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Convener
Criminal Justice Committee
Scottish Parliament
EH99 1SP

1 May 2020

Dear Audrey

Thank you for the constructive and helpful Stage 1 report on the Fireworks and Pyrotechnic Articles (Scotland) Bill. I would like to take this opportunity to thank all those who have engaged with us to help shape the Bill, and in particular all those who provided evidence.

I am grateful for the comments and recommendations in the report and I enclose the Scottish Government's response to the Committee's recommendations.

I hope that the Committee finds this response helpful.

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ANNEX A

SCOTTISH GOVERNMENT RESPONSE TO STAGE 1 REPORT

Introduction

1. In the response below the Scottish Government addresses the issues raised in the Committee's report where either a response was sought or otherwise where a response on the general principles of the Bill is considered helpful.

Prohibition on providing fireworks or pyrotechnic articles to people under 18 years of age

67. Irrespective of whether the Bill should be passed in the limited time available for scrutiny, the Committee recommends that the Scottish Government, as part of its overall public education and awareness programme on the Bill, takes steps to provide better public information on the dangers of adults providing fireworks to children and, if this Bill passes, to highlight that it will become a criminal offence.

Scottish Government response

2. The Scottish Government notes that the Committee agrees there is a gap in the existing legislation in relation to ensuring that all adults who supply fireworks or pyrotechnic articles to children, under any circumstances, are held accountable. As set out in the Committee's report, and in line with what was heard through the 2019 consultation, there are concerning incidents of adults giving fireworks to children in some communities around bonfire night.

3. The Scottish Government welcomes the agreement from the Committee to progress an accelerated scrutiny timetable which, as noted in the Committee's report, will enable the proxy purchase provision to be implemented in time for the bonfire period this year. However, the accelerated scrutiny timetable will also have the practical advantage of enabling the other measures within the Bill that require regulations and / or lead in time before commencement to progress quicker. Given the issues faced each year by communities and stakeholders, such as the emergency services, involving fireworks the Scottish Government believes it is important to progress positive change and introduce the required restrictions as soon as possible to reduce incidents and harm.

4. The Scottish Government notes the Committee's concern in relation to the most appropriate legislative route to progressing the proxy purchasing offence; and it is our firm view that this is best achieved through the current Bill. In January last year, the Minister for Community Safety met with her counterparts from UK and Welsh Governments to discuss the work underway in Scotland following the recommendation of the independent Firework Review Group. At this meeting, in the absence of a commitment by the UK Government to tighten firework regulations in England and Wales, the Welsh Government requested that the UK Government consider transferring the relevant powers to Welsh Ministers to enable Wales to take forward regulatory change in relation to fireworks; and it is our understanding this has not been forthcoming as yet. The Scottish Government has engaged with the UK Government

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throughout our journey on firework safety but these engagements have not prompted the UK Government to bring forward any changes to existing legislation. The Scottish Government has therefore not directly approached the UK Government to seek that they make this specific legislative change or to devolve it to the Scottish Ministers to do so instead; and indeed repeated comments by the leader of the House of Commons¹ reinforces that the UK Government are not minded to make further regulations in the area of fireworks control.

5. The Scottish Government welcomes the suggestion from the Committee to include information on the dangers of adults providing fireworks to children; and agrees that if the Bill passes it will important to highlight that this will become a criminal offence. The Scottish Government suggests that this is most appropriately taken forward as part of the annual programme of public awareness campaigns that are run in advance of the bonfire season every year. Since 2019, the Scottish Government has funded three separate, but related, public awareness campaigns comprising:

- A nationwide 'Impact of Fireworks' campaign, which is run by the Scottish Government in conjunction with the Scottish Fire and Rescue Service, to improve people's awareness and understanding of the impact that fireworks can have on people and animals, encouraging people to follow the fireworks code.
- The Crimestoppers 'Rules and Regulations' campaign, in partnership with Police Scotland and local communities, focussing on areas with higher levels of fireworks misuse. This campaign focusses on improving awareness and understanding of the existing rules and regulations and improving understanding of how and when to report the misuse of fireworks.
- The third campaign is point of sale material, in partnership with Trading Standards, which involves distributing leaflets via retailers selling fireworks to consumers.

6. We will consider, in collaboration with relevant stakeholders, the most appropriate campaigns in which to communicate this specific information. Our initial assessment is that this might be most appropriately built into the Crimestoppers 'Rules and Regulations' campaign that is focussed on providing information in relation to existing fireworks legislation and criminal offences. It is also expected that the training course that will form part of the fireworks licensing system, if the Bill is passed and once this system is introduced, will include information for those applying for a fireworks licence on the relevant legislation and it is suggested that this would also be an appropriate route to ensuring those who are able to purchase, possess and use fireworks are aware of the legislation in this area and of their legal responsibilities.

¹ [Business of the House - Hansard - UK Parliament](#); [Business of the House - Hansard - UK Parliament](#)

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Fireworks licensing system

131. The Scottish Government must work to resolve the significant questions which have been raised about the workability of the proposed licensing scheme. This will be central to avoiding the worst of any unintended consequences, especially around the risk of a growth of any black market. These issues need to be resolved before Stage 3 of this Bill, or at least a clear indication is required from the Scottish Government on how these issues will be addressed in any further consultation on the licensing provisions in this Bill. And the Scottish Government must set out concrete proposals on how the licensing system will work as well as addressing how they will prevent the potential growth of a black market.

Scottish Government response

7. The Scottish Government notes the priority accorded by the Committee regarding the workability of the fireworks licensing system, and its request for further detail on the operation of the system.

8. The policy on the licensing system has been developed following a significant period of evidence gathering and engagement. It is the view of the Scottish Government that the Bill, as currently drafted, sets out the core principles and elements of how the licensing system will function and the requirements that will be placed on those wishing to apply for a fireworks licence, and that sufficient provision is provided for within the Bill for additional regulations to be brought forward to deal with the administrative aspects of the system.

9. In terms of the core principles and elements of the system the Bill sets out:

- That the licensing system will be administered by the Scottish Government, on behalf of Scottish Ministers which will ensure a consistent, Scotland wide approach to licence applications and to sharing of relevant data with other national partners.
- The mandatory requirements that applicants must meet when applying for a fireworks licence, including: disclosing convictions in relation to relevant offences; disclosing details of any previous fireworks licences that were revoked or cancelled; and evidence of having completed a fireworks training course on the safe and appropriate use of fireworks no earlier than 3 months before completion of the application process.
- The requirement of a valid application and applicable fee to have been received.
- The checks and balances that are in place to ensure that licence holders continue to demonstrate lawful behaviour involving fireworks, and purchase and use fireworks in a safe and responsible manner; and the Bill sets out a clear process for the Scottish Ministers to revoke a person's licence if they are convicted of a relevant offence.
- The requirement for Scottish Ministers to establish and maintain a register of fireworks licence applications and licence holders.

10. In addition, the Bill sets out core conditions that licence holders must abide by, including: that the licence is only valid for the person named on the licence and is not transferrable; that it is only valid for the period specified; and the requirement of licence holders to inform Scottish

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Ministers of any material change in circumstance. It is our view that it is appropriate to set out further operational and administrative detail in regulations. This will future-proof the system, and allow processes to be adapted in a more agile manner to fit future circumstances. However, the Scottish Government will write to the Committee in advance of Stage 3 with a mock 'user journey' for the licensing system to set out in more practical terms how the system is planned to work. This will, of course, be subject to further consultation and agreement of subsequent regulations by the relevant Committee at a later date.

11. The Scottish Government notes the request of the Committee for an outline of the steps that will be taken to prevent the potential growth of a black market. It is considered that the licensing system, as set out in the Bill, strikes the balance between ensuring that necessary safeguards are in place so that fireworks are purchased and used in a safe and appropriate way without implementing excessive barriers to legitimately accessing fireworks. The Scottish Government is not aware of evidence to suggest that the introduction of a licensing system will lead to an increase in illegal firework sales, and existing enforcement routes in relation to illegal firework sales will continue through Trading Standards and Police Scotland. Further, the requirement to hold a licence for possession and use, coupled with the Police being able to check a person's licence status in real time, will assist the Police, both in preventing the use of illegal fireworks and in investigating their origin. The impact of the licensing system will, of course, be monitored to ensure that it is working effectively and contributing to the overarching policy objectives of changing the culture of fireworks in Scotland.

