



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

6th Meeting, 2021 (Session 5)

Tuesday 16 February 2021

The Committee will meet at 10.30 am in a virtual meeting and be broadcast on www.scottishparliament.tv.

1. **Hate Crime and Public Order (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 3).
2. **Subordinate legislation:** The Committee will consider the following negative instruments—

The Parole Board (Scotland) Amendment Rules 2021 (SSI 2021/4)

The Fireworks (Scotland) Amendment Regulations 2021 (SSI 2021/14)

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The papers for this meeting are as follows—

Agenda item 2

Note by the Clerk

J/S5/21/6/1

Justice Committee

6th Meeting, 2021 (Session 5), Tuesday 16 February 2021

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - [The Parole Board \(Scotland\) Amendment Rules 2021](#) [see page 3];
 - [The Fireworks \(Scotland\) Amendment Regulations 2021](#) [see page 6].
2. The 40-day deadline date if the Committee agrees to report to the Parliament on the Parole Board (Scotland) Amendment Rules 2021 is **19 February 2021**. The deadline for the Fireworks (Scotland) Amendment Regulations 2021 is **23 February 2021**.

The Fireworks (Scotland) Amendment Regulations 2021

3. The Minister for Community Safety has written to the Committee regarding the Fireworks (Scotland) Amendment Regulations 2021. The letter is attached in the **Annex**.
4. **The Minister's letter states that due to an unintended consequence arising from the instrument a revised SSI will be made, and will be laid in Parliament on 19 February. The revised SSI will revoke this instrument in order to avoid these unintended consequences and remake it with relevant exemptions provided for.**
5. **The Committee may wish, therefore, to make no recommendation on the existing instrument on the basis that the Government has made a commitment to revoke these regulations at a later point.**

Delegated Powers and Law Reform Committee Consideration

5. The Delegated Powers and Law Reform Committee considered the instruments at its meetings on 19 January and 26 January 2021. The Committee agreed that it did not need to draw either of them to the attention of the Parliament on any grounds within its remit.

Procedure for negative instruments

6. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative

instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

7. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
8. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
9. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
10. Each negative instrument appears on the Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *a/ways* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
11. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

12. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

13. **The Committee is invited to consider the instruments.**
14. **The Committee may wish to state for the record that they make no recommendation on the Fireworks (Scotland) Amendment Regulations 2021, on the basis that the Government has made a commitment to revoke these regulations.**

POLICY NOTE

The Parole Board (Scotland) Amendment Rules 2021

SSI 2021/4

The above instrument was made in exercise of the powers conferred by section 20(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The instrument is subject to negative procedure.

Summary Box

The SSI amends the Parole Board (Scotland) Rules 2001 to set out new procedures in relation to victims and the parole process. The amendments are being made to improve the victim's experience and to increase transparency and openness in parole procedures and decisions.

Policy Objectives

The provisions amend Rule 8 to make it clear that the Parole Board for Scotland ("the Parole Board") may take into account the safety or security of a victim, or the family member of a victim, where a person is released on licence, remains on licence or is re-released on licence. Rule 8(e) is added to increase transparency as to how victims (and their families) may be considered when the Parole Board is making a decision.

New Rule 26A sets out an explicit procedure for a victim (or family member of a victim), who is registered with the Victim Notification Scheme (VNS) as established under the Criminal Justice (Scotland) Act 2003, to request to attend a parole hearing in a case considered under Part IV¹ of the Rules. It also sets out the manner by which attendance will be permitted or otherwise not permitted by the Parole Board. This rule stipulates that any request to attend must be made in writing within timescales set out by the Parole Board. The rule also stipulates that a registered victim cannot participate in the hearing and is there as an observer only. The effect of this is that the victim is not a party to the case. The intention of this is to avoid, potential re-traumatisation, for example if the victim were able to be cross examined as a party at the hearing. Further the new rule allows a supporter or supporters to accompany the registered victim with permission from the Parole Board. The rule also reserves the right for the Parole Board to exclude any victim, family member, or supporter from any part of the hearing if it is in the public interest or the interests of justice to do so. This is intended to balance the ability of victims to observe

¹ Cases considered under Part IV include consideration of: recalled extended sentence prisoners (where the prisoner is serving their extension period); and life sentence and OLR prisoners (release and re-release on licence).

hearings, in the interests of transparency, against other important considerations such as the need for certain information to remain confidential.

