

# Criminal Justice Committee

13th Meeting, 2023 (Session 6), Wednesday 3  
May 2023

## Fireworks and Pyrotechnic Articles (Scotland) Act 2022 – Statutory Instruments and Revised Implementation Timetable

### Note by the clerk

#### *Background*

1. In June 2022, the Scottish Parliament enacted the [Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022](#). The Act provides restrictions to the access and use by the public of various categories of ‘consumer’ fireworks in Scotland. These restrictions include the establishment of a public licencing system. The Act provides restrictions for the possession and use of some other forms of specialist pyrotechnics, commonly known as distress flares.
2. The Act also prevents the supply of certain fireworks and pyrotechnic articles to persons under the age of 18 by addressing so called ‘proxy purchasing’. It limits the public supply of certain consumer fireworks by retailers to certain times of the year, as well as providing financial compensation for those specialist firework retailers whose business would be significantly impacted by the sale restrictions.
3. The Act also limits the use of certain fireworks by the public to particular days of the year, and it empowers local authorities to establish firework control zones in their area, if they so wish.

#### *Statutory instruments*

4. At its meeting on 3 May, the Committee will consider two Scottish Statutory Instruments relating to the Fireworks and Pyrotechnic Articles (Scotland) Act 2022.
5. The first is an affirmative instrument, *the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Consequential Modifications, Saving and Transitional Provisions) Regulations 2023 (draft)*<sup>1</sup>.

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<sup>1</sup> [The Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022 \(Consequential Modifications, Saving and Transitional Provisions\) Regulations 2023 \(SSI/2023/Draft\)](#)

6. This Instrument sets out regulations which will repeal certain provisions of section 20 of the Criminal Law (Consolidation) (Scotland) Act 1995, in consequence of the commencement of provisions in Part 5 of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022. **Paper CJ/S6/23/13/2 sets out the detail of this affirmative instrument.**
7. The Minister for Victims and Community Safety, Siobhian Brown MSP, will attend to speak to and move the motion on the approval of this Instrument.
8. The second instrument is a negative instrument, *the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Designation of Events and Incidental Provision) Regulations 2023 (SSI/2023/98)*.<sup>2</sup>
9. This instrument designates classes of sporting events and music events for the purposes of Section 36 of the Fireworks and Pyrotechnic Articles (Scotland) Act (“the 2022 Act”). Section 36 prohibits the possession of all pyrotechnic articles, including F1 fireworks, at those designated events. **Paper CJ/S6/23/13/3 sets out the detail of this negative instrument.**
10. The Delegated Powers and Law Reform Committee considered these instruments at its meeting on 18 April and 25 April 2023 and had no comments to make on either of them.<sup>3</sup>

#### *Revised implementation timetable*

11. On 14 February 2023, the then Minister for Community Safety, Elena Whitham MSP, wrote to the Committee setting out a revised implementation timetable for various provisions of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022. The Committee considered this letter at its meeting on 1 March and agreed to write back to the Minister and seek clarification on several issues.
12. The Convener wrote to the Minister on 8 March, setting out a series of questions from the Committee. The then Minister for Community Safety responded to this letter on 22 March. All three pieces of correspondence are available online<sup>4</sup> and are also set out in the **Annex** to this paper for information.

## **Action/Decision**

13. **Members are asked to consider the correspondence set out in the Annex to this paper, along with the statutory instruments in papers CJ/S6/23/13/2 and CJ/S6/23/13/3 and put any questions they may wish to the minister and her officials.**

### **Criminal Justice Committee clerks**

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<sup>2</sup> [The Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022 \(Designation of Events and Incidental Provision\) Regulations 2023 \(SI/2023/98\)](#)

<sup>3</sup> DPLR Committee 18 April 2023: <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-delegated-powers-and-law-reform-committee/meetings/2023/dplrs62312/minutes>

<sup>4</sup> Letters between the Minister and the Committee: [Letter from Minister Whitham 14 February 2023](#), [Letter from the Convener 8 March 2023](#), [Response from Minister Whitham 22 March 2023](#).