12. In relation to the sale of illegal firework products, the Scottish Government is aware that there are isolated incidents involving the supply of illicit/illegal firework products, but is not aware of any evidence to suggest that this is currently a widespread issue. Due to the underground nature of the black market, it is difficult to gather evidence on how this will be impacted by measures within the Bill. The Scottish Government is not aware, however, of evidence to suggest that measures within the Bill will lead to a significant increase in illegal/black market sales. While the Scottish Government has listened to and considered the concerns raised by the fireworks industry around the availability of fireworks via the black market in countries that have introduced tighter restrictions on the sale and use of fireworks, including outright bans, the limited data that is available from these countries does not point to any significant change in relation to the number of firework seizures.

13. While placing restrictions on any potentially harmful product comes with a possible risk that some people may seek to circumvent those restrictions; that is not a compelling argument for not having justified restrictions. The Scottish Government consider that measures within the Bill strike the right balance between introducing restrictions and ensuring public safety, with robust checks and balances in place whilst not introducing barriers to the sale of fireworks that mean it will not be possible for people to buy fireworks through legitimate methods at appropriate times of the year.

14. The Scottish Government would like to reassure the Committee that the illegal sale and purchase of fireworks will continue to be subject to existing well established enforcement routes through trading standards, the police and the courts; and the Scottish Government intends to continue to work with these partners to build on and enhance existing processes to tackle black market sales. The Scottish Government also wishes to note that the importation of dangerous goods is a matter for the UK Government and, in the case of firework imports, this is regulated by the UK Government's Health and Safety Executive (HSE); while people who may self-import fireworks falls substantially within the remit of Border Force. We will

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continue to engage with the UK Government to ensure that all efforts are being taken to prevent and detect the illegal importation of fireworks; and intend to write to the UK Government highlighting the Committee's concerns.

15. Scottish Government will, of course, ensure that the impact of the measures within the Bill are carefully monitored following implementation to ensure that they are working effectively; and the Bill includes the ability, if required, to amend the secondary legislation swiftly, subject to the approval of Parliament.

133. The Committee recommends the Scottish Government ensure the development of the contents of the training system is stakeholder led and informed. This would ensure it includes information on the impact that the noise of fireworks can have on vulnerable groups, such as people with sensory issues (like autism), or suffers of trauma or PTSD (like military veterans), as well as the impact on pets, livestock and wildlife.

Scottish Government response

16. The Scottish Government notes the Committee's recommendation that the training course is stakeholder led and informed. The Scottish Government can confirm that we intend to work collaboratively with a range of stakeholders on the development of the training course such as the firework industry, community safety partners such as the Scottish Fire and Rescue Service and Police Scotland, disabilities organisations, such as those representing people with mental health and/or neurodivergent conditions such as PTSD or autism, and animal welfare organisations such as the Scottish Society for the Prevention of Animals and the British Veterinary Association. This will ensure that the training course is fit for purpose and includes information on how to purchase, possess and use fireworks in a safe and lawful manner. The course will also highlight the importance of the responsible and considerate use of fireworks, highlighting the adverse impact that fireworks can have on some people, particularly those with noise sensitivity conditions such as autism or PTSD, as well as the wider communities and animals.

17. The Scottish Government also intends to engage with a range of stakeholder organisations when developing the training course to ensure all possible avenues are explored and identified to ensure it is accessible to disabled people, and takes into account those whose first language is not English, and Gaelic speakers and BSL users.

18. The Bill includes a provision for the Scottish Ministers to bring forward regulations to set out further detail relating to the training course such as the course content, and the accreditation and qualification of any person providing training. The Bill sets out that consultation is required with such persons considered to be interested in or affected by the licensing system, which will ensure that stakeholders have the opportunity to contribute to and share their views and opinions on the proposed training course.

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136. In the meantime, we recommend that the Scottish Government works with the fireworks industry to educate the public to the availability of lower noise fireworks. This could be through an improved communications and a public information campaign. The Scottish Government may also wish to include information on the availability of lower noise fireworks as part of the online training course members of the public will have to undertake in advance of applying for a fireworks license.

Scottish Government response

19. The Scottish Government notes the Committee's recommendation to work with the firework industry to educate the public on the availability of lower noise fireworks. Given the lack of a recognised standard or specification to categorise lower-noise fireworks, the Scottish Government will explore with the firework industry what appropriate information could be communicated with the public about the availability of fireworks marketed as lower-noise by retailers, and the potential benefits of using these to minimising the noise and disruption fireworks can cause.

20. The Scottish Government will continue to develop and run public awareness raising campaigns in advance of the bonfire season (as described at paragraph 5 above), and will seek to engage with the fireworks industry as part of this process.

21. The Scottish Government notes the Committee's recommendation to include information on the availability of lower noise fireworks as part of the fireworks licensing training course. As outlined above, the content of the training course will be informed by consultation and engagement with stakeholders to ensure that it includes the necessary information that licence holders should be aware of on the safe, appropriate and lawful purchase, possession and use of fireworks; and full consideration will be given to the promotion of lower noise fireworks through this route.

137. We ask the Scottish Government work collaboratively with the fireworks industry, and the relevant UK standards and regulatory authorities, on any standard or specification to identify or distinguish lower-noise fireworks.

Scottish Government response

22. The Scottish Government notes the Committee's recommendation to work collaboratively with the fireworks industry, and the relevant UK standards and regulatory authorities, on any standard or specification to identify or distinguish lower-noise fireworks, and will continue to engage with stakeholders regarding lower-noise fireworks.

23. As described above, engagement with stakeholders during development of the Bill, which included firework industry experts and the Health and Safety Executive, confirmed that there is, at present, no recognised standard or specification for lower-noise fireworks. However, the Bill includes a regulation making power which can be utilised to enable certain categories,

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types, classifications or descriptions of fireworks to be exempt from provisions within the Bill should a recognised specification or standard be applicable to lower-noise fireworks in the future.

24. The Scottish Government will also continue to engage with the Department for Business, Energy and Industrial Strategy (BEIS) as results of noise level testing on common consumer firework products becomes available. This will improve understanding of whether any common firework products can be considered as lower noise fireworks, and potentially inform the potential to move towards such recognised standards or specifications.

139. Nevertheless, the licensing system will need careful consultation, design, implementation and testing. The Scottish Government must take the necessary time to ensure the system is robust and user friendly, before it goes live, so that it is credible. Options such as pilot schemes or grace periods could be considered.

Scottish Government response

25. The Scottish Government notes and agrees with the Committee's recommendation that the licensing system will require careful consultation, design, implementation and testing. The Bill sets out the overarching principles of how the licensing system will work, as well as the mandatory requirements of the system. This will be built on through regulations, and further operational and administrative elements of the system will be carefully considered and developed as part of that process. We recognise the importance of the licensing system operating in an optimum, user friendly way and it is considered this approach will allow the different elements of the system to be carefully considered with stakeholders and subject to scrutiny. A concurrent IT project will be progressed to develop the system itself, carefully following project management principles to ensure that the system itself operates in an optimum way with appropriate testing and preparation for commencement of the system undertaken.

26. The Scottish Government intends to set out transitional arrangements in regulations for the licensing system, that will come into effect in conjunction with the operational launch of the system and the commencement of the provisions in Part 2 of the Bill. The Committee's suggestion to consider options such as pilot schemes or grace periods has been noted and will be considered as part of implementation planning. Consideration has been given to including a grace period as part of the transitional arrangements, where offences attached to the licensing system would not be in effect for a period of time after the system goes live in the interests of fairness.

27. While a final decision will be taken on this in due course, the purpose of such arrangements would be to enable the licensing system to effectively bed in during implementation, and for the public and stakeholders to fully understand the requirements of the licensing system before the related offence provisions are brought into effect, giving people ample time to apply for and obtain a licence. The launch of the system will also be supported by a programme of communication and awareness raising to make people aware of the requirement to obtain a licence, and the process involved in doing so.

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140. Furthermore, the application and licensing system needs to interact with the IT systems of relevant organisations where appropriate, such as the Police Service and local authorities. This needs to be in place before a licensing system is introduced. More detail is needed from the Scottish Government on the plan to ensure these different systems work together.