New rule 28A provides that the Parole Board must, when it has decided to release a prisoner in a Part IV case, publish, by whatever means it thinks appropriate, an anonymised/redacted summary of the decision setting out the reasons the decision was made. The decision summary will also be shared with any victim registered with the VNS in relation to the case, unless they have opted not to be sent such summaries. This new rule also allows for the publication of any other decision of the Parole Board should the Parole Board consider that it is of interest.

Consultation

A public consultation, *Transforming Parole in Scotland*², took place between December 2018 and March 2019. Ninety-two people/organisations responded to the consultation. These included: individuals (60); Local Government (11); Third Sector (6); and Others (15).

A majority of respondents thought that the victim's safety should be paramount in the Parole Board's considerations. It was felt that victim's safety planning should be a more specific consideration along with recognition by the prisoner of the impact the crime has had on the victim.

Most respondents thought that victims and/or their families should have a greater role in the parole process. The majority thought that victims should be allowed to participate in some way at a parole hearing. Some suggested that the decision on participation should be made on a case-by-case basis and that all parties should agree. It was also felt attendance should not be compulsory as it was not appropriate for everyone.

A few respondents also felt that the publication of decisions and reasons behind them would help with accountability.

The current amendments to the Parole Board (Scotland) Rules 2001 are being made as a result of the consultation.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website at: <https://www.gov.scot/publications/transforming-parole-scotland-consultation-report/pages/1/>

Impact Assessments

A Data Protection Impact Assessment has been completed on the draft SSI and is attached.

² *Transforming Parole in Scotland*: Scottish Government 2018:
<https://consult.gov.scot/justice/transforming-parole-in-scotland/>

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government, the third sector or on business.

Scottish Government
Justice Directorate

January 2021

POLICY NOTE

THE FIREWORKS (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/14

The above instrument was made in exercise of the powers conferred by sections 2 and 4 of the Fireworks Act 2003³. The instrument is subject to *negative procedure*.

The purpose of this statutory instrument is to change how fireworks are sold and used by the general public in Scotland with the aim of protecting public and community safety and wellbeing by ensuring fireworks do not cause harm, distress or injury. In particular, to reduce the volume of fireworks being set off out with organised firework displays, their associated noise and disturbance and burden on emergency services and firework related injury; and enable those negatively affected by fireworks to be more aware of when fireworks will be set off and take preventative measures.

Policy Objectives

The Scottish Government is committed to ensuring fireworks are used safely and handled with care and that they do not cause harm, distress or serious injury; while recognising that well organised firework displays provide the opportunity to bring communities together.

The statutory instrument will:

- Amend the times of day fireworks can be used by the general public to between 6pm and 11pm, with the exception of 5 November (when they can be used from 6pm until midnight), New Year's Eve, the night of Chinese New Year and the night of Diwali (when they can be used from 6pm until 1am).
- Amend the times of day fireworks can be sold to the general public to during the daytime hours of 7am and 6pm, subject to the exceptions set out in the regulations and alongside existing requirements on retailers around sale and storage licences.
- Amend the quantity of fireworks that can be sold by retailers to individuals who do not have an explosives licence from 50kg to 5kg, subject to the exceptions set out in the regulations.

³ 2003 c.22; by virtue of article 4 and the Schedule to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2004 (S.I. 2004/2030), the Scottish Ministers exercise certain functions concurrently with the Secretary of State, being functions conferred by sections 4 and 6 of the Fireworks Act 2003 and section 2 of that Act as it relates to sections 4 and 6.

The main purpose of this instrument is to amend how the general public can access and use fireworks. The Scottish Government does not consider it would be appropriate for these measures to apply to professional organisers or operators of firework displays, or to firework displays that are organised and run by local community groups and organisations, in line with local licencing arrangements.

Existing routes of enforcement covering the use of fireworks out with permitted times, the unlicensed sale of fireworks and enforcement of permitted quantities will continue through Police Scotland and Trading Standards.

Current Law

Fireworks in Scotland are controlled by legislation that covers a wide range of areas. Key legislation includes:

- The Fireworks (Scotland) Regulations 2004
- The Fireworks Regulations 2004
- Explosives Act 1875
- Explosives Regulations 2014 (ER14)
- The Pyrotechnic Articles (Safety) Regulations 2015.

