

Fireworks and Pyrotechnic Articles (Scotland) Bill

Business and Regulatory Impact Assessment

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Scottish Government
Riaghaltas na h-Alba
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The Fireworks and Pyrotechnic Articles (Scotland) Bill

Purpose and Intended Effect

1. Background

Fireworks

1.1 Following high profile incidents during bonfire night in 2017, and again in 2018, the Scottish Government undertook work to look at the position of fireworks in Scotland. This included: a review of police and fire service activity linked to fireworks and bonfire night by Her Majesty's Inspectorate of Constabulary in Scotland and Her Majesty's Fire Service Inspectorate for Scotland; and a programme of public consultation, stakeholder engagement and evidence gathering on the sale and use of fireworks in Scotland to identify what action was required going forward.

1.2 A 'consultation on fireworks in Scotland: Your experiences, your ideas, your views' launched on 3 February 2019 for a period of 14 weeks to its close on 13 May 2019. It was designed to start a conversation with the people of Scotland on how fireworks are sold and used. The consultation was an important step in gathering valuable evidence on a range of opinions and perspectives and covered organised displays, private use by individuals, and inappropriate use.

1.3 Over the consultation period 29 engagement events were held – 24 open public events, and five events for specific population groups including young people. A total of 16,420 responses were received from members of the public and stakeholder organisations.

1.4 In October 2019 the Minister for Community Safety published the [Fireworks Action Plan](#) which set out how the Scottish Government would address the concerns expressed through the national consultation. The Action Plan sets out activities that have been taken forward immediately, as well as longer term actions that will collectively support a change in how fireworks are used in Scotland.

1.5 An independent Firework Review Group was tasked with considering the options available to tighten legislation on fireworks in Scotland. The Group considered the evidence available and made a series of recommendations to Scottish Ministers in November 2020 (report available [online](#)) and reached a majority consensus that a fundamental shift is required in how fireworks are used and accessed in Scotland through the introduction of a comprehensive set of measures.

Pyrotechnic Articles

1.6 Prior to the introduction of Covid restrictions, reports of the misuse of pyrotechnic articles (in particular, flares and smoke bombs) at events across Scotland had become widespread and there is evidence of them having been set

off at large gatherings such as concerts, music festivals, sporting events and on-street celebrations.

1.7 In 2018, Police Scotland approached the Scottish Government with their significant concerns about the dangers of misuse of pyrotechnic articles and the work they had been undertaking in relation to it. This included the establishment of a Police Scotland Short Life Working Group (SLWG) on pyrotechnic articles. This Group aimed to identify 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.

1.8 Following engagement with Police Scotland, in May 2019, the Scottish Government built on the work of the SLWG by holding stakeholder discussions to identify possible actions that could be taken to tackle the issue based on the evidence gathered and presented. These discussions, which were hosted by the Scottish Government, included representatives from Police Scotland, Scottish Police Federation, British Transport Police, Crown Office and Procurator Fiscal Service and Scottish Government.

1.9 The conclusion from these stakeholder discussions was that a new offence was required, and led to the proposed new offence of being in possession of a pyrotechnic article at, in the vicinity of, or travelling to a designated event, without reasonable excuse or lawful authority, and for police powers to be extended to allow a stop and search provision for anyone reasonably suspected of committing the offence. This requires primary legislation in order to be implemented.

2. Objectives

Fireworks

2.1 The Firework Review Group provided its recommendations to Scottish Ministers in November 2020 and reached a majority consensus that a fundamental shift is required in how fireworks are used and accessed 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.
- Restricting the volume of fireworks that can be purchased.
- Restricting the days and times fireworks can be set off.
- A provision for no-fireworks areas to be introduced where it is not permitted for fireworks to be set off, with local communities having a key role in influencing this.
- The introduction of a proxy purchasing offence to reduce the risk of fireworks being misused by children and young people under the age of 18.

2.2 A number of these recommendations have been progressed through [The Fireworks \(Scotland\) Miscellaneous Amendments Regulations 2021](#), which amends the Firework (Scotland) Regulations 2004. The changes implemented by these regulations came into effect on 30 June 2021. The Bill progresses the remaining

recommendations from the Group including: the introduction of mandatory conditions at the point of the sale for fireworks through a licensing system, restricting the days that fireworks can be set off by the general public, introducing Fireworks Control Zones where the general public cannot set off fireworks and introducing a proxy purchasing offence to criminalise the supply of fireworks to people under the age of 18.

2.3 The Bill includes some measures which go further than the Firework Review Group recommendations in order to achieve policy objectives. These measures were included in the 2021 consultation, as outlined in paragraph 5.8.

2.4 The policy objectives underpinning the Fireworks Action Plan were developed using a behaviour change framework (Individual Social Material) to ensure substantive and long lasting change in relation to how fireworks are used in Scotland. Relevant data and evidence from a variety of sources, including from the emergency services, as well as specific analytical work and international case studies have also informed the policy objectives.

Pyrotechnic Articles

2.5 Evidence gathered through stakeholder engagement, particularly from Police Scotland, on pyrotechnic incidents at different types of events, both within and outwith Scotland, allowed us to identify the main locations and types of events where pyrotechnic articles are misused. This also supported the view that the frequency of pyrotechnic misuse is rising and, to tackle this, legislation needs to be backed up with sufficient police powers which can only be provided through new primary legislation.

2.6 The measures aim to tackle the misuse of pyrotechnic articles, with the overarching policy aim being to protect public safety by deterring those who might misuse pyrotechnic articles from doing so, and thereby reducing the risk to individuals themselves, other members of the public, those working in and around stadia, events and assemblies where misuse mainly occurs, such as stewards, and police attending such events and coming into proximity with the devices.

2.7 These risks range from the potential for minor injury (such as a superficial burn) through to major injuries (such as maiming or disfigurement). While we are not aware of anyone in the UK having died from the misuse of a pyrotechnic article, we are aware that deaths have occurred in other countries and favour a preventative approach to avoid possible worst case scenarios.

2.8 The measures included within the Bill on pyrotechnic articles therefore aim to tackle the misuse of pyrotechnic articles in an appropriate and proportionate way, while ensuring that these measures do not deter those with lawful authority or legitimate reason from carrying and using pyrotechnic articles.

2.9 Following further development of the measures that were proposed in the 2021 consultation, the Fireworks and Pyrotechnic Articles (Scotland) Bill is in seven parts:

- Part 1: Key Concepts
- Part 2: Fireworks licensing
- Part 3: Restrictions on supply and use of fireworks and pyrotechnic articles including: prohibition on supply to children; and restricting the days of use and supply of fireworks
- Part 4: Fireworks Control Zones
- Part 5: Pyrotechnic Articles at Certain Events
- Part 6: Enforcement
- Part 7: General provisions including interpretation, regulations, ancillary provision and commencement.

3. Rationale for Government Intervention

Fireworks

3.1 People should be, and feel, safe in their communities. This ambition is embedded through our [National Performance Framework](#), and our [Justice Vision for Scotland](#). The Action Plan supports the Scottish Government National Outcome of **We live in communities that are inclusive, empowered, resilient and safe** and sets out a range of outcomes for fireworks to support this including:

- Organised displays provide the opportunity to bring communities together.
- Fireworks are used safely and handled with care.
- Fireworks do not cause harm, distress or serious injury.

3.2 Achieving a cultural shift in the relationship Scotland has with fireworks will take time and will require a concentrated package of action by various partners. This includes progressing legislation to implement changes, as well as actions such as partnership working within communities to improve awareness and understanding on the appropriate use of fireworks, to positively influence responsible behaviour, and to support communities to have greater control in how fireworks are used in their local area.