Scottish Government response

28. The operation of the licensing system will require the collation, processing and retention of licence application and licence holder information. In particular, information will need to be shared between the Scottish Government, as operator of the licensing system, and Police/Trading Standards/the Courts to support enforcement of licensing offences. Officials are continuing to liaise closely with stakeholders as this develops, to identify the optimal way of this working in practice to inform development of the most appropriate IT system. This will include ensuring mechanisms are in place for Police Scotland to access real time data on fireworks licence holders to support effective enforcement.

29. A legislation Data Protection Impact Assessment has been developed which considers potential data protection implications and risks around the provision to establish and maintain the licensing system within the Bill. An operational Data Protection Impact Assessment will be completed on the system itself, as it is developed, to consider data risks and ensure suitable processes are in place to mitigate these.

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Restrictions on supply and use of fireworks and pyrotechnic articles

- 194. The Scottish Government should consider that the illegal acquisition of fireworks and pyrotechnics may occur. Furthermore, it is unclear how current legal online purchases will work across the UK. This is a potential risk which the Scottish Government should work to mitigate as it will invalidate the policy intention of the legislation whilst allowing an increase in unregulated fireworks coming into Scotland.**
- 195. The Scottish Government must report back to the Parliament, before Stage 3, on how these matters will be addressed.**

Scottish Government response

30. The Scottish Government welcomes the Committee's acknowledgement of the benefits of limiting the supply and use of fireworks by the general public, and the role this can play in reducing the noise and disturbance that fireworks can cause, particularly for those who are negatively impacted who will be able to have advance notice of the dates to expect fireworks to be used and put any required safeguarding measures in place.

31. The Scottish Government notes the concern raised by the Committee in relation to the potential for people to turn to illicit or illegal sources of fireworks and in relation to people turning to online sales; and wishes to reassure the Committee, as outlined in paragraphs 11-14 above, that the potential risk of displacement of firework sales due to measures within the Bill, including in relation to restricted days for sale and use, has been carefully considered as the Bill has been developed.

32. The Scottish Government welcomes the recommendation from the Committee that work should be undertaken to mitigate, as far as possible, against the potential risk of displacement of firework sales in terms of legal firework products through illicit routes as well as illegal firework products. In addition to the information provided in paragraphs 11-14 above, it is the view of the Scottish Government that the Bill, as currently drafted, mitigates against displacement in a range of ways, as follows:

- The licensing system includes a requirement for people to have a licence to possess fireworks in Scotland, not only to purchase and use them. While the Bill cannot regulate for activity outside Scotland, for anyone who purchases fireworks outside of Scotland, the Bill requires that person to have a licence if they cross back into Scotland.
- The Bill covers not only the sale of fireworks, but the entire supply process. This means that for the online sale of fireworks from outside of Scotland, where any part of the supply takes place in Scotland including delivery, this can only be done within the permitted periods set out in the Bill.

33. Fireworks cannot be sent through the normal postal system; all firework deliveries need to be done through a special licensed courier system and the items need to be marked clearly as explosives.

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- 199. The Scottish Government must set out how it plans to liaise with the major retail outlets in Scotland on whether they will continue to sell fireworks for sale on the permitted days. If they do not, because it is no longer commercially viable, then there is a more severe risk that people will attempt to source fireworks elsewhere. The Scottish Government must report back to the Parliament, before Stage 3 on their discussions with major retail outlets stating what their view is on how this Bill will impact the viability of selling fireworks and how the risk of online purchasing will be addressed as a result of these discussions.**
- 200. Furthermore, we would expect the Scottish Government's public communications and education strategy on the provisions in the Bill, and any online training course for a fireworks license application, to educate the public on these issues. This should include awareness of the legal requirements, penalties and risks of purchasing an explosive material - such as fireworks - online, and having them delivered to the purchaser via a courier or mail delivery service.**

Scottish Government response

34. The Scottish Government notes the priority accorded by the Committee for engagement with firework retailers to continue as the Bill is scrutinised by Parliament; and in particular to seek views on whether existing retailers plan to continue to supply fireworks if the provisions within the Bill are implemented. As part of ongoing stakeholder engagement, the Scottish Government will seek to have further discussions with such retailers as well as representative bodies such as the Scottish Grocers Federation and Scottish Retail Consortium. The Scottish Government will also continue to liaise with Trading Standards to identify any intelligence as to any potential reduction in retailers applying for storage licences. The Scottish Government will provide any additional information from such stakeholders when this becomes available. It is worth noting however that a substantial majority of retailers who sell fireworks only sell fireworks at particular and established times of the year; and the Scottish Government's proposed dates of permitted supply largely overlap with those times. It is unlikely therefore that this policy will have a significant impact upon the commercial viability of the vast majority of those sales as they already mostly take place at those times. The Scottish Government is also aware that some retailers, including Sainsbury's and Co-op Food, took the decision to not supply fireworks a number of years ago; which would be for reasons unrelated to this Bill.

35. As outlined in paragraphs 11-14, in relation to consumers moving towards online purchasing, it is the view of the Scottish Government that the Bill includes sufficient provision to mitigate against any potential increase in the sale of fireworks in an online context. For example, the effect of the Bill is that retailers outside of Scotland supplying fireworks into Scotland, in an online context, will be subject to the same requirements as those businesses based within Scotland for sales to customers in Scotland. Where any part of the supply process takes place in Scotland, including delivery, suppliers will be required to check the licence status of the recipient receiving a fireworks delivery to ensure that they do not commit an offence of supplying to an individual without a fireworks licence. Similarly, retailers outside of Scotland will be committing an offence if they supply F2 and F3 fireworks to people within

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Scotland, other than those in the relevant exempt groups, on days other than those specified if any part of the supply process takes place in Scotland including delivery. Trading Standards are in discussion with their counterparts in the rest of the UK around engagement with businesses within their local areas supplying fireworks to ensure they will be aware of their obligations with respect to Scots law if the Bill passes.

36. The Scottish Government welcomes the Committee's recommendation that public communication is undertaken to ensure people are aware of the importance of, and understand the legal requirements in relation to, purchasing fireworks in online settings. The Scottish Government further agrees that this should clearly set out requirements in relation to the transportation of such products. The Scottish Government will consider the most appropriate route for communicating this information, over and above through the proposed training course as part of the licensing system.

202. As such, the Scottish Government must ensure that the public are fully educated on this as part of the implementation of the Bill. Furthermore, we ask that the Scottish Government reports back to the Committee on how the existing law on fireworks would deter stockpiling following the introduction of the restrictions on their supply and use.

Scottish Government response

37. The Scottish Government notes the priority accorded by the Committee in relation to the risk of people stockpiling fireworks in domestic settings as a result of introducing restrictions on the days when the general public are permitted to purchase and use fireworks. The Scottish Government wishes to reassure the Committee that all of the measures within the Bill, including the restricted days of supply and use of fireworks, have been carefully considered to ensure they strike the right balance between introducing restrictions and ensuring public safety, while having robust checks and balances in place to mitigate against potential unintended consequences, including stockpiling. The permitted days of use have been set to extend slightly beyond when fireworks can be supplied to avoid a situation where people buy fireworks towards the very end of the supply period and then are not able to use them on that day, for example due to bad weather. This also minimises the likelihood of fireworks being stored by individuals for an unnecessarily long period of time – for example, from the last day of one permitted use period to the beginning of the next permitted use period.

38. The Scottish Government notes the request of the Committee for the Scottish Government to set out how the existing law on fireworks would deter stockpiling following the introduction of the restrictions on their supply and use. It is our view that existing mitigations against stockpiling, which are already in place through the Explosives Regulations 2014, will continue to apply and restrict the volume of fireworks the general public are permitted to store. The Explosives Regulations 2014 (regulation 9) prohibits the sale or acquisition of more than 50kg (net mass of explosive substance²) of fireworks at a time, except to individuals with an explosives licence. Individuals are able to store up to 5kg of fireworks at home without registration for an unlimited time, and are able to store higher quantities of fireworks for short

² This refers to the quantity of explosives contained within the firework, and not to gross weight. If the net explosive content is not available, then they are taken as being 25% of the gross weight of the firework.

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periods³. A contravention of such regulations is an offence by virtue of section 33(1) of the Health and Safety at Work etc. Act 1974. On summary conviction the maximum penalties are imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both; while on indictment, imprisonment could be up to 2 years and there is no specified limit on the fine. In addition to this, the Fireworks (Scotland) Regulations 2004 were amended in 2021 to limit the volume of fireworks that can be purchased by the general public at any one time to 5kg.