The Fireworks Regulations 2004 and Explosives Regulations 2014 (ER14) set out that for most of the year, fireworks can only be sold by licenced traders. Licencing the sale of fireworks is done by local authorities, and traders have to meet set criteria to receive a licence. In the run up to New Year, Chinese New Year and Diwali, and the three weeks before Bonfire Night, traders registered with their local authority to store fireworks do not require a specific sales licence. Instead they are required to register with the relevant local authority.

Pyrotechnic Articles (Safety) Regulations 2015 set out it is illegal to sell outdoor fireworks to anyone who is less than 18 years old . It is illegal to sell indoor fireworks (such as sparklers) to anyone who is less than 16 years old. Fireworks which make a noise of over 120 decibels when they are set off, or fireworks that require specialist knowledge to use safely, cannot be sold to the general public at any time. Fireworks associated with antisocial behaviour such as bangers, air bombs and jumping jacks are also banned.

There are existing restrictions in place on when fireworks can be used within the Fireworks (Scotland) Regulation 2004. During most of the year, fireworks can only be used between 7am and 11pm. On 5th November, fireworks can be used until midnight, and on the nights of Chinese New Year, Diwali and New Year's Eve, fireworks can be used until 1am. It is for each local authority to decide if it wishes to licence public firework displays under its individual Public Entertainment Licencing regime.

The Explosives Act 1875 (section 80) sets out it is a criminal offence for anyone to throw, cast or fire any fireworks in or into any road or public place and this is enforced by Police Scotland.

Scottish Ministers have the powers to introduce the new regulations in exercise of the powers conferred on them by sections 2 and 4 of the Fireworks Act 2003.

Consultation

To comply with the requirements of Section 2(3) of the Fireworks Act, a programme of consultation and engagement has been undertaken with key stakeholders.

A 14 week public consultation on the sale and use of fireworks was carried out between February and May 2019. The consultation asked 10 questions, with seven closed questions and nine opportunities for further comments. A total of 16,420 formal responses were received and, of these, 16,322 were submitted by individual members of the public while 98 responses were submitted by groups or organisations including key stakeholders. Twenty seven public engagement events were also held – 24 open public events, and 3 events for specific population groups over the consultation period.

The consultation was an important step in gathering evidence on the range of opinions and perspectives in relation to fireworks and sought views on: the sale of fireworks to the general public; how people use and enjoy fireworks; the impact of fireworks on people, communities and animals; and ideas on what action could be taken to ensure fireworks continue to be enjoyed safely and responsibly. An independent analysis of the consultation responses was carried out to identify the main issues and themes raised by participants across all ways of taking part in the consultation, and this was published in October 2019.

The consultation and engagement was supported by a programme of analytical work to ensure the outcomes of the consultation were considered alongside other forms of evidence. This included a nationally representative opinion poll (with a sample of 1,002 responses) to ensure findings were available that represented the views of the wider public. The report from this was published alongside the consultation analysis in October 2019.

The consultation identified a broad sense that fireworks can be good for people and communities when they are used at the right time, right place and used responsibly. There was little appetite to ban properly organised public displays and recognition that they can bring communities together and have positive community benefits. The consultation and representative opinion poll, however, highlighted strong public desire for tighter controls to be introduced on the sale and use of fireworks in Scotland; and a similar theme emerged from the Firework Review Group whose recommendations centre on the sale and use of fireworks by the general public, as opposed to organised firework displays.

Both the consultation and omnibus survey demonstrated a strong desire for greater control on the sale and use of fireworks in Scotland:

- Almost all of those who responded to the consultation (94%) said they would

welcome increased controls on the sale of fireworks; while majority of adults in Scotland (71%) felt there should be more controls over the sale of fireworks.

- A strong majority of those who responded to the consultation (92%) felt there should be more control on how they can be used; while a majority of adults in Scotland (68%) felt there should be more control on how fireworks can be used.
- Over three-quarters of those who responded to the consultation (87%) said they would welcome a ban on the sale of fireworks; while over half of adults in Scotland (58%) supported a ban.

Additional evidence was considered through: an evidence review on the impact of fireworks in the context of international legislation and regulations which included a summary of current fireworks legislation and regulations internationally, and a review of the available evidence on the impact of fireworks relating to social and environmental factors; and case studies of the evidence internationally and to draw evidence on the effectiveness – or otherwise – of similar measures in place.