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14 February 2023

Dear Convener

### **Fireworks and Pyrotechnic Articles (Scotland) Act 2022 – Implementation Timetable**

I am writing to update you on the implementation of provisions within the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (“the Act”) that was passed by the Scottish Parliament on 29 June 2022.

As you will be aware, work has progressed at pace to implement the measures in the Act, which enabled the key proxy purchase and emergency worker aggravation measures to be in force for bonfire night 2022. The implementation of the remaining measures will be phased due to the work required to commence them – such as regulations, developing guidance and IT development of a firework licensing system.

The ongoing unprecedented challenging financial context is impacting our ability to implement the remaining measures within the originally anticipated timescales. To ensure that we continue to build on the good progress that has been made to implement the measures within the Act, and introduce further positive change for communities, the timing of the phased implementation will be extended.

While full implementation of the Act will take place over a longer period of time, the revised timings will continue to deliver clear, tangible progress and mean that, subject to parliamentary process:

- Firework Control Zone provisions will commence in advance of bonfire night 2023 as planned;
- The pyrotechnic possession offence provisions will commence in summer 2023 as planned;
- A slight delay to implementation of the licensing system, meaning it will commence mid-2024 at the earliest;

- The implementation of the restricted days of supply and use provisions will be paused to a future financial year. This includes the compensation regulation making power, which is attached specifically to restricted days of supply.

We will undertake a programme of public awareness raising to ensure that businesses, stakeholders, and the general public are aware of new measures as they are implemented, and what this means for their interests and responsibilities in terms of how fireworks are supplied and used in Scotland. I will also be writing to our key stakeholders to make them aware of the revised anticipated implementation timescales.

I would like to reassure the committee that I am committed to the implementation of the remaining measures within the Act, and working towards a cultural shift in the relationship that Scotland has with fireworks. I consider this phased approach through a revised timetable to be the best route forward to achieve this and ensure that progress continues to be made, while adapting the timescales given the unprecedented challenges faced.

I hope that this update is helpful.

**ELENA WHITHAM**



The Scottish Parliament  
Pàrlamaid na h-Alba

## Criminal Justice Committee

Elena Whitham MSP  
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The Scottish Government

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8 March 2023

Dear Minister,

### **Fireworks and Pyrotechnic Articles (Scotland) Act 2022 – Implementation Timetable**

Thank you for your letter of 14 February last, updating the Committee on the Scottish Government's revised implementation timetable for various provisions of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 ('the Act').

The Committee [considered your letter](#), at its meeting on Wednesday 1 March and the [Official Report of that consideration](#) is available online.

The Committee agreed that your letter was a helpful update, however, it was our view that it takes a light touch approach to informing the Committee of the reasons for the delay in implementing some of the key provisions of the Act.

As you will recall, the Scottish Government requested the Committee undertake an accelerated Stage 1 scrutiny process of the original Bill in early 2022, so that provisions on the proxy purchase of fireworks could be in place for the 2022 bonfire season. In light of this, and the importance of this policy area to the people of Scotland, the Committee asks you to provide a more detailed response on the issues raised in your letter.

The Annex to this letter sets out several areas on which we are seeking a more detailed written response. I am conscious that this response may take time to prepare. I would be grateful therefore if you could reply to the Committee by the end of March 2023.

I look forward to hearing from you.

