheme to address the potential for a negative economic impact of restricting the days of supply for specialist firework businesses who are concerned with the supply, distribution or importation of fireworks in Scotland immediately before the commencement of the provision. As noted in paragraph 186 on human rights below, this restriction on the days of sale has the potential to engage Article 1 of Protocol 1 of ECHR (protection of property). The regulation making power provides a means to mitigate any disproportionate impact. This provision sets out that those eligible for compensation would require to be wholly or mainly concerned with the supply, distribution or importation of fireworks; and enables the Scottish Ministers to make further provision about the criteria to whom and in what circumstances compensation is payable, the calculation of compensation, the procedure to be followed in connection with claiming compensation and the review of decisions and appeals against decisions made under the regulations.

## **PART 4 OF THE BILL – FIREWORK CONTROL ZONES**

### **Background**

143. The Fireworks Review Group recommended that a provision should be made for no-firework areas to be introduced where it is not permitted for fireworks to be set off by the general public, with clear systems in place for communities to have a say in where these areas should be introduced. The Review Group recognised this as offering the potential for targeted localised approaches based on the specific circumstances within different areas and communities.

### **Policy objectives**

144. This part of the Bill provides local authorities with the power to designate a place or places within its area as a firework control zone. Following the consultation, the term ‘no-firework area’ was amended to ‘firework control zone’ to more accurately reflect that this will not result in a blanket ban on fireworks within the area given that certain types of firework displays will still be permitted. The purpose of this provision is to:

- Reduce the use of fireworks in particular areas, where this is occurring in an unpredictable way and impacting on communities.
- Reduce the use of fireworks overall within any specified area(s) and therefore the associated noise and disturbance.

145. 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.

### **Consultation**

146. There was strong support through the 2021 consultation for the introduction of no-firework areas where it is not possible for the general public to use fireworks with a large majority of respondents (83%) agreeing with their introduction. A majority of respondents (69%) agreed that consideration, introduction and management of no-firework areas should be led by local authorities. While the consultation focussed on the introduction and management of no-firework areas being local authority led, some respondents did suggest alternative approaches such as community councils taking the lead role, which was suggested primarily by individual respondents; or that Police Scotland should lead as the relevant enforcement authority, which was suggested by two local authority respondents and some individuals. However it is considered that given the knowledge local authorities have of the local community, as well as links with local partner organisations, they are best placed to lead on the process with the involvement of the community and local community safety partners.

147. The main reasons for supporting no-firework areas centred around protecting animals, including pets; and to improve the lives of those living in communities that experience fireworks misuse. Emergency service respondents and animal welfare organisations supported this proposal. Those who disagreed tended to disagree with any restriction on where, how or by whom fireworks can be used and felt this would not work in practice and would discriminate against those living

in a no-firework area but who use fireworks responsibly. This included individual respondents and stakeholders.

## **Related Bill content**

### **Firework control zones**

148. The Bill confers a power on each local authority in Scotland to designate, amend or revoke a specified part (or parts) of their area as a firework control zone, and for it to be an offence for a person to use category F2, F3 and F4 fireworks within a firework control zone unless they are exempt. While category F4 fireworks can only be used by those with specialist knowledge, they are included within this provision to make it clear that the restrictions on the use of fireworks in designated areas covers category F2, F3 and F4 fireworks other than for those in an exempt group.

149. The exempt groups include: professional organisers or operators of firework displays; organisers of public firework displays; regulatory authorities; and businesses engaged in the supply of fireworks. The Scottish Ministers will be able to add, amend or remove any exemption through regulations.

150. This will mean that any display – whether public or private – can take place in an area that is designated as a firework control zone if it is organised by a professional firework operator; as well as public displays organised by community groups (or similar). This is in line with the proposal set out in the 2021 consultation that no-firework areas should not extend to community groups at publicly organised events or to professional firework operators. While this will mean that the use of fireworks can take place in firework control zones, it is anticipated it will significantly reduce the volume of fireworks that are used within these areas.

151. The Scottish Government is aware that arguments can be made for widening the scope of such powers to cover the use of fireworks at organised public displays, and by the general public who are able to engage a professional firework operator, thereby further limiting fireworks use within any designated firework control zone. However, the Bill will limit this power to the use of fireworks by the general public and therefore prevent high levels of unpredictable firework use outside of organised events and those involving professionals in any designated area.

