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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Fireworks and Pyrotechnic Articles (Scotland) Bill at Stage 1**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) any—
  - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
  - (ii) [deleted]
  - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- (c) general questions relating to powers to make subordinate legislation;
- (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;
- (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;
- (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
- (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
- (i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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# Introduction

1. At its meetings on 8 and 22 March 2022, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the Fireworks and Pyrotechnic Articles (Scotland) Bill (“the Bill”) at Stage 1.<sup>i</sup>
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

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<sup>i</sup> The Bill as introduced is available [here](#)

# Overview of the Bill

3. The Scottish Government Bill was introduced by the Cabinet Secretary for Justice and Veterans, Keith Brown MSP on 1 February 2022. The lead Committee is the Criminal Justice Committee.
4. The Scottish Government's Policy Memorandum notes that the purpose of the Bill is to protect public and community safety and wellbeing by ensuring fireworks and pyrotechnics do not cause harm, distress or serious injury<sup>ii</sup>. This is to be achieved by changing how the general public accesses and uses fireworks and pyrotechnics by restricting purchase, acquisition, possession and use and creating new criminal offences where these restrictions are not complied with.
5. There are several pieces of existing legislation (at both the UK and Scottish level) which are relevant in terms of regulating the supply, sale, use and possession of fireworks. These include the Fireworks Act 2003 (a UK Act), and subsequent UK and Scottish regulations from 2004. The provisions under the Bill are intended to support a cultural shift in how fireworks and pyrotechnics are used in Scotland. Existing legislation available to address certain acts of pyrotechnic misuse (including fireworks) includes the Fireworks (Scotland) Regulations 2004, the Fireworks Regulations 2004, the Explosives Act 1875, the Explosives Regulations 2014 and the Pyrotechnic Articles (Safety) Regulations 2015. However, the Policy Memorandum explains that existing legislative provisions can only be applied in particular and sometimes very specific circumstances. The proposed measures in the Bill seek to address gaps in existing legislation and to enable preventative measures to be taken.
6. The Policy Memorandum explains that a public consultation on the sale and use of fireworks was carried out between February and May 2019 and the analysis was published in October 2019. The Minister for Community Safety appointed an independent Review Group of key stakeholders to consider the legislative and regulatory options for change that emerged from consultation, to scrutinise the evidence available and make recommendations on changes required to current legislation and regulations.
7. Three measures recommended by the Review Group have been progressed through the Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 (2021/79) which amended the Fireworks (Scotland) Regulations 2004. The changes came into effect on 30 June 2021 which (1) restrict the times of the day fireworks can be used (2) restrict the times of the day fireworks can be supplied to the general public and (3) limit the quantity of fireworks that can be supplied to the general public to 5kg at any one time.
8. The Bill is intended to implement the remaining recommendations from the Fireworks Review Group to support a change in how fireworks are accessed and used by the general public in Scotland with the aim of protecting public and community safety and wellbeing.
9. The Bill has 51 sections, split into seven parts with two schedules. It makes

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ii The Policy Memorandum is available [here](#)

provision as follows:

- **Part 1:** key words and expressions used in the Bill, including the meaning of fireworks and pyrotechnic articles and categories.
  - **Part 2:** licensing the purchase, acquisition, possession and use of certain fireworks, and regulating the supply of such fireworks.
  - **Part 3:** Restrictions on supply and use of fireworks and pyrotechnic articles including: prohibition on supply to children; days of use and supply of fireworks; and compensation for specialist firework businesses affected by restricted days of supply of fireworks.
  - **Part 4:** enables local authorities to designate Firework control zones that limit the use of certain fireworks in the zone while the designation is in effect.
  - **Part 5:** prohibits a person from possessing a pyrotechnic article while travelling to, in the immediate vicinity of, or at a designated venue or event, a public procession or a public assembly.
  - **Part 6:** Exemptions and enforcement for the purposes of the Bill
  - **Part 7:** General provisions, including interpretation, regulations, ancillary provision, Crown application and commencement and short title.
10. Schedule 1 of the Bill makes provision for exemptions to certain offences under Parts 2 to 5 of the Bill. Schedule 2 makes provision about the powers of a local weights and measures authority<sup>iii</sup> (and its officers) to enforce the offences under section 5 (supply of fireworks to unlicensed persons) and section 22 (restriction on days of supply of fireworks), in its local authority area and related matters.

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<sup>iii</sup> A local weights and measures authority is the statutory name for Trading Standards