Best wishes,

Audrey Nicoll MSP  
Convener, Criminal Justice Committee

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## Annex

We request the Scottish Government provide the Committee with further information on the following issues raised in your letter of 14 February -

- *On the offences of proxy purchase and aggravations relating to offences against emergency service workers*: Is there any data available yet on the number of offences recorded relating to proxy purchasing or attacks on emergency service workers from when those provisions of the Act came into force? Are the Scottish Ministers aware of the number of prosecutions currently before the courts, or prosecutions taken since the relevant provisions of the Act came into force, which related to the offence of proxy purchasing, or, on the aggravation in relation to emergency service workers?
- *On the implementation of the remaining provisions in the Act*: In your letter you say, “the ongoing unprecedented challenging financial context is impacting our ability to implement the remaining measures.” Can you clarify exactly which challenges you are referring to? Can you clarify the exact impacts these challenges are having on the delivery of the remaining provisions? For example, a lack of dedicated resource provision in the Justice Directorate’s budget for the delivery of these provisions?
- *On the Financial Memorandum which accompanied the Bill*: Did the Financial Memorandum which accompanied the original Bill underestimate the actual cost of implementing all the provisions of the Act?
- *On the delay to provisions on Firework Control Zones*: In our Stage 1 report on the Bill, the Committee [set out a number of concerns](#) on the workability of Firework Control Zones and concluded that these Zones as proposed faced a number of “significant operational, administrative, enforcement and resourcing challenges” which needed to be addressed.<sup>5</sup>
- The Committee also highlighted that as Scottish Ministers planned to formulate much of the crucial policy detail on these Zones by way of secondary legislation, the Committee was unable to assess much of this policy as part of its scrutiny of the Bill. In our Stage 1 report we went on to say-  
“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

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<sup>5</sup> Criminal Justice Committee 5th Report, 2022 (Session 6), Fireworks and Pyrotechnic Articles (Scotland) Bill Stage 1 Report (SP Paper 164) (28 April 2022): Paragraph 251

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.”<sup>6</sup>

- Can you confirm when Scottish Ministers expect the details of the draft framework and guidance on the operation of Firework Control Zones will be finalised by the Scottish Government? Once a draft framework and guidance are finalised, will the Scottish Ministers provide these drafts to the Committee in advance of any SSIs being laid to bring them into force, to allow the Committee sufficient time to scrutinise these proposals?
- On the delay to provision of the fireworks licencing system: – In your letter you state the rollout of the licencing system will not take place until next year “at the earliest.” Can you clarify what this means? Are you referring to the Financial Year 2024/25, or the calendar year 2024, or some other timescale?
- Can you also explain the specific reason(s) for the delay in the rollout of the new licensing system? Is the delay associated with a lack of sufficient resources, or are there other factors adding to the delay, such as issues with the development of the required IT systems? Are there any issues around reaching agreement with local government on the commencement of the licencing system etc? Have any stakeholders raised concerns with the Scottish Government about the provisions on the licencing system since the Act was passed by the Parliament?
- Furthermore, can you indicate at what level the Scottish Government is planning to set the fee for a fireworks licence at? Can you also indicate what the Scottish Government now estimates the overall costs of the rollout and operation of the new licencing scheme will be?
- On the delay to restrictions to days of supply and days of use: – In your letter you say that the coming into force of the provisions around the statutory restrictions to the days on which fireworks can be supplied to the public, and days on which the public can use fireworks, have been “paused to a future financial year.” Can you confirm in which financial year the Scottish Ministers now intend commencing these provisions?
- Some of these provisions were designed in recognition of the use of fireworks by the public to mark certain religious/cultural events. As you know, the Committee stated in its Stage 1 report that it was concerned that the then proposed phased rollout of the various provisions on fireworks - over two years - could lead to confusion in the minds of the public as to which provisions were in force, and which were not. Given the unspecified delays you have referred to in your letter, are you concerned such delays will further confuse the public, or undermine their confidence in the workability of these provisions? How will the delay in the implementation of these provisions

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<sup>6</sup> Criminal Justice Committee 5th Report, 2022 (Session 6), Fireworks and Pyrotechnic Articles (Scotland) Bill Stage 1 Report (SP Paper 164) (28 April 2022): Paragraph 372

impact those groups preparing for religious/cultural events and expecting various provisions of the act to be in force?



