POLICY NOTE

THE FIREWORKS (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2021

SSI 2021/79

The above instrument was made in exercise of the powers conferred by sections 2 and 4 of the Fireworks Act 2003(**1**). The instrument is subject to *negative procedure*.

The purpose of this statutory instrument is to revoke and replace SSI 2021/14.

The instrument will change how fireworks are sold and used by the general public in Scotland with the aim of protecting public and community safety and wellbeing by ensuring fireworks do not cause harm, distress or injury. In particular, to reduce the volume of fireworks being set off outwith organised firework displays, their associated noise and disturbance and burden on emergency services and firework related injury; and enable those negatively affected by fireworks to be more aware of when fireworks will be set off and take preventative measures.

In addition, this instrument will correct an unintended consequence in the effect of SSI 2021/14 and ensure that these changes only apply to the general public. This will have the effect that, (in the delivery of the policy set out above):

- public, organised displays organised by community groups can continue to take place between the hours of 07.00 and 18.00;
- public organised displays organised by firework display businesses can also continue to take place between the hours of 07.00 and 18.00, without the need for permission from the local authority;
- businesses involved in the supply of fireworks and who use the firework in connection with that business between the hours of 07.00 and 18.00 can continue to do so;
- regulatory authorities can continue to use fireworks between the hours of 07.00 and 18.00 in the exercise of their powers or duties in connection with the use and/or regulation of fireworks.

Policy Objectives

The Scottish Government is committed to ensuring fireworks are used safely and handled with care and that they do not cause harm, distress or serious injury; while recognising that well organised firework displays provide the opportunity to bring communities together.

The statutory instrument will:

(**1**) 2003 c.22; by virtue of article 4 and the Schedule to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2004 (S.I. 2004/2030), the Scottish Ministers exercise certain functions concurrently with the Secretary of State, being functions conferred by sections 4 and 6 of the Fireworks Act 2003 and section 2 of that Act as it relates to sections 4 and 6.

- Amend the times of day fireworks can be used by the general public to between 6pm and 11pm, with the exception of 5 November (when they can be used from 6pm until midnight), New Year's Eve, the night of Chinese New Year and the night of Diwali (when they can be used from 6pm until 1am).
- Amend the times of day fireworks can be sold to the general public to during the daytime hours of 7am and 6pm, subject to the exceptions set out in the regulations and alongside existing requirements on retailers around sale and storage licences.
- Amend the quantity of fireworks that can be sold by retailers to individuals who do not have an explosives licence from 50kg to 5kg, subject to the exceptions set out in the regulations.

The main purpose of this instrument is to amend how the general public can access and use fireworks. The Scottish Government does not consider it would be appropriate for these measures to apply to professional organisers or operators of firework displays, or to firework displays that are organised and run by local community groups and organisations, in line with local licencing arrangements.

Existing routes of enforcement will cover the use of fireworks outwith permitted times, with Police Scotland continuing that role. The prohibitions on the sale of fireworks outwith permitted times, and on the permitted quantities of fireworks able to be sold will be enforced by Trading Standards.

Current Law
Fireworks in Scotland are controlled by legislation that covers a wide range of areas. Key legislation includes:

- The Fireworks (Scotland) Regulations 2004
- The Fireworks Regulations 2004
- Explosives Act 1875
- Explosives Regulations 2014 (ER14)
- The Pyrotechnic Articles (Safety) Regulations 2015.

The Fireworks Regulations 2004 and Explosives Regulations 2014 (ER14) set out that for most of the year, fireworks can only be sold by licenced traders. Licencing the sale of fireworks is done by local authorities, and traders have to meet set criteria to receive a licence. In the run up to New Year, Chinese New Year and Diwali, and the three weeks before Bonfire Night, traders registered with their local authority to store fireworks do not require a specific sales licence. Instead they are required to register with the relevant local authority.

Pyrotechnic Articles (Safety) Regulations 2015 set out it is illegal to sell outdoor fireworks to anyone who is less than 18 years old. It is illegal to sell indoor fireworks (such as sparklers) to anyone who is less than 16 years old. Fireworks which make a noise of over 120 decibels when they are set off, or fireworks that require specialist knowledge to use safely, cannot be sold to the general public at any time. Fireworks associated with antisocial behaviour such as bangers, air bombs and jumping jacks are also banned.