Pyrotechnic articles

3.3 The misuse of pyrotechnic articles can have a range of negative impacts, with the potential to be damaging and dangerous when not used for their intended purpose. We believe that a new offence of being in possession of a pyrotechnic article while travelling to, in the immediate vicinity of, or attending a designated venue or event, or while travelling to, participating in, or otherwise attending a public assembly without reasonable excuse or lawful authority, and a power to allow the police to stop and search a person they have reasonable grounds to suspect is committing that offence, would reduce the number of incidents currently being experienced and therefore minimise the risk of serious harm to individuals and communities.

4. Existing Legislation – Fireworks and Pyrotechnic Articles

Fireworks

Categorisation and control of firework supply

4.1 Fireworks are categorised in schedule 1 of the Pyrotechnic Articles (Safety) Regulations 2015:

- 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.

4.2 The online sales of fireworks are regulated by Trading Standards¹ 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.

Supply of Fireworks

4.3 The sale, possession and use of fireworks is regulated by the Fireworks Act 2003, the Fireworks Regulations 2004, the Fireworks (Scotland) Regulations 2004 and the Pyrotechnic Articles (Safety) Regulations 2015. On 30 June 2021, The Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 came into force which amended the Fireworks (Scotland) Regulations 2004 to introduce new measures on how fireworks can be supplied to and used by the general public.

4.4 In addition, Regulation 9 of the Explosives Regulations 2014 prohibits the supply or acquisition of more than 50kg of fireworks at a time, except to individuals licensed by the 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 5kg of fireworks at a time, except to individuals licensed by the Local Authority, professional firework operators/organisers, firework businesses and community groups.

4.5 Regulation 9 of the Fireworks Regulations 2004 limits the sale and supply of fireworks to seasonal 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:

- November 5 (from 15th October to 10th November)
- New Year (from December 26th to 31st)
- Chinese New Year (on the first day of the Chinese New Year and the 3 days immediately preceding it)

¹ The legal term used for Trading Standards is 'weights and measures authority'.

- Diwali (on the day of Diwali and the 3 days immediately preceding it)

4.6 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 7am and 6pm, with exemptions for professional firework operators/organisers, firework businesses and community groups.

4.7 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.
- F1 category fireworks to anyone under the age of 16.
- F2 and F3 category fireworks to anyone under the age of 18.
- F4 category fireworks to members of the public.

4.8 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 4 (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, have used the category of article before, and hold valid liability insurance for the article in question².

Enforcement

4.9 Trading Standards can carry out test purchasing 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.

Use of fireworks

4.10 Under regulation 3 of the Fireworks (Scotland) Regulations 2004 the use of fireworks by the general public is permitted between 6pm and 11pm, although this is extended to midnight on 5 November and 1am 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.

4.11 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

²Guide to pyrotechnics regulations 2015:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950114/Guide-to-pyrotechnics-regulations-2015-tp.pdf

4.12 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.

4.13 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.

4.14 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'.

Public firework displays

4.15 It is for each local authority to decide if it wishes to license public firework 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".

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

Stop and search powers for fireworks

4.17 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 are:

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

4.18 Breaching any of the above regulations 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 on possession of a firework they may search that person.

4.19 The Minister for Community Safety has kept the UK Government's Minister for Small Business, Consumers and Corporate Responsibility updated as fireworks policy and practice has developed in Scotland. The UK Government has confirmed it has no plans to make changes to the UK legislation at present and in a formal response, published in March 2020, to the House of Commons Petitions Committee report on fireworks, it did not set out any plans to introduce new firework legislation. The Minister for Community Safety has also engaged with the Minister for Environment, Energy and Rural Affairs in the Welsh Government throughout this work.

Pyrotechnic articles

Possession of a pyrotechnic article at sporting events.

4.20 Possession of some pyrotechnic articles and fireworks in a sports ground is an offence under the Criminal Law (Consolidation) (Scotland) Act 1995. The 1995 Act also provides the power for the police to search a person they have reasonable grounds to suspect is committing or has committed an offence. The current legislative provisions relate to searches of persons who are entering or attempting to enter designated sporting events.

Carrying dangerous instruments or offensive weapons

4.21 The Criminal Justice and Public Order Act 1994 provides stop and search powers where 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 as "dangerous instruments", which is defined as a sharply pointed instrument or one with a blade, but may be an offensive weapon if that is the use 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 period of time.

4.22 If a person is stopped and searched under legislative powers for a different offence and found to be in possession of a pyrotechnic article, 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 argued that carrying a pyrotechnic article, which could cause much harm, without a legitimate reason for doing so, is serious.

4.23 Culpable and reckless conduct provides an appropriate charge for those who activate pyrotechnic articles in a situation where there is a safety risk generated by this activation, such as in a crowded public place or sporting venue. Police Scotland have 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.

4.24 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.

5. Consultation

2019 Fireworks Consultation

5.1 Fireworks policy has been developed following a significant programme of consultation and engagement with key stakeholders. This includes the 2019 public consultation, which was an important step in gathering 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. An independent [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.

5.2 The consultation and engagement was 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](#) (with a sample of 1,002 responses) to ensure findings were available that represented the views of the wider public. The report from this was published alongside the consultation analysis in October 2019.

5.3 The consultation identified a broad sense that fireworks can be good for people and communities when they are used at the right time, in the 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. The consultation and representative opinion poll, however, highlighted strong public desire for tighter controls to be introduced on the sale and use of fireworks in Scotland; and a similar theme emerged from the Firework Review Group whose recommendations centred on the sale and use of fireworks by the general public, as opposed to organised firework displays.

5.4 Both the consultation and omnibus survey demonstrated a strong desire for greater control on 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.

5.5 Additional evidence was considered through: an [evidence review on the impact of fireworks](#) in the context of international legislation and regulations which 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; and [case studies of the evidence internationally](#) to draw evidence on the effectiveness – or otherwise – of similar measures in place.

5.6 Throughout this period, the Scottish Government continued to engage with a range of stakeholders including emergency services, enforcement agencies, local authorities, animal welfare organisations, community safety representatives, the National Health Service, the fireworks industry, the Department for Business, Energy and Industrial Strategy (UK Government), the Health and Safety Executive and the Welsh Government.

5.7 A full list of those who responded to the 2019 consultation and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website and includes Police Scotland, the Convention of Scottish Local Authorities (COSLA), the Scottish Community Safety Network, the Scottish SPCA, the British Veterinary Association, the Scottish Burned Children Club, the British Fireworks Association and a number of local authorities and community councils.

2021 Fireworks and Pyrotechnic Articles Consultation

5.8 A second public consultation 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.

5.9 In preparing the 2021 consultation, the Scottish Government considered responses received to the 2019 consultation, engagement with stakeholders, the deliberations and recommendations from the independent Firework Review Group and the evidence gathered as part of this process. In preparing the consultation the Scottish Government also liaised with:

Within Scottish Government:

- Justice Analytical Services

- Police Division
- Public Service Reform and Community Planning
- Community Empowerment
- Criminal Law, Practice and Licensing
- Local Government Policy
- Animal Welfare
- Environmental Quality
- Fire and Rescue Unit
- Consumer Legislation
- Veterans and Armed Forces Unit
- Community Safety Unit
- Urgent Care Policy
- Active Scotland.

Enforcement Agencies:

- Police Scotland
- The Society of Chief Officers for Trading Standards in Scotland (SCOTSS)
- Scottish Fire and Rescue Service
- Health and Safety Executive.

Local Authorities and Representative Bodies:

- The Convention of Scottish Local Authorities (COSLA)
- Scottish Community Safety Network
- Society of Local Authority Lawyers and Administrators in Scotland.

5.10 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. Results of the consultation show majority support among respondents for each of the measures included, although not all measures were supported equally:

- The majority (84%) of respondents agreed that a firework licensing system should be introduced in Scotland.
- A strong (85%) majority felt that the firework licensing system should cover the possession and use of fireworks, as well as their purchase.
- Most respondents supported proposed restrictions on the days that fireworks can used by the general public (67%) and sold to the general public (64%).
- The majority of respondents (83%) agreed with the introduction of no-firework areas, or Firework Control Zones.
- The vast majority (92%) agreed with the introduction of a 'proxy purchasing' offence in relation to fireworks to criminalise the supply of fireworks to people under the age of 18.

