



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

10th Meeting, 2021 (Session 5)

Tuesday 16 March 2021

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

1. **Decision on taking business in private:** The Committee will decide whether to take items 4 and 5 in private.
2. **Subordinate legislation:** The Committee will consider the following negative instruments—

The Scotland Act 1998 (Agency Arrangements) (Specification) (Overseas Production Orders) Order 2021 (SI 2021/144)

The Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 (SSI 2021/79)

The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2021 (SSI 2021/80)
3. **Justice Sub-Committee on Policing:** The Committee will consider a report back from the Sub-Committee meetings held on 1 March 2021 and 15 March 2021.
4. **Legacy report:** The Committee will consider a draft legacy report.
5. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 12 May 2020 to 24 March 2021.

J/S5/21/10/A

Stephen Imrie
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: justiceCommittee@parliament.scot

The papers for this meeting are as follows—

Agenda item 2

Note by the Clerk J/S5/21/10/1

Letters from the British Fireworks Association J/S5/21/10/2

Letter from the Howard League Scotland J/S5/21/10/3

Agenda item 4

PRIVATE PAPER J/S5/21/10/4 (P)

Agenda item 5

PRIVATE PAPER J/S5/21/10/5 (P)

Justice Committee

10th Meeting, 2021 (Session 5), Tuesday 16 March 2021

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - [The Scotland Act 1998 \(Agency Arrangements\) \(Specification\) \(Overseas Production Orders\) Order 2021 \(SI 2021/144\)](#) [see page 3];
 - [The Fireworks \(Scotland\) Miscellaneous Amendments Regulations 2021 \(SSI 2021/79\)](#) [see page 6];
 - [The Prisons and Young Offenders Institutions \(Coronavirus\) \(Scotland\) Amendment Rules 2021 \(SSI 2021/80\)](#) [see page 12].
2. If the Committee agrees to report to the Parliament on the Scotland Act 1998 (Agency Arrangements) (Specification) (Overseas Production Orders) Order 2021 it is required to do so by **22 March 2021**.
3. The remaining two instruments require to be reported on by **29 March 2021**.

Delegated Powers and Law Reform Committee Consideration

4. The Delegated Powers and Law Reform Committee considered the instruments at its meetings on 23 February and 2 March 2021. The DPLR Committee agreed that it did not need to draw any of them to the attention of the Parliament on any grounds within its remit.

Procedure for negative instruments

5. 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).
6. 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.

7. 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.
8. 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.
9. 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 *always* 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.
10. 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

11. 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>

12. **The Committee is invited to consider the instruments.**

POLICY NOTE**THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION)
(OVERSEAS PRODUCTION ORDERS) ORDER 2021****2021 No. 144****Introduction**

This policy note has been prepared by the Scottish Government and is laid before Parliament.

The Scotland Act 1998 (Agency Arrangements) (Specification) (Overseas Production Orders) Order 2021 is made in exercise of the power conferred by section 93(3) of the Scotland Act 1998. The instrument is subject to annulment by either House of the UK Parliament and is subject to negative procedure in the Scottish Parliament.

Policy Objectives

The main purpose of this instrument is to allow for the Lord Advocate to enter into an agency arrangement with the Secretary of State for the Home Department so that the Lord Advocate's function of serving overseas production orders (OPOs), as set out in Section 14 of the Crime (Overseas Production Orders) Act 2019 (the COPO Act), can be carried out by the Secretary of State for the Home Department on the Lord Advocate's behalf. This is currently prohibited by Section 9(3) of the COPO Act.

This order is necessary to ensure that OPOs made in Scotland by reference to the Agreement between the Government of the United Kingdom and the Government of the United States of America on Access to Electronic Data for the Purpose of Countering Serious Crime ("the Agreement") can be served by the Secretary of State for the Home Department.

The policy intention of this instrument is to ensure that OPOs made in Scotland by reference to the Agreement can be served on US-based communications services providers by the Secretary of State for the Home Department. This can only be achieved through a legislative mechanism such as an Order enabling agency arrangements to be made between the Lord Advocate and the Secretary of State for the Home Department.

The COPO Act grants law enforcement and prosecuting authorities the power to apply for and obtain electronic data directly from service providers (those who create, process, communicate, or store electronic data) using an OPO for the purposes of criminal investigations and prosecutions. OPOs may only be used when permitted under an international co-operation arrangement between the UK and the country where the subject of the Order is located.

