

**From:** REDACTED  
**Sent:** 17 December 2020 10:56  
**To:** REDACTED  
**Cc:** REDACTED; REDACTED>; REDACTED >; REDACTED >  
**Subject:** RE: OFFICIA - CONFIDENTIAL - SG fireworks amendments

Hi **REDACTED**,

Thanks very much for coming back to us so quickly – it is very much appreciated. And thank you for the helpful thoughts and comments below.

As you have set out the only limits on volume of fireworks are set out in the Explosive Regs 2014. These regs have a much wider interpretation of fireworks ('fireworks' means the explosive articles assigned in accordance with the United Nations Recommendations any of the U.N. nos. 0333 to 0337'). However the Pyrotechnics Article (safety) Regulations 2015 tell us that the fireworks available on the market are Category F2, F3 and F4 and that F4 fireworks are not to be made available to persons without specialist knowledge. The Fireworks (Scotland) Regulations 2004, which we are amending set out the law in relation to "adult fireworks" which are interpreted as being these categories of fireworks.

In our discussion, I should have been clearer that we are not overriding the law set out in the 2014 Regs but are setting limits on the volume of fireworks that can be sold here in Scotland with reference to the type of fireworks which are available on the market. When the change in volume is set out in the context of what fireworks are available on the market then we are making clear rules here.

We are in fairly regular contact with **REDACTED** – I gave her the heads up about the formal response to the Review Group recommendations that were published on Tuesday; and are also in fairly regular contact with our counterpart in Wales who also have a strong interest in this. The changes that are being made follow from the 2019 consultation, and we are continuing our engagement with the industry along with other key stakeholders.

Hope that all makes sense, and happy to arrange another chat if that would be helpful?

With many thanks again for your quick and helpful response. If we don't speak before Christmas, I hope you all have a lovely break.

**REDACTED**

**REDACTED**  
**REDACTED**

**From:** REDACTED  
**Sent:** 17 December 2020 08:51  
**To:** REDACTED  
**Cc:** REDACTED; REDACTED; REDACTED; REDACTED  
**Subject:** FW: OFFICIA - CONFIDENTIAL - SG fireworks amendments

Hi **REDACTED**,

Thank you for the meeting last week and for your very thorough and clear paper detailing the specific changes that the Scottish Government is considering to the laws on the acquisition and use of fireworks.

You requested comments on the proposals, in particular in relation to the following points and our comments are provided as below. We would advise, if you have not done so already, to consult colleagues in BEIS (OPSS) who own the policy and legislation for the Fireworks Act 2003 and the Pyrotechnics Articles (Safety) Regulations 2015, as we anticipate any changes in legislation in Scotland may lead to calls for similar changes to be made to other similar legislation. **REDACTED - REDACTED** - and her team will be able to assist you.

HSE has no comment on the proposal to reduce the times of day adult fireworks can be used by the general public as HSE has no role in the legislation relating to the sale of fireworks.

HSE has no comment on proposal to reduce the times of day adult fireworks can be sold to the general public as HSE has no role in the legislation relating to the sale of fireworks.

In respect of the proposal to reduce the volume of adult fireworks that can be sold by retailers to individuals who do not have an explosives licence we consulted with our lawyers to understand and gain clarity, on how Scottish Government regulations interact with Explosives Regulations 2014 (as amended) [ER 2014], any potential direct or indirect impacts and how the two regimes may work alongside each other.

In our discussions you indicated that in line with the proposals it is your intention to significantly reduce the permitted mass of explosive that can be purchased by introducing provisions into the Fireworks (Scotland) 2004 Regulations and that these new provisions would 'override' any provisions in the ER2014. From our lawyer's advice we now understand, that the Fireworks (Scotland) Regulations 2004 were made under the Fireworks Act 2003 and the Consumer Protection Act 1987 and are a devolved matter, providing for the prohibition of the use of certain fireworks at night and for dispensations from that prohibition. We acknowledge that Section 4 of the Fireworks Act 2003 gives the Scottish Government power to make regulations in relation to the supply of explosives by reference to quantity, i.e. in specified circumstances, thus covering similar ground to Regulation 9 of the ER2014. Our understanding is that provisions under the Fireworks (Scotland) Regulations 2004 would not 'override' the requirements in Regulation 9 of ER2014 as these provisions would continue to apply. We note however that a dutyholder breaching the quantity requirement in the Fireworks (Scotland) Regulations, but below the limit in the Explosives Regulations, may still be liable for sanctions under the Fireworks (Scotland) Regulations. I am sure you have considered that dutyholders, in their defence in such a situation, may argue that they were compliant with the provisions of ER2014. Whilst we imagine this is unlikely to be a successful defence, you might wish to bear in mind, it is possible that the courts may pass adverse comment on the inconsistency between regimes, but appreciate you may have evidence that justifies this legislative difference.