5.11 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.

Engagement on pyrotechnic articles

5.12 Initial engagement with key stakeholders in relation to possible pyrotechnic legislation began in 2019, and has been outlined in paragraphs 1.7 and 1.8, with representatives from:

Enforcement Agencies:

- Police Scotland
- Scottish Police Federation
- British Transport Police
- Crown Office and Procurator Fiscal Service.

Within Scottish Government:

- Community Safety Unit
- Police Division
- Active Scotland Division.

5.13 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.

5.14 Analysis of consultation responses confirms strong overall support for measures to tackle pyrotechnic article misuse, although at different levels and with some mixed views among stakeholder groups.

- 76% of respondents had concerns about pyrotechnic articles 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.

5.15 While the specific offence consulted on was for being in possession of a pyrotechnic article in a public place without reasonable excuse or lawful authority, rather than the provision included in the Bill as drafted – in possession of a pyrotechnic article at, in the vicinity of, or travelling to, a designated event or venue (music concert/festival, sporting ground) or a public assembly or procession – 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 any concerns expressed during consultation about unintended consequences or the proportionality of the legislation will be addressed by the offence as drafted.

5.16 The proxy purchase provision as it relates to pyrotechnics was not consulted on in the Scottish Government consultation paper, as it was a provision developed from subsequent policy development. However, there is widespread support for a proxy purchase offence in relation to fireworks (92% of respondents), and the Scottish Government believes there will be similar support on the general principles of this measure. The provision as drafted ensures exemptions in relation to legitimate possession of pyrotechnics for under-18 year olds.

6. Options (including Costs and Benefits)

6.1 Two options have been actively considered:

- Option 1: 'Do nothing' – No measures are introduced
- Option 2: Introduce a significant package of legislative measures through a Bill to introduce further restrictions on how the general public can purchase and use fireworks and pyrotechnic articles in Scotland.

6.2 An outline of each option is included below, along with a summary of the assumed costs and benefits of each option. As Option 2 consists of a number of measures to form a comprehensive package of change, the benefits and costs are compared to a 'do nothing' option, as opposed to providing a cost/benefit analysis of each single measure contained within the Bill. In many cases, the anticipated benefits and costs can be described, but cannot be easily quantified. These benefits are described and, where possible, a discussion is given of the relevant evidence base that underpins the scale and nature of these anticipated impacts.

Option 1: Do Nothing

6.3 Option 1 involves no new legislative measures in relation to the sale and use of fireworks and the misuse of pyrotechnic articles in Scotland being progressed.

Option 1: Costs

6.4 There are a number of potential costs to adopting a 'do nothing' approach:

- **Demonstrates lack of Scottish Government action** in response to the strong voice for change which emerged from the 2019 consultation, the support demonstrated for proposed measures in the 2021 consultation and the recommendations to emerge from the Firework Review Group and the stakeholder discussions on the misuse of pyrotechnics. On these lines, too, it would also erroneously suggest that the Scottish Government does not prioritise community and individual safety.
- **Damage to stakeholder relationships** including the emergency services and animal welfare charities, particularly organisations represented on the Firework Review Group, who have contributed towards and endorsed the recommendations of the Group for legislative change.
- **No legislative measures introduced to seek to improve outcomes for people and communities by reducing the harm caused by fireworks misuse.** A lack of legislative measures will mean that the cultural shift that

was recommended by the Firework Review Group cannot be achieved, and therefore outcomes for people in relation to fireworks are unlikely to improve. Police Scotland warnings of the risk of serious injury or death by pyrotechnic misuse if action isn't taken would go unheeded.

- **Pressure to increase enforcement but with no legislative changes progressed to shift the culture of fireworks** suggests there is no motivation or driver for behaviours to change and the risk of harm caused by fireworks, in terms of physical injuries and in the wider sense, continues.

Option 1: Benefits

6.5 There are a number of potential benefits to adopting a 'do nothing' approach:

- **No additional financial burden to the public purse** as there would be no funding required to support implementation and operation of new legislative measures.
- **Enforcement authorities would not be required to adapt processes** to adjust to requirements and responsibilities introduced through new measures.
- **Firework retailers will be able to continue to sell fireworks to consumers without any additional restrictions.** Whilst economic impacts of new measures are difficult to quantify, business as usual would be able to continue.

Option 2: Introduce a significant package of legislative change through a Bill to introduce further restrictions on how the general public can purchase and use fireworks and pyrotechnic articles in Scotland.

Fireworks

6.6 The Firework Review Group recommended that a significant package of legislative change is required to bring about a cultural shift in the relationship Scotland has with fireworks, supported by preventative activity such as education and awareness raising, improved outcomes for people in relation to noise and disturbance, anti-social behaviour, community safety and wellbeing and reducing firework related injuries.

6.7 A number of measures have been considered that could potentially form part of a package of legislative change relating to implementing Option 2. Analysing each individual measure in isolation would risk understating the collective impact of the measures as a whole, and the intention to progress them collectively if Option 2 is preferred. Each measure has been developed taking into consideration a range of evidence including findings from the 2021 public consultation, the recommendations from the Firework Review Group and responses to the 2019 public consultation.

- Firework Licensing System: The Firework Review Group recognised that the introduction of mandatory conditions at the point of sale of fireworks could potentially have a positive impact on promoting and encouraging the safe and

appropriate use of fireworks in Scotland, and support the purchase of fireworks being a well thought out and planned, rather than spontaneous, transaction. The Bill implements this through a firework licensing system that requires members of the public to apply for and obtain a valid fireworks licence to enable them to lawfully purchase, possess, acquire and use fireworks in Scotland. A core part of the licensing system will be the requirement of applicants to successfully complete a firework training course. Responses to the 2021 consultation have informed development of this measure, including elements such as who will operate the system, which will be undertaken by the Scottish Government or under arrangements made by them; and the licence term. The consultation paper proposed a 12 month licence term. Following analysis of consultation responses and consideration of other licensing regimes in Scotland where appropriate (such as Air Weapons certificates), it is now intended that the licence term will be 5 years. The extended licence term seeks to introduce new measures on how the public can purchase and use fireworks, particularly around ensuring people have essential knowledge which means they know how to use fireworks in a safe and appropriate manner, without being excessively restrictive and potentially driving people towards illegitimate methods of accessing fireworks.

- Restricting the days fireworks can be used by the general public: The Firework Review Group suggested that restricting the days fireworks can be used by the general public has the potential to ease the burden on emergency services and reduce the noise and disturbance that fireworks can cause to people and communities. The below dates were included in the 2021 consultation as days when the general public are permitted to use fireworks. These dates align with existing traditional firework periods, where fireworks form part of religious or cultural celebrations around those dates:
 - 29 October to 12 November;
 - 28 December to 4 January;
 - The 1st day of Chinese New Year and the week immediately following it; and
 - The 1st day of Diwali and the week immediately following.

Further engagement with faith groups was undertaken during the 2021 consultation period to ensure that important festivals or events where fireworks already form an important part of celebrations were considered. The Sikh festival of Vaisakhi was highlighted, which led to the dates 7-16 April being included as part of this measure as dates when the public can use fireworks.

- Restricting the days fireworks can be supplied to the general public: Whilst this goes further than the Firework Review Group recommendation, relating to restricting the days the general public can use fireworks, this measure was developed in order to align the days that fireworks can be supplied with the days that they can be used, and received support in the 2021 consultation. It is considered that having fireworks available to purchase for long periods when they are not able to be used could lead to confusion for both retailers

and consumers, and issues around stockpiling and the unsafe storage of fireworks.