# Delegated Powers

11. The Bill confers 24 powers to make subordinate legislation on the Scottish Ministers. The Scottish Government has prepared a Delegated Powers Memorandum which sets out the reasoning for taking the delegated powers in the Bill and the parliamentary scrutiny procedure that has been chosen.<sup>iv</sup>
12. At its meeting on 8 March 2022, the Committee considered the delegated powers in the Bill and agreed that it was content with the following powers:
  - Section 1(2) – Power to amend or replace the definition of “Firework” within the Bill;
  - Section 2(2)(a) – Power to add, amend or remove categories, types, classifications or descriptions of fireworks;
  - Section 2(2)(b) – Power to make further provision in respect of demonstrating “specialist knowledge” for the purposes of the definition of a category F4 firework;
  - Section 3(2) – Power to modify section 3(1) in respect of the application of Part 2 (fireworks licensing) of the Bill;
  - Section 6(3) – Power to provide for general requirements relating to the fireworks licence application process;
  - Section 8(1) – Power to make provision in respect of mandatory fireworks training course;
  - Section 8(3) and (4) – Power to issue and publish guidance on fireworks training course;
  - Section 10(3) – Power to make provision in respect of licence conditions;
  - Section 11(2) – Power to make provision in respect of register of applications and licence holders;
  - Section 20(2) – Power to modify section 20(1) in respect of the application of Part 3 (restrictions on supply and use of fireworks and pyrotechnic articles) of the Bill;
  - Section 22(6) – Power to add, amend or remove days when fireworks are permitted to be supplied;
  - Section 23(4) – Power to add, amend or remove days when fireworks are permitted to be used;
  - Section 25(2) – Power to modify section 25(1) in respect of the application of Part 4 (firework control zones) of the Bill;
  - Section 31(2) – Power to publish guidance on firework control zones;

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<sup>iv</sup> The Delegated Powers Memorandum is available [here](#)

- Section 32(2) – Power to modify section 32(1) in respect of the application of Part 5 (pyrotechnic articles at certain events) of the Bill;
  - Section 34(1) - Power to designate a venue or event;
  - Section 35(2)(a) – Power to modify Schedule 1 of the Bill (exemptions from offences);
  - Section 47(1) – Power to make ancillary provision in relation to the Bill; and
  - Section 50(2) – Commencement.
13. The Committee, however, agreed to write to the Scottish Government to raise questions in relation to the following delegated powers:
- Section 7(2) – Power to provide for additional mandatory requirements relating to the fireworks licence application process;
  - Section 18(1) – Power to make further provision for the purposes of the operation of the licensing system;
  - Section 24(1) – Power to make provision for compensation for specialist firework businesses affected by section 22;
  - Section 30(1) – Power to make further provision about firework control zones; and
  - Section 35(2)(b) – Power to make further provision as to requirements to determine whether a person may be treated as within an exempt category for the purposes of schedule 1.
14. The Committee considered the Scottish Government’s response at its meeting on 22 March 2022.
15. A copy of all correspondence can be found in the **Annex**.
16. The issues considered by the Committee in relation to these powers, together with its recommendations, are set out below.

### **Section 7(2) – Power to provide for additional mandatory requirements relating to the fireworks licence application process**

#### **Power conferred on: The Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish Statutory Instrument**

#### **Parliamentary procedure: Negative**

#### *Provisions*

17. Fireworks licence applicants will, in addition the general requirements under section 6, also need to meet the mandatory requirements set out in section 7 of the Bill when applying for a licence. These require applicants to disclose any unspent convictions relating to a “relevant offence”, details of any previous fireworks

licences that were revoked or cancelled and provide evidence that they completed a fireworks training course no earlier than three months before making the application.

18. A “relevant offence” is defined in section 7(4) as an offence under the Bill, the 2003 Act (and any regulations made under it), the 2015 Regulations, the Explosives Act 1875 and any other offence where the misuse of fireworks or pyrotechnic articles has been a factor.
19. Section 7(2) confers power on the Scottish Ministers by regulations to specify additional mandatory requirements that a fireworks licence applicant must meet.

#### *Committee consideration*

20. The Committee asked the Scottish Government for further information regarding the delegated power in section 7(2) of the Bill. In particular, the Committee asked the Scottish Government's to explain the reason for the scope of the power to add, but not remove or amend, mandatory conditions that a fireworks licence applicant must meet before applying for a licence and whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 7(2).
21. In its response, the Scottish Government stated that it considers that the mandatory requirements set out in section 7(1) of the Bill will provide information which is essential to enable a decision to be made as to whether a person should be able to obtain a licence, whilst satisfying the policy objective of the firework licensing system, that an applicant can demonstrate that they are able to purchase, acquire, possess and use fireworks in Scotland in a safe and appropriate manner. As such, the Scottish Government confirmed it considers that a power to remove or amend the requirements set out in section 7(1) not necessary.
22. The Scottish Government also explained that the power at section 7(2) has been included to future-proof the operation of the licensing system. Where evidence suggests additional mandatory requirements are necessary, the Scottish Government noted that these can be considered and introduced by regulation to ensure the firework licensing system can operate as effectively as possible. Noting that existing mandatory requirements cannot be amended or removed under this provision, the Scottish Government also explained that any regulations made under this provision to impose additional requirements can be revoked. Therefore, the additional mandatory requirements could be removed and replaced if considered necessary in future.
23. With regards to the proposed procedure, the Scottish Government reiterated that the power is intended to enable operational details of the licensing system to be updated, therefore it is considered that negative procedure is most appropriate procedure. However, the Scottish Government did acknowledge that the power could enable regulations to be introduced which reduce the ability of individuals to be able to apply for a licence by introducing more restrictive mandatory requirements. The Scottish Government explained that the intention is not to proactively seek to include additional restrictive requirements but to use the power only if there is evidence to suggest that additional mandatory requirements should be included to improve operation of the system. It pointed out that the consultation requirements in section 19 of the Bill would allow for scrutiny by those affected by

the proposed regulations.