152. As with the use of fireworks outside of permitted days, this will allow members of the public to arrange for a professional to organise and put on a display within any designated area; and will mean those who have the ability to pay to engage a professional firework organiser will be in a position to use fireworks in such areas, while those who do not will be unable to. Again, it is considered that this represents a balance between allowing certain fireworks events to continue in such areas and reducing the impact on the businesses involved, while preventing high levels of unpredictable firework use outside of organised events and those involving professionals.

153. The Scottish Government is aware that arguments can be made that existing legislation is already in place restricting the use of fireworks in public places, such as streets or parks, and that there is a risk of this measure duplicating existing legislation when the focus should be on enhancing enforcement. The introduction of firework control zones will restrict the use of fireworks by the general public in areas currently permitted, that is by the general public on private

property. It will therefore reduce the use of fireworks overall within any specified area(s) and the associated noise and disturbance including 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. Further, firework control zones will form part of the range of preventative and diversionary strategies that local partners can utilise in planning and preparing for the safe and considerate use of fireworks within communities.

154. The Bill exempts regulatory authorities and businesses engaged in the supply of fireworks from the offences relating to designated firework control zones (other than that of knowingly or recklessly firing or throwing a firework into a zone). This is to ensure that enforcement bodies are able to continue to carry out their duties as required within any designated firework control zone. This may include testing by use of fireworks and controlled disposals, and there may be occasions where other organisations – such as the Scottish Fire and Rescue Service or specialist contractors – are asked to carry this out on behalf of enforcement bodies such as local authority Trading Standards officers or Police Scotland. Similarly, in relation to businesses engaged in the supply of fireworks, safety checks that are carried out on fireworks as part of due diligence checking will therefore be permitted.

155. Similar to restrictions on the days of supply and days of use discussed at paragraph 141, the Scottish Government considered the possibility of exempting quieter or low noise fireworks from this provision, and the Bill includes a regulation making power to enable the Scottish Ministers to amend this in future should the development of suitable standards or specifications make this possible.

### **Mandatory consultation**

156. Before designating a firework control zone or amending or revoking a zone, there is to be a mandatory consultation exercise carried out by the local authority. As part of this, the local authority must undertake consultation with 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 person or bodies the local authority considers relevant before making a designation in respect of that area. This does not provide for any specific mandatory consultees, nor does it specify a minimum length for the consultation period, as the scope and manner of consultation are to be for the local authority to determine based on the particular circumstances of the area in question and existing practice within the local authority area.

157. The Bill includes a provision for Scottish Ministers to issue guidance that local authorities must have regard to. It is intended that this will provide examples and good practice in relation to those who should be consulted as part of this process, including public authorities such as Police Scotland and the Scottish Fire and Rescue Service, and in relation to the consultation process. This guidance will be in place before the commencement of this provision.

### **Publication of designation**

158. The Bill requires a local authority to publish its decision following the consultation as soon as practicable after the decision in relation to the proposal has been made, and at least 60 calendar days before the designation is to come into effect to provide fair notice to those affected. The Bill does not set out how the decision is to be published to ensure that this is driven by local

circumstances and is able to adapt to changing methods of communication. It is intended that the accompanying guidance, however, will set out that this should include: in a newspaper circulating in the area; by displaying notices in conspicuous places within the area; on the local authority website; and on relevant social media.

### **Review of operation and effectiveness**

159. The Bill sets out that a local authority must carry out a review of the operation and effectiveness of designated firework control zones. The intention of this is to ensure that they are working as intended, remain proportionate and don't cause an unjustifiable interference with a person's right to peaceable enjoyment of their property. The Bill includes an obligation for local authorities to review any designated zones but also a mechanism for the local authority to act on such a review if required by amending or revoking such zones. Similar to the requirements to publish the decision taken following a consultation, the Bill sets out that, following such a review, the local authority must publish a report of the findings from the review and set out its proposals in relation to the zone going forward. The Bill does not set out a minimum frequency for carrying out reviews, although regulations provided for under section 30 of the Bill enable this to be provided for through secondary legislation.

### **Regulation**

160. The Bill includes a provision conferring a power for the Scottish Ministers to make further provision by regulations to set requirements which will apply to a local authority that has taken a decision to designate a firework control zone. The regulations may provide for the manner in which that decision is to be given effect to, and the local authority must comply with the regulations in order for a firework control zone to be validly established. Under this power, Scottish Ministers will include regulations in relation to requirements for the local authority to specify, when a firework control zone is designated, certain matters in relation to the zone in question, such as the size, location, boundaries of the zone, length of time for which the area can be designated as a firework control zone; as well as further requirements in relation to reviewing and reporting on the operation and effectiveness of zones. The power to designate firework control zones will not commence until these regulations have been made.

