

FIREWORKS AND PYROTECHNICS ARTICLES (SCOTLAND) BILL

[As Amended at Stage 2]

REVISED DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This revised memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.9 of the Parliament's Standing Orders in relation to the Fireworks and Pyrotechnic Articles (Scotland) Bill as amended at stage 2. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill. Text has been added or amended as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the margin

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The principal policy objectives of the Bill are to protect public and community safety and wellbeing by ensuring fireworks and pyrotechnics do not cause harm, distress or serious injury. The provisions included within the Bill will support a cultural shift in how fireworks and pyrotechnics are used in Scotland. This will be achieved by altering how the general public can access and use fireworks and pyrotechnics, by making provisions for new restrictions to apply to the sale, possession and use of fireworks and pyrotechnics, with new criminal offences to apply where these restrictions are not complied with.

4. The Bill is in 7 Parts:

- Part 1: Key concepts, including the meaning of fireworks and pyrotechnic articles and categories.
- Part 2: Fireworks licensing.
- Part 3: Restrictions on supply and use of fireworks and pyrotechnic articles including: prohibition on supply to children; days of use and supply of fireworks; and compensation for specialist firework businesses affected by restricted days of supply of fireworks.
- Part 4: Firework control zones.
- Part 5: Pyrotechnic articles in public places and at designated venues or events.

- Part 6: Exemptions and enforcement.
- Part 7: General provisions, including interpretation, regulations, ancillary provision, Crown application and commencement.

RATIONALE FOR SUBORDINATE LEGISLATION

5. The Bill contains a number of delegated powers provisions. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has considered the importance of each matter against:

- The need to allow detailed operational arrangements to be set out in secondary legislation, in line with the basic structures and principles set out in the primary legislation;
- The need to ensure sufficient flexibility in the future to respond to changing circumstances and to make changes quickly without the need for primary legislation;
- The need to ensure proper use of parliamentary time;
- The possible frequency of amendment; and
- The need to anticipate the unexpected, which might otherwise impact on the purpose of the legislation.

6. The relevant provisions are described in detail below. For each provision, this memorandum sets out:

- The person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- Why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and
- The parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

7. Subordinate legislation is required to implement the Scottish Government's policy and some form of parliamentary procedure is appropriate. For the decision on negative or affirmative procedure, the Scottish Government has considered carefully the degree of Parliamentary scrutiny that is thought to be required for the instrument, balancing the need for the appropriate level of scrutiny with the need to avoid using up Parliamentary time unnecessarily. The balance reflects the views of the Government on the importance of the matters being delegated by the Parliament.

DELEGATED POWERS

Part 1 – Key Concepts

Section 1(2) – Meaning of “firework” and “pyrotechnic article”

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative

Provision

8. The Bill (section 1) makes provisions for the meaning of ‘firework’ and ‘pyrotechnic article’ generally in line with how these are set out within the current legislative landscape (e.g. the Fireworks Act 2003 (“the 2003 Act”) and the Pyrotechnic Articles (Safety) Regulations 2015 (S.I. 2015/1553)).

9. Section 1(2)(a) permits the Scottish Ministers to modify by regulations subsection (1) to amend or replace the definition of firework within the Bill while section 1(2)(b) permits the Scottish Ministers to modify by regulations subsection (1A) to add, amend or remove articles or descriptions of types of articles that are not to be treated as a pyrotechnic article for the purposes of this Bill.

Reason for taking power

10. These powers are required for consistency and futureproofing. Section 1(2)(a) enables the Scottish Ministers to respond to ensure consistency with the definition of firework provided in section 1 of the 2003 Act as this definition may be substituted by regulations made under section 1(2) of the 2003 Act. Were that to happen there could be significant consequences for the operation of the Bill with limited opportunity to address those consequences. It also provides the ability to futureproof the provision to allow for any other changes which may impact upon the meaning of a firework within the Bill which could otherwise undermine the policy intention or effectiveness of the provisions included within the Bill.