- Firework Control Zones: The Firework Review Group recommended that provision should be made for no-fireworks areas to be introduced where it is not permitted for fireworks to be set off by the general public, with local communities having a key role in influencing this. They recognised this as offering the potential for targeted localised approaches based on the specific circumstances within different areas and communities. The purpose of this measure is to ensure that any system put in place to entirely restrict the use of fireworks by the general public in an area is proportionate and fit for purpose to work alongside a range of local preventative and diversionary activity.
- Proxy purchase and supply offence: The 2021 consultation sought views on the introduction of a proxy purchase offence for fireworks following the Firework Review Group recommendation that a proxy purchasing offence is introduced criminalising the non-retail supply of fireworks to people under the age of 18. This measure was further developed to include pyrotechnic articles following analysis of the consultation responses and discussions with Police Scotland, who advised that this was needed in order to protect children and young people from potential harm through the misuse of pyrotechnic articles. 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 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.

Pyrotechnic articles

6.8 The overarching policy aim of any proposed legislation on pyrotechnic articles has always been to tackle the misuse of pyrotechnic articles in an appropriate and proportionate way, while ensuring that these measures do not deter those with lawful authority or legitimate reason from carrying and using pyrotechnic articles. In particular, we are mindful of the need to avoid placing any barrier on those carrying or using pyrotechnic articles as visual distress aids (such as marine flares, or distress flares when hiking).

- Possession of a pyrotechnic article, including a firework, at, in the vicinity of, or travelling to, a designated event: The 2021 consultation asked for views on whether it should be an offence to carry a pyrotechnic article in a public place without reasonable excuse or lawful authority. Throughout the consultation period and beyond, we have therefore been mindful that a more general offence for carrying pyrotechnic articles could potentially have unintended consequences, discouraging those who we would wish to encourage to carry pyrotechnic safety devices from doing so, and not only raising safety concerns but potentially impacting on the sale of pyrotechnic articles bought for legitimate use. Therefore, the provision as drafted ensures that the offence targets misuse at particular places and events, where

pyrotechnic misuse most often occurs, and where their misuse has the potential to be most dangerous. In doing so, it achieves the policy aim, while remaining proportionate, limiting the likelihood of unintended consequences, while being flexible enough should the evidence change as to where and when incidents occur.

- Stop and Search Power in relation to the possession offence: the 2021 consultation asked if police powers should be extended to allow a stop and search provision for anyone reasonably suspected of committing the offence; and to gather views on whether this proposed new offence should be wide enough to allow the police to stop and search a vehicle, for example a car, bus, tram or van. The majority of consultation respondents agreed with extending the Stop and Search Power, and including the search of a vehicle. This provision recognises that the preventative action favoured by Police Scotland – and Scottish Government – can only be achieved legislatively if the offence also comes with the ability to stop and search on reasonable suspicion of an offence being committed. Under existing legislation, Police already have search powers for offences through the Firework Act 2003 and any regulations made under the Act. Therefore, whilst the consultation asked about the specific issue of Stop and Search Powers as detailed above, it is considered that in order to align with existing enforcement powers and practice similar search powers should be included for offences across the Bill.

Option 2: Costs

6.9 It is reasonable to expect a reduction in demand for fireworks if the package of measures that comprise Option 2 is introduced.

6.10 A significant component of the costs imposed by the measures is a reduction in opportunities throughout the year that consumers (members of the public) will have to personally use and enjoy fireworks. Some respondents to the 2021 consultation highlighted that they felt that the proposed measures would only impact legitimate firework users and have no contribution towards reducing the deliberate misuse of fireworks. However, whilst the measures will introduce increased restrictions on the ability of consumers to purchase and use fireworks, it is considered that many legitimate firework users will continue to purchase and use fireworks within the boundaries of the law and will be willing to plan their fireworks purchases and use for specific times and take an online training course and pay for a licence in order to use fireworks. It is also difficult to anticipate what the impact might be on the sale of F1 and F4.

6.11 The economic impact of Option 2 is unclear due to the limited nature of economic data available (see below section on the Scottish Firms Impact Test). However, data provided by the British Firework Association (BFA) provides the following estimates associated with the importation, wholesale and retail of fireworks in Scotland³:

³ Estimates provided by the BFA are based on a series of calculations from UK level data.

- Almost £13m in retail sales value (including VAT).
- A maximum of 334 people are employed in the retail of consumer fireworks in Scotland in a given year, albeit with 291 employed on a seasonal basis, meaning the annual Full Time Equivalent employment would be significantly lower.
- In addition, the BFA estimate that employment in retail fireworks accounts for almost £1.9 million per year and that government revenue from retail fireworks in Scotland equals almost £2.7 million.

6.12 It would be reasonable to expect both the revenue and the employment generated by fireworks to be reduced accordingly if demand falls. Unfortunately, the available evidence does not provide enough substance to underpin a robust prediction of the impacts that the policy could have. However, illustrative modelling on the impact of the firework licensing system, based on simple assumptions (in the absence of economic evidence being available to inform the modelling), suggests this could reduce by between approximately £6 million per annum in a high impact scenario; approximately £4 million per annum in a medium impact scenario and approximately £2 million per annum in a low impact scenario. A reduction in demand would not just reduce revenues, but have knock on impacts for employment (as well as other factors, such as the wider use of fireworks).

6.13 There are also a number of associated costs for specific measures within Option 2. Examples of costs are set out below, alongside estimates that are included in the Financial Memorandum:

- Firework Licensing System: There will be financial and resource costs associated with developing, operating and managing the system. Modelling within the Financial Memorandum sets out estimated **overall** financial costs for the first three financial years of the system, including developing and designing the licence system, developing the firework training course and managing and operating the system, amounting to between £1.1 million and £2.9 million. This will be offset by the licence fee, which should cover operational costs.

Modelling has also been undertaken as part of the Financial Memorandum in relation to the licence fee level, and the revenue that could be generated under different scenarios comparing the fee level with possible levels of demand. For example, where there is low reduction in the demand for fireworks as a result of the licence system and a £30 licence fee applies (with the licence remaining valid for 5 years), there could be an income generated of approximately £3.9 million over a 5 year period. The fee level set will have regard to the costs associated with setting up the system and its ongoing operation, as well as ensuring it is not set at a rate which places overly restrictive barriers on the ability of individuals to purchase fireworks. It would be reasonable to expect licence fee revenues to be higher in the earlier years of operation (as enthusiasts apply for licences) and lower in later years (when many already have licences).

- Firework Control Zones: The majority of costs for local authorities will be staffing costs associated with scoping, establishing, and monitoring the

impact of Fireworks Control Zones, as identified by the Short Life Working Group (further detail on the work of the group can be found at paragraph 7.14). Designating a Fireworks Control Zone will have a number of mandatory requirements including consulting with local communities and relevant public sector authorities and taking the views of these groups into account when considering and authorising such zones. It is estimated in the Financial Memorandum that the costs of setting up one Firework Control Zone, including staffing, consultation and communications, will be approximately £24,000. Drawing on the experience of local authority officers who sat on the Working Group, it is assumed that a few local authorities (primarily large urban) may designate multiple zones in their area, a small number of authorities may designate a single zone in their area, and the majority are unlikely to designate any zones.