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22 March 2023

Dear Convener,

### **Fireworks and Pyrotechnic Articles (Scotland) Act 2022 – Implementation Timetable**

Thank you for your letter of 8 March 2023, requesting further information on the Scottish Government's revised implementation timetable for various provisions of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 ('the Act'), and for the Committee's ongoing, considered engagement with the Act.

I will respond to each of the points that you have raised below.

### **Offences of proxy purchase and aggravations relating to offences against emergency workers**

The Committee asked if data is available yet on the number of offences recorded relating to proxy purchasing or attacks on emergency service workers from when those provisions came into force, and if the Scottish Ministers are aware of prosecution numbers since the provisions came into force.

Following the disorder involving fireworks witnessed on Halloween and over the bonfire night period last year, my officials have regularly liaised with Police Scotland regarding offences and charges. Police Scotland have advised that, at this stage, investigations by Police Scotland and the Crown Office and Procurator Fiscal Service are continuing and that information relating to specific cases is not yet available for the public domain. I would like to reassure you that I consider gathering data in relation to the proxy purchase offence and emergency worker aggravation to be a matter of priority to understand how those have been used, along with other firework related charges, in response to the misuse of fireworks. My officials are continuing to liaise with Police Scotland.

### **Implementation of the remaining provisions in the Act**

The Committee asked for clarification on the unprecedented financial challenges I referred to in my letter, and the impact that these are having on delivery of the remaining measures within the Act.

Significant inflationary pressures and deterioration of the economy due to external factors, such as the impact of the UK Government's 'mini budget' in the autumn of 2022, compounded by effects of Brexit and rising prices as a result of Russia's invasion of Ukraine, have been key to underpinning the rationale for a revised approach to implementation. These pressures have intensified significantly over the previous few months. The financial landscape has shifted since the original implementation timescales were outlined and the Bill for the Act progressed through Parliament.

The Scottish Ministers have had to take significant and decisive action to protect the delivery of core public services and deal with pressures across the Justice portfolio. In view of the competing financial pressures, it is therefore no longer possible to progress implementation of certain measures at the originally anticipated pace and timescale.

I believe the adapted approach, outlined in my letter of 14 February, strikes the balance by enabling positive and tangible change to be implemented year on year for communities, whilst also ensuring that the necessary resources can be allocated to protect vital public services. We will be monitoring and evaluating the impact of each of the interventions as they are implemented to develop a robust evidence base as to how the different interventions are making a difference, and how they build upon each other to become effective prevention measures.

### **Financial Memorandum**

The Committee asked if the Financial Memorandum, which accompanied the Bill for the Act, underestimated the actual cost of implementing all of the provisions within the Act. I can advise that the estimated costs for implementing provisions have not changed, and remain as detailed in the Financial Memorandum. As outlined above, unprecedented economic turbulence has had a significant impact across Government and resulted in the decision to adapt the implementation timetable to ensure core public services are protected while continuing to deliver change.

### **Firework Control Zones**

The Committee has set out concerns, that were initially raised in the Stage 1 report, about the level of detail for measures that will be set out in regulations. The Act sets out the essential components of Firework Control Zones, including the offences committed within a zone, exemptions to the offences and the requirements of local authorities to develop proposals for zones and consult widely on those. I can advise, as was indicated in my predecessor's letter of 21 September 2022, that the implementation of Firework Control Zones will be supported by the publication of Scottish Government guidance for local authorities on the operational and administrative aspects of Firework Control Zones, rather than by use of regulations to set out these aspects.

To take forward the development of the guidance, a Firework Control Zones Working Group involving key stakeholders and practitioners from a number of local authorities has been established. The membership of the group reflects the viewpoints of those who will be involved in the practical implementation of Firework Control Zones at a local level. To inform the co-design process being undertaken by the working group, wider stakeholders have also been consulted, including the fireworks industry, and organisations representing the interests of animal welfare, environmental protection, community safety, and equalities. A series of Scottish Government run community workshops is also underway across Scotland to ensure that those who live and work in

communities have the opportunity to directly feed into the development of the guidance. As my predecessor outlined in her letter of 21 September 2022, the guidance will be shared with the Committee for information once the co-design process has concluded. The working group is progressing a programme of work to finalise the guidance by early summer 2023. It is intended that the provisions of Part 4 of the Act will be commenced as quickly as possible after the guidance is finalised, allowing local authorities to utilise their new powers in respect of Firework Control Zones.