24. The Committee noted that, in its response, the Scottish Government provided further explanation and justification, beyond that contained within the supporting documents to the Bill, as to the reasons why the power provides for additional mandatory conditions and not for the removal or amendment of these conditions. The Committee further noted the Scottish Government's explanation that the power has been included to future proof the operation of the licensing system, accepting that the mandatory conditions set out at section 7(1) cannot be amended and noting that additional conditions that may be imposed by way of regulations made under this power, could be removed by revocation of these regulations if considered necessary.
25. The Committee also noted the Scottish Government's reason for using the negative procedure, namely in relation to the operational and procedural nature of the power which is also subject to a consultation requirement.
26. The Committee noted that the imposition of additional conditions may restrict an individual's ability to apply for a licence. However, given the Scottish Government has further explained the purpose of the power, the Committee considered it procedural in nature and noted that any regulations made would be subject to consultation.

**27. The Committee is content with the explanation provided by the Scottish Government. It therefore accepts the power in principle and is content that the exercise of the delegated power as set out in section 7(2) of the Bill will be subject to the negative procedure.**

## **Section 18(1) – Power to make further provision for the purposes of the operation of the licensing system**

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Negative**

### *Provisions*

28. Section 18(1) confers power on the Scottish Ministers by regulation to make further provision for the purposes of the operation of the licensing system. Such regulations may make further provision about:
  - the application processes under this Part of the Bill such as specifying any required supporting documents or making provision about the verification of applications.
  - the sharing of information such as in connection with the verification of applications or the enforcement of this Part of the Bill.
  - the fireworks licence (for example to specify its form and content).

### *Committee consideration*

29. The Committee asked the Scottish Government for further explanation as to how the regulation making powers under section 18(1) connect with the ancillary powers under section 47 of the Bill and whether any duplication occurs with regards to the ancillary powers under section 47 and the regulation making powers under section 6(3) of the Bill (which provide for general requirements relating to the fireworks licence application process). The Committee also asked whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 18(1).
30. In its response, the Scottish Government explained that the powers in section 18(1) and 47 are intended to complement each other. It indicated that section 18 focuses particularly on those procedural and detailed aspects of the licensing system as need to be developed and that section 47 provides scope to deal with matters which may be tangential or consequential to the establishment of the licensing arrangements (and so not clearly within the scope of section 18) as well as the rest of the Bill. The Scottish Government also explained that whilst section 47 of the Bill could, if necessary, be used to make provision in relation to the licensing scheme, it was considered more transparent to have a specific power for that matter, with provision of examples of the type of provision anticipated to be required under such regulations, providing clarity to the end user which may not be the case if reliance was placed on section 47.
31. The Scottish Government explained that section 6(3) of the Bill is deliberately specific in making provision as to detail such as the form and content of applications whereas section 18(2) deals with wider aspects of the application process, such as verification of applications. Further, it explained that section 18(2) has been drafted to avoid a narrow construction of the two powers that may indicate that section 18 could not make provision about matters relating to applications (as section 6 already does so). However, the Scottish Government acknowledged that it would be possible to adjust section 6 of the Bill to include such ancillary matters as those examples provided in section 18(2) such that section 18 is not relied upon.
32. With regards to the proposed procedure, the Scottish Government reiterated the justification contained within the Delegated Powers Memorandum that the nature of the material which will be provided for in regulations made under this power is essentially focused on matters of procedural and operational detail of the licensing system. The Scottish Government stated that the regulations will be subject to a consultation requirement and the negative procedure is considered appropriate for these procedural aspects.
33. The Committee noted that the response from the Scottish Government established that there could be a degree of overlap between the powers contained in sections 6, 18 and 47. However, the Committee noted that the specific regulation making power to make further provision for the purposes of the operation of the licensing system under section 18 is intended to aid transparency and avoid reliance on the ancillary power available under section 47.
34. The Committee also noted that the scope of the power in section 18(1) is limited to a degree in respect of making further provision for the purposes of Part 2 of the Bill concerning the operation of the licensing system and this will be subject to consultation requirements. Nevertheless, the Committee noted that the examples of the provision that may be made (as set out in section 18(2)) by regulations does not limit the generality of the power and the operation of the licensing system could

encompass a wide range of matters. It noted that the power is akin to that of an ancillary power albeit with a narrower scope in relation to Part 2 of the Bill. Despite this narrowing of scope, the Committee considers this is still a wide power which may reach beyond purely procedural matters with potential to impact on businesses, individuals and the offences under this Part. The Committee therefore considered that the affirmative procedure, providing the highest level of scrutiny, would be appropriate to be used when making further provision for the purposes of this Part of the Bill.