- Restricting the days that fireworks can be supplied to the general public and restricting the days fireworks can be set off by the general public: This measure impacts retailers selling fireworks, particularly specialist firework retailers who are licensed to sell fireworks to the general public throughout the year. As outlined at paragraph 6.15, limited economic data is available. Retailers will, however, be able to continue to supply fireworks to professional display companies and firework operators in Scotland, as well as consumers outwith Scotland throughout the year and also F1 fireworks in Scotland throughout the year. This option also includes consideration of a power being provided to Scottish Ministers to, by regulation, make provision about the payment of compensation to address the economic impact of restricted days of supply, if evidence is demonstrated of this, for those whose trade or business is wholly or mainly concerned with the supply, distribution or importation of fireworks in Scotland.
- Enforcement of new offences associated with measures: There could be an additional financial and resource burden within the justice system associated with processing cases where people are charged with the proposed offences, including by police and the courts in Scotland. In relation to a summary case prosecuted in Scotland, average costs comprise prosecution costs of £444; court costs of £430 and legal assistance of £604. The intention of this measure is to act as a deterrent to supply fireworks to people under the age of 18 whilst having an appropriate offence in place where this is still found to have happened. Estimates within the Financial Memorandum of the costs of court prosecutions in relation to the proxy offence, as well as offences connected to the restrictions on days of use and supply detailed above, range from between approximately £15,000 - £37,000 per year for the first three years, however this is highly dependent on the behavioural response to the measures, and the subsequent response of justice partners as a result.
- Offence of being in possession of a pyrotechnic article, including a firework, at, in the vicinity of, or travelling to, a designated event: As with the introduction of any new criminal offence, it is difficult to estimate with certainty the costs that may be incurred by the justice system. The potential deterrent effect of the legislation, the use of this new offence as a more appropriate charge instead of others under existing legislation, as well as the facilitation

of early intervention before damage and injury is caused, could mean overall savings, if not immediately, then in years to come. Therefore, it is not anticipated that there will be significant costs associated with the proposed changes in relation to pyrotechnic articles.

Option 2: Benefits

6.14 As outlined at paragraph 6.2, whilst benefits are difficult to quantify, a description is given, underpinned by evidence, of the assumed benefits and behavioural change as a result of the introduction of a comprehensive package of measures.

6.15 While there is a lack of economic data to underpin predictions about the precise impact of each individual measure, the international evidence and experience of countries that have introduced these measures, including a licensing system and reduced selling/use period of fireworks, indicates there has been positive outcomes and a reduction in injuries.

- **Improved community safety and wellbeing:** Responses to the 2019 and 2021 consultations indicated that people felt that the use of fireworks can cause significant harm to people, animals and whole communities. This includes through the deliberate misuse of fireworks by individuals, as well as the noise disturbance caused by the legitimate use of fireworks. Evidence highlights that heightened background noise levels and high peak sound levels (which can be harmful to human hearing), and increased noise levels, can cause particular distress to those with noise sensitivity, including people with autism; as well as the fear response to noise from fireworks that can have an adverse impact on animals⁴. The package of measures within Option 2 can be expected to work collectively to reduce the overall number of fireworks being used by the general public in a random and ad hoc way and the subsequent negative impact on people and animals.
- **Individuals and communities will be able to better plan and prepare for fireworks being used.** The current unpredictable, sporadic nature of firework use was cited as an issue that causes significant disturbance to people in both the 2019 and 2021 consultation. During an engagement event with sight loss organisations as part of the 2021 consultation, attendees highlighted the disturbance fireworks can cause to their guide dogs over sustained periods of time when fireworks are widely available to purchase. Increased restrictions on when fireworks can be purchased and used by the public will particularly benefit those with noise sensitivity, such as people with autism or post-traumatic stress disorder, as well as animals that are distressed by the noise created by fireworks.
- **Improved outcomes for people living in areas of increased deprivation:** Data on firework injuries in Scotland⁵ makes a clear link between living in the lowest Scottish Index of Multiple Deprivation (SIMD) decile and being more likely to sustain an injury due to fireworks, with eight times as many patients

⁴ [Evaluation-of-firework-related-harm-in-Scotland-October-2020-1.pdf](#)

⁵ [Evaluation-of-firework-related-harm-in-Scotland-October-2020-1.pdf](#)

attending hospital emergency departments from these areas than those living in the least deprived communities. By promoting the safe and considerate use, and ensuring those who do buy fireworks have a licence and have gone through a firework training course, it is expected that groups living in these areas will benefit the most from these measures.

- **Reducing demand for emergency services, including surges in demand during traditional firework periods:** Emergency services face significant demand as a result of fireworks incidents, which spikes during traditional firework periods and results in significant resource implications. However with the focus on the safe and considerate use of fireworks and additional checks in place before a person is able to purchase fireworks as part of the measures in Option 2, it is reasonable to expect that these costs will be reduced, freeing up valuable resources for Scotland's emergency services.
- **Reduction in the number of firework related incidents and attacks on emergency service workers:** As outlined in paragraph 7.16, in recent years there has been an increasing trend in attacks on emergency workers. Introducing this package of measures will ensure that those able to purchase and use fireworks in Scotland are responsible individuals who meet a number of checks and balances. The Bill, along with wider non-legislative actions such as public campaigns and awareness raising, seeks to bring about long term behavioural changes, including reducing instances where people deliberately misuse fireworks as weapons against emergency services.
- **Reduction in firework related injuries and the associated cost to the NHS for treating these:** Data relating to firework injuries in the Greater Glasgow and Clyde (GGC) NHS Health Board area covering 2008-2019⁶ estimated total health expenditure on treating firework injuries over the period was £463,583, a mean cost of £38,632 per annum. The majority of this cost (£438,775) was 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. By introducing the package of measures, which includes a mandatory training element on the appropriate and considerate use of fireworks, it is anticipated that fewer firework related injuries will occur as a result of accidents or improper use of fireworks.
- **Improved safety for individuals attending events** will be a key factor in relation to the proposed changes for pyrotechnic articles. This will extend to all of the places where pyrotechnic articles are currently known to be set off illegally such as concert venues and sports grounds, or on the way to such venues. Precise costs to the NHS and emergency services of pyrotechnic misuse at events are difficult to determine from the existing data due to the general categorisation of firework/pyrotechnic related injury covering all injuries by such devices, however we believe the potential severity of injury from even one preventable incident justifies taking action. A consequence of reducing the risk of injury from pyrotechnic articles at events will be a direct reduction of those requiring NHS treatment. There may also be modest reductions in future for the costs of stewarding or policing such events if the risk of injury from pyrotechnic articles is reduced.

⁶ [Evaluation-of-firework-related-harm-in-Scotland-October-2020-1.pdf](#)

Alternative Legislative Solutions

6.16 As outlined in paragraphs 69-70 of the Policy Memorandum, alternative legislative approaches were considered prior to the development of the measures outlined above which form part of Option 2. In relation to fireworks, as part of its options appraisal approach the Firework Review Group also considered restricting the use of fireworks on private property, and introducing a notification system before fireworks can be used. The initial options appraisal exercise carried out by the Group recommended that these options for change were not considered further.

7. Sectors and Groups Affected

People and Communities

7.1 Actions that will support the safe and considerate use of fireworks, and appropriate use of pyrotechnic articles, in Scotland will aim to protect people from injury, harm, fear and distress. This includes addressing issues that were raised in the 2019 public consultation such as reducing the noise and disturbance the sporadic use of fireworks can cause, including to those who have noise sensitivity; reducing anti-social behaviour and the misuse of fireworks and pyrotechnic articles and the impact this has on individuals and communities; environmental impacts of fireworks use from discarded material to air pollution; and animal welfare concerns for pets, wildlife and livestock.

7.2 Fireworks misuse is more prominent in deprived communities and urban areas, with evidence that incidents attended by the Scottish Fire and Rescue Service over the traditional November fireworks period are more concentrated within deprived areas. There is also a clear link between deprivation and firework injury, with studies also finding that young people, often defined as those under 18 or aged 5-20 years, sustain most fireworks related injuries. Males are also disproportionately affected by firework injuries, with data from Greater Glasgow and Clyde (GGC) NHS Health Board area covering 2008-2019 showing that males were disproportionately affected by injuries in comparison to females, with 200 of the 251 injuries (80%) being sustained by males, whilst accounting for 48% of the population during this time⁷. People living in these communities, young males in particular, will benefit from the introduction of new measures that promote using fireworks in a safe manner, such as the firework licensing system which requires successful completion of a firework training course, with a test to demonstrate learning.