The Agreement is the first international co-operation arrangement to be designated as a relevant international agreement for the purposes of the COPO Act. It will allow UK public authorities to obtain data directly from US-based service providers for the purpose of preventing, detecting, investigating, and prosecuting serious crime and can be used in conjunction with OPOs.

The Agreement and the COPO Act both set out requirements for the service of Orders. Article 5(5) of the Agreement states that “Orders shall be transmitted by the Issuing Party’s Designated Authority”, and Article 1(8) of the Agreement indicates that there will be one UK Designated Authority, which must be designated by the Secretary of State for the Home Department. The Investigatory Powers Unit within the Home Office has since been designated by the Secretary of State for the Home Department as the UK Designated Authority. Section 14 of the COPO Act sets out the means by which OPOs may be served. In this context, “served” means served on an overseas person, such as a US-based service providers and is equivalent to the term “transmitted” used in the Agreement.

However, Section 9(3) of the COPO Act states that “An overseas production order made in Scotland may be served only by the Lord Advocate”. Consequently, the UK Designated Authority is currently prohibited from serving OPOs made in Scotland.

This Order therefore provides the necessary legal power for the Lord Advocate and the Secretary of State for the Home Department to enter into agency arrangements. Once agreed, any arrangement will allow for the Lord Advocate’s function of serving OPOs, as set out in Section 14 of the COPO Act, to be carried out by the Secretary of State for the Home Department on the Lord Advocate’s behalf, with the Lord Advocate retaining the overall responsibility for the powers. This will ensure that OPOs made in Scotland can be served by the UK Designated Authority for the purposes of the Agreement.

Legislative Context

Section 93(1) of the Scotland Act 1998 enables the Scottish Ministers to make arrangements for any of their functions to be exercised on their behalf by a Minister of the Crown. Section 93(1) applies to the Lord Advocate as it does to Scottish Ministers (section 93(3)). Functions to be subject to such arrangements must be specified in an Order in Council, made under section 93(3).

The Agreement was designated in the Overseas Production Orders and Requests for Interception (Designation of Agreement) Regulations 2020 as a relevant international agreement for the purposes of the COPO Act.

This instrument is made to allow the Secretary of State for the Home Department and the Lord Advocate to enter into agency arrangements under Section 93(1) of the Scotland Act 1998 to allow the Secretary of State for the Home Department to carry out the Lord Advocate’s function of serving OPOs made in Scotland on the Lord Advocate’s behalf for the purposes of the Agreement.

Consultation

There has been no general public consultation specific to this Order as it simply allows administrative arrangements to be entered into.

Impact Assessments

A Business and Regulatory Impact Assessment has not been prepared for this Order as it will have no impact on business or civil society organisations.

The Order has no direct impact on the public sector, it simply allows for arrangements to be entered into.

Monitoring and Review

There is no need for monitoring or review. Any arrangements will be subject to the UK and Scottish Governments being agreed that they should continue.

Scottish Government, Safer Communities Directorate.
February 2021

POLICY NOTE**THE FIREWORKS (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2021****SSI 2021/79**

The above instrument was made in exercise of the powers conferred by sections 2 and 4 of the Fireworks Act 2003¹. The instrument is subject to negative procedure.

The purpose of this statutory instrument is to revoke and replace SSI 2021/14.

The instrument will 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 outwith 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.

In addition, this instrument will correct an unintended consequence in the effect of SSI 2021/14 and ensure that these changes only apply to the general public. This will have the effect that, (in the delivery of the policy set out above):

- public, organised displays organised by community groups can continue to take place between the hours of 07.00 and 18.00;
- public organised displays organised by firework display businesses can also continue to take place between the hours of 07.00 and 18.00, without the need for permission from the local authority;
- businesses involved in the supply of fireworks and who use the firework in connection with that business between the hours of 07.00 and 18.00 can continue to do so;
- regulatory authorities can continue to use fireworks between the hours of 07.00 and 18.00 in the exercise of their powers or duties in connection with the use and/or regulation of fireworks.

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.

¹ 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 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.

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 will cover the use of fireworks outwith permitted times, with Police Scotland continuing that role. The prohibitions on the sale of fireworks outwith permitted times, and on the permitted quantities of fireworks able to be sold will be enforced by 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.