In summary, we accept your proposals are legally possible, but note that the proposal may lead to unnecessary duplication and regulatory confusion with dutyholders. Our view is that, where possible, having two legal regimes containing different limitations on the same thing should be avoided.

We would anticipate that there may be strong objections from the fireworks industry to the proposals when made public and would be grateful if you could advise if you intend to undertake any further public consultation on this proposed regulatory change.

We are happy to discuss anything further if this will help you make progress.

Best regards

**REDACTED**

**REDACTED**

**Regulation, International and Major Hazards Policy Branch**

**Explosives Policy Team Leader**  
Engagement and Policy Division

Health and Safety Executive | Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS

**REDACTED**

[REDACTED](#)

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**From:** REDACTED

**Sent:** 11 December 2020 16:47

**To:** REDACTED >; REDACTED

**Subject:** OFFICIA - CONFIDENTIAL - SG fireworks amendments

Both

As discussed in earlier meeting please see attached document **REDACTED** requested.

**REDACTED** has requested comments/views by end of next week if possible. If this is not possible please let me know and I can advise.

Regards

**REDACTED**

**From:** REDACTED

**Sent:** 11 December 2020 16:22

**To:** REDACTED

**Cc:** REDACTED; REDACTED

**Subject:** CONFIDENTIAL - SG fireworks amendments

Hello **REDACTED**,

It was lovely to speak to you this afternoon, and your colleagues REDACTED and REDACTED. We very much appreciate you all taking the time out of what sounds like very busy diaries and engaging with us so helpfully and positively.

As we agreed, I have attached an overview of the specific changes that SG is considering bringing forward. This includes some background to the work that I discussed (along with hyperlinks to relevant reports etc) as well as an outline of the specific changes that are being considered.

We discussed the role of HSE and whether you will have any substantial to feed in here. We would very much welcome you having a look at the attached document and providing any views or comments where appropriate. I mentioned the tight

timescales we are currently working towards and if you are able to provide a response by the end of next week that would be incredibly helpful.

If you are able to share this with REDACTED and REDACTED that would be great. Please, however, do not circulate any further and treat as confidential for the moment.

With many thanks

REDACTED

**Please note that I am now working from home. I am available via email, phone or skype.**

REDACTED

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REDACTED

REDACTED | REDACTED

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**From:** REDACTED  
**Sent:** 18 December 2020 10:45  
**To:** REDACTED >; REDACTED >  
**Cc:** REDACTED >  
**Subject:** RE: OFFICIAL - CONFIDENTIAL - SG fireworks amendments

REDACTED,

Thank you for the further clarification which is very helpful.

Wishing you a very happy Christmas.  
Take care.



REDACTED

REDACTED

REDACTED

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*Please let us know by phone or email of any instances where this is not possible and hard copy mail needs urgent attention.*

*Mae'r argyfwng COVID 19 presennol yn ei gwneud hi'n anodd eithriadol i dderbyn, a chael mynediad i bost. Byddai HSE yn ddiolchgar petasech yn peidio ag anfon post copi caled lle mae'n bosibl ac yn hytrach fersiynau electronig. Rhwch wybod dros y ffôn neu ebost am unrhyw achosion lle nad yw hyn yn bosibl ac mae post copi caled angen sylw ar frys.*

**From:** REDACTED  
**Sent:** 18 December 2020 10:27  
**To:** REDACTED; REDACTED  
**Cc:** REDACTED  
**Subject:** RE: OFFICIAL - CONFIDENTIAL - SG fireworks amendments

Thanks REDACTED for the quick and helpful response.

The intention is that the regs will cover adult fireworks as defined in the Fireworks (Scotland) Regulations 2004; but a number of exemptions will be made so that the changes in relation to time and quantity of supply do not apply to:

- People employed by, or in business as, a professional organiser or operator of firework displays.
- People employed in, or whose trade or business (or part of whose trade or business) is the supply of fireworks in accordance with the provisions of the Pyrotechnic Articles (Safety) Regulations 2015([1])
- People employed by a local authority and the fireworks in question are to be used for the purposes of putting on a firework display by that local authority; or at a national public celebration or commemorative event.
- Those who holds a public entertainment licence, or temporary public entertainment licence issued under section 41 of the Civic Government (Scotland) Act 1982([2]) to hold a firework display.