39. The Scottish Government welcomes the suggestion by the Committee to ensure the public are fully educated on their legal responsibilities with regard to storing fireworks in domestic settings as well as the potential dangers of this and good practice in relation to storage. The Scottish Government intends that this will be built into the content of the training course as part of the fireworks licensing system; and that this will cover issues such as stockpiling and storage to ensure that people who can possess and use fireworks fully understand the quantity of fireworks they are able to store and how to do so safely in domestic settings. The Scottish Government also intends to explore the potential for messages around stockpiling and safe storage of fireworks more generally in domestic settings to be included within the point of sale campaign and / or the nationwide 'Impact of Fireworks' campaign described in paragraph 5, particularly if this provision is introduced in advance of the fireworks licensing system.

³ Category 4 fireworks: store up to 50kg for up to 21 days; store up to 250kg for up to 5 days; and any amount for 24 hours; and for category 3 fireworks: store up to 100kg for 5 days, and any amount for 24 hours.

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- 204. Some of the evidence we heard called for a degree of local flexibility to be granted to local authorities to vary the dates on which category F2 and F3 fireworks can be used by individuals, on a case-by-case basis. This could accommodate local needs (such as traditional festivals, local celebrations around sporting successes, or national holidays of communities from other nations etc.). Not to provide such local flexibility may inadvertently encourage illegal use of fireworks on specific days by those who cannot afford to hire a professional fireworks display company to provide a display. However, local flexibility has the potential to increase permitted use of fireworks in certain local areas and may confuse the public. Whilst the Committee does not take a view on this, we ask the Scottish Government to consider whether providing such a flexibility in the Bill would be desirable or not.**
- 205. We also note that the Bill contains an order making power for Scottish Ministers to make changes to the list of permitted dates. We recommend that the Scottish Government uses this power appropriately if a strong case can be made about a religious or cultural event that is not currently covered by the permitted dates.**

Scottish Government response

40. The Scottish Government believes that the Bill, as currently drafted, strikes the right balance between including exemptions to allow organised displays to take place outside of permitted days, while responding to the strong message from the public that the unpredictable use of fireworks can be disruptive and distressing. We understand that this change will mean people celebrating events, such as weddings or birthdays, would be prevented if these fall outside of the permitted days, and they are not in one of the exempt groups. However, it is these sorts of events that are more individual and unpredictable in nature where many of the issues around noise and disturbance were raised during the 2019 consultation. The Bill includes an exemption to the proposed restricted days of supply and use of fireworks for licensed individuals if they are purchasing and using fireworks as the organiser of a public firework display. The inclusion of this exemption means that these kinds of public firework displays (which need not be commercially operated) can continue to be organised and take place outwith the proposed permitted days of supply and use, while still limiting wider sporadic use of fireworks by members of the public throughout the year. This exemption is in addition to the exemption for professional organisers or operators of fireworks displays, which has been included to seek to reduce the potential impact of this measure on businesses.

41. Consideration has been given to providing local authorities with the power to exempt fireworks licence holders from the limitations on the dates of supply and use, but it is the view of the Scottish Government that this could render those proposals of having no real effect in tackling the issues caused by sporadic and unpredictable use of fireworks. It will already be unlawful for a member of the public to use fireworks at any time if they do not hold a licence, so enabling local authorities to exempt those persons who hold a licence from the proposed restrictions on dates of use, would significantly dilute the intended policy effect. It would also cause significant confusion at the boundaries of mainland local authority areas as it would be unclear at the outset if an offence was being committed and have the potential for complications in trying to enforce offences in relation to the use of fireworks outwith permitted

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days. The Scottish Government notes that the Committee does not take a view on this, but it is for these reasons that the Scottish Government has not made provision for this local flexibility.

42. The Scottish Government notes the recommendation of the Committee to utilise the regulation making power provided for within the Bill to amend the permitted days of supply and use; and can confirm that should evidence become available that additional permitted periods of cultural significance should be included that this will be fully considered.

208. Whilst this is to be welcomed, the Scottish Government must commence work with the fireworks retail industry as soon as the Bill is enacted, and before the relevant provisions of Part 3 comes into force, so as to lay the groundwork for a mechanism by which those retailers can assess the likely impact to their business and seek compensation.

209. Furthermore, the Scottish Government must set out how the restrictions on dates of sales will impact the annual fireworks storage license of those retailers.

Scottish Government response

43. The Scottish Government notes the Committee's recommendation that work on the compensation scheme is commenced as soon as possible if the Bill is enacted, and in advance of the restricted days of supply and use provisions coming into force. The Scottish Government accepts this recommendation and intends to engage directly with those businesses who are likely to be affected in a timely and transparent manner.

44. Following introduction of the Bill to the Scottish Parliament, the Scottish Government provided assurances to the industry and retailers that, if the Bill is passed, fair and sufficient time will be provided for businesses to adapt their processes and existing stock in line with changes; and therefore that this provision will not commence this calendar year, with the earliest possible commencement date being 2023.

45. The Scottish Government notes the request of the Committee to provide further information in relation to how the restricted days of supply provision will impact the annual fireworks storage licence of those retailers. The Scottish Government can confirm that there is no direct impact on the current requirement on those wishing to store explosives as set out under the Explosive Regulations 2014 (regulation 7) and retailers will be required to continue to abide by these requirements and hold appropriate authorisation to store explosives if the Bill is passed.

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Firework control zones

256. We recommend that the Scottish Government considers how it will make it clear to the general public what control zones will mean in practice, and whether another term would provide the necessary clarity to explain more clearly that Part 4 of the Bill would provide local authorities with the power to establish limited-user zones for these types of fireworks.

Scottish Government response

46. The Scottish Government note the Committee's recommendation regarding the need for clarity amongst the general public with regard to what a firework control zone will mean in practice. It is the Scottish Government's position that in operation, clear communication will be vital to ensure that people understand if they are in a control zone and the implications of that. Alongside this, there will be a need to continue to ensure the public are aware of and understand existing legislation – that is that people are not able to use fireworks in a public place in any area – whether it is designated as a zone or not. The Scottish Government will give ample consideration, alongside relevant local authority partners, as to how these issues are best communicated to the general public.

47. The Bill requires that after a decision has been taken to designate an area as a control zone, the local authority publishes this decision as soon as possible. The Bill itself does not set out how the decision is publicised, in order to ensure that this is driven by local circumstances and that local authorities are able to adapt to changing methods of communication. We will ensure that the accompanying guidance will be developed with the Committee's recommendation in mind; and that this guidance covers how local authorities may best ensure the general public are aware of what designated zones will mean in practice. It is our intention to co-design this guidance with local authorities and other relevant stakeholders, including communities, to ensure that it is easily understood and applied in practice.

48. With regard to the Committee's concern regarding the term used for these zones, during the drafting process it became apparent that "Firework Control Zones" more accurately described the policy intent – that is, that the zones were subject to controlled use of fireworks only. It is the view of the Scottish Government that this is a more accurate and easy to understand descriptor than the alternative of 'limited user zones' as suggested by the Committee.

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- 257. The Committee asks the Scottish Government to urgently reassess whether the firework control zone provision, on its own, is sufficient. We ask the Government to consider introducing a provision to also allow local authorities to establish genuine no-firework zones, where the use of category F2, F3 and F4 fireworks would be a criminal offence in all circumstances, for as long as such a zone is in force.**
- 258. The Committee asks the Minister to respond to this request during the Stage 1 debate on the Bill, and to write back to the Committee with her considered view before the start of the Stage 2 process.**

Scottish Government response

49. We note the Committee's conclusion in paragraph 253, which indicates their view that the provision, as currently drafted, may fall short of public expectations. The measure included within the Bill is very much in line with the proposal included in the consultation last year; namely that any designated area does not extend to community groups at publicly organised events or to professional firework operators; and is also in line with the recommendations of the independent Firework Review Group.

50. The 2019 consultation demonstrated the value and enjoyment of well organised public firework displays; and we recognise that these can provide a route for local communities to come together to enjoy fireworks in a safe and appropriate way. It is therefore the view of the Scottish Government that the current exemptions that enable public firework displays to continue should be retained to ensure there are alternative routes for people to enjoy fireworks in a safe and appropriate way.