- 35. The Committee notes the Scottish Government's response. It is therefore content with the power in principle. Nevertheless, the Committee recommends that the Scottish Government brings forward an amendment to the Bill at Stage 2 to make regulations under section 18(1) subject to the affirmative procedure such that there can be enhanced scrutiny of any proposals to make further provision for the purposes of the operation of the licensing system.**

### **Section 24(1) – Power to make provision for compensation for specialist firework businesses affected by section 22**

#### **Power conferred on: The Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish Statutory Instrument**

#### **Parliamentary procedure: Negative**

#### *Provisions*

36. Section 22 of the Bill places a restriction on the days on which fireworks may be supplied. The days currently permitted for the supply of fireworks could also be modified by regulations.
37. Section 24(1) confers power on the Scottish Ministers by regulations to make provision for or about the payment of compensation to relevant persons in consequence of the coming into force of Section 22 or the coming into force of a modification under section 22(6) which further limits the days on which fireworks may be supplied. A relevant person is defined in section 24(2) as a person whose trade or business was wholly or mainly concerned with the supply, distribution or importation of fireworks in Scotland immediately before the coming into force of section 22 or a modification under 22(6) where that modification further limits the days of supply.
38. Under section 24(3) the regulations may make further provision about who qualifies as a relevant person, set out the circumstances in which compensation is payable, make provision about the calculation of compensation, set out the procedure to be followed in connection with claiming compensation, provide for the review of decisions made under the regulations and make provision about appeals against decisions under the regulations.

#### *Committee consideration*

39. The Committee asked the Scottish Government for further explanation as to what

further provision about who qualifies as a relevant person may be made under section 24(3)(a) considering provision already made under section 24(2) and whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 24(1).

40. In its response, the Scottish Government explained that in the event that any future changes are made to permitted days of supply which are deemed to have a disproportionate impact on businesses whose trade or business is not wholly or mainly concerned with the supply, distribution or importation of fireworks, section 24(3)(a) enables further provision to be made about who qualifies as a relevant person. The Scottish Government also explained that this could include, for example, businesses where only a proportion of their trade or business is concerned with the supply, distribution or importation of fireworks in Scotland. Section 24(3)(a) also provides flexibility for the operational detail of the compensation scheme to take account of unanticipated individual circumstances.
41. With regards to the choice of procedure, the Scottish Government reiterated that as the regulations will be largely concerned with the administrative aspects of any scheme, and do not enable amendment of the Bill itself, it considers the negative procedure is appropriate and strikes the right balance between flexibility and the need for scrutiny of a provision of this nature. The Scottish Government did, however, acknowledge that regulations made under this provision will be of particular interest to those businesses who may be impacted by section 22, noting it will carefully consider the evidence that is presented to the Committee on this and any recommendations that follow.
42. The Committee acknowledged the further explanation provided by the Scottish Government as to the reason for the provisions which could be made under section 24(3)(a) to make further provision about who qualifies as a “relevant person” with reference to future changes that may be made to permitted days of supply which are deemed to have a disproportionate impact on certain businesses.
43. With regards to the proposed procedure, the Committee considered that the matters listed in section 24(3), that may be provided for in regulations made under 24(1), are not all purely administrative in nature. The reason for making further provision as to who qualifies as a relevant person is accepted however this is a substantive provision. The Committee considered that the power to make regulations setting out the circumstances in which compensation is payable and how that compensation is calculated to be more substantive than purely of administrative nature particularly in light of the impact on businesses that may be affected.
44. The Committee considered that the enhanced scrutiny afforded by the affirmative procedure may be more appropriate, on the basis of the generality of the power with reference to the provisions that the regulations *may* make as set out in section 24(3) and considering the particular interest there may be in these regulations from businesses that may be impacted.

45. **The Committee notes the Scottish Government's response. It is therefore content with the power in principle. Nevertheless, the Committee recommends that the Scottish Government brings forward an amendment to the Bill at Stage 2 to make regulations under section 24(1) subject to the**

**affirmative procedure such that there can be enhanced scrutiny of proposals to make provision for or about the payment of compensation for specialist firework businesses affected by section 22.**

## **Section 30(1) – Power to make further provision about firework control zones**

### **Power conferred on: The Scottish Ministers**

### **Power exercisable by: Regulations made by Scottish Statutory Instrument**

### **Parliamentary procedure: Negative**

#### *Provisions*

46. Section 30(1) confers power on the Scottish Ministers by regulation to make further provision about Firework Control Zones and the procedures to be followed to designate a place as a zone, or to amend or revoke one. Such regulations may, as set out in section 30(2), make further provision about:
- Setting limits on the size of area (and cumulative area) that may be designated by a local authority as a firework control zone;
  - the manner in which a local authority is to designate a place as a zone, or to amend or revoke one;
  - the information that must be included when designating a zone, or amending or revoking one;
  - zones that operate on specific days only;
  - relating to the consultation process;
  - relating to the publication of documents required under this part of the Bill; and
  - the reviewing and reporting on the operation and effectiveness of zones in its area

#### *Committee consideration*

47. The Committee asked the Scottish Government for further explanation as to whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 30(1).
48. In its response, the Scottish Government explained that there are aspects of section 30(2) which may fundamentally impact on how a firework control zone can be designated, such as limits on the size of a place and the cumulative area of a local authority that may be designated. The Scottish Government explained, however, that the primary purpose of this provision is to provide further detail on the operation of the policy and to ensure that the zones work as intended by targeting specific and clearly defined areas and to prevent the designation of most or all of a local authority area as a firework control zone.
49. The Scottish Government also explained that the further provision (as provided for



in section 30) is intended to deal with procedural and operational issues and enable further provision to be made to improve or refine the operational effectiveness of the policy.