Throughout this period, the Scottish Government has continued to engage with a range of stakeholders including emergency services, enforcement agencies, local authorities, animal welfare organisations, community safety representatives, the National Health Service, the fireworks industry, the Department for Business, Energy and Industrial Strategy (UKG), the Health and Safety Executive and the Welsh Government. Engagement was informed by the public consultation and evidence gathering which highlighted a range of drivers underpinning the need for change, including:

- The noise and disturbance of fireworks, including on those with noise sensitivity.
- Additional resourcing of emergency services, local authorities and the NHS in preparing for and responding to the bonfire season.
- Firework related attacks on emergency service workers, some with life changing consequences.
- Anti-social behaviour and misuse of fireworks, and the effect on individuals and communities.
- Firework related injuries to the general public.
- Animal welfare concerns for pets, wildlife and livestock.
- Environmental impacts of fireworks use from discarded material to air pollution.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website and includes Police Scotland, the Convention of Scottish Local Authorities (COSLA), the Scottish Community Safety Network, the Scottish SPCA, the British Veterinary Association, the Scottish Burned Children Club, the British Fireworks Association and a number of local authorities and community councils.

Impact Assessments

An Equality Impact Assessment has been completed on the policy and [is attached](#).

No impacts were identified on protected characteristics including gender reassignment, race, and sexual orientation; and religion and belief. Potential benefits identified in relation to disability, age, pregnancy and maternity, and sex.

A [Children's Rights and Wellbeing Impact Assessment](#) has been completed on the policy and assessed the proposed changes to have a direct and indirect impact on children and young people, including the reduction of the harms caused by fireworks to the health and wellbeing of children and young people, and addressing concerns about the impact of noise disturbance and pollutants from fireworks.

A [Fairer Scotland Impact Assessment](#) identified no adverse impacts as a consequence of this change.

The [screening process](#) has determined a Strategic Environment Assessment is not required.

This has been sent to 3 environmental consultation authorities for final determination that it is not required, with any objection required within 28 days and the template will be published in due course.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed on these Regulations and [is attached](#). The BRIA considers the impact that the Regulations will have on business and industry, as well as consumers and other groups impacted, with a cost and benefit analysis, where these are known, of the options available.

Scottish Government
Safer Communities Directorate
January 2021

Annex

LETTER FROM THE MINISTER FOR COMMUNITY SAFETY TO THE COMMITTEE

11 February 2021

Dear Convener,

I am writing to make you aware of an unintended consequence arising from The Fireworks (Scotland) Amendment Regulations 2021 that were laid in Parliament on 15 January, and I believe are due to be considered by Justice Committee on 16 February.

This instrument amends the Fireworks (Scotland) Regulations 2004, (“the 2004 regulations”), with its main purpose being to amend how the general public can access and use fireworks. Unfortunately, I have been alerted to an unintended consequence in regulation 2(3) of the instrument. This provision amends the time of day that fireworks can be used, limiting their use to between the permitted hours of 6pm to 11pm (with existing exemptions for bonfire night, New Year, Diwali and Chinese New Year retained).

The policy intention was that the amendments would apply only to the general public. However, it has become apparent that businesses, enforcement agencies and community groups will be impacted by them as currently set out, with no general exemptions for these groups to allow use of fireworks between the hours of 7am and 6pm.

If regulation 2(3) were to come in to effect on 30 June it would have a real impact on firework operators and their businesses, adding a barrier to their ability to fully operate as they did prior to the regulations. It would also have an impact on community groups and their ability to organise firework displays in their local area; and on enforcement agencies exercising their functions. Therefore a revised SSI will be made, and will be laid in Parliament on 19 February. The revised SSI will revoke this instrument in order to avoid these unintended consequences and remake it with relevant exemptions provided for.

The other two new regulations to be inserted into the 2004 regulations by this instrument (supply of fireworks outside permitted hours; and supply in excess of permitted quantity) apply to the general public with exemptions for professional firework operators/organisers, firework businesses and community groups. These will be remade without change in the revised SSI.

Finally, with regard to the regulations on supply of fireworks outside permitted hours and supply in excess of permitted quantity; the revised SSI will not remake regulation 2(5) of these regulations (enforcement). This provision is not needed as the provisions of section 12 of the Fireworks Act 2003 will operate to allow their enforcement by weights and measures authorities (Trading Standards) without the need for an amendment to the 2004 regulations. Enforcement of the regulations on the use of fireworks outwith permitted times will remain with the police.

I would like to sincerely apologise for this situation, which is due to human error, and for the Committee's time and resource that will be dedicated to scrutinising the instrument laid on 15 January.

Once again, I would like to apologise to you and the rest of the Justice Committee members for this situation.

ASH DENHAM