11. Section 1(2)(b) allows for Scottish Ministers to add, amend or remove articles or descriptions of types of articles that are not to be treated as a “pyrotechnic article” for the purposes of this Act. This does not give Ministers the power to add or fundamentally change the core definition of a pyrotechnic article but provides a level of futureproofing which will allow Ministers to exclude any items unintentionally captured or new items which come to the market that broadly fall under the definition of a pyrotechnic article, but pose no risk of harm to the public.

Choice of procedure

12. As this provision is central to the operation of the Bill and enables amendment of the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the affirmative procedure.

Section 2(2)(a) – Categories of fireworks

Power conferred on: **The Scottish Ministers**
Power exercisable by: **Regulations made by Scottish Statutory Instrument**
Parliamentary procedure: **Affirmative**

Provision

13. The Bill (section 1) makes provisions for the meaning of ‘firework’ and ‘pyrotechnic article’ generally in line with how these are set out within the current legislative landscape. The Bill (section 2) also sets out the categories of fireworks that the Bill relates to – that is category F1, F2, F3 and F4 – which is drawn from the Pyrotechnic Articles (Safety) Regulations 2015 (S.I. 2015/1553).

14. Section 2(2)(a) permits the Scottish Ministers to make regulations to add, amend or remove categories, types, classifications or descriptions of fireworks.

Reason for taking power

15. This power is required to enable the Scottish Ministers to respond to any fundamental changes to the categories of fireworks that are introduced by the Secretary of State which may impact upon the policy intention of the provisions included within the Bill. It will also allow the Scottish Ministers to respond to any future developments or changes in regard to firework standards and specifications, including in relation to quieter or low noise fireworks.

Choice of procedure

16. As this provision enables amendment of the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the affirmative procedure.

Section 2(2)(b) – Categories of fireworks

Power conferred on: **The Scottish Ministers**
Power exercisable by: **Regulations made by Scottish Statutory Instrument**
Parliamentary procedure: **Negative**

Provision

17. The Bill refers to category F4 fireworks and section 2(1) sets out its definition. Category F4 fireworks are, under the Pyrotechnic Articles (Safety) Regulations 2015 (S.I. 2015/1553), only available to those with specialist knowledge.

18. This provision permits the Scottish Ministers to make further provision about the requirements a person must meet for such ‘specialist knowledge’ for the purposes of defining a category F4 firework.

Reason for taking power

19. The requirements currently set out in paragraph 1 of schedule 4 of the Pyrotechnic Articles (Safety) Regulations 2015 includes a requirement to have undertaken training recognised in the fireworks business or industry, have used the category of firework before, and hold valid liability insurance for that category of firework.

20. This power is required to enable the Scottish Ministers to respond to any changes to the requirements made on such persons, to ensure that high hazard fireworks remain subject to the required stringent safety measures.

Choice of procedure

21. As this provision does not enable amendment of the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the negative procedure. The negative procedure is also considered appropriate in light of the technical nature of the requirements to be set out in such regulations.

Part 2 – Fireworks licensing

Section 3(2) – Application of Part 2

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative

Provision

22. The Bill sets out that those fireworks which require a licence as being category F2 and F3 fireworks. This provision permits the Scottish Ministers to modify these categories to add, amend or remove types, classifications or descriptions of fireworks to which the licensing requirements apply.

Reason for taking power

23. While there is currently no intention to use this regulation making power, this may become necessary if there are any future changes to how fireworks are defined, or to the different categories of fireworks, as currently set out in the Fireworks Act 2003 and the Pyrotechnic Articles (Safety) Regulations 2015.

Choice of procedure

24. As this provision enables amendment of the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the affirmative procedure.

Section 6(3) – Fireworks licensing: applications

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Provision

25. The Bill (sections 4 and 6) provides that persons over the age of 18 who wish to hold a valid fireworks licence in order to purchase, acquire, possess and use fireworks are required to apply to the Scottish Ministers. Section 6(3) permits the Scottish Ministers to make regulations about applications for fireworks licences. This includes setting detail such as the form and content of the application, specifying the manner in which applications must be made, the information and any supporting documents to be provided by an applicant, the time in which the application must be made and any fees payable and to whom fees are payable.

26. Section 19 provides that before making any regulations under section 6(3), the Scottish Ministers must consult such persons they consider likely to be interested in or affected by the licensing of fireworks.