In November 2019, the Minister for Community Safety appointed an independent Review Group of stakeholders² to consider the legislative and regulatory options for change that emerged from consultation, scrutinise the evidence available, and alongside professional judgement and expertise set out clear recommendations on what change is required to current legislation and regulations. Building on the strong message for change from the consultation and representative opinion poll and ideas on what action should be taken, the Review Group was tasked with exploring a number of options for legislative and regulatory change including:

- Restricting the use of fireworks on private property

² Membership included: Police Scotland, SFRS, Scottish Ambulance Service, Local Authority Licensing, Trading Standards, Scottish Community Safety Network, British Pyrotechnics Association, British Fireworks Association, NHS Greater Glasgow and Clyde / Care of Burns in Scotland, Veterans Scotland and Community Representatives.

- Restricting the days and times fireworks can be set off
- Introducing a notification system before fireworks can be used
- Introducing no firework areas or zones
- Introducing a proxy purchasing offence
- Restricting the times fireworks can be sold
- Restricting the volume of fireworks that can be purchased
- Introducing mandatory conditions at point of sale.

The Group used an Options Appraisal Approach to consider these options, their potential effects, trade-offs and overall impact. The Group met a total of eight times between November 2019 and October 2020 and provided a forum in which the likely impacts and issues which could arise as a result of particular policy proposals could be debated and tested. Scottish Government officials provided Secretariat support to the Group, worked closely with the Chair and Group members throughout and were present at all meetings to discuss and engage with the proposals being considered, and understand the arguments behind them. The remit of the Group along with minutes from each meeting have been published online³; and the final report from the Group was published on 3 November 2020⁴. The consensus of the majority of Group members was that a fundamental shift is required in how fireworks are accessed and sold in Scotland through the introduction of a comprehensive set of measures, including:

- The introduction of mandatory conditions before consumers are able to purchase fireworks.
- Restricting the times of day fireworks can be sold and the volume of fireworks that can be purchased.
- Restricting the days and times fireworks can be set off.
- A provision for no fireworks areas / zones to be introduced where it is not possible for fireworks to be set off, with local communities having a key role in influencing this.
- The introduction of a proxy purchasing offence so adults are not able to give adult fireworks to those children under the age of 18 without prosecution.

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.

³ <https://www.gov.scot/groups/firework-review-group/>

⁴ <https://www.gov.scot/publications/firework-review-group-report-scottish-government/>

- 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

February 2021

POLICY NOTE

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (CORONAVIRUS) (SCOTLAND) AMENDMENT RULES 2021

SSI 2021/80

1. The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2021 are made in the exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989. These Rules amend The Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the Prison Rules”) and they are subject to negative procedure.

The purpose of this instrument is to extend the application of amendments made to the Prison Rules by The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (SSI 2020/122).

Policy Objective

2. The Prison Rules set out provisions relating to the regulation and management of Prisons and Young Offenders Institutions and various matters concerning those who are required to be detained in these institutions (such as their classification, treatment, discipline, employment and control).

3. These amendments extend the application of amendments made to the Prison Rules in response to the Coronavirus outbreak by The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (SSI 2020/122). The amendments made by SSI 2020/122 were extended and themselves slightly amended by The Prisons and Young Offenders Institutions (Scotland) Amendment (No.2) Rules 2020 (SSI 2020/264). The amendments to the Prison Rules are due to expire on 31 March 2021 and this instrument extends the application of those amendments until 30 September 2021.

4. The amendments made to the Prison Rules by SSI 2020/122 and SSI 2020/264 are designed to support the Scottish Prison Service’s (SPS) response to the exceptional pressures facing prisons during the current Coronavirus outbreak and the impact that staff shortages within prisons may have, as prison staff require to self-isolate to prevent the spread of the virus. The amendments generally provide Governors with flexibility in regards to compliance with timescales and the provision of those services, which although important, are not critical to the security and health of SPS and NHS staff and those in SPS’ care. This instrument keeps those amendments in force until 30 September 2021.

5. Given the continuing uncertainty regarding further local and national ‘lockdowns’ as a result of the second wave of the Coronavirus outbreak and possible further waves, and the uncertainty around the increasing spread of new variants of COVID-19, SPS considers it necessary to take steps to retain the flexibility afforded by SSI

2020/122 and SSI 2020/264 to ensure that we are prepared and able to focus on the immediate priorities arising from the pandemic.