### **Guidance**

161. The Bill confers a power for the Scottish Ministers to issue guidance applying to local authorities in relation to the designation of firework control zones. This guidance must be published. The Bill makes it a requirement for local authorities to have regard to that guidance when exercising their functions in this area. It is intended that this guidance will be developed in collaboration with local authorities, relevant community groups, and other stakeholders with an interest in community safety such as Police Scotland and the Scottish Fire and Rescue Service. This guidance will cover matters such as: the type of alternative strategies that may be applied instead of designating a firework control zone; information about the types of issue which may be suitable to be addressed through firework control zones; and information about the evidence a local authority may consider in deciding to designate such a zone. It is intended that this guidance will support local authorities to deliver a degree of consistency of approach between different areas; while having discretion to apply their own approaches to these designations to reflect local circumstances.

## **PART 5 OF THE BILL – PYROTECHNIC ARTICLES AT CERTAIN PLACES OR EVENTS**

### **Background**

162. In recent years, the misuse of pyrotechnics and fireworks at events in Scotland has become more prevalent. There is evidence of pyrotechnics having been set off in crowded locations with subsequent risk of serious injury or death. This has included incidents at concerts and music festivals, at sporting events, and during public gatherings and protests. While it is already an offence to use a firework in a public place and illegal to be in possession of a pyrotechnic article in a sporting venue, and there are powers to stop and search while entering the venue in relation to that offence, there is no existing power that enables police to act at an earlier stage on any intelligence they might have regarding those in possession of pyrotechnic articles, including fireworks, before entering the venue or without the device being used. The offence included in this Bill aims to facilitate a truly preventative approach to protect public safety.

### **Policy objectives**

163. The objective is to reduce the increasing misuse of pyrotechnic articles, including fireworks, before anyone in Scotland is seriously maimed or killed. The Scottish Government aims to achieve this while recognising that pyrotechnic articles have a number of legitimate uses, such as distress flares for personal safety or for theatrical special effects, and therefore will ensure the right balance between preventing misuse where it takes place and not interfering with legitimate use.

### **Consultation**

164. Analysis of the 2021 consultation responses confirmed strong overall support for tackling the misuse of pyrotechnic articles, with 76% of respondents expressing concerns about pyrotechnic articles being misused, and 77% agreed with the introduction of a new offence for being in possession of a pyrotechnic article in a public place without reasonable excuse or lawful authority. This is in line with responses to the 2019 fireworks consultation where 70% of respondents reported that they had been affected by fireworks being used in an irresponsible or unsafe way.

165. The offence in the Bill differs from the offence consulted on in two ways. First, in that the consultation did not explicitly include fireworks as a category of pyrotechnic article to be included within the offence. However, it is clear that it is not appropriate for members of the public to possess fireworks at such events and gatherings, given the safety implications of using fireworks in these circumstances; and it is important to ensure this can be tackled and prevented appropriately. Second, in that the proposed offence is narrower in scope to reflect the evidence and avoid unintended consequences. The proposal formally consulted on was for an offence of being in possession of a pyrotechnic in all public places, without reasonable excuse or lawful authority. While the Scottish Government believes that, in practice, the reasonable excuse defence of the law would have meant that all legitimate uses of pyrotechnic articles would have been excluded from the offence, the Scottish Government is also acutely aware of the importance of avoiding unintended and unacceptable consequences arising from a public perception that the offence is too broad. A key risk to avoid was any perception that would deter people from carrying necessary visual distress signals at appropriate times (for example, carrying a distress flare in a

public place en route to hillwalking in a remote area). The offence in the Bill ensures that there remains a reasonable excuse defence, while also ensuring the approach is a proportionate response to the evidence that we have received on the misuse of these devices. The Scottish Government believes this is the most appropriate means to achieve the intended policy aim.

### **Related Bill content**

166. It will be a criminal offence for a person, without reasonable excuse, to possess a pyrotechnic article, including a firework, while the person is (a) travelling to, in the immediate vicinity of, or attending a designated venue or event, or (b) travelling to, participating in, or otherwise attending a public procession or a public assembly. The Scottish Ministers will have a regulation-making power to specify what is a designated venue or event. It is intended that a designated venue or event will include an event at specified sports grounds and music concerts/festivals.