Reason for taking power

27. This power allows the Scottish Ministers to set out the detail of the process for applying for fireworks licences. This ensures that the application process is able to operate as efficiently as possible, with the ability to make updates and future changes if this is required without the need for primary legislation.

Choice of procedure

28. As this power relates to the operational aspects of the licensing system and does not enable amendment of the provisions included within the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the negative procedure. This is consistent with the powers conferred by sections 2, 4, 11(6) and 12(1) of the Firework Act 2003, under which current regulations – the Fireworks (Scotland) Regulations 2004 (S.S.I. 2004/393) – made in Scotland, which are also subject to the negative procedure.

29. Given the regulations under these powers will set out essential elements of how the licensing system will operate, the Scottish Government believes it is important to require the Scottish Ministers to consult such persons as appear to them to have an interest in, or be affected by, the licensing system before making these regulations – see section 19(1).

Section 7(2) – Fireworks licensing; applications and mandatory requirements

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Provision

30. The Bill sets out a number of mandatory requirements that must be met when an individual applies for a fireworks licence – see section 7(1). This includes disclosing any unspent convictions of “firework-related offences” (see definition of this term in subsection (4)), disclosing details of any previous firework licences that have been revoked or cancelled, and providing evidence of having completed a relevant fireworks training course within the previous 3 months. This power under section 7(3) would allow the Scottish Ministers to specify additional mandatory requirements that an applicant for a fireworks licence must meet.

Reason for taking power

31. It is considered that the mandatory requirements set out in the Bill are essential to inform the decision whether an individual should be awarded a licence upon application based on their previous behaviour using fireworks. The power does not amend the requirements on the face of the Bill, but means that additional mandatory requirements can be included should it become apparent in the future that there are additional matters relating to the application of which the Scottish Ministers should be made aware before a decision is made on an application.

Choice of procedure

32. As this power relates to the operational aspects of the licensing system, and does not enable amendment of the provisions included within the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the negative procedure. This is consistent with the powers conferred by sections 2, 4, 11(6) and 12(1) of the Firework Act 2003, under which current regulations – the Fireworks (Scotland) Regulations 2004 (S.S.I. 2004/393) – made in Scotland, which are also subject to the negative procedure.

33. Given that any regulations under section 7(3) will set out essential elements of how the licensing system will operate, the Scottish Government believes that it is important to require the Scottish Ministers to consult such persons as appear to them to have an interest in, or be affected by, the licensing system before making these regulations – see section 19(1).

Section 8(1) – Firework licensing: applications and fireworks training course

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Provision

34. The Bill (section 7(1)(c)) includes a requirement for applicants for a fireworks licence to complete a mandatory fireworks training course. Section 8(1) would confer power on the Scottish

Ministers to set out the detail of the course such as the content and form of the course, the minimum criteria for successful completion of the course and how successful completion is recorded.

Reason for taking power

35. The requirement for applicants to undertake training is a core element of the licensing system and the policy objective to ensure that fireworks are used in a safe and appropriate manner. Including the detailed aspects of the training in regulations means that the training will be able to be updated if necessary to remain current and accurate. For example, changes may be required if there are new firework products that become readily available which require specific advice.

Choice of procedure

36. As this power relates to the operational aspects of the licensing system and does not enable amendment of the provisions included within the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the negative procedure. This is consistent with the powers conferred by sections 2, 4, 11(6) and 12(1) of the Firework Act 2003, under which current regulations – the Fireworks (Scotland) Regulations 2004 (S.S.I. 2004/393) – made in Scotland, which are also subject to the negative procedure.

37. Also, given that any regulations made under section 8(1) will set out essential elements of how the licensing system will operate, the Scottish Government believes it is important to require the Scottish Ministers to consult such persons as appear to them to have an interest in, or be affected by, the licensing system before making these regulations – see section 19(1).

Section 8 (3) and (4) – Firework licensing: guidance on fireworks training course

Power conferred on: The Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None

Provision

38. Section 8(3) requires the provider of a fireworks training course to have regard to any guidance issued by the Scottish Ministers in relation to fireworks training courses. Section 8(4) requires the Scottish Ministers to publish any such guidance.