51. The Scottish Government also wishes to note that it is essential the current exemptions for regulatory authorities, such as Trading Standards, and for businesses engaged in the supply of fireworks are retained. This is to ensure enforcement bodies are able to continue to carry out their duties as required within any designated firework control zone including, for example, testing by use of fireworks and controlled disposals; and to ensure that any safety checks that are carried out on fireworks as part of due diligence checking is able to continue.

52. The Scottish Government does accept, however, that the current exemption that enables a member of the public to arrange for a professional to organise and put on a private display within a fireworks control zone may be worthy of re-consideration; and can confirm that this will be actively considered by the Scottish Government in advance of Stage 2.

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260. We recommend that the Scottish Government ensures that the statutory guidance which will underpin the operation of control zones will ensure consistency in the decision making process and operation across Scotland. This should include an impact assessment and the dispute resolution mechanism between local authorities who disagree on designations next to their boundary, as well as setting out the review and evaluation process, the maximum time period for a zone to operate, and issues such as various criteria to be considered when assessing the need for, or impact on, various groups.

Scottish Government response

53. The Scottish Government notes the Committee's recommendation that the statutory guidance ensures consistency in the decision making process and operation of control zones across Scotland. We intend to co-design this guidance in collaboration with local authorities, community groups and other relevant stakeholders to ensure the guidance supports local authorities to deliver a degree of consistency of approach between different areas, while having discretion to apply their own approaches to reflect local circumstances. It is important that local authorities will be able to take into account particular vulnerable populations, as well as concerns about disorder and anti-social behaviour connected with firework use in a particular area. Circumstances in each local area vary and what will work in one local area will be different to another. We will therefore work to assuage the Committee's concerns in developing the guidance, whilst being mindful of the need to respect local circumstances and avoid a national approach which may be ill-suited to these.

54. With regard to a maximum time limit for zones, it is the Scottish Government position that the length of time an area is designated as a firework control zone should be driven by local circumstances and the evidence of harm and impact of fireworks. The Bill sets out that a local authority must carry out a review of the operation and effectiveness of its zones, and publish the findings from this. Therefore, while the Bill does not set a maximum time a control zone can be in place for, these requirements mean that the evidence and impact will be reviewed regularly, ensuring that control zones are in place only while there is a strong justification to have them. Section 30 of the Bill does, however, enable further requirements to be set out if required, in relation to reviewing and reporting on the operation and effectiveness of zones. We will ensure that the Committee's recommendation is considered fully as control zones are implemented.

55. The Scottish Government agrees that the statutory guidance should set out further detail on issues such as the review and evaluation process, the criteria to be considered when assessing the need for a fireworks control zone as well as to assess the potential impact on different groups; and as outlined in paragraph 47, it is intended that this guidance will be co-designed with a range of partners.

56. The Scottish Government agrees with the Committee's view that, in circumstances where the boundary of a firework control zone being considered falls next to or near another local authority, the views of this local authority should be taken into account. The consultation process required in the Bill provides for this - section 27(1)(iii) places a duty on local authorities to consult with 'any other persons or bodies that the local authority consider to have a connection with, be interested in or affected by the proposal' before designating a place as a

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firework control zone, or indeed amending or revoking such a zone; while section 28(1)(c) requires a local authority to 'explain how it had regard to the views expressed during the consultation period'. Given the Bill sets out a robust process for designating a firework control zone that a local authority is required to follow before it can designate a zone as a firework control zone, an additional appeals process has not been deemed necessary, and that where a local authority has failed to comply with its duties then judicial review remains an option.

261. While we accept local circumstances may have to be accounted for, there should also be consistency in the decision-making structures across all local authorities. The Committee supports the suggestion that there should be local democratic accountability for decisions on firework control zones through locally elected councillors.

Scottish Government response

57. The Scottish Government notes the Committee's support for The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) suggestion that this decision should be made by Elected Members. The Bill provides local authorities with the power to designate a place or places as a firework control zone, so the ultimate decision lies with the local authority; and the Bill sets out a robust process that a local authority must follow when they are considering and making such a designation to ensure consistency in decision-making. The intention is that individual local authorities will utilise their own governance processes in relation to formally agreeing the designation of zones.

262. We ask the Scottish Government to set out how it envisions any appeals or arbitration mechanism for those who wish to object to the establishment of a zone, or a decision by a council not to establish a zone, would operate.

Scottish Government response

58. The Scottish Government notes the Committee's request to set out how we envision any appeals or arbitration mechanisms for those who wish to object to the decision to establish, or not to establish, a zone. The Bill sets out a robust process for designating a firework control zone that a local authority is required to follow before it can designate a zone as a firework control zone; which includes a clear process for consultation and a requirement for the local authority to explain how it has had regard to the views expressed through this process. In addition, the Scottish Public Services Ombudsman can investigate complaints as to whether the local authority has followed due process, and this route would apply where a person has already complained to a local authority and, for an administrative function failure, the complainer needs to have suffered injustice or hardship due to maladministration on the part of the local authority.

59. Given this, a dedicated appeals process in addition to the availability of judicial review where a local authority has failed to comply with its duties, has not been deemed necessary. The Scottish Government also wishes to highlight that the Bill requires local authorities to carry out reviews of the operation and effectiveness of its firework control zones providing another

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route for people to engage with this process, and a requirement on the local authority to report on the findings of such reviews.

263. The Committee recommends that the local government sector should publicly report annually on firework control zones across Scotland, in terms of issues like application for zones being granted or rejected, criteria used, details of zones in force and levels of fireworks anti-social behaviour etc.

Scottish Government response

60. The Scottish Government notes the Committee's recommendation at paragraph 263 and agrees, in principle, that there would be merit in establishing a regular reporting structure with local authorities in relation to firework control zones. The Scottish Government will take forward discussions with the Convention of Scottish Local Authorities to explore the possibility of this.

265. Firework control zones should be seen as a tool whose usefulness will only be fully realised in concert with support for locally designed and delivered community-based programs. We ask the Scottish Government to establish a dedicated funding package, either as part of local government funding or other community-support funding streams, to support the development of such programs in communities where firework control zones may be established.

Scottish Government response

61. The Scottish Government welcomes the vast amount of pre-planning, education and preventive work that is carried out in communities each year in preparation for the bonfire season by local authorities and community safety partners. This includes activities such as visits to primary and secondary schools, diversionary activities for young people and joint partner visits to premises selling fireworks over the bonfire period.

62. As part of Scottish Government funding to the Scottish Community Safety Network (SCSN) this financial year, SCSN will play a key role in collating firework prevention plans across Scotland's 32 local authorities in order to promote joint working and share examples of good practice supporting local partners to further enhance and develop the approaches they deploy as appropriate.

63. In addition, the Scottish Government, as part of the funding package provided to Crimestoppers, will ensure local partners are able to access support from Crimestoppers to enhance and build on the specific issues that are faced in their local communities, including the provision of leaflets, banners, information cards and social media animations. The Scottish Government believes that this is the most appropriate way in which to provide support to local communities and local partners.

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266. We ask the Scottish Government to confirm how it will ensure that the designation of a control zone will not merely displace anti-social behaviour, and the misuse of fireworks, to other areas outside a zone.

Scottish Government response

64. The Scottish Government notes the Committee's concern that designated firework control zones may displace problems with firework misuse to other areas. We recognise that there is a possibility some people, particularly family or friends in different households, may choose to have a private fireworks display in the garden of the household that is not in a firework control zone. This would mean the use of fireworks would still happen but it would take place in a garden outside of the designated zone; which would be a reasonable displacement to expect and would indicate that the designated zone is working as intended.

65. With regard to concerns that it would displace people from using fireworks in their garden to then using them in the street, existing legislation criminalising the letting off of fireworks in public places, such as the street, would continue to apply. Therefore, any displacement to the street is already illegal and this will continue to be the case. In the case where a firework control zone is designated to deal with issues around anti-social behaviour, for example, then it may be reasonable for local partners to consider the need to put in place additional preventative activity in surrounding areas. The Bill sets out that a local authority must carry out a review of the operation and effectiveness of its firework control zones; and displacement is an example of the issues a local authority will be required to consider as part of that; and make any amendments that might be required.