167. Fireworks are included in the offence to ensure that any such type of pyrotechnic article comes under the scope of the legislation. This approach is backed by Police Scotland. The policy aim is to protect public safety - the misuse of any type of pyrotechnic article in the places covered by the legislation could be dangerous, and this avoids problems of those 'switching' to other types of devices.

168. The offence will not apply to a person travelling from a designated venue or event, public processions or a public assembly (unless they are travelling on to another such designated venue or event, procession or assembly). As this provision is to prevent people bringing pyrotechnic articles, including fireworks, to specific settings where they might be used and where their use would be dangerous, there does not appear to be justification to extend the offence to persons travelling from such a place.

169. A person will not commit an offence if they have a reasonable excuse for possessing any such pyrotechnic article.

### **Exemptions**

170. There are some exemptions in relation to this offence. In particular, it is not an offence if the person in question is: employed by a regulatory authority and acting in that capacity; employed by, or in business as, a professional organiser or operator of firework displays or pyrotechnic displays, and the firework or pyrotechnic article is possessed in connection with that business; employed by a business engaged in, or whose trade or business (or part of whose trade or business) is, the manufacture, importation, distribution or supply of fireworks or pyrotechnic articles, and the firework or pyrotechnic article is possessed in connection with that business; or the organiser of a public fireworks display (or persons assisting such an organiser) where the firework or pyrotechnic article is used for the purposes of putting on a public fireworks display on behalf of a charitable, religious, youth, recreational, community, political or similar organisation. Scottish Ministers will be able to add, amend or remove an exemption by regulations.

## **PART 6 OF THE BILL – EXEMPTIONS AND ENFORCEMENT**

### **Offences and penalties**

171. Parts 2 – 6 of the Bill creates the following new offences that will be enforced by Police Scotland:

- It is an offence for a person, without reasonable excuse, to purchase, acquire, possess or use a category F2 or F3 firework without having a valid fireworks licence.
- It is an offence for a person to supply a category F2 or F3 firework to an unlicensed person.
- It is an offence for an individual to knowingly or recklessly make any statement which is false in any material particular, for the purposes of obtaining a fireworks licence.
- It is an offence for an individual to produce a false fireworks licence, or produce any other false document purporting to prove an exemption, with a view to purchasing, acquiring, possessing or using fireworks.
- It is an offence for a person to knowingly buy or attempt to buy, give or otherwise make available category F2, F3 and F4 fireworks or pyrotechnic articles to a person under the age of 18.
- It is an offence for a person to supply a category F2 or F3 firework on days other than those specified.
- It is an offence for a person to use a category F2 or F3 firework on days other than those specified.
- It is an offence for a person to ignite a category F2, F3 or F4 firework in a firework control zone or to knowingly or recklessly throw or cast a lit firework into a firework control zone, or fire a firework into a firework control zone.
- It is an offence for a person, without reasonable excuse, to possess a pyrotechnic article, including F1, F2, F3 and F4 fireworks, while the person is (a) travelling to, in the immediate vicinity of, or attending a designated venue or event, or (b) travelling to, participating in, or otherwise attending a public procession or a public assembly.

172. The Bill also places a duty on each local weights and measures authority (i.e. the local authority for the area) to enforce the following offences, in so far as they relate to supply by a person in the course of business:

- The offence of supplying a category F2 or F3 firework to an unlicensed person.
- The offence of supplying a category F2 or F3 firework on days other than those specified.

173. It is an offence for a person to obstruct an officer of a local weights and measures authority (i.e. a Trading Standards officer). It is also an offence for a person, in giving any information required by a local weights and measures authority, to make a statement which the person knows is false, or to recklessly make a statement which is false in a material particular.

174. For each of the offences mentioned above, any person found guilty is liable on summary conviction to:

- Imprisonment for a term not exceeding six months;
- A fine not exceeding level 5 on the standard scale; or
- Both.

175. These penalties are in line with the penalties for offences that are provided for under the Fireworks Act 2003. The imprisonment penalty associated with the pyrotechnic and firework proxy purchase and supply offence is higher than that for similar proxy purchasing offences for alcohol (which is for a term not exceeding 3 months and/or a fine not exceeding level 5 on the standard scale) and tobacco (which is a fine only not exceeding level 5 on that scale). This reflects the potential severity of a person under 18 possessing and using an explosive device. The current maximum fine for a level 5 offence is £5,000.