Reason for taking power

39. The intention is that guidance for the providers of fireworks training courses will inform the development and operation of the training course, such as the content that should be included in the course and criteria for successful completion of the course to ensure that the course operates as intended and covers essential fireworks information. The guidance will ensure the course includes essential knowledge and learning about how to use fireworks in a safe, lawful and appropriate manner.

Choice of procedure

40. This is an administrative power of the Scottish Ministers to issue guidance. However, the Scottish Ministers are required under section 8(4) to publish any guidance issued.

Section 10(3) – Firework licensing: licence conditions

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Provision

41. The Bill (section 10(1)) includes a number of conditions attached to a fireworks licence such as the licence only being valid for the named individual and not transferrable, a licence only being valid for the period specified on the licence and the requirement of licence holders to inform Scottish Ministers of any specified change of circumstances. The power to be conferred by section 10(3) will allow the Scottish Ministers to make regulations about the form and content of the fireworks licence and set out the detail of the conditions applying to a fireworks licence such as determining the length of time that a licence is granted for, the specific circumstances that a licence holder would be required to update Scottish Ministers of and provision for any additional or optional conditions to be attached to a fireworks licence.

Reason for taking power

42. The power allows Scottish Ministers to set out administrative details of the operation of the licensing system, including the length of time for which a licence may be granted, through regulations in order for these kinds of administrative changes and updates to be made to the system without the need for primary legislation to be progressed.

Choice of procedure

43. As this power relates to the operational aspects of the licensing system, and does not enable amendment of the provisions included within the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the negative procedure. This is consistent with the powers conferred by sections 2, 4, 11(6) and 12(1) of the Firework Act 2003, under which current regulations – the Fireworks (Scotland) Regulations 2004 (S.S.I. 2004/393) – made in Scotland, which are also subject to the negative procedure.

44. Also, given that any regulations under section 10(3) will set out essential elements of how the licensing system will operate, the Scottish Government believes it is important to require the Scottish Ministers to consult such persons as appear to them to have an interest in, or be affected by, the licensing system before making these regulations – see section 19(1).

Section 11(2) – Firework licensing: register of applications and licence holders

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Provision

45. The Bill (section 11(1)) includes provision that requires the Scottish Ministers to establish and maintain a register of fireworks licence applications and licence holders. Detailed aspects of the system will be set out in regulations to be made under section 11(2) to ensure that the level of information held on the system is appropriate and held for a required length of time.

Reasons for taking power

46. The licence register requires to hold a level of information on licence applications and licence holders that means the system can function well without holding unnecessary information for longer than necessary in contravention of data protection requirements. The power to be conferred by section 11(2) means that regulations can be updated if, for example, data protection requirements change over time. Additionally, if having operated the system, it is considered that other information is required to be collected and held (or is no longer required to be collected and held) for optimum functioning of the system.

Choice of procedure

47. As this power relates to the operational aspects of the licensing system and potential future improvements to how the system is run, and does not enable amendment of the provisions included within the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the negative procedure. This is consistent with the powers conferred by sections 2, 4, 11(6) and 12(1) of the Firework Act 2003, under which current regulations – the Fireworks (Scotland) Regulations 2004 (S.S.I. 2004/393) – made in Scotland, which are also subject to the negative procedure.

48. Also, given that regulations under section 11(2) will set out essential elements of how the licensing system will operate, the Scottish Government believes it is important to require the Scottish Ministers to consult such persons as appear to them to have an interest in, or be affected by, the licensing system before making these regulations – see section 19(1).

Section 18(1) – Firework licensing: further provisions

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision.

49. The power to be conferred by section 18(1) would allow the Scottish Ministers to make further provision by regulations for the purposes of the Part (i.e. the effective operation of the licensing system). This may include making further provision about the verification of

applications and supporting documents provided by applicants during the application process, as well as making further provision about the sharing of information in connection with verification processes or the enforcement of offences in relation to the licensing system. It would also allow provision to be made in order to respond to unforeseen issues.