Please note we are still working through these exemptions – particularly the last one to ensure we are not prohibiting organised displays put on by community groups.

To answer your question – there is no policy intent to limit the quantity of F4 fireworks specialists can purchase.

**REDACTED**  
**REDACTED**

**From: REDACTED**

**Sent:** 18 December 2020 10:09

**To: REDACTED >; REDACTED**

**Cc: REDACTED**

**Subject:** RE: OFFICIAL - CONFIDENTIAL - SG fireworks amendments

**REDACTED,**

Thank you for your e-mail.

The use of 25% of the gross weight to provide an indication of the net explosive mass of a firework was previously used as a benchmark, but this is no longer generally accepted as a suitable approach given the variability in types and construction of fireworks.

In order to know the net explosive quantity of any individual firework the retailer would need to obtain this information from their supplier and then calculate the net explosive quantity for the fireworks being purchased. This information may already be provided to retailers as they would need to know the total net explosive quantity of the fireworks they hold in order to ensure they are complying with the provisions of their storage licence.

I note in a previous e-mail to **REDACTED** you advised;

*As you have set out the only limits on volume of fireworks are set out in the Explosive Regs 2014. These regs have a much wider interpretation of fireworks ('fireworks' means the explosive articles assigned in accordance with the United Nations Recommendations any of*

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([1]) S.I 2015/1553; as amended by S.I 2019/696

([2]) 1982 c.45. Section 41 was amended by the Fire Safety and Safety of Places of Sport Act 1987 (c.27) section 44(5); the Licencing (Scotland) Act 2005 (asp 16), schedule 6 paragraph 6(2)(b); the Criminal Justice and Licencing (Scotland) Act 2010 (asp 13), section 172(5), section 176(2)(a),(b) and (c), section 176(2)(d) and (e) and section 176(3) and the Air Weapons and Licencing (Scotland) Act 2015 (asp 10) section 74(1)(a) and (b) and section 75.

*the U.N. nos. 0333 to 0337'). However the Pyrotechnics Article (safety) Regulations 2015 tell us that the fireworks available on the market are Category F2, F3 and F4 and that F4 fireworks are not to be made available to persons without specialist knowledge. The Fireworks (Scotland) Regulations 2004, which we are amending set out the law in relation to "adult fireworks" which are interpreted as being these categories of fireworks.*

I thought it may be worth clarifying that the Explosives Regulations, by use of reference to UN Numbers, and the Pyrotechnics Article (Safety) Regulations 2015 by reference to categories of firework are referring to the same items just in different contexts. The classification of an article to U.N. nos. 0333 to 0337 is how the article is considered in relation to transport, which the category (F1, F2, F3, F4) is the categorisation for the purposes of product safety. Any firework will be assigned a classification for transport and also to a category. I would also be helpful if you could advise if the policy intention is to extend the limit for the quantity that can be purchased to include category F4 fireworks. As you note these articles are not generally publicly available due the requirements relating to their provision to persons of specialist knowledge only.

I trust this is helpful to you.  
Take care.



REDACTED  
REDACTED

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**From:** REDACTED

**Sent:** 18 December 2020 08:42

**To:** REDACTED

**Cc:** REDACTED >; REDACTED

**Subject:** RE: OFFICIAL - CONFIDENTIAL - SG fireworks amendments

Hi REDACTED / REDACTED,

I received REDACTED out of office so forwarding onto you both in case you are able to advise.

Many thanks



**REDACTED**  
**REDACTED**

**From:** REDACTED  
**Sent:** 18 December 2020 08:37  
**To:** REDACTED  
**Subject:** RE: OFFICIAL - CONFIDENTIAL - SG fireworks amendments

Hi REDACTED,

I have a quick question I was hoping you might be able to help me with.

As you know, in the regs we are drafting, one of the intentions is to reduce the quantity of fireworks that the general public can purchase at any one time. We are intending to follow the same/similar definitions outlined in the Explosive Regs (i.e the quantity is construed as a reference to the net mass of explosive substance). My understanding is that this information can usually be found on the outer packaging or documents from suppliers, but that it is not always included on individual fireworks. I am also aware that if the explosive mass isn't known, this can be taken to be 25% of the gross weight of the fireworks; but I wondered whether this is currently written into any regulations or guidance notes that you are aware of?

I hope that makes sense and happy to chat if easier?