Consultation

6. There has been consultation with operational managers and policy colleagues within the SPS and Scottish Government. SPS have advised NHS colleagues, HM Inspectorate of Prisons for Scotland and the Scottish Human Rights Commission of our intention to take forward these changes.

Impact Assessment

7. An Equality and Human Rights Impact Assessment was carried out which determined that without these measures the Article 3 rights (Prohibition of torture, or of inhumane or degrading treatment or punishment) of the prisoners in the care of SPS could be engaged. The assessment also recognised that the changes will engage the Article 8 rights (the right to respect for private and family life, home and correspondence) of prisoners. SPS consider that these rule amendments are necessary for the protection of the health, safety and security of SPS staff, NHS staff and prisoners during this current Coronavirus outbreak. It remains the view of the SPS that the amendment rules can be applied in a proportionate way to have the least impact possible upon prisoners' Article 8 rights.

Financial Effect

8. The Cabinet Secretary for Justice confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

SCOTTISH PRISON SERVICE
February 2021

Justice Committee

10th Meeting, 2021 (Session 5), Tuesday 16 March 2021

**The Fireworks (Scotland) Amendment Regulations 2021 – Letters from the
British Fireworks Association**

Background

1. This paper consists of a series of responses from the British Fireworks Association (see Annex) to the Minister for Community Safety about the Fireworks (Scotland) Amendment Regulations 2021. These letters have been copied to the Committee.

Action

2. **Members are asked to take the correspondence into account during their deliberations.**

**Clerks to the Committee
March 2021**

5th March 2021

Dear Minister,

SSI 2021 No. 14 / No. 79 - The Fireworks (Scotland) Amendment Regulations 2021

Further to your recent correspondence, dated 19th February 2021. We note your response and would comment as follows: -

Update on Fireworks Scottish Statutory Instrument

We welcome the acknowledgement of the unintended consequences of the original legislation and would highlight that had the Minister's department discussed the detail of the proposed legislation with the industry ahead of publication, as the Firework Act 2003 requires, then this would have been picked up prior to publication and the Minister would not have had to revoke it. However, we also note, with grave concern, that the implementation date for the bulk of the legislation has been moved from 30th June 2021, to the 22nd March 2021. A cynical view would be that such a move is based on a false assumption that the legislation is a vote winner, and so is intended to bribe voters ahead of the May elections in Scotland. Political point scoring should never be put ahead of the wider public safety.

Scottish Government Approach and Unintended Consequences

We note the Minister's department response and acknowledgement that the proposed legislation will not address the issue of misuse but will, as you state, change the way which law abiding Scots purchase and use fireworks. Unfortunately, we do not share the Minister's department view that such action will not result in the creation of a black market and the greater issues for enforcement that will certainly create. We remain resolute that the legislation will create a black market for fireworks by simply putting barriers and restrictions on the legal purchase and use of fireworks by law-abiding members of the public. Furthermore, this is also the opinion of senior police and fire officers, who publicly stated their concerns on the record, to the Petitions Committee Enquiry in 2019, that increased regulations would lead to the creation of a black market.

Once again, we would highlight to the department that there is already extensive legislation available to multi-agency authorities which, if properly and fully enforced, would have a real impact on reducing the misuse of fireworks.

Extensive legislation which targets the misuse of fireworks, including prohibiting the use in a public space, misuse against individuals, including the emergency services, prohibiting fireworks with excessive noise, antisocial behaviour and prohibiting the use of fireworks after 11pm. The proposed legislation is intended to target law abiding citizens, who are NOT those responsible for antisocial behaviour and misuse!

It is widely acknowledged, and has been demonstrated, that the existing legislation is not being fully enforced.

Therefore the industry would suggest that the Minister's department may wish to focus on adequately resourcing and enforcing the existing legislation, before considering additional measures; measures which will have zero impact on anti-social behaviour and misuse. A recent example is the case in Tranent where an adult male attacked two Police Officers with a firework. Instead of receiving a fine of up to £5,000 and/or a 6 month prison sentence (which the legislation allows), the assailant was fined £150.