Reason for taking power

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

Choice of procedure

51. As the power conferred by section 18(1) allows the Scottish Ministers to make a broad range of further provision in connection with the Part, it is considered that, on this occasion it, merits the enhanced parliamentary scrutiny of the affirmative procedure.

52. Furthermore, given that any regulations under section 18(1) would set out essential elements of how the licensing system will operate, the Scottish Government believes it is important to require the Scottish Ministers to consult such persons as appear to them to have an interest in, or be affected by, the licensing system before making these regulations – see section 19(1).

Part 3 – Restrictions on supply and use of fireworks and pyrotechnic articles

Section 20(2) – Application of Part 2

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative

Provision

53. Section 20(1)(a) sets out those fireworks and pyrotechnics which are subject to the prohibition on providing fireworks and pyrotechnics to children (section 21) as being all pyrotechnic articles other than category F1 fireworks and percussion caps for toys that are intended for use by children under the age of 14. Section 20(1)(b) and (c) sets out those fireworks which are subject to restrictions on the days of supply and use of fireworks (section 22 and section 23) as being category F2 and F3 fireworks.

54. Section 20(2)(a) confers a power to permit the Scottish Ministers to modify the categories types, classifications or descriptions of fireworks or pyrotechnic articles which are subject to section 21. Section 20(2)(b) confers a power to permit the Scottish Ministers to modify the categories, types, classifications or descriptions of fireworks which are subject to section 22 and 23.

Reason for taking power

55. While there is currently no intention to use this regulation-making power, this may become necessary if there are any future changes to how fireworks are defined, or to the different categories

of fireworks, as currently set out in the Fireworks Act 2003 and the Pyrotechnic Articles (Safety) Regulations 2015.

Choice of procedure

56. As this provision enables amendment of the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the affirmative procedure.

Section 22(6) – Restriction on days of supply of fireworks

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative

Provision

57. The Bill (section 22(1) and (3)) makes provision for the days when fireworks are permitted to be supplied.

58. The power to be conferred by section 22(6) would allow the Scottish Ministers to make regulations to add, amend or remove days (or a period of days) when fireworks are permitted to be supplied.

Reason for taking power

59. This power is required to permit the Scottish Ministers to adjust the days, or period of days, when fireworks can be supplied. This will enable the Scottish Ministers to react to any changes in circumstances through subordinate legislation to either further extend or further restrict the permitted days as required; and provide flexibility to include, if required, other significant celebrations or religious events.

Choice of procedure

60. As the power to be conferred by section 22(6) would allow regulations to amend the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the affirmative procedure.

Section 23(4) – Restricted days of use of fireworks

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative

Provision

61. The Bill makes provision for the days when fireworks are permitted to be used (see section 23(1) and (3)).

62. The power to be conferred by section 23(4) would allow the Scottish Ministers to make regulations to add, amend or remove days or a period of days when fireworks are permitted to be used.

Reason for taking power

63. This power is required to permit the Scottish Ministers to adjust the days, or period of days, when fireworks can be used. This will enable the Scottish Ministers to react to any changes in circumstances through subordinate legislation to either extend or further restrict the permitted days as required; and provide flexibility to include, if required, other significant celebrations or religious events.

Choice of procedure

64. As the power to be conferred by section 23(4) would allow regulations to amend the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the affirmative procedure.

Section 24(1) – Compensation for specialist firework businesses affected by section 22

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision.

65. The power to be conferred by section 24(1) would allow the Scottish Ministers to make provision for, or about, the payment of compensation to relevant persons in consequence of section 22 coming into force, or the coming into force of a modification under section 22(6) which further limits the days on which fireworks may be supplied. This includes setting out in regulations aspects such as additional requirements for a person to be considered eligible to receive compensation, the circumstances in which compensation is payable and the procedure to be followed in connection with claiming compensation.

Reason for taking power

66. It is recognised that restrictions on the days where it is permitted to supply fireworks to the public could adversely affect a number of businesses whose trade or business is wholly or mainly concerned with the supply, distribution or importation of fireworks in Scotland. This power allows the Scottish Ministers to consider evidence on the economic impact of the provision on firework businesses, whether it is appropriate to provide compensation to seek to mitigate this as far as possible, and the conditions for payment of compensation.