7.3 The measures in the Bill will also affect the ability of community groups to organise local displays due to a requirement to comply with them, for example community groups will be required to (via an individual acting on their behalf) apply for and obtain a fireworks licence in order to purchase and use fireworks as part of a public display. Data from the Society of Local Authority Lawyers and

⁷ [NRS Population Estimates Time Series Data](#)

⁸ The survey sought to better understand how many firework displays take place in different local authority areas, what processes are in place locally around organising public fireworks displays, to gain an insight into what kind of guidance local authorities feel would be helpful. 22 local authorities responded.

Administrators (SOLAR) Licensing Group⁸ in February 2020 highlighted that around 150 organised displays take place over the Bonfire period across the 17 local authorities who responded to the survey. The majority of these have less than 500 attendees and are organised by a community group or organisation.

Retailers

7.4 Retailers licensed to sell fireworks, either on an all year round basis or during traditional firework selling periods, will be impacted by the proposed changes. The firework licensing system for consumers and restrictions on the days that fireworks can be supplied will have a direct impact on retailers and will require existing processes and practices to be adapted in line with the new measures.

7.5 Data provided by Trading Standards covering the bonfire period in 2019 indicated that there were 650 licensed retailers selling fireworks across Scotland. A more detailed survey was carried out in 2020 with all local authority Trading Standards to explore the number and type of storage licences as well as site visits and enforcement activity that took place over the 2019 period. Eighteen⁹ local authority areas responded to the survey. Survey responses indicated that, across the 18 local authorities, the majority of retailers are licensed to store fireworks on a multi-year basis¹⁰, and there were 255 retailers who held a multi-year storage licence in 2019. Local authorities were also asked the types of retailers that applied for a temporary storage licence in their area in 2019. The majority of applications (70%) were for large supermarkets and superstores (190), followed by 18% for smaller independent stores (48), 9% for 'pop up' shops (23) and 3% for firework specific stores (8).

7.6 Data from the British Fireworks Association (BFA) in relation to the retail sales of fireworks suggests that the equivalent of 334 people are employed in the retail of consumer fireworks in Scotland. This comprises: 25 people being directly employed in the wholesale of fireworks; 40 seasonal employees in wholesale; 19 seasonal employees in delivery of fireworks; and 251 seasonal employees within the retail of fireworks. These figures have been estimated by the BFA through a series of calculations such as using the percentage of the overall UK employment and the percentage of product which goes into the UK to calculate how many people are directly employed in wholesale. Whilst this can provide an estimate it does not give a full, comprehensive picture of the number of people employed in retail fireworks in Scotland. In addition, the BFA estimate that employment in retail

⁹ Aberdeen Council; Argyll & Bute Council; City of Edinburgh; Clackmannanshire Council; Dumfries & Galloway Council; East Ayrshire Council; East Dunbartonshire Council; Falkirk Council; Glasgow City Council; Midlothian Council; North Ayrshire Council; North Lanarkshire Council; Orkney Island Council; Scottish Borders Council; South Ayrshire Council; Stirling Council; West Dunbartonshire Council; and West Lothian Council.

¹⁰ Retailers looking to sell fireworks over specified dates must apply to the relevant local authority for a temporary storage licence to do so. A separate licence is required for retailers that sell fireworks throughout the year. The temporary storage licence can be applied for and granted on a multi-year basis, which means the application and licensed granted covers the retailer for a number of years (up to 5 years).

fireworks accounts for almost £1.9 million per year and that government revenue from retail fireworks in Scotland equals almost £2.7 million (the vast majority of this being VAT).

7.7 In October 2018 Sainsbury's announced that it would no longer be selling fireworks to the public, but did not explain its reasons for doing so.

7.8 In relation to pyrotechnic articles there should be no impact on retailers selling pyrotechnic articles for legitimate use. The aim of the provisions is tackling misuse, while ensuring that legitimate and necessary use – and therefore legitimate and necessary purchase – is protected.

Fireworks Industry

7.9 Whilst the BFA were represented on the Firework 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 including:

- Introduction of mandatory conditions at the point of sale: The BFA felt that the introduction of such measures could drive consumers to illegitimately purchase fireworks through illegal channels, bypassing safety messaging and potentially purchasing prohibited firework products. Concerns were also raised that these measures will not tackle the root cause of anti-social behaviour involving fireworks or fireworks misuse, as responsible consumers that would comply with the conditions would not purchase fireworks to use them in an irresponsible manner. While there is no evidence available from which to estimate potential levels of displacement, it is not anticipated that this will be on a large scale based on advice from Police Scotland. Police Scotland have advised that they have no evidence to suggest there will be any significant increase in illegal sales following the introduction of these proposed measures. The international case study review undertaken by the Scottish Government did not identify the emergence of illegal markets when similar restrictions were introduced.
- Restricting the days that fireworks can be sold to the general public and restricting the days fireworks can be set off by the general public: The BFA highlighted concerns that the restrictions on 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. It was highlighted that this could also lead to stockpiling of fireworks at home if consumers cannot use all of their fireworks on permitted days. It is important to note, however, that existing legislation on storing fireworks at home will remain in place, and the days that fireworks can be used in this measure are extended beyond the days that they can be sold to mitigate this. The measures introduced by The Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 limiting the volume of fireworks that can be supplied to the public in one transaction to 5kg net explosive content (formerly 50kg) also seeks to mitigate this.
- Introducing no-firework areas where it is not permitted for the general public to set off fireworks: The BFA felt that this could lead to displacement of

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. The BFA felt that creating widespread firework free areas would not tackle the issue of fireworks misuse and anti-social behaviour.

- Introduction of a proxy purchasing offence to criminalise the supply of fireworks to people under the age of 18: The BFA agreed that some form of legislation to cover proxy transactions by an individual to another would clarify the situation, with the term 'supply' providing a catch all, where someone aged 18 or over gave fireworks to someone aged under 18.

7.10. The new measures may also impact on the professional firework display sector. The increased restrictions on the general public purchasing and using fireworks could potentially result in an increase in public organised displays and professional companies being engaged to organise these.

Consumers

7.11 It is recognised that the new measures will impact on consumers and their ability to purchase, possess and use fireworks. Introducing a firework licensing system for the public, including a mandatory firework training course, will play an important role in promoting the appropriate and considerate use of fireworks, ensuring consumers understand essential requirements and possess essential knowledge when purchasing and using fireworks. Other new measures, such as restrictions on the days that fireworks can be supplied to and used by the public, and the introduction of Firework Control Zones, will impact on where and when consumers can legally use fireworks and will require to be taken into consideration and complied with prior to fireworks being purchased and set off.

7.12 Those buying pyrotechnic articles for legitimate use will continue to be able to do so. The proposed changes relating to pyrotechnic articles will therefore have no impact on this group.

Local Authorities

7.13 The introduction of the ability to designate Firework Control Zones is most likely to impact on local authorities. The administration connected to Firework Control Zones, whether this is the application of a Firework Control Zone or considering areas that could be designated as one, will incur an additional resource burden on local authorities. Local authorities were represented on the Firework Review Group through COSLA and SOLAR (Scottish Local Authority Lawyers & Administrators) and formed part of the majority agreement on the need for fundamental change that the Firework Review Group recommended.

7.14 A Scottish Government and Local Government Short Life Working Group was formed to identify likely financial costs, savings and changes in revenue for local government from the Bill and advise on methods to produce best estimates of these and to identify and provide data and analysis to inform and make financial estimates. The membership included local government officers with knowledge of fireworks and finance, with representation from urban and rural local authorities in Scotland. It included representatives from Society of Chief Officers of Trading Standards in

Scotland, the Society of Local Authority Lawyers and Administrators in Scotland, Directors of Finance and the Convention of Scottish Local Authorities officials. (more detailed information on costs and benefits is set out in section 6).

Emergency Services

7.15 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 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 (4th to 6th November), and these incidents were disproportionately concentrated within more deprived areas. In recent years, there has been a number of attacks on emergency services. 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.