We also note the Minister's reference to the international case studies. The industry raised concerns regarding such studies and highlighted these during the working group meetings. As an example, the study cites the creation of firework-free zones in public spaces in Berlin, as justification for doing the same in Scotland. However, the use of fireworks in a public space has been an offence in the UK since the introduction of the 1875 Explosives Act, and the creation of firework-free zones in Berlin is simply bringing Germany into line with existing UK legislation! Furthermore, the Minister's department proposes to go further and make it an offence for individuals to use fireworks on their own private land, which raises serious civil liberty issues.

Consultation Process

The department states that the (now revoked) legislation was made in full consultation with the industry. Quite clearly it was not; had this been the case then Industry would have had the opportunity to highlight the unintended consequences to the Minister's department, avoiding the need to revoke the same legislation.

Competitive Advantage

In respect of the competitive advantages, it is stated that "...these regulations will therefore apply equally to retailers based in and outside of Scotland...". May we therefore ask how the Minister's department proposes to place selling restrictions on retailers outside of Scotland, and how they intend to enforce such restrictions, considering the fact that the current legislation is not being fully enforced? Also, bearing in mind that some of these retailers may well be based outside of the UK and taking advantage of the black market that will certainly evolve!

Furthermore, In light of the Minister's department's intention to place restrictions on the legitimate supply and use of Fireworks in Scotland, we would add that the substantial financial loss to Scottish retailers, along with numerous other issues, has not been considered in the published **Business and Regulatory Impact Assessment**, which we assert, questions its validity .

As always, the industry wishes to offer support and assistance in implementing its own 10 point plan below. We do have a common aim in reducing anti-social and misuse of fireworks and will work with all agencies to achieve this.

10 Point Plan to improve firework safety and reduce anti-social behaviour .

1. There should be an annual national safety awareness campaign agreed and funded jointly between industry and Government.
2. Enforcement agencies should receive additional, seasonal funding, to help tackle the growth in illegal fireworks.
3. Enforcement agencies to receive better training in the detection and apprehension of illegal fireworks.
4. The minimum age for buying fireworks should be raised to 21.
5. Illegal fireworks sold via social media should have their sites taken down immediately.
6. Fines for selling, possessing or using illegal fireworks should be increased – along with robust minimum sentencing.
7. There should be a central contact point for reporting all firework related misuse issues.
8. There should be a standardised reporting structure for injuries caused solely by fireworks – to include the cause.
9. Better resources for border control to prevent illegal fireworks entering the country.
10. Tougher sentencing for letting fireworks off in a public place such as streets and shopping arcades. Tougher sentencing for using fireworks as weapons – especially against police officers and other emergency services.

At present, the Westminster Government is working with the industry and have/are in the process of implementing the bold options 1, 3, 5, 7, 9 and 10, which can be achieved within the existing legislation. Point 2 is a funding matter. Points 4 and 6 require legislative change and point 8 is an administrative change at point of first reporting, all of which would be fully supported by industry.

It is well within the Minister's remit to implement the industry proposals, achieve our joint aims, whilst minimising risk of unintended consequences and the negative impact on law abiding citizens.

Finally, we would ask the Minister:-

- Why is more not being done to enforce the existing legislation?
- Why are additional resources not being provided to enforcement authorities to fully enforce the existing legislation?
- Why is such action not being taken BEFORE introducing additional legislation?
- The legislation targets law abiding citizens, why does the Minister feel justified in this when law abiding citizens are not the cause of antisocial behaviour and misuse?

A copy of this letter has also been sent to the Delegated Powers and Law Reform Committee and Justice Committee at the Scottish Parliament, due to their respective roles in scrutinising the regulations.

We look forward to your comments.

Lawrence Black, Steve Raper, Fraser Stevenson

8th March 2021

Dear Minister,

SSI 2021 No. 14 / No. 79 - The Fireworks (Scotland) Amendment Regulations 2021

After examining the revised legislation (SSI 2021 No. 79) in great detail and having discussed with others, we are confident that there remains some fundamental flaws within the legislation, which will make it unenforceable, leading to costly and time-wasting enforcement. The BFA would once again, encourage the Minister to consider the industry proposals below, which were discussed during the working group meetings and put forward to the Minister on more than one occasion.

The British Fireworks Association 10 Point Plan to improve firework safety and reduce anti-social behaviour.