Choice of procedure

67. This power enables Scottish Ministers to consider the procedure and process to be followed if it is deemed appropriate to provide compensation to firework businesses. While much of that is routine, given the important principle of compensation, it is considered that this merits the affirmative procedure to enable appropriate scrutiny of the detail.

Part 4 – Firework control zones

Section 25(2) – Application of Part 4

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative

Provision

68. The Bill (section 25) sets out that those fireworks which are not permitted to be used in any area designated as a firework control zone as being category F2, F3 and F4 fireworks. The power to be conferred by section 25(2) would permit the Scottish Ministers to, by regulations, modify these categories to add, amend or remove types, classifications or descriptions of fireworks to which the firework control zone restrictions apply.

Reason for taking power

69. While there is currently no intention to use this regulation-making power, this may become necessary if there are any future changes to how fireworks are defined, or to the different categories of fireworks, as currently set out in the Fireworks Act 2003 and the Pyrotechnic Articles (Safety) Regulations 2015.

Choice of procedure

70. As this provision enables amendment of the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the affirmative procedure.

Section 30(1) – Firework control zones: power to make further provision

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Negative

Provision

71. Section 30(1) confers a power for the Scottish Ministers to make further provision by regulations to set requirements which will apply to a local authority in relation to the procedures that need to be followed to designate a place as a firework control zone, or to amend or revoke a zone. The Regulations may make provision about the procedure to be followed by a local authority in designating a firework control zone for it to be validly established, such as the size, location or boundaries of an area which may be designated as a zone. The regulations also make provision in relation to the reviewing and reporting on the operation and effectiveness of firework control zones in their areas.

72. The Bill itself sets out the general requirements that must be met before a local authority can designate, amend or revoke a firework control zone including the requirement to prepare and publish its proposals (section 27(1)), the requirement to consult (see section 27), the requirement

to publish the decision following a consultation (section 28), and the requirement to carry out reviews of the operation and effectiveness of firework control zones (section 29).

Reason for taking power

73. The intention with this power is to provide the Scottish Ministers with the ability to make further provision about firework control zones and their operation and the procedure for designating and reviewing them. The power will allow Ministers to make any improvements to the process of designating firework control zones that may be required.

74. This provision will ensure that the designation and operation of firework control zones can be amended and updated as required without the need for primary legislation.

Choice of procedure

75. As this power relates to the operational aspects of firework control zones and potential future improvements to how these are designated, and does not enable amendment of the provisions included within the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the negative procedure. This is consistent with the powers conferred by sections 2, 4, 11(6) and 12(1) of Fireworks Act 2003, under which current regulations – the Fireworks (Scotland) Regulations 2004 (S.S.I. 2004/393) – made in Scotland, which are also subject to the negative procedure. It is intended that the regulations will largely be concerned with fine tuning the operation of the system or filling in aspects of detail in light of experience. Given the pressures on parliamentary time, it seems more appropriate that changes of that nature are dealt with by means of the negative procedure.

Section 31 – Firework control zones: guidance

Power conferred on: The Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: None

Provision

76. Section 31(2) requires local authorities to have regard to any guidance issued by the Scottish Ministers in relation to the designation of firework control zones. Section 31(2) requires the Scottish Ministers to publish any such guidance. It is intended this guidance will be developed in collaboration with local authorities, relevant community groups, and other stakeholders with an interest in community safety such as Police Scotland and the Scottish Fire and Rescue Service.

Reason for taking power

77. The intention of the guidance is to provide further detail to local authorities on issues such as: the type of alternative strategies that may be applied instead of designating a firework control zone; information about the types of issue which may be suitable to be addressed through firework control zones; and information about the evidence that a local authority may consider in deciding whether to designate an area as such a zone.

78. It is intended that the guidance will provide examples and good practice in relation to those who should be consulted as part of the process of considering designation, including public authorities such as Police Scotland and the Scottish Fire and Rescue Service. It is also intended that guidance will be published before the commencement of this provision.