7.16 There are financial costs and resource implications for Police Scotland and SFRS in order to plan and prepare for 5th November and the period leading up to it each year. SFRS estimate that approximately £66,000 was spent on preventative activity in 2019. Police Scotland estimate the costs of covering 4 and 5 November in 2019 was approximately £98,000. Introducing these changes may lead to varying impacts on the emergency services in the short term. For example, restricting the days that fireworks can be used may lead to increased reports of use outwith permitted days, however the introduction of a Firework Control Zone in a community that previously saw high instances of fireworks misuse and incidents requiring emergency service response is likely to have a positive effect. There will be a balance until the long term outcomes for the changes are achieved as they are embedded in practice and public behaviour develops to comply with the changes.

7.17 Police Scotland has been a key driver in requesting the proposed offence and related stop and search power for pyrotechnic articles and will be responsible for enforcement of the offence. It is anticipated that any additional cost to Police Scotland will be minimal as it is expected that the detection and enforcement of possession offences will take place as part of an existing policing operation at the respective designated event. Whereas currently Police Scotland can only act if an individual has been searched by security staff upon entering a sports ground and has been found with a pyrotechnic article, or when the pyrotechnic article has already been illegally deployed at an event, or at a public assembly, the new offence will provide police officers with the power to intervene at an earlier stage, reducing the public safety risk but not significantly increasing the policing operation involved.

7.18 For larger events, Police Scotland often use enhanced custody arrangements to ensure quick processing and minimal abstraction of officers from the event footprint. This ensures that should a number of arrests be made under the new offence at a single event, there is minimal impact on the policing of the event.

7.19 There may be some one-off or occasional costs relating to the production of guidance and the development of officer training in relation to the new offences. It

is anticipated there may be some costs for Police Scotland-led public awareness raising campaigns, although such campaigns on pyrotechnic misuse currently take place and therefore additional costs are likely to be minimal.

7.20 In providing a stop and search power for police to intervene at an earlier stage, it is anticipated that offences that are currently dealt with under the Explosives Substances Act 1883 or the Explosives Regulations 2014, or through a charge of Culpable or Reckless Conduct, can be prevented and dealt with under the new possession offence. Additionally, as the new offence will supersede much of s20 of the Criminal Law Consolidation (Scotland) Act 1995 (an offence to possess a pyrotechnic article or firework at a designated sports ground during a sporting event), police incidents and charges currently dealt with under that legislation will likely come under the new offence.

7.21 Furthermore the proposed legislation should benefit Police Scotland's policing operations, partly through deterrence, as well as making it easier for officers to prevent injury and criminal damage through earlier intervention. This will potentially reduce the resource needed from emergency services more broadly.

8. Scottish Firms Impact Test

8.1 The two main groups that will be impacted are specialist firework retailers that have a licence to sell fireworks all year round, and retailers that sell fireworks temporarily at certain times of the year. Specialist firework retailers are expected to be most impacted. It is also anticipated that wholesalers of fireworks will also be affected where they are supplying fireworks to Scottish retailers. Professional firework display companies may be affected, but to a lesser extent where their core business is not the sale of fireworks. There are, however, some professional display companies that also sell fireworks as part of their business, and would therefore be affected. However, it is anticipated that the measures could lead to an increase in organised displays, and people engaging the services of professional display companies to organise these, which may impact these businesses positively.

8.2 The two main representative bodies for the firework industry in the UK, the British Fireworks Association and the British Pyrotechnists Association, have been engaged throughout this work with their views opposing additional restrictions on the sale and use of fireworks and their concerns considered as the proposals have been developed.

8.3 The Scottish Government is aware of 9 firework specific retailers that are licensed all year round to sell fireworks in Scotland, with only one Scottish company involved in the importation of fireworks. The majority of retailers that sell fireworks at specific times of the year are licensed on a temporary basis by the relevant local authority. Trading Standards data indicated that, in 2019, 650 retailers were licensed to sell fireworks in Scotland, and the majority of these retailers were supermarkets or superstores (see section 7.5 for more detail on this data). However, the proposed regulations do not prohibit firework sales entirely and only narrow the window in which they can be sold to the general public. The local licensing processes in place across Scotland, administered by local authorities,

which grant retailers permission to temporarily sell fireworks at certain times of the year, will not be substantively altered or impacted by the proposed legislation.

8.4 Eight businesses responded to the 2019 public consultation. This included firework retailers, wider retailers and professional display companies, with most requesting that their name is not published with the response. The majority of businesses that responded to the consultation were not supportive of further controls being introduced on the sale or use of fireworks. The most common reasons for this were that existing legislation should be enforced and that increased controls would negatively impact safe and responsible firework users, rather than the minority who seek to cause harm or disruption. One business was supportive of increased controls however, and suggested measures such as conditions at the point of sale as a possible option for change.

8.5 Two firework industry representative bodies and three specialist firework retailers responded to the 2021 public consultation. A number of firework retailers also attended public consultation events, and a specific engagement event was held for firework retailers (attended by two specialist retailers and one representative retail body). The specialist firework retailers indicated that restriction of sales of fireworks to the public, particularly to only permitted days in the year, will render their business no longer viable on the basis that a large part their income comes from year-round sales of F2 and F3 fireworks to members of the public. Other common reasons for being unsupportive of new legislative measures were that it was felt that restrictions would only penalise law abiding citizens, rather than tackle fireworks misuse, and that the proposals compromised personal freedom and civil liberties. One measure that businesses were supportive of was the proposed proxy purchase offence in relation to the supply of fireworks to people under the age of 18.

8.6 The proposed offence of being in possession of a pyrotechnic article in a public place without a reasonable excuse or lawful authority and the extension of police stop and search powers will have no impact on the industry or consumers seeking to buy pyrotechnic articles for legitimate uses.

9. Competition Assessment

9.1 It is not considered that the measures will impact on competition in the fireworks market in Scotland. The new measures will not make it more difficult for a new retailer to enter the consumer firework sales market. They may, however, result in the consumer firework sales market being a less lucrative sector to enter and could result in a reduction of new business entering the market in Scotland.

9.2 The temporary storage licences required for non-specialist retailers to sell fireworks at certain times of the year are administered and granted at a local authority level. Further restrictions on the days that fireworks can be sold to the general public will have minimal impact on the days that temporary storage licences can be granted to retailers to sell fireworks on permitted days of the year, as the restricted days align with existing traditional firework selling periods. Licences for specialist fireworks retailers are also administered and granted locally. These businesses will be required to comply with restrictions and permitted days when fireworks can be supplied to the general public. It is recognised that this will have a

significant impact on specialist firework traders should their business become unviable. They will, however, continue to be able to sell fireworks throughout the year to professional firework display companies, as well as community groups and organisations organising a public firework display (and also F1 fireworks).

9.3 It is also recognised that Scottish businesses could be at a competitive disadvantage if the measures did not apply to businesses based outwith Scotland that sell fireworks to Scottish consumers, such as through online sales. Therefore, measures relating to the supply of fireworks, such as the firework licensing system and restricted days that fireworks can be supplied to the public, will apply equally to retailers based in and outside of Scotland if any part of the supply – including the physical transfer of fireworks to consumers – takes place in Scotland. Retailers based outwith Scotland will be required to comply with Scots Law, as is the case for existing legislation where there is a policy difference between Scotland and other parts of the UK, for example alcohol minimum unit pricing. The measures will not limit the ability of retailers in Scotland to supply consumers outside Scotland.

9.4 The proposed legislative changes in relation to pyrotechnic articles will not have an impact on competition in this market. The proposed legislation will not make it more difficult for a new retailer to enter the pyrotechnic sales market.

10. Consumer Assessment

10.1 The impact the proposed measures will have on consumers has been considered. The days that the general public can purchase and use consumer fireworks will be limited to specific periods of cultural significance, such as Bonfire Night and Diwali. This will encourage consumers to ensure that the purchasing and using of fireworks is well thought out and planned.