Many thanks  
**REDACTED**

**REDACTED**  
**REDACTED**

**From:** REDACTED  
**Sent:** 17 December 2020 08:51  
**To:** REDACTED  
**Cc:** REDACTED >; REDACTED REDACTED >; REDACTED  
**Subject:** FW: OFFICIAL - CONFIDENTIAL - SG fireworks amendments

Hi REDACTED,

Thank you for the meeting last week and for your very thorough and clear paper detailing the specific changes that the Scottish Government is considering to the laws on the acquisition and use of fireworks.

You requested comments on the proposals, in particular in relation to the following points and our comments are provided as below. We would advise, if you have not done so already, to consult colleagues in BEIS (OPSS) who own the policy and legislation for the Fireworks Act 2003 and the Pyrotechnics Articles (Safety) Regulations 2015, as we anticipate any changes in legislation in Scotland may lead to calls for similar changes to be made to other similar legislation. **REDACTED - REDACTED** - and her team will be able to assist you.

HSE has no comment on the proposal to reduce the times of day adult fireworks can be used by the general public as HSE has no role in the legislation relating to the sale of fireworks.

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In respect of the proposal to reduce the volume of adult fireworks that can be sold by retailers to individuals who do not have an explosives licence we consulted with our lawyers to understand and gain clarity, on how Scottish Government regulations interact with Explosives Regulations 2014 (as amended) [ER 2014], any potential direct or indirect impacts and how the two regimes may work alongside each other.

In our discussions you indicated that in line with the proposals it is your intention to significantly reduce the permitted mass of explosive that can be purchased by introducing provisions into the Fireworks (Scotland) 2004 Regulations and that these new provisions would 'override' any provisions in the ER2014. From our lawyer's advice we now understand, that the Fireworks (Scotland) Regulations 2004 were made under the Fireworks Act 2003 and the Consumer Protection Act 1987 and are a devolved matter, providing for the prohibition of the use of certain fireworks at night and for dispensations from that prohibition. We acknowledge that Section 4 of the Fireworks Act 2003 gives the Scottish Government power to make regulations in relation to the supply of explosives by reference to quantity, i.e. in specified circumstances, thus covering similar ground to Regulation 9 of the ER2014. Our understanding is that provisions under the Fireworks (Scotland) Regulations 2004 would not 'override' the requirements in Regulation 9 of ER2014 as these provisions would continue to apply. We note however that a dutyholder breaching the quantity requirement in the Fireworks (Scotland) Regulations, but below the limit in the Explosives Regulations, may still be liable for sanctions under the Fireworks (Scotland) Regulations. I am sure you have considered that dutyholders, in their defence in such a situation, may argue that they were compliant with the provisions of ER2014. Whilst we imagine this is unlikely to be a successful defence, you might wish to bear in mind, it is possible that the courts may pass adverse comment on the inconsistency between regimes, but appreciate you may have evidence that justifies this legislative difference.

In summary, we accept your proposals are legally possible, but note that the proposal may lead to unnecessary duplication and regulatory confusion with dutyholders. Our view is that, where possible, having two legal regimes containing different limitations on the same thing should be avoided.

We would anticipate that there may be strong objections from the fireworks industry to the proposals when made public and would be grateful if you could advise if you intend to undertake any further public consultation on this proposed regulatory change.

We are happy to discuss anything further if this will help you make progress.

Best regards

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

REDACTED

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**From:** REDACTED

**Sent:** 11 December 2020 16:47

**To:** REDACTED >; REDACTED

**Subject:** OFFICIA - CONFIDENTIAL - SG fireworks amendments

Both

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**REDACTED** has requested comments/views by end of next week if possible. If this is not possible please let me know and I can advise.

Regards

**REDACTED**

**From:** REDACTED

**Sent:** 11 December 2020 16:22

**To:** REDACTED

**Cc:** REDACTED ; REDACTED

**Subject:** CONFIDENTIAL - SG fireworks amendments

Hello **REDACTED**,

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As we agreed, I have attached an overview of the specific changes that SG is considering bringing forward. This includes some background to the work that I discussed (along with hyperlinks to relevant reports etc) as well as an outline of the specific changes that are being considered.

We discussed the role of HSE and whether you will have any substantial to feed in here. We would very much welcome you having a look at the attached document and providing any views or comments where appropriate. I mentioned the tight timescales we are currently working towards and if you are able to provide a response by the end of next week that would be incredibly helpful.

If you are able to share this with **REDACTED** and **REDACTED** that would be great. Please, however, do not circulate any further and treat as confidential for the moment.

With many thanks

**REDACTED**

**Please note that I am now working from home. I am available via email, phone or skype.**

**REDACTED**

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**REDACTED**

**REDACTED | REDACTED**

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