Choice of procedure

79. This is an administrative power of the Scottish Ministers to issue guidance to local authorities. However, the Scottish Ministers are required under section 31(2) to publish any guidance issued. It is intended that this guidance will support local authorities to deliver a degree of consistency of approach between different areas; while having discretion to apply their own approaches to these designations to reflect local circumstances.

Part 5 – Pyrotechnic articles in public places and at designated venues or events

Section 32(2) – Application of Part 5

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative

Provision

80. Section 32(1A) (a) provides that the prohibition of pyrotechnic articles in public places, as set out in section 32A, applies to all pyrotechnic articles except category F1 fireworks. Section 32(1A) (b) provides that the prohibition on the possession of a pyrotechnic article at designated venues or events, as set out in section 33, applies to all pyrotechnic articles, including F1 fireworks.

81. The power to be conferred by section 32(2) would allow the Scottish Ministers to, by regulations, amend section 32(1A) to modify the categories, types, classifications or descriptions of pyrotechnic articles whose possession in certain circumstances is excluded from the prohibition under sections 32A and 33.

Reason for taking power

82. While there is currently no intention to use this regulation making power, this may become necessary if there are any future changes to how fireworks are defined, or to the categories of fireworks, as currently set out in the Fireworks Act 2003 and the Pyrotechnic Articles (Safety) Regulations 2015.

Choice of procedure

83. As this provision enables amendment of the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the affirmative procedure.

Section 34(1) - Designation of venues or events

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Negative

Provision

84. Section 34(1) confers a power for the Scottish Ministers to make regulations to designate a venue or event for the purpose of the offence of possessing a pyrotechnic article, as set out at section 33, while in a designated venue or while at a designated event. The venues or events which may be designated by regulations under the power are sports grounds, sporting events, venues to be used for music events and music events themselves.

Reason for taking power

85. The Bill aims to tackle the misuse of pyrotechnic articles where the evidence shows it is of most concern. The evidence shows that currently this is most often at sporting events, music concerts/festivals, and public assemblies/protests/street celebrations. Enabling the designation of sporting and music venues or events by regulation allows a greater degree of flexibility to respond to any emerging risks from pyrotechnic misuse within those specific categories in a proportionate way. [It enables appropriate exemptions to be put in place dependent on the setting.]

Choice of procedure

86. This power relates to the operational detail of designating venues and events, with the power limited to designating certain types of venues and events only (sports venues/events and music venues/event). It does not enable amendment of the provisions included within the Bill itself. Therefore, the Scottish Government believes that the lower level of parliamentary scrutiny afforded by the negative procedure would be appropriate for the regulations to be subject to negative procedure.

Section 35(2)(a) – Exemptions from offences in Bill

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative

Provision

87. Section 35 introduces schedule 1, which lists the exemptions to certain offences under Parts 2 to 5. Schedule 1 provides that individuals of certain descriptions or within certain groups are exempt from various offences in the Bill. This includes: regulatory authorities, professional firework operators; those involved in fireworks trade or business; and organisers of public firework displays.

88. The power under section 35(2)(a) will permit the Scottish Ministers to modify schedule 1 by regulations to add, amend or remove any of the exemptions set out in schedule 1.

Reason for taking power

89. This power is required to permit the Scottish Ministers to adjust individuals of certain descriptions or within certain groups to be exempt from offences under:

- section 4(1) (offence of having etc. a category F2 or F3 firework without a fireworks licence);
- section 5(1) (offence of supplying a category F2 or F3 firework to a person who does not have a fireworks licence);
- section 21(1) (offence of providing category F2, F3 or F4 firework or certain pyrotechnic articles to children);
- section 22(1) (offence of supply of a category F2 or F3 firework on a restricted day);
- section 23(1) (offence of using a category F2 or F3 firework on a restricted day);
- section 26(2)(a) (offence of igniting a category F2, F3 or F4 firework in a firework control zone); and
- section 32A(1) (offence of possessing certain pyrotechnic articles in public places).
- Section 33(1) (offence of possessing pyrotechnic articles at designated venues or designated events).