10.2 Introducing a firework licensing system will mean that consumers are required to successfully meet specific criteria in order to purchase fireworks. This will include the requirement to successfully complete a firework training course and test, which will ensure that consumers permitted to purchase and use fireworks are able to do this in an appropriate and responsible manner, reducing the risk of harm and injury caused by the improper use of fireworks or accidents as consumers will have essential firework knowledge.

10.3 The introduction of Fireworks Control Zones will impact consumers as, on some occasions, this will determine whether they can use fireworks in the location that they intend to. However, it is proposed that the process of implementing a Fireworks Control Zone will be undertaken at a local level with consultation undertaken with individuals and communities in that area. Therefore consumers will be aware of any restrictions around using fireworks in a particular area and the local circumstances and context that have led to the decision being taken, allowing them to adapt their plans accordingly.

10.4 The introduction of an offence of being in possession of a pyrotechnic article, including fireworks, while travelling to, in the vicinity of, or at, a designated venue or event, or while travelling to, participating in, or otherwise attending a public

assembly, without a reasonable excuse or lawful authority should not have any impact on those seeking to purchase pyrotechnic articles for legitimate uses.

11. Test Run of Business Forms

11.1 Engagement will be undertaken with relevant businesses and representative organisations on new business forms that are developed as a result of the measures in the Bill.

12. Digital Impact Test

12.1 It is not considered that these measures will have an impact on advances in technology. Fireworks can however be purchased online, which is a complicated landscape. There is a clear distinction between legitimate online sales, where the product meets UK product safety standards and the carrier carries out required age checks upon delivery, and unregulated online sales. Unregulated online sales includes imports from other countries where that product meets local safety standards but not those in the UK, as well as illegal fireworks which are completely unregulated. Some consumers may not be aware that they are purchasing products that do not meet required safety standards in the UK, whereas others may actively seek products (such as bangers) which are illegal in the UK.

13. Legal Aid Impact Test

13.1 While the Bill creates a number of new offences, it is not considered that there will be a notable impact on the Legal Aid Fund. As noted in paragraph 72 of the Financial Memorandum that accompanies the Bill, it is estimated that the increase in the number of court prosecutions as a result of offences created by measures within the Bill will be relatively low. The impact on the Legal Aid Fund will continue to be reviewed.

14. Enforcement, Sanctions and Monitoring

14.1 There are existing and long established enforcement and monitoring processes in place, with appropriate sanctions issued where non-compliance is identified, due to existing firework legislation in Scotland.

14.2 COSLA, local authority licensing officials, Trading Standards and Police Scotland have been engaged in and represented on the Firework Review Group and engagement has continued since as the 2021 consultation was progressed and the measures in the Bill developed.

14.3 New offences relating to the commercial supply of fireworks will be enforced by Trading Standards as is the case with existing firework legislation, with Police Scotland having responsibility for offences relating to the possession and use of fireworks, and the exchange of fireworks between individuals.

14.4 The introduction of a proxy purchasing offence criminalising the supply of fireworks and pyrotechnic articles to people under the age of 18 creates a new offence that will require to be enforced by Police Scotland. Similar offences already

exist for the supply of alcohol or tobacco products to individuals under 18, and it is anticipated that this offence will be enforced and sanctioned in a similar way.

14.5 The Bill creates 11 new offences that will be enforced by Police Scotland:

- It is an offence for a person, without reasonable excuse or lawful authority, to purchase, acquire, possess or use F2 and F3 fireworks without having a valid fireworks licence.
- It is an offence for a person to sell, give or otherwise make F2 and F3 fireworks available to an unlicensed person.
- It is an offence for a person, without reasonable excuse, to fail to comply with the requirements of a notice of revocation of a fireworks licence.
- 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 other false document] 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 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 F2 and F3 fireworks on days other than those specified.
- It is an offence for a person to use F2 and F3 fireworks on days other than those specified.
- It is an offence for a person to ignite an F2, F3 or F4 firework in a fireworks control zone or to knowingly or recklessly throw or cast a lit firework into a fireworks control zone, or fire a firework into a fireworks control zone.
- It is an offence for a person, without reasonable excuse or lawful authority, to possess a pyrotechnic article, including F2, F3 and F4 fireworks, while the person is travelling to, in the immediate vicinity of, or attending a designated venue or event.
- It is an offence for a person, without reasonable excuse or lawful authority, to possess a pyrotechnic article, including F2, F3 and F4 fireworks, while the person is travelling to, participating in, or otherwise attending a public procession or a public assembly.

14.6 The Bill also creates four new offences that will be enforced by Trading Standards:

- It is an offence for a person to supply F2 and F3 fireworks to an unlicensed person.
- It is an offence for a person to supply F2 and F3 fireworks on days other than those specified.
- It is an offence for a person to obstruct an officer of a weights and measures authority or a constable.
- It is an offence for a person to make a statement which the person knows is false, or to recklessly make a statement which is false in a material particular to an officer of a weights and measures authority.

14.7 For all the offences included with the Bill, any person found guilty is liable on summary conviction to:

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

15. Implementation and Delivery Plan

15.1 It is intended that implementation of measures introduced by the Bill are staggered over late 2022 to early 2024. This is to allow measures to be developed prior to implementation and enforcement, including progressing necessary secondary legislation. This will involve Trading Standards officers, Police Scotland, local authorities and COSLA, as a representative body for local authorities. Existing processes will require to be adapted to take into account the changes the proposed legislation will bring, as well as consideration of new systems or processes that will be required to be developed to administer proposed measures within the Bill. The Scottish Government will continue to engage with stakeholder organisations, including the fireworks industry in Scotland, and enforcement agencies as any measures are developed and implemented.

15.2 Police Scotland will implement the new offence for being in possession of a pyrotechnic article in a public place without reasonable excuse or lawful authority and the stop and search power for pyrotechnic articles, as soon as possible after the powers come into force.

16. Post-Implementation Review

16.1 The Scottish Government will undertake a review of any proposed measures introduced through the Bill within 3-5 years of implementation to check that requirements are being met and that the legislation is working effectively.

16.2 Continued engagement with Police Scotland and other key stakeholders will allow us to monitor the impact of the new pyrotechnic powers and review these a year after implementation.

17. Summary and Recommendation

17.1 Whilst monetisation of the expected impacts of measures in the Bill cannot be achieved, the Scottish Government believes that the benefits of introducing the comprehensive package of measures proposed within the Bill outweigh the associated costs.

17.2 A core element of the Bill is to promote the safe and appropriate use of fireworks and pyrotechnic articles, and ensure that those permitted to purchase and use fireworks are aware of how to do so in a responsible manner. By introducing a package of measures, it is anticipated that the financial and resource burden on the emergency services and NHS will be reduced as there will be fewer incidents to respond to and less injuries and harm as a result of fireworks use. Whilst this may take time to embed and for a positive impact to be seen, this is part of the long term shift in consumer behaviours that the Bill seeks to achieve.

17.3 Responses to the 2019 and 2021 consultations indicated that people felt that the use of fireworks causes harm to people, animals and whole communities. This includes through the deliberate misuse of fireworks by individuals, as well as the noise disturbance caused by the legitimate use of fireworks, and can have an impact on physical and mental wellbeing. The lived experience of those living in communities where the use of fireworks has a particularly detrimental impact, particularly at certain times of the year when fireworks are more readily available to consumers, was heard in both consultations. Similarly, responses to the 2021 consultation indicated that people have concerns about the misuse of pyrotechnic articles, and support a legislative response to tackle it.

17.4 It is acknowledged that it is likely the measures could have a significant impact on specialist firework businesses, including retailers who are licensed to sell fireworks all year round. However, on balance, taking into consideration important factors such as community safety and wellbeing, individual safety and the impact on the public purse of planning for and responding to firework related incidents, as well including a power to allow Scottish Ministers to make provision for the payment of compensation to address the economic impact of restricted days of supply, it is considered that the package of measures strikes a balance between increased restrictions and minimised impact on businesses as far as possible.

Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Minister for Community Safety



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Date: 25 January 2022



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