66. As set out in paragraph 46, it is the Scottish Government's position that, in operation, clear communication will be vital to ensure that people understand if they are in a control zone and the implications of that; and the need to ensure the public are aware of and understand the existing legislation – that is that people are not able to use fireworks in a public place in any area – whether it is designated as a zone or not. The Scottish Government will give ample consideration, alongside relevant local authority partners, as to how these issues are best communicated to the general public.

267. In order to deal with the impact that dangerous firework use has on emergency workers, the Committee asks the Scottish Government to consider tougher punishments for those who use fireworks to assault emergency workers.

Scottish Government response

67. The Scottish Government wholly condemns all assaults on emergency workers, including those assaults which involve the use of fireworks, and supports independent justice agencies having the necessary powers to deal with such intolerable activity. Under Scots criminal law, anyone using fireworks to assault an emergency worker can receive a significant custodial sentence (up to life imprisonment). In addition, there are specific statutory offences in the Emergency Workers (Scotland) Act 2005 which can be used as well.

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68. It is for the independent court to make decisions in any given case depending on the facts and circumstances arising. While the Scottish Government notes the recommendation made, discretion for the court in sentencing is an essential element of how sentencing is carried out in Scotland and the Scottish Government considers it is appropriate for courts to have the necessary powers, as they already do, and for sentencing decisions to be made independently by the court on a case-by-case basis.

268. The Committee recommends that the Scottish Government undertakes a public awareness campaign to explain what a control zone is, how it will operate, and how it will impact on those living within it. Crucially, this needs to explain that control zones are not the same as a 'no firework zone'.

Scottish Government response

69. The Scottish Government notes the Committee recommendation that a public awareness campaign accompany the implementation of control zones to inform the public of what a control zone is, how it will operate, and how it will impact on those living within it.

70. As stated in our response to recommendation 256, we believe that, in operation, clear communication will be vital to ensure that people understand if they are in a control zone and the implications of that. It has been the Scottish Government's position throughout development of the Bill that targeted communication and awareness raising will form a key element of the designation of firework control zones; and section 28 of the Bill sets out a requirement on local authorities to publish the decision on any proposal to designate a firework control zone. We will ensure that the accompanying guidance will be developed with the Committee's recommendation in mind; providing additional guidance to local authorities on how best to ensure the general public are aware of what the zones will mean in practice. It is our intention to co-design this guidance with local authorities and other relevant stakeholders to ensure that it is easily understood and applied in practice.

269. The Committee asks the Minister to clarify how members of the public who make an application for a fireworks licence will be made aware of the implication of living in a control zone. For example, whether there is any conflict between having a license for the use of category F2 or F3 fireworks, if the applicant or license holder lives in an area designated as a firework control zone, but where their use of such fireworks is not permitted because the license holder is not a members of an exempted group under the Bill.

71. The Scottish Government can confirm that as part of the application process for a fireworks licence, it will be made clear to applicants that, if they are granted a licence, they will be required to adhere to all other relevant fireworks legislation, including any areas designated as firework control zones. It will be made clear to applicants from the outset that the designation of areas as control zones can be considered by local authorities throughout the term of their fireworks licence and that it may be a possibility that the area in which they live may subsequently become a firework control zone thereby prohibiting them from setting off fireworks in this area, unless they are in an exempt group.

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Pyrotechnic articles at certain places or events

304. The Committee asks the Minister to provide an update on any proposed changes the Scottish Government intends to make to these provisions, during the Stage 1 debate in the Bill, and by no later than the start of consideration of Stage 2 amendments.

Scottish Government Response

72. The Scottish Government welcomes the Committee's support for the overarching policy aims of the pyrotechnic possession offence, and their recognition that irresponsible use of pyrotechnics is a public safety issue that needs to be addressed.

73. The Scottish Government notes the Committee's concerns about enforcement of these provisions, and their conclusion that, at this stage, they would welcome a reconsideration of the offence as currently drafted to resolve these concerns.

74. An offence of being in possession of a pyrotechnic article in a public place, without reasonable excuse or lawful authority, was initially considered, proposed and consulted on, with responses to the consultation showing key stakeholders and the wider public were broadly supportive.

75. However, a key part of the process when developing legislation is to ensure that the least restrictive and most proportionate option is considered. In the case of the pyrotechnic provisions in this Bill, there is a need to ensure any interference with civil liberties is necessary, justifiable and a proportionate way to deal with the issue of pyrotechnic misuse. It is also vital that there are no harmful unintended consequences as a result of the legislation, or, that if any unacceptable impacts are identified, that these are mitigated for. In this case, the Scottish Government must ensure that legitimate pyrotechnic use is not impeded by the legislation, and in particular, ensure that nobody is dissuaded from carrying potentially life-saving visual distress aids with them when appropriate.

76. These are important decisions, and a balance must be struck. Therefore, the Scottish Government believes it was right that the more targeted offence, as currently drafted, was developed and put forward for consideration.

77. Nonetheless, the Scottish Government recognises the importance of addressing operational challenges to ensure the legislation is effective and we are therefore happy to revisit these issues and give further consideration to the Committee's concerns. In particular, we have engaged further with Police Scotland and the Scottish Police Federation in relation to the challenges they have raised since the Bill was introduced, and we will continue to do so.

78. The Scottish Government therefore welcomes the opportunity for these issues to be debated more widely at Stage 1 and to hear views from across the Chamber, to help inform further consideration prior to updating the Committee in advance of Stage 2.

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306. The Committee asks the Minister to confirm during the Stage 1 debate on the Bill, and by no later than the start of consideration of Stage 2 amendments, whether the Scottish Government intends to amend the Bill to include a “presumption of contents” clause.

Scottish Government Response

79. The Scottish Government recognises the benefits of facilitating a more straightforward presentation of evidence during prosecutions for offences under the Bill.

80. The Scottish Government can therefore confirm that we are actively considering proposing an amendment of the Bill at Stage 2 to make provisions for an evidential presumption to operate in proceedings for offences under the Bill. The approach to this is under consideration, but this could involve provision to the effect that a pyrotechnic article which is labelled, or is in labelled packaging, is as described on the label. In common with similar presumptions already in use, the intention would be that this could be rebutted by contrary evidence, to ensure fairness to the accused in proceedings.

81. Confirmation of the final Scottish Government position on this will be provided in advance of the Committee’s consideration of the Bill at Stage 2.

307 The Committee also asks the Minister to provide clarification during the Stage 1 debate, and by no later than the start of consideration of Stage 2 amendments, on how the provisions relating to possession of a pyrotechnic article at a public assembly are to be implemented by police officers. In particular, where there are fewer than 20 people in attendance when a suspect is detected.

Scottish Government Response

82. The Scottish Government notes the request for clarification regarding the provisions relating to possession of a pyrotechnic article at a public assembly, and in particular for clarification on how those provisions would be implemented by police officers.

83. The Scottish Government notes the Committee’s particular concerns about how the legislation would be implemented if there are fewer than 20 people in attendance when a suspect is detected.

84. The meaning of “Public assembly” in the Bill is consistent with the meaning given in section 16 of the Public Order Act 1986 as it applies in Scotland. Section 33(b)(ii) of the Bill would therefore make it an offence to possess a pyrotechnic article, without reasonable excuse, while travelling to, participating in, or otherwise attending, a public assembly (“an assembly of 20 or more persons in a public place which is wholly or partly open to the air”).

85. Where an individual is travelling to an assembly of 20 or more people, this would be captured under the “travelling to” element of the offence.

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86. Operational policing is, of course, a matter for Police Scotland, and operational policing decisions on a range of matters are made routinely, using police guidance, judgement and intelligence-led policing. The definition of “public assembly” is a well-established definition already understood and used when operational policing decisions are being made for reasons of public order. The Scottish Government believes that the decisions needed to enforce this offence will be similar.

87. We accept that there are sometimes difficult judgement calls to be made, but also recognise that such decisions have to be made in the context of the specific circumstances of each incident, and trust the professionalism of Police Scotland to make appropriate and proportionate judgements in response to individual incidents.

88. As stated at paragraph 73 of this response, the Scottish Government notes the Committee’s conclusion that it would welcome a reconsideration of the offence as currently drafted. The operational challenges raised by Police Scotland since the Bill’s introduction, including those around the public assembly provisions, will form a key part of those considerations.