50. The Committee noted that the power under section 30 will allow further provisions to be made in respect of the provisions under sections 26 to 29 of the Bill. The Committee acknowledged that the language used in section 30 is similar to that used in section 18 (discussed above) noting in particular the reference to the generality of the power not being limited to the example of provision that may be made. However, the Committee noted that the scope of this power is more narrowly drafted and limited in respect of making further provision for the purposes of this Part of the Bill, in particular the procedures to be followed to designate a place as a firework control zone, or to amend or revoke one. Therefore, the Committee considered this power to be more procedural in nature.
51. The Committee nonetheless acknowledged that the power may have an impact on the ability of a local authority to make decisions in respect of designating, amending or revoking a firework control zone and there may therefore be enhanced interest for local authorities.
52. Considering the robust processes set out on the face of the Bill that a local authority must follow and given the procedural nature of the power to make further provision and the balance to be struck between use of parliament time and level of scrutiny required, the Committee accepted the power in principle and was content with the choice of procedure.

**53. The Committee notes the explanation provided by the Scottish Government. It therefore accepts the power in principle and is content that the regulation-making power as set out in section 30(1) of the Bill will be subject to the negative procedure.**

**Section 35(2)(b) – Power to make further provision as to requirements to determine whether a person may be treated as within an exempt category for the purposes of schedule 1**

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Negative**

*Provisions*

54. Section 35(1) of the Bill introduces schedule 1 which contains exemptions to certain offences under Part 2 to 5 of the Bill. The exemptions generally relate to persons whom by virtue of their employment should not be criminalised for purchasing, acquiring, possessing or using fireworks contrary to the Bill such as those employed by a regulatory authority, professional organisers or operators of a fireworks or pyrotechnics display, those who carry out a business in accordance with the Pyrotechnic Articles (Safety) Regulations 2015 and organisers of public fireworks displays.

55. Section 35(2)(b) of the Bill confers power on Scottish Ministers to make further provision about the requirements that a person must meet to be treated as being employed by, or in business as, a professional organiser or operator of fireworks displays or pyrotechnics displays for the purposes of schedule 1.

*Committee consideration*

56. The Committee asked the Scottish Government for an explanation as to whether further provision, as to what requirements determine whether a person may be treated as within the exempt category, could alter whether an offence has been committed or not and whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 35(2)(b).
57. In its response, the Scottish Government explained that the definition of this particular group is in line with existing legislation which similarly exempts these businesses, and their employees, from certain restrictions applying to the general public. The Scottish Government also explained that the provision 35(2)(b) has been included primarily with the intention of enabling the Scottish Ministers to provide further information or detail about those who may benefit from the exemptions available to this group, if required, though there is no intention at this stage to fundamentally alter the requirements that a person must meet to be included within this group.
58. The Scottish Government acknowledged that this power would enable the Scottish Ministers to introduce additional requirements that professional organisers or operators of firework or pyrotechnic displays must meet in order to be included within this group and therefore exempt from certain offences within the Bill. The Scottish Government explained that this would be for the purpose of responding to any changes in existing legislation pertaining to this category of professionals and/or to respond to any changes in the market following implementation of the provisions within the Bill.
59. The Scottish Government also acknowledged that the power under 35(2)(b) does have the ability to determine whether a person may be treated as within the exempt category of a professional organiser or operator of firework or pyrotechnic displays, and this may therefore alter whether an offence would be committed by such a person in particular circumstances.
60. The Scottish Government indicated that it remains of the view that as this power does not create new offences or enable amendment of the provision included within the Bill itself, and that when considering the balance between parliamentary time and affording Parliament adequate scrutiny of future regulations, the negative procedure is suitable in this case.
61. The Committee noted the Scottish Government's explanation that the general description of these operators and organisers used in the Bill is consistent with existing legislation. The Committee also noted that should that change, then this provision would permit further detail to be provided to reflect those changes where required.
62. The Committee noted that the Scottish Government does not currently intend to fundamentally alter the requirements that a person must meet to be included within this group. However, the Committee also noted that the power under 35(2)(b), as

the Scottish Government has confirmed, could determine whether a person may be treated as within the exempt category of a professional organiser or operator of firework or pyrotechnic displays, and that this may therefore alter whether an offence would be committed by such a person in particular circumstances. The Committee therefore considered that the affirmative procedure, providing the highest level of scrutiny, would be appropriate to be used when making further provision as to requirements to determine whether a person may be treated as within an exempt category for the purposes of schedule 1.

- 63. The Committee notes the Scottish Government's response. It is therefore content with the power in principle. Nevertheless, the Committee recommends that the Scottish Government brings forward an amendment to the Bill at Stage 2 to make regulations under section 35(2)(b) subject to the affirmative procedure such that there can be enhanced scrutiny of any proposals to make further provision as to requirements to determine whether a person may be treated as within an exempt category for the purposes of schedule 1.**

# Annex

## **On 9 March 2022, the Scottish Government was asked:**

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting on 8 March 2022 and seeks an explanation of the following matters:

### **Section 7(2) – Power to provide for additional mandatory requirements relating to the fireworks licence application process**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: negative**

Section 7(2) confers a power on the Scottish Ministers by regulations to specify additional mandatory requirements that a fireworks licence applicant must meet before applying for a licence.