90. The power under section 35(2)(a) is required in order to ensure that the individuals and groups exempt from various offences in the Bill can be adjusted. While there is currently no intention to use this regulation making power, this provides flexibility to respond to changing circumstances. This could include, for example, individuals or groups that are considered to be able to use fireworks safely and appropriately without a licence; or changes to the requirements on businesses engaged in the supply of fireworks as set out in the provisions of the Pyrotechnics Articles (Safety) Regulations.

Choice of procedure

91. As this provision enables amendment of the Bill itself, the Scottish Government believes that it is appropriate that this power is subject to the affirmative procedure.

Section 35(2)(b) – Exemptions from offences in Bill

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative

Provision

92. Section 35 will permit the Scottish Ministers to make further provision about future additional requirements that apply to determine whether a person may be treated as within the exempt category relating to a person employed by or in business as a professional operator or organiser of firework displays for the purposes of schedule 1.

Reason for taking power

93. The general description of professional operators or organisers of firework displays has been used in the Bill to be consistent with existing legislation which similarly exempts these businesses, and their employees, from certain restrictions applying to the general public. As with section 35(2)(a) above, while there is currently no intention to use this regulation making power, it reserves the ability for the Scottish Ministers to provide additional detail about who may benefit from the exemptions available to this group in the case where additional requirements would be beneficial.

Choice of procedure

94. Provision made under this power can determine whether a person may be treated as within the exempt category of a professional organiser or operator of firework or pyrotechnic displays. This has the potential to determine whether an offence has been committed in particular circumstances and therefore it is considered that this merits enhanced parliamentary scrutiny through the affirmative procedure. .

Section 47(1) – Ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
**Parliamentary procedure: Affirmative procedure if amending primary legislation,
 otherwise negative procedure**

Provision

95. Section 47(1) provides the Scottish Ministers with the power to make, by regulations, such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate in connection with or for giving full effect to the Bill, any provision of the Bill or any provision made under it.

Reason for taking power

96. Such provision is common in Bills to provide flexibility to make any adjustments that may arise in light of experience in relation to the operation of the Act as timeously as possible. The Scottish Government recognises the potentially broad application of this power, which includes the power to modify primary legislation, and to alter the provisions of the Bill. Any incidental or supplementary use of the power would be strictly construed. While the Scottish Government has given careful consideration to the provisions of the Bill, this power is considered necessary to ensure that any unexpected issues which require further changes can be dealt with effectively and so that the purpose of the Bill is not inadvertently obstructed.

97. The ancillary provision is included to future-proof the Bill to allow changes and updates to systems and processes introduced through commencement of provisions in the Bill. This will allow Bill provisions to be adapted to take account of any developments in relation issues around fireworks and pyrotechnic articles in the coming years, adapting to changes of circumstances as required.

Choice of procedure

98. The Scottish Government believes it is appropriate for regulations under this provision to be subject to affirmative procedure if they add to, amend or omit any part of the Bill, but that they are otherwise are subject to negative procedure.

Section 50(2) – Commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Laid, no procedure

Provision

99. This provision provides for the Scottish Ministers, by regulations, to appoint a day when the provisions of the Bill come into force. Certain sections are excepted from this power, namely sections 45, 46, 47, 51, as they come into force on the day after Royal Assent. The regulations may include transitional, transitory or saving provision and may make different provision for different purposes.

Reason for taking power

100. The Scottish Ministers consider it appropriate for the provisions of the Bill not coming into effect on Royal Assent to be commenced at such a time as the Scottish Ministers consider to be suitable. It is standard practice for the commencement provisions to be dealt with by subordinate legislation.

Choice of procedure

101. As is usual for commencement regulations, the default laying requirement applies (as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010). This is considered appropriate because the policy behind the provisions will already have been considered by Scottish Parliament during the passage of the Bill. Any regulations made under this section will be laid before the Scottish Parliament as soon as practicable after being made.

This document relates to the Fireworks and Pyrotechnic Articles (Scotland) Bill (SP Bill 10A) as amended at Stage 2

**FIREWORKS AND PYROTECHNIC ARTICLES
(SCOTLAND) BILL**
[As Amended at Stage 2]

REVISED DELEGATED POWERS MEMORANDUM

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