



The Scottish Parliament  
Pàrlamaid na h-Alba

Alison Irvine  
Head of Cabinet, Parliament and  
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Scottish Government

Delegated Powers and Law Reform  
Committee  
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9 March 2022

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

Dear Alison,

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

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

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: negative**

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

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

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

The Committee would therefore be grateful for an explanation of:

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

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

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: negative**

Section 18(1) confers a power on the Scottish Ministers by regulations to make further provision for the purposes of the operation of the licensing system. The Committee notes that Paragraph 49 of the Delegated Powers Memorandum (DPM) explains that the power will ensure that the operation of the licence system can be designed, amended and updated as required for optimum operation of the system, without the need for primary legislation.

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

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

The Committee would therefore be grateful for an explanation of:

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

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

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: negative**

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

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

In addition, the Committee notes that a “relevant person” is defined in section 24(2) and that section 24(3)(a) provides that regulations may be made to set out further provision about who qualifies as a relevant person. It is also not clear from the DPM what this further provision may be such that regulations would be required under Section 24(3) that is not already provided for under Section 24(2). This may have an impact on who may qualify for compensation.

The Committee would therefore be grateful for further explanation of:

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

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

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: negative**

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

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

- 8. whether the enhanced scrutiny afforded by the affirmative procedure**

would be more appropriate to regulations made under section 30(1).

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

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: negative**

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

Paragraph 94 of the DPM explains that as the provision does not create new offences or enable amendment of the provision included within the Bill itself, it is considered appropriate that the power is subject to the negative procedure.

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

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

The Committee would therefore be grateful for an explanation of:

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

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

Yours sincerely,

Andrew Proudfoot

**Clerk to the Delegated Powers and Law Reform Committee**