The Committee acknowledges that, in addition to the mandatory requirements set out on the face of the Bill, it may be required to include additional mandatory conditions in respect of the application process. It nonetheless appears that the power has been drafted in such a way that while additional mandatory conditions may be added, the existing conditions under section 7(1) may not be amended or removed by regulations made under this power.

In relation to the proposed parliamentary procedure, the Committee notes that there is a requirement in section 19(1) to consult appropriate stakeholders but also acknowledges that this provision will determine whether a person is able to submit an application for a fireworks licence in the first instance. Nonetheless, the level of scrutiny proposed once the instrument is laid before the Parliament is subject to the negative procedure.

The Committee would therefore be grateful for an explanation of:

1. **the reason for the scope of the power to add, but not remove or amend, mandatory conditions; and**
2. **whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 7(2).**

### **Section 18(1) – Power to make further provision for the purposes of the operation of the licensing system**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: negative**

Section 18(1) confers a power on the Scottish Ministers by regulations to make further provision for the purposes of the operation of the licensing system. The Committee notes that Paragraph 49 of the Delegated Powers Memorandum (DPM) explains that the power

will ensure that the operation of the licence system can be designed, amended and updated as required for optimum operation of the system, without the need for primary legislation.

The Committee acknowledges that the regulations would deal with operational aspects of the licensing system and so the power is limited to an extent in that regard, further that any regulations made under this power must be subject to consultation before being laid before the Parliament. Notwithstanding the limitation and consultation requirement, whilst the further provisions made under this power may include the matters set out in section 18(2) this does not limit the generality of the power.

The power has also been drafted in such a way that it appears akin to an ancillary power. It is not clear from the DPM how this power connects with the ancillary powers under Section 47 of the Bill and whether it duplicates to a degree these ancillary powers. Furthermore, it is not clear from the DPM what the provisions in regulation 18(2)(a) would specify that is not possible under regulations made under 6 (3) in respect of the general requirements in applying for a fireworks licence.

The Committee would therefore be grateful for an explanation of:

1. **how the regulation making powers connect with the ancillary powers under Section 47 of the Bill;**
2. **whether any duplication occurs with regards to the ancillary powers under Section 47 and the regulation making powers under Section 6(3) of the Bill; and**
3. **again, whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 18(1).**

### **Section 24(1) – Power to make provision for compensation for specialist firework businesses affected by section 22**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: negative**

Section 24(1) confers a power on the Scottish Ministers by regulations to make provision for or about the payment of compensation to relevant persons in consequence of the coming into force of section 22 or the coming into force of a modification under section 22(6) which further limits the days on which fireworks may be supplied.

The Committee acknowledges, as set out in Paragraph 66 of the DPM, the importance of the principle of paying compensation but that the regulations themselves will be *largely concerned* with the administrative aspects and details of any scheme and as such the Scottish Government considers the negative procedure is considered appropriate. It is not however clear from the DPM why the negative procedure is deemed to be more appropriate than the affirmative procedure in this case with regards to the level of parliamentary scrutiny to be afforded to such a compensation scheme.

In addition, the Committee notes that a “relevant person” is defined in section 24(2) and that section 24(3)(a) provides that regulations may be made to set out further provision about who qualifies as a relevant person. It is also not clear from the DPM what this further

provision may be such that regulations would be required under Section 24(3) that is not already provided for under Section 24(2). This may have an impact on who may qualify for compensation.

The Committee would therefore be grateful for further explanation of:

1. **whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 24(1); and**
2. **what further provision may be made under Section 24(3)(a) considering provision already made under section 24(2).**

### **Section 30(1) – Power to make further provision about firework control zones**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: negative**

Section 30(1) confers a power on the Scottish Ministers by regulation to make further provision about firework control zones and the procedures to be followed to designate a place as a zone, or to amend or revoke one. Paragraphs 73 and 74 of the DPM explain that the power will allow Scottish Ministers to make any improvements to the process of designating firework control zones that may be required. This will allow the designation of such zones to be amended and updated as required without the need for primary legislation.

The Committee recognises that these regulations would deal with procedural and operational aspects of firework control zones. However, considering the impact these regulations may have on the ability of a local authority to make decisions in respect of designating, amending or revoking a firework control zone and the enhanced interest there may be for local authorities, the Committee would be grateful for an explanation of:

1. **whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 30(1).**

### **Section 35(2)(b) – Power to make further provision as to requirements to determine whether a person may be treated as within an exempt category for the purposes of schedule 1**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: negative**

Section 35(2)(b) of the Bill confers a power on Scottish Ministers to make further provision about the requirements that a person must meet to be treated as being employed by, or in business as, a professional organiser or operator of fireworks displays or pyrotechnics displays for the purposes of schedule 1. Schedule 1 provides for exemptions from certain offences under Parts 2 to 5.

Paragraph 94 of the DPM explains that as the provision does not create new offences or enable amendment of the provision included within the Bill itself, it is considered

appropriate that the power is subject to the negative procedure.