While the Act does include regulation making powers that could be utilised to set out the operational and administrative detail should that be considered necessary in the future, setting this out in guidance for local authorities, which must under section 33 of the Act have 'have regard to any guidance issued by the Scottish Ministers', is considered the most appropriate approach at this stage. The regulation making powers are subject to the negative procedure, which I consider to be suitable to set out matters of operational and administrative detail and will allow for Committee consideration of any future regulations in relation to Firework Control Zones. This view was reaffirmed throughout the scrutiny of the Bill by the Delegated Powers and Law Reform Committee, who did not recommend changing these procedures.

### **Firework Licensing System**

The Committee raised a number of points in relation to the firework licensing system. Firstly, the Committee asked for clarification on the anticipated implementation timescales for the system. The revised timescale for implementation of the licensing system is that it will be in force mid-2024 calendar year at the earliest. The original timescales set out in Parliament during scrutiny of the Bill for the Act were that the system would be in place at the end of the 2023 calendar year/at the beginning of the 2024 calendar year at the earliest. The ambition continues to be to have the licensing system operational ahead of bonfire night 2024, which would have been the first firework season during which the system would have been operational within the original timescales.

The Committee also asked for the specific reasons for the delay in the rollout of the licensing system. Development of the licensing system is a major IT procurement and project, which has already started in parallel with the implementation of other measures within the Act. As outlined above, the significant inflationary and financial pressures have meant that a phased approach to funding development of the system is the most appropriate approach to allow year on year delivery of the Act to continue.

In relation to the licence fee, as outlined during the parliamentary process, the licence fee and other operational and administrative details of the licensing system will be set out in regulations. Section 19 of the Act requires that before making any regulations under Part 2 (fireworks licensing), the Scottish Ministers must consult such persons as they consider are likely to be interested in, or affected by, the licensing of fireworks. The regulations setting out the licence fee will therefore be informed by wide consultation with the public and stakeholders. I will share further details on the consultation that will inform licensing regulations with the Committee in due course.

### **Restrictions to days of supply and days of use**

The Committee has asked for confirmation of which financial year the Scottish Ministers now intend on commencing the restrictions to days of supply and days of use of fireworks provisions. Due to the evolving turbulent economic environment, it is not yet

possible to confirm in which financial year the restrictions on supply and use of fireworks will commence. However I would like to reassure the Committee that the delivery of full implementation of the Act remains a priority within the Justice portfolio. Scoping and consideration is being given to the revised timescales for delivery of these measures, and my officials and I will continue to engage with the Committee and stakeholders to provide firmer timescales in due course.

The Committee has highlighted concerns that changes to implementation timescales could lead to confusion for members of the public about what provisions are in force and when, particularly groups preparing for religious or cultural events involving fireworks. A programme of communication and public awareness raising will be put in place to ensure that businesses, stakeholders and the public are aware of new measures as they are implemented, and what this means for their interests and responsibilities in terms of how fireworks are supplied and used in Scotland. This will build upon the three long-standing annual fireworks campaigns that the Scottish Government delivers with partners such as the Scottish Fire and Rescue Service, Trading Standards, Crimestoppers, the Scottish Society for the Prevention of Cruelty to Animals, and other stakeholders. Last year the campaigns were updated to incorporate messaging on the proxy purchase offence, and the Scottish Government worked with stakeholders to share messaging on the emergency worker aggravation, to ensure that the public and stakeholders were aware of the new measures.

I hope that the Committee find this information helpful, and are reassured of my commitment to progressing implementation of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022.

**ELENA WHITHAM**