

E: Hollie.Gibson@gov.scot

Andrew Proudfoot
Clerk to the Delegated Powers and Law Reform
Committee

By email: DPLR.Committee@scottish.parliament.uk

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Dear Andrew,

FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) BILL

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

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

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

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

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

revoked. Therefore there is some room for removing and replacing any additional mandatory requirements, were that necessary.

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

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

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

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

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

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

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

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

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

The examples set out in section 18(2) contemplate matters associated with the licensing system and are included to enable detailed provision about how the system will work

(beyond other specific powers). As noted earlier, reliance on section 47 for all ancillary matters would be less transparent.

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

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

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

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

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

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

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

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

Scottish Government response: Section 22(6) enables the Scottish Ministers to make regulations to add, amend or remove days (or a period of days) when fireworks are permitted to be supplied. In the event that any future changes are made to permitted days of supply which are deemed to have a disproportionate impact on businesses whose trade or business is not wholly or mainly concerned with the supply, distribution or importation of fireworks, section 24(3)(a) enables further provision to be made about who qualifies as a relevant

person. This could include, for example, businesses where only a proportion of their trade of business is concerned with the supply, distribution or importation of fireworks in Scotland. Section 24(3)(a) also provides flexibility for the operational detail of the compensation scheme to take account of unanticipated individual circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

HOLLIE GIBSON
Bill Team Leader, Safer Communities Division
Scottish Government