The Committee acknowledges that the provision is limited to those employed by, or in business as, a professional organiser or operator of fireworks displays or pyrotechnic displays. The Committee also notes that the Scottish Government explains that the general description of these operators and organisers used in the Bill is consistent with existing legislation, adding that should that change then this provision would permit further detail to be provided to reflect those changes where required.

Nevertheless, it appears making further provision as to what requirements determine whether a person may be treated as within the exempt category could alter whether an offence has been committed or not.

The Committee would therefore be grateful for an explanation of:

1. **whether further provision as to what requirements determine whether a person may be treated as within the exempt category could alter whether an offence has been committed or not; and**
2. **whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 35(2)(b).**

I would be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 12 noon on Wednesday 16 March. I appreciate this is a very short turnaround but this is to allow the Committee to report in time for the Criminal Justice Committee's session with Ash Regan MSP, Minister for Community Safety, on Wednesday 30 March.

**On 16 March 2022, the Scottish Government responded:**

Thank you for the recent letter to Alison Irvine of 9 March 2022 sent on behalf of the Delegated Powers and Law Reform Committee ("the Committee") requesting further explanation from the Scottish Government on the delegated powers contained in the Fireworks and Pyrotechnic Articles (Scotland) Bill ("the Bill") as introduced.

The Scottish Government's responses to the Committee's ten questions are set out below.

**Section 7(2) – Power to provide for additional mandatory requirements relating to the fireworks licence application process**

Question 1: Request for explanation as to the reason for the scope of the power to add, but not remove or amend, mandatory conditions that a fireworks licence applicant must meet before applying for a licence.

Scottish Government response: Section 7(1) sets out the mandatory requirements that an applicant must meet when applying for a fireworks licence. It is considered that these requirements will provide information which is essential to enable a decision to be made as to whether a person should be able to obtain a licence, whilst satisfying the policy objective of the firework licensing system, which is that those members of the public who are permitted to purchase, acquire, possess and use fireworks in Scotland can demonstrate that they are able to do so in a safe and appropriate manner. As such, a power to remove or amend the requirements set out in section 7(1) is not considered to be necessary. The power at section 7(2) to specify additional mandatory requirements has been included to future-proof operation of the licensing system. If there is evidence to

suggest that additional mandatory requirements are necessary, these can be considered and introduced by regulation to ensure the firework licensing system can operate as effectively as possible. While additional requirements cannot be amended, regulations imposing additional requirements can be revoked. Therefore there is some room for removing and replacing any additional mandatory requirements, were that necessary.

Question 2: Request for explanation as to whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 7(2).

Scottish Government response: The power included at section 7(2) is intended to enable operational details of the licensing system to be updated, therefore it is considered that negative procedure is most appropriate and agile procedure for this power. It is appreciated, however, that it is theoretically possible that this power could enable regulations to be introduced which substantially reduce the ability of individuals to be able to apply for a licence by including much more restrictive mandatory requirements. The intention is that this power will be utilised only if there is evidence to suggest that additional mandatory requirements should be included to improve operation of the system, rather than proactively seeking to include additional, restrictive requirements.

New regulations under section 7(2) are also required to meet the consultation requirement in section 19, which would allow for scrutiny by those affected by the proposed regulations.

### **Section 18(1) – Power to make further provision for the purposes of the operation of the licensing system**

Question 3: Request for explanation as to how the regulation making powers connect with the ancillary powers under section 47 of the Bill.

Scottish Government response: As the Bill sets up a new licensing scheme within a complicated existing statutory framework, the regulation-making powers are intended to ensure the Bill's objectives can be met and any novel or unexpected situations responded to appropriately.

With that in mind, the powers in section 18(1) and 47 are intended to complement each other. Section 18 focuses particularly on those procedural and detailed aspects of the licensing system as need to be developed and section 47 provides scope to deal with matters which may be tangential or consequential to the establishment of the licensing arrangements (and so not clearly within the scope of section 18) as well as the rest of the Bill. While section 47 could also be used to deliver provision in relation to the licensing scheme, it was felt to be more transparent to have a specific power for that material, and include examples of the kind of provision that it is anticipated will be required under such regulations. Were such detail to be left to section 47, it would be less clear to the end user that provisions about, for example, the sharing of information are to be made, which is clearly important to the functioning of the new system.

Question 4: Request for explanation as to whether any duplication occurs with regards to the ancillary powers under section 47 and the regulation making powers under section 6(3) of the Bill.

Scottish Government response: As noted in response to question 3, the Bill includes specific powers to make subordinate legislation as respects the different aspects of the licensing system in order to help users understand how the system will work. This is also intended to promote transparency and proper scrutiny of the power.



The examples set out in section 18(2) contemplate matters associated with the licensing system and are included to enable detailed provision about how the system will work (beyond other specific powers). As noted earlier, reliance on section 47 for all ancillary matters would be less transparent.

In the context of section 6(3) and the matter in section 18(2)(a)—section 6(3) is deliberately specific as to the form and content of applications etc. whereas section 18(2) deals with the wider aspects of the application process, such as verification of information. Paragraph (a) of section 18(2), in particular, is intended to avoid a narrow construction of the two powers which might lead to the conclusion that section 18 could not make provision about matters relating to applications (as section 6 already provides for that). It would, of course, be possible to adjust section 6 to include such ancillary matters without reliance on section 18.