There are existing restrictions in place on when fireworks can be used within the Fireworks (Scotland) Regulation 2004. During most of the year, fireworks can only be used between 7am and 11pm. On 5th November, fireworks can be used until midnight, and on the nights of

Chinese New Year, Diwali and New Year's Eve, fireworks can be used until 1am. It is for each local authority to decide if it wishes to licence public firework displays under its individual Public Entertainment Licencing regime.

The Explosives Act 1875 (section 80) sets out it is a criminal offence for anyone to throw, cast or fire any fireworks in or into any road or public place and this is enforced by Police Scotland.

Scottish Ministers have the powers to introduce the new regulations in exercise of the powers conferred on them by sections 2 and 4 of the Fireworks Act 2003.

Consultation

To comply with the requirements of Section 2(3) of the Fireworks Act, a programme of consultation and engagement has been undertaken with key stakeholders.

A 14 week public consultation on the sale and use of fireworks was carried out between February and May 2019. The consultation asked 10 questions, with seven closed questions and nine opportunities for further comments. A total of 16,420 formal responses were received and, of these, 16,322 were submitted by individual members of the public while 98 responses were submitted by groups or organisations including key stakeholders. Twenty-seven public engagement events were also held – 24 open public events, and 3 events for specific population groups over the consultation period.

The consultation 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.

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.

The consultation identified a broad sense that fireworks can be good for people and communities when they are used at the right time, right place and used responsibly. There was little appetite to ban properly organised public displays and recognition that they can bring communities together and have positive community benefits. 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 centre on the sale and use of fireworks by the general public, as opposed to organised firework displays.

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 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.

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 and to draw evidence on the effectiveness – or otherwise – of similar measures in place.

In November 2019, the Minister for Community Safety appointed an independent Review Group of stakeholders[2] to consider the legislative and regulatory options for change that emerged from consultation, scrutinise the evidence available, and alongside professional judgement and expertise set out clear recommendations on what change is required to current legislation and regulations. Building on the strong message for change from the consultation and representative opinion poll and ideas on what action should be taken, the Review Group was tasked with exploring a number of options for legislative and regulatory change including:

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

The Group used an Options Appraisal Approach to consider these options, their potential effects, trade-offs and overall impact. The Group met a total of eight times between November 2019 and October 2020 and provided a forum in which the likely impacts and issues which could arise as a result of particular policy proposals could be debated and tested. Scottish Government officials provided Secretariat support to the Group, worked closely with the Chair and Group members throughout and were present at all meetings to discuss and engage with the proposals being considered, and understand the arguments behind them. The remit of the Group along with minutes from each meeting have been published online[3]; and the final report from the Group was published on 3 November 2020[4]. The consensus of the majority of Group members was that a fundamental shift is required in how fireworks are

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

3 https://www.gov.scot/groups/firework-review-group/

4 https://www.gov.scot/publications/firework-review-group-report-scottish-government/

accessed and sold in Scotland through the introduction of a comprehensive set of measures, including:

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

Throughout this period, the Scottish Government has 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 (UKG), the Health and Safety Executive and the Welsh Government. Engagement was informed by the public consultation and evidence gathering which highlighted a range of drivers underpinning the need for change, including:

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

A full list of those consulted 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.

Impact Assessments

An Equality Impact Assessment has been completed on the policy and is attached. No impacts were identified on protected characteristics including gender reassignment, race, and sexual orientation; and religion and belief. Potential benefits identified in relation to disability, age, pregnancy and maternity, and sex.

A Children's Rights and Wellbeing Impact Assessment has been completed on the policy and assessed the proposed changes to have a direct and indirect impact on children and young people, including the reduction of the harms caused by fireworks to the health and wellbeing

of children and young people, and addressing concerns about the impact of noise disturbance and pollutants from fireworks.

A Fairer Scotland Impact Assessment identified no adverse impacts as a consequence of this change.

The screening process has determined a Strategic Environment Assessment is not required. This has been sent to 3 environmental consultation authorities for final determination that it is not required, with any objection required within 28 days and the template will be published in due course.

Financial Effects
A Business and Regulatory Impact Assessment (BRIA) has been completed on these Regulations and is attached. The BRIA considers the impact that the Regulations will have on business and industry, as well as consumers and other groups impacted, with a cost and benefit analysis, where these are known, of the options available.

Scottish Government
Safer Communities Directorate
February 2021