Financial memorandum

334. The Scottish Government must ensure that actual costs are agreed with those who are to implement the provisions in the Bill and that they are provided with the necessary funding to ensure the Bill is properly implemented and enforced. Additionally, the revenue from the licence fees should cover only the costs of the scheme and be cost-neutral. If it can be shown that the level of licence fees is causing people not to apply and purchase fireworks illegally, then the Scottish Government needs to address this.

Scottish Government response

89. The Scottish Government notes the priority accorded by the Committee to ensuring the costs associated with the measures within the Bill are fully understood and costs agreed with those required to implement the provisions. In developing the Bill's Financial Memorandum, the Scottish Government established a short life working group with the Convention of Scottish Local Authorities, individual local authorities, including Trading Standards, to ensure the financial and resource implications of measures within the Bill were, as far as possible, fully explored and understood. The working group found that there will be additional resource requirements as a result, particularly in the initial few years following implementation of measures, which are set out in the Financial Memorandum. In addition, engagement was undertaken with Police Scotland as the Financial Memorandum was developed to ensure this reflects what is known about possible costs for the service at this stage.

90. If the Bill is passed, the Scottish Government will continue this engagement to further develop our understanding of what is required and when; and decisions on funding will be taken forward through established routes including the joint Scottish Government and Convention of Scottish Local Authorities Settlement and Distribution Group. The main anticipated costs will be commissioning the IT licence system for the fireworks licensing system and managing this process, which will rest with the Scottish Government; and, of course, careful consideration will be given to other partners and agencies that may require additional funding.

91. The Scottish Government notes the Committee's recommendation that the revenue from the licence fees should cover only the costs of the scheme and be cost neutral. However, the Scottish Government believes that, while cost recovery will be a key determinant of the fee level, a fee should generally be chargeable in order to ensure also that applications are made with due consideration of the responsibilities involved in holding a fireworks licence.

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335. The Committee agrees that there should be a compensation scheme for specialist fireworks retail businesses who will be adversely affected by restriction of supply and use provisions the Bill, prior to those provisions coming into force. The Committee asks the Minister to provide further details of the compensation scheme in response to this report.

Scottish Government response

92. The Scottish Government notes that the Committee agrees that there should be a compensation scheme for specialist firework retail businesses who may be adversely affected by the restricted days of supply provision. As the Committee has noted, the Bill includes a regulation making power that allows Scottish Ministers to introduce a compensation scheme to address the potential negative economic impact of restricting the days of supply of fireworks, if required. An assessment on the impact on businesses from this measure will have to be obtained before a decision can be made as to whether a compensation scheme will be required. We will engage with such businesses when developing an appropriate approach to the type and form of evidence that will be applicable in determining the impact.

93. The Scottish Government notes that the Committee would welcome further information on the detail of the compensation scheme and can confirm that this will be a targeted scheme and would be limited to only those businesses that are wholly or mainly concerned with the supply, distribution or importation of fireworks in Scotland; and where evidence of negative economic impact can be demonstrated. The Scottish Government is aware of 10 such businesses in Scotland who may potentially be negatively impacted and, as set out above, we intend to engage with these businesses and retailers to ensure any negative economic impact of the restricted days of supply is understood and any potential subsequent compensation payments are fair and transparent.

94. The detail of the scheme will be set out in regulations and may include: the criteria to whom and in what circumstances compensation is payable, the calculation of compensation, the procedure to be followed in connection with claiming compensation and the review of decisions and appeals against decisions made under the regulations. Schemes delivered via secondary legislation (rather than in the Bill) can be tailored to suit particular circumstances and amended in light of changing circumstances. This flexibility would not be available through primary legislation.

95. As outlined in paragraph 106, the Scottish Government has considered the recommendation of the Delegated Powers and Law Reform Committee to bring 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. The Scottish Government recognises that regulations under this section will be of strong interest to those businesses who may be impacted, and will therefore consider bringing forward such an amendment at Stage 2.

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336. Local community groups can play a vital role in helping to tackle the misuse of fireworks within their communities. Preventative actions, such as the provision of diversion programmes can reduce the costs for the fire and police services. The Committee asks the Scottish Government to consider how communities can be supported for this purpose.

Scottish Government response

96. Similar to the response to the recommendation at 265, we recognise the vast amount of local planning and preventative work undertaken each year over the bonfire season. This includes diversionary work in communities that have been most impacted by fireworks and anti-social behaviour in previous years, as well as other activities such as primary and secondary school visits and joint partner visits to premises selling fireworks over the bonfire period. We believe our role is to support the learning from this work, and Scottish Government funding is already provided to the Scottish Community Safety Network, as the representative body for community safety partnerships, and to Crimestoppers, who provide targeted support each year to communities most impacted by the misuse of fireworks.

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Other issues – Internal Market Act

355. The Committee thanks the Minister for the clarification she has provided in relation to the UK Internal Markets Act 2020. The Committee recommends that, as a matter of course, the Government keeps the Parliament updated on this issue in relation to the implementation of the provisions in the Bill. The Scottish Government should also keep the Parliament informed of other discussions with the UK Government on reserved issues relevant to the Bill, such as cross-border trade in fireworks or the packaging and supply of fireworks in the UK retail marketplace.

Scottish Government response

97. The Scottish Government notes the Committee's request to be kept updated on implementation of the Bill in relation to the UK Internal Markets Act 2020, and other discussions with the UK Government on relevant reserved issues, and will endeavour to keep the Committee updated as appropriate on any discussions or progress. The Scottish Government can confirm that the potential impacts of the Internal Market Act have been fully considered as the Bill has been developed; and we are confident that the provisions within the Bill adhere to the requirements that are set out in that Act.

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Other issues – prosecution of offences, data collection and evidence-based approaches

361. The Committee wishes to see such data being published as a matter of course by the police, COPFS and the Scottish Government. This will also play a vital role in supporting the successful operation of the provisions in the Bill.

Scottish Government response

98. The Scottish Government is aware of the inevitable challenges that face enforcement agencies once fireworks are in the wrong hands. That is why introducing stricter measures at the point of purchase via the licensing system and introducing the proxy purchase offence so adults are not able to give fireworks to children will help to ensure fireworks do not end up in the hands of those who will misuse them. The measures proposed in the Bill will therefore enable intervention at the earliest possible stage and thereby help to prevent these issues from happening.

99. The Scottish Government wishes to clarify that the Bill creates 10 new offences that will be enforced by Police Scotland:

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

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

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

101. Additionally, new offences are created to support the enforcement of the requirements of the Bill by the local weights and measures authority, which mirror similar existing provisions for enforcement of offences by Police Scotland:

- It is an offence for a person to intentionally obstruct, fail to comply with a requirement made by, or fail (without reasonable excuse) to provide assistance of information to, an officer of the local weights and measures authority.
- It is an offence to knowingly or recklessly make false statements to an officer of the local weights and measures authority.
- It is an offence to impersonate an officer of the local weights and measures authority.

102. The Scottish Government notes that the Committee sees value in regular publication of prosecution and conviction data in relation to firework related offences. While, in principle, the Scottish Government agrees with this recommendation, focussing on data about those prosecuted and convicted under existing fireworks law will only provide part of the picture given some firework offenders will be dealt with through use of non-court disposals issued directly by police or the Crown Office and Procurator Fiscal Service (COPFS), the Children's Hearing system rather than criminal courts, and some firework offenders will be prosecuted and convicted for common law offences (e.g. assault) and the link with fireworks may not be identified. In addition, the success of the law cannot only be determined by the number of offenders prosecuted and convicted, but also by its preventative effect – that is, the number of people who have been deterred and diverted from committing offences. As set out in paragraph 109 below, it is the view of the Scottish Government that developing a more nuanced and rounded picture of the impact of the provisions within the Bill, and indeed in conjunction with the wider non-legislative actions set out in the Fireworks Action Plan, will provide a more accurate picture of the impact and effectiveness of the legislation in meeting the intended policy aims.

103. Notwithstanding these comments, it will, of course, be a decision for COPFS and Police Scotland as to what data they have available and can make public on a regular basis. The Scottish Government can confirm that it will seek to provide regular data in relation to proceedings and convictions for offences under existing and new fireworks legislation, split by sentencing outcome, and court location, and non-court disposals issued directly by Police Scotland or COPFS. The Scottish Government will also liaise with Police Scotland and the Scottish Fire and Rescue Service to explore regular publication of firework related incidents that are reported.