Question 5 : Request for explanation as to whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 18(1).

Scottish Government response: In considering the power associated with section 18, it was considered that the nature of the material was essentially focused on matters of procedural and operational detail of the licensing system. While this is important material which will set out, for example, how key aspects of the system will work in practice, it is considered that such procedural aspects are better suited to the lower level of parliamentary scrutiny. However, the inclusion of a specific consultation requirement (see section 19) in relation to regulations introduced on the aspects set out in section 18 is intended to provide a means for those affected by the regulations to input into the ongoing design and implementation of the licensing system in order to ensure the procedural and operational details of the system are developed as required.

### **Section 24(1) – Power to make provision for compensation for specialist firework businesses affected by section 22**

Question 6 : Request for explanation as to whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 24(1).

Scottish Government response: Section 24(1) of the Bill enables the Scottish Ministers to make provision for the payment of compensation, while section 24(2) sets out further detail as to who is deemed to be a relevant person for the purposes of any compensation scheme. Given the regulations under section 24(3) will be largely concerned with the administrative aspects of any scheme, and do not enable amendment of the Bill itself, the Scottish Government believes that the negative procedure is appropriate and strikes the right balance between flexibility and the need for scrutiny of a provision of this nature.

However, we understand that regulations under this provision will be of strong interest to those business who may be impacted by section 22 (restrictions on days of supply of fireworks), and will, of course, carefully consider the evidence that is presented to the Committee on this and any recommendations that follow.

Question 7 : Request for explanation as to what further provision may be made under Section 24(3)(a) considering provision already made under Section 24(2).

Scottish Government response: Section 22(6) enables the Scottish Ministers to make regulations to add, amend or remove days (or a period of days) when fireworks are permitted to be supplied. In the event that any future changes are made to permitted days of supply which are deemed to have a disproportionate impact on businesses whose trade

or business is not wholly or mainly concerned with the supply, distribution or importation of fireworks, section 24(3)(a) enables further provision to be made about who qualifies as a relevant person. This could include, for example, businesses where only a proportion of their trade of business is concerned with the supply, distribution or importation of fireworks in Scotland. Section 24(3)(a) also provides flexibility for the operational detail of the compensation scheme to take account of unanticipated individual circumstances.

### **Section 30(1) – Power to make further provision about firework control zones.**

Question 8 : Request for explanation as to whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 30(1).

Scottish Government response: Sections 27, 28 and 29 of the Bill set out a robust process that needs to be followed by local authorities when considering and designating firework control zones, including in relation to consultation, publication and review of such zones. As you have noted in your letter, further provision (as provided for in section 30) is intended to deal with procedural and operational issues and enable further provision to be made to improve or refine the operational effectiveness of the policy.

While there are aspects of section 30(2) which may fundamentally impact on how a firework control zone can be designated – such as limits on the size of a place that may be designated and the cumulative area of a local authority that may be designated (section 30(2)(a)(i)(ii)) – the primary purpose of this provision is to provide further detail on the operation of the policy and to ensure that the zones work as intended by targeting specific and clearly defined areas and to prevent the designation of most or all the a local authority area as a firework control zone.

### **Section 35(2)(b) – Power to make further provision as to requirements to determine whether a person may be treated as within an exempt category for the purposes of schedule 1**

Question 9: Request for explanation as to whether further provision as to what requirements determine whether a person may be treated as within the exempt category could alter whether an offence has been committed or not.

Scottish Government response: As you have noted in your letter, schedule 1 sets out those individuals and groups who are exempt from certain offences under Parts 2 to 5 of the Bill. This includes professional organisers or operators of fireworks displays or pyrotechnics displays. The definition of this group is in line with existing legislation which similarly exempts these businesses, and their employees, from certain restrictions applying to the general public.

This provision 35(2)(b) has been included primarily with the intention of enabling the Scottish Ministers to provide further information or detail about those who may benefit from the exemptions available to this group, if required, and there is no intention at this stage to fundamentally alter the requirements that a person must meet to be included within this group.

The Scottish Government recognises, however, that this regulation making power also enables the Scottish Ministers to introduce additional requirements that professional organisers or operators of firework or pyrotechnic displays must meet in order to be included within this group and therefore exempt from certain offences within the Bill. This is required to future proof the Bill to respond to any changes in existing legislation pertaining to this category of professionals and / or to respond to any changes in the

market following implementation of the provisions within the Bill. In this situation, it is the view of the Scottish Government that the power under 35(2)(a) does have the ability to determine whether a person may be treated as within the exempt category of a professional organiser or operator of firework or pyrotechnic displays, and this may therefore alter whether an offence would be committed by such a person in particular circumstances.

Question 10: Request for explanation as to whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 35(2)(b).

Scottish Government response: Given our response to Question 9 above, we appreciate that there is a fine balance to be struck between affording Parliament adequate scrutiny of future regulations and the best use of Parliament's time. However, it is our view that as this power does not create new offences or enable amendment of the provision included within the Bill itself, in this case, it is suitable for this power to be subject to the negative procedure.

## **Conclusion**

I hope this response is helpful, and the Scottish Government looks forward to receiving a copy of the Committee's report on the Bill in due course.