176. The Bill also makes it an offence for a person (without reasonable excuse) to fail to comply with the requirement of a notice of revocation of a fireworks licence, and makes it an offence to impersonate a Trading Standards officer. Any person found to have committed either offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

177. Following a request from the British Fireworks Association, similar to the change enacted in England and Wales in 2015<sup>35</sup> which removed the £5,000 cap associated with level 5 fines, the Scottish Government considered whether a higher scale should be attached to the offences created in the Bill. The Scottish Government is not aware of any evidence as to the merits of this approach. The Bill therefore sets the maximum fine, on summary conviction, at level 5 on the standard scale.

### **Time limit for offences**

178. Summary criminal proceedings for statutory offences must ordinarily<sup>36</sup> be commenced at any time within six months from the time when an offence was committed. For offences within the Bill, proceedings must be commenced at any time within 12 months from the time when the offence was committed. The Fireworks (Scotland) Regulations 2004 make provisions for summary proceedings, in relation to offences under the Fireworks Act 2003, to be commenced at any time within 12 months from the time when the offence was committed. The same approach is being taken in the Bill to ensure consistency in practice for prosecution of firework offences.

### **Exemptions from offences in Bill**

179. Schedule 1 of the Bill contains exemptions to certain offences under of the Bill. The exemptions relevant to each part of the Bill are described in detail above.<sup>37</sup> The Bill makes provision for Scottish Ministers to have the power to modify Schedule 1 to add, amend or remove exemptions and make further provision about the requirements that a person must meet to be

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<sup>35</sup> [Unlimited fines for serious offences - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>36</sup> Unless a different time limit is set out in legislation for the offence in question.

<sup>37</sup> See paragraphs 111-113, 124-125, 139-141, 149, 154-155 and 170.

treated as being employed by, or in business as, a professional organiser or operator of firework displays.

## **Enforcement**

180. The Bill includes a number of detailed provisions to allow for the robust and effective enforcement of the new offences that have been created, both by Police Scotland and local authority trading standards officers in their role as enforcement authorities.

181. The Bill includes provision to allow a constable to have powers of search without warrant in order to investigate and prosecute offences within the Bill; and to seize or detain anything which may be found. This largely mirrors existing powers for fireworks as set out in the Fireworks Act 2003. This includes an offence of obstruction of the exercise of all the search powers included within the Bill. 70% of those who responded to the 2021 consultation agreed that police stop and search powers should be extended to allow the police to stop and search where there is reasonable suspicion that an individual is in possession of a pyrotechnic device in a public place without a reasonable excuse; while 65% thought that police stop and search powers should be wide enough to allow the police to stop and search a vehicle where there is reasonable suspicion that there are pyrotechnic devices contained without a reasonable excuse.

182. The Bill includes provision for a sheriff or justice of the peace to grant a warrant for a constable to enter and search premises, or persons found there, where it is suspected that an offence has been, is being, or is about to be committed; and to seize or detain anything which may be found on the premises or any person there.

183. The Bill includes provisions for an officer of a local weights and measures authority (i.e. a Trading Standards officer) to require a retailer to produce any relevant document, records or other information held by them, and to take copies, if they have reasonable grounds to suspect that an offence has been committed in course of supplying fireworks; and for Trading Standards officers to have the power to enter premises without a warrant (other than those that are used wholly or mainly as a dwelling) and, in other cases, with a warrant. The Bill also includes provisions for Trading Standards officers to: inspect products (e.g. to confirm what is being sold is a category covered by the legislation); require the production and seizure of documents (e.g. where there is a suspected breach of the legislation); seize and detain goods or documents which may provide evidence of the commission of an offence; and to require assistance or information from persons on premises. The provisions mirror existing powers for Trading Standards officers set out in Schedule 5 of the Consumer Rights Act 2015 that are relevant for effective enforcement of the provisions within this Bill.