Delegated Powers

371 The Committee urges the Minister to accept these recommendations and bring forward the necessary amendments at Stage 2 to give effect to these changes.

Scottish Government response

104. The Scottish Government thanks the Delegated Powers and Law Reform Committee (DPLRC) for their report and their recommendations. We note that their report includes three recommendations to the Scottish Government on delegated powers within the Bill that the Committee considers should be subject to the affirmative, rather than negative, procedure.

Firework Licensing: Section 18(1) – Power to make further provision for the purposes of the operation of the licensing system

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.

105. The Scottish Government understands the Committee's views on the benefit of affirmative procedure in relation to making further provision about the licensing system through section 18. Therefore we note the Committee's recommendation that this is more suited to the increased scrutiny of affirmative procedures and are giving consideration to progressing a Stage 2 amendment to implement this, in respect of the power under section 18 to make further provision about matters relating to Part 2. We also understand the sensitivities around provision on the verification of licence applications, and sharing of information, which may benefit from additional scrutiny. There are, however, at present what we consider to be administrative points of detail included within section 18(2), relating to applications and supporting documents. Our position is that for such details, which are purely operational in their nature, negative procedure is the most appropriate procedure. We are therefore also considering whether or how it may be appropriate to adjust section 18(2) in light of the Committee's recommendation, potentially by moving the power to regulate in relation to administrative and operational points to other sections in this part. This may also have the advantage of clarifying the scope of the various powers in Part 2. The Scottish Government will provide an update on this in advance of Stage 2.

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Restricted Days of Supply: Section 24(1) – Power to make provision for compensation for specialist firework businesses affected by section 22

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.

106. The Scottish Government recognise that regulations under this section will be of strong interest to those businesses who may be impacted by section 22. We acknowledge that the power to make regulations setting out the circumstances in which compensation is payable and how that compensation is calculated is more substantive than administrative; particularly in light of the impact on businesses that may be affected. We therefore note the Committee's recommendation that this is more suited to the increased scrutiny of affirmative procedures and are giving consideration to progressing a Stage 2 amendment to implement this.

Exemptions: 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

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.

107. The Minister for Community Safety's response to the DPLRC explained that this power is required to future proof the Bill to respond to any changes in existing legislation pertaining to this category of professionals and any market changes that develop following implementation of the Bill. We recognise, however, that there is a fine balance to be struck between the procedures used. Therefore, we note the DPLRC's recommendation to use affirmative procedures and are giving consideration to progressing a Stage 2 amendment to implement this.

372. Given the lack of detail on how the key provisions in this Bill will work because this is to be set out in future regulations, the Committee asks for a commitment from the Minister that draft regulations will be shown to the Committee in advance to allow for sufficient scrutiny before these are laid and enable the Committee to recommend changes to these. Such regulations should, therefore, follow the super affirmative procedure.

108. The Scottish Government note the Criminal Justice Committee's recommendation that regulations should follow the super affirmative procedure. Our intention is, as in line with usual good practice for regulations, to do a wide ranging consultation with the public and other relevant stakeholders, in order to inform our approach. In addition, section 19 of the Bill also sets out a statutory requirement for consultation for all regulations (regardless of the applicable procedure) made under the powers in Part 2 – that is, the regulations which will provide detail on the licensing system to be established. We consider that, with respect to the nature of the powers in this Bill, consultation is the most appropriate means to ensure that the content of regulations is informed by the views of those likely to be affected by the regulations. We will give consideration as to how best the Committee can be involved in this consultation as we move forward. However, in the view of the Scottish Government, the nature of the subordinate legislation powers in this Bill are not of a sort that would usually be subject to additional scrutiny requirements which could be considered to amount to super-affirmative procedure. They are, in most cases, powers to set out matters of operational detail or administrative procedure, and it is considered that negative procedure is suitable. Affirmative procedure is considered to be adequate to provide enhanced scrutiny of those powers in the Bill which are broader than this, or which enable amendment of primary legislation.

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Post-legislative scrutiny review of the Bill

- 376. We would ask the Scottish Government to detail what information it will be collecting and whether this will be shared at regular intervals with the Committee in the years to come.**
- 378. We ask the Scottish Government to respond to us on this point and consider amending the Bill at Stage 2 or 3 to set out what data will be collected and shared with Parliament, and to mandate a review of the implementation of the Bill, within 3 years of the relevant provisions coming into effect.**

Scottish Government response

109. The Scottish Government agrees that processes will be required to be put in place to ensure relevant information and evidence is collected to inform ongoing implementation of measures included within the Bill and to inform an assessment on its overall effectiveness. While the Scottish Government agrees that this should include numerical data in a range of areas (outlined below), it is also of the view that this will only provide part of the picture; and that wider more qualitative evidence in relation to prevention and the perceptions and experiences of people and communities will be vital to ensure an accurate picture of the impact and effectiveness of the legislation in meeting the intended policy aims. The Scottish Government notes the recommendation of the Committee to mandate that a review of implementation of the Bill is carried out within 3 years of the relevant provisions coming into effect. The Scottish Government can confirm that, in line with the commitment set out in the accompanying Business and Regulatory Impact Assessment, it is intended that a full review of the measures introduced through the Bill will be undertaken within 3 to 5 years of implementation to check that requirements are being met and that the legislation is working effectively. This will be designed in such a way, making use of appropriate research methodologies, to ensure a full and rounded picture of the impact of the measures within the Bill is identified and understood. The Scottish Government notes the request of the Committee to bring forward an amendment to the Bill setting this out and will give this careful consideration in advance of Stage 2.

110. In relation to numerical data, the Scottish Government considers that this should cover a range of areas including: attendance at Accident and Emergency Department and Minor Injury Units for firework related injuries; firework related incidents reported to Police Scotland and the Scottish Fire and Rescue Service; proceedings and convictions for offences under existing and new fireworks legislation as outlined in paragraph 102; and the number of retailers licenced to sell and store fireworks. The Scottish Government can confirm that a process can be put in place to share this data with the Committee in the years to come.

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Final conclusion and general principles of the Bill

- 385. The success of this Bill in achieving its objectives will depend on whether the Scottish Government can work with parliamentarians and key stakeholders to successfully address the concerns we have highlighted in this report**
- 386. We are of the view that the Parliament should be provided with the opportunity to allow the Bill to be improved to meet our shared goal of tackling the misuse of fireworks and pyrotechnic articles. The Scottish Government must make the necessary amendments to ensure that the measures introduced by the Bill will be effective, robust, workable and have the confidence of the public and key stakeholders. The Committee has very serious concerns about the Bill achieving its objectives. The Committee is concerned that there will be no time for our concerns to be addressed at stage 2 and 3 because of the fast-track timetable for this Bill. At this stage, only on balance, we are prepared to recommend that the Parliament agrees the general principles of the Bill at Stage 1 to allow for the possibility for these issues to be addressed. For some members of the Committee, agreeing this recommendation now is being done in good faith to allow the Bill to progress and for amendments to be considered and they reserve the right to consider their position at Stage 3.**

Scottish Government response

111. The Scottish Government both welcomes and shares the Committee's views on the importance of working constructively to ensure that the Bill achieves its objectives. The Bill as introduced is the culmination of a significant period of evidence gathering and engagement across Scotland, but that evidence gathering and engagement has not ended with the Bill's introduction, and we welcome the scrutiny of the Committee and all key stakeholders as we continue to listen and reflect on the points raised. We look forward to the Stage 1 debate and the views of parliamentarians across the Chamber also informing those considerations.

112. We welcome the Committee's willingness to recommend the general principles of the Bill at Stage 1, and note the Committee's concerns about the Bill timetable and the impact of an accelerated timetable on parliamentary scrutiny. We agree that upholding the integrity of the scrutiny process is vital and we believe that the accelerated timetable still allows that to happen, while ensuring that the Scottish Government is listening to the public and the calls for prompt and decisive action that have clearly emerged from public consultations on these issues.

113. As noted by the Committee's report, if the Bill is passed by Parliament prior to Summer recess, it will enable the proxy purchase provision to be implemented in time for the bonfire period this year. The scrutiny timetable also has the practical advantage of enabling work to implement other measures in the Bill to begin swiftly, ensuring that further positive change is in place for people and communities as soon as possible.

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