1. There should be an annual national safety awareness campaign agreed and funded jointly between industry and Government.
2. Enforcement agencies should receive additional, seasonal funding, to help tackle the growth in illegal fireworks.
3. Enforcement agencies to receive better training in the detection and apprehension of illegal fireworks.
4. The minimum age for buying fireworks should be raised to 21.
5. Illegal fireworks sold via social media should have their sites taken down immediately.
6. Fines for selling, possessing or using illegal fireworks should be increased – along with robust minimum sentencing.
7. There should be a central contact point for reporting all firework related misuse issues.
8. There should be a standardised reporting structure for injuries caused solely by fireworks – to include the cause.
9. Better resources for border control to prevent illegal fireworks entering the country.
10. Tougher sentencing for letting fireworks off in a public place such as streets and shopping arcades. Tougher sentencing for using fireworks as weapons – especially against police officers and other emergency services.

We look forward to your comments.

Yours sincerely

Lawrence Black, Steve Raper, Fraser Stevenson

Justice Committee

10th Meeting, 2021 (Session 5), Tuesday 16 March 2021

SSI – Letter from the Howard League Scotland

Background

1. This paper consists of a letter from the Howard League Scotland (see Annex) in relation to the Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2021.

Action

2. **Members are asked to take the correspondence into account during their deliberations.**

**Clerks to the Committee
February 2021**

Dear Convener,

Re: The Prisons and Young Offenders Institutions (Coronavirus)(Scotland) Amendment Rules 2021 [SSI 2021/80]

As you will be aware, the above secondary legislation was laid before the Scottish Parliament on 19 February 2021, with a view to it coming into force on 30 March 2021.

The Rules themselves amend the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the Prison Rules”) in response to the coronavirus outbreak, with the statutory instrument proposing that Rule 2(1) of the Prison Rules is amended to extend the definition of “for the duration of the coronavirus outbreak” to mean the time period starting with the commencement of the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 and continuing until 30 September 2021.

In their letter to the Justice Committee of 18 May 2020, the Scottish Human Rights Commission (SHRC) raised serious human rights concerns re the amendments to prison rules, highlighting that these significant changes had been introduced at the discretion of SPS. It was later reported that in meetings with Humza Yousaf MSP, Cabinet Secretary for Justice, both SHRC and HM Inspectorate of Prisons for Scotland had also raised concerns around oversight and scrutiny, as well as inconsistent practise around different prisons resulting from the discretion afforded to individual Governors within the legislation.

We would therefore like to draw the Justice Committee’s attention to this SSI and the manner in which it has been prepared.

The policy note accompanying it advises that the extension is in response to the “exceptional pressures facing prisons during the current Coronavirus outbreak and the impact that staff shortages within prisons may have, as prison staff require to self-isolate to prevent the spread of the virus”.

It may strike you as odd that the justification for the severely restricted regime is predicated on the availability of prison staff and the pressure faced by “prisons”, rather than “prisoners”. This purely operational response becomes easier to understand, however, when you note that the policy note was written by SPS itself, with its short paragraph on Consultations advising that:

“There has been consultation with operational managers and policy colleagues within the SPS and Scottish Government. SPS have advised NHS colleagues, HM Inspectorate of Prisons for Scotland and the Scottish Human Rights Commission of our intention to take forward these changes.”

In effect, SPS has therefore consulted with itself, taken no public health advice and passed its operational wish-list to the Scottish Government for ratification, bypassing any scrutiny entirely.

We note that the extraordinary measures contained in Part 1 of the Coronavirus (Scotland) Act 2020 (including in relation to justice matters) are capable of extension for a similar period, but only subject to the higher levels of scrutiny involved in the affirmative procedure. We would argue that the extension of the present regime in relation to prisons is no less extraordinary, and therefore deserves close scrutiny – particularly when it pertains to situations in which people can be held in their cells for close to 24 hours per day, for close to 18 months in total.

It is hard not to conclude that SPS is on a very long rein indeed. Thus, the passing of this SSI should be more than a mere formality and we urge the Justice Committee to scrutinise such actions very closely.

Yours sincerely,

Howard League Scotland Committee

Cc: Judith Robertson, Chair, Scottish Human Rights Commission
Wendy Sinclair-Giebens, HM Inspectorate of Prisons for Scotland
Humza Yousaf MSP, Cabinet Secretary.