184. The Bill also includes provisions for a Trading Standards officer to purchase a firework or pyrotechnic article, and to enter into an agreement to secure their purchase (which may involve an individual, acting under the direction of the local weights and measures authority, making such a purchase) to enable test purchasing as an enforcement mechanism.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

185. Comments were invited on a draft partial Equalities Impact Assessment in the 2021 consultation and these have informed the final full Equality Impact Assessment (EQIA). The final EQIA concluded that the Bill does not have an adverse impact on any of the protected characteristics such as, age, sex, race, gender reassignment, pregnancy and maternity, disability, marital or civil partnership status, religion or belief or sexual orientation. The EQIA identified a number of potential benefits that the measures could have on people within protected characteristic groups. This includes positive impacts on people because of their age as young people are more at risk of being injured by a firework. The measures will encourage the safe and responsible use of fireworks by adults in appropriate situations, and the proxy purchase and supply offence will make it an offence for an adult to supply a young person with pyrotechnic articles, including fireworks, reducing the risk of fireworks being in the hands of young people and injuries occurring. Potential positive impacts on people with disabilities, such as those with neurodivergent conditions, have also been identified. The restrictions on days of use and supply will limit the unpredictable use of fireworks and allow people to be aware of when fireworks are likely to be used and prepare accordingly. It is also recognised that fireworks are used in a variety of cultural celebrations, however the measures will not disproportionately impact on the use of fireworks at those celebrations following engagement with equality groups as part of the 2021 consultation to ensure that holidays and dates of significance where fireworks are used to celebrate are included within the permitted days of use and supply.

### **Human rights**

186. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention of Human Rights (ECHR). It is recognised that Article 1 of Protocol 1 of ECHR (protection of property) may be engaged by the restrictions on sales of fireworks (such as the fireworks licensing system, and the restricted days of supply) and the restrictions imposed by firework control zones (to the extent that these restrict use of fireworks by individuals living in a firework control zone). Careful consideration has been given to ensuring that this interference is proportionate and necessary in pursuit of the objectives of the Bill in improving public safety, as well as to avoid property damage and other negative impacts that can occur from the unsafe or inappropriate use of fireworks.

187. The Scottish Government also recognises that Article 8 of the ECHR concerning the right to private life may be engaged by the provisions within the Bill that relate to powers of stop and search. Stop and search has two primary aims in Scotland - to promote public safety, and to help prevent and detect crime. Therefore, careful consideration has been given to ensure that the enforcement powers conferred on enforcing authorities meet those aims in a reasonable and proportionate way, and that they are required to locate a harmful item or confirm the possession of an illegal item. Recognising that stopping and searching members of the public is a significant

intrusion into their personal liberty and privacy, all stop and search activity must be appropriate, as defined by the Stop and Search of the Person in Scotland: code of practice for constables.<sup>38</sup>

### **Island communities**

188. The provisions of the Bill apply equally to all communities in Scotland; and there is provision within the Bill, in relation to firework control zones, that offers flexibility to local authorities and local communities in relation to influencing the use of fireworks in designated areas. The Scottish Government therefore considers that the effect of the Bill will be consistent in island communities and other communities because the safe and appropriate use of fireworks is in everyone's interests and because the use of fireworks is not confined to large urban areas.

### **Local government**

189. The Bill will have an effect on local government in Scotland. There are additional responsibilities for local government for enforcement of commercial firework supply under the fireworks licensing provision and the restricted days of sale provision. Local government will also have the power to designate firework control zones; and it is assessed that this will provide local government with additional powers and the discretion to prevent and respond to specific firework-related circumstances within their local authority area. There will be costs associated with scoping, establishing and monitoring the impact of any such designated areas. Scottish Government has engaged with the Convention of Scottish Local Authorities and with local government officers on the practical and financial implications associated with the provisions included with the Bill. Further information on the financial implications can be found in the Financial Memorandum that accompanies this Bill.

### **Sustainable development**

190. The Bill has no negative effect on sustainable development. A pre-screening report confirmed that the Bill would have no impact on the environment. The measures will reduce negative animal welfare impacts of firework use, with the significance here likely to be greatest for pets and livestock where owners can take mitigating action as they will have a better understanding of which dates and where fireworks are likely to be used. The potential negative environmental impacts from firework debris and pollutants may also be addressed, but there is currently no clear evidence to suggest that this will have a significant effect with regards to the Scottish countryside. It is, therefore, exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005 and consequently there is no need for a full Strategic Environmental Assessment to be undertaken.

191. Further details on the Bill's impact, on matters such as sustainable business, economic growth, inequalities and gender equality are explored in the EQIA and in the Business and Regulatory Impact Assessment prepared in respect of the Bill.

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<sup>38</sup> <https://www.gov.scot/publications/code-practice-exercise-constables-power-stop-search-person-scotland/>.



*This document relates to the Fireworks and Pyrotechnic Articles (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 1 February 2022*

# **FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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