



Law Society  
of Scotland

# Consultation Response

Use and sale of fireworks, and tackling the misuse of pyrotechnics: consultation

16 August 2021



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee and the Licensing Law subcommittee welcome the opportunity to consider and respond to the Scottish Government consultation: Use and Sale of Fireworks in Scotland and tackling the misuse of pyrotechnics. The committee has the following comments to put forward for consideration (the consultation).

For information, our Licensing Law sub-committee is made up of solicitors who represent those responsible for licensing matters from the Local Authorities as well as those representing clients involved in the licensing trade. Our Criminal Law Committee is made up of solicitors representing the defence as well as those responsible for prosecution within the Crown Office and Procurator Fiscal Service (COPFS) and academics.

## Section One: Fireworks

### Background

We refer to our response to the earlier Scottish Government consultation on Fireworks in Scotland: Your experiences, your ideas, your views<sup>1</sup> in May 2019. It is disappointing that many of the significant aspects on which we commented fully then are not mentioned or indeed appear to be addressed in this further consultation.

We appreciate that the earlier consultation was followed by in October 2019 by the publication of the 'Fireworks Action Plan: Promoting the safe and appropriate use of fireworks in Scotland' that addressed the concerns and promote the safe and appropriate use of fireworks. That Action Plan culminated in this

<sup>1</sup> <https://www.lawscot.org.uk/media/362638/2019-05-13-crim-lic-fireworks-final.pdf>

consultation which focuses on the proposed introduction of four changes to how fireworks can be sold and used in Scotland. These include:

- Requiring the general public and community groups to meet a number of mandatory conditions before they are able to purchase fireworks.
- Restricting the days fireworks can be set off by the general public and restricting the days fireworks can be sold to the general public.
- Introducing no-fireworks areas where it is not possible for the general public to set fireworks off.
- Introduction of a proxy purchasing offence to criminalise the supply of fireworks to people under the age of 18.

The consultation also highlights that feedback is to be obtained on “the introduction of legislation from those who use and enjoy fireworks as well as those affected by fireworks including vulnerable groups, pet and animal owners, and from local authorities, enforcement agencies, the fireworks industry, retailers and other organisations that have a role or interest in fireworks.” Regarding the first three changes, the consultation does not refer to how these would be enforced. Enforcement seems crucial to bring about the changes that would be required. That seems to be a significant omission along with others which we seek to highlight:

**Criminal justice:** There is no mention of the role of criminal justice in the relation to the creation of potential offences and the impact and significance of any proposed criminal prosecution. Reference to enforcement agencies refers merely to the role of trading standards and the local authorities rather than to the roles of Crown Office and Procurator Fiscal Service (COPFS) and the Scottish Courts and Tribunals Service (SCTS) in relation to the criminal justice process.

It is important to understand these proposed changes in the light of the context of criminal law. Criminal law in seeking to create penalties is about prohibiting conduct that causes or threatens the public interest, it defines and warns people of the acts that are subject to criminal punishment, distinguishes between serious and minor offences, and imposes punishment to protect society and to satisfy the demands for retribution, rehabilitation, and deterrence. Here, these changes are about deterrence.

If any conduct is to be criminalized, there is a need to consider what the impact of any conviction would be on any offender – it should act as a deterrent as it may have implications for their travel and work. Accordingly, the creation of criminal offences should be the ultimate and not the primary aim – as it is about education and awareness raising with which we suggest that the consultation and any changes should be concerned. That should be the main objective.

Though the consultation refers to existing penalties with regard to a custodial sentence of six months since the Impact of the presumption against short sentences affects any sentence of under a year, it is unlikely that any conviction unless for the most serious of offences would ever feature custody- and also all offences seems in effect to be restricted to summary proceedings given the sentences – but would suggest

that these penalties are revisited in the event that any changes are brought forward so that to ensure they are relevant and proportionate.

We also query why no consideration has been given to the imposition of civil sanctions before deploying/using criminal sanctions which require prosecution in court. Just how many offences would be expected to arise also needs to be modelled if any new offences are created – and therefore an impact assessment considered affecting the use of resources of both COPFS and SCTS. This is not included in this consultation which we suggest is a rather narrow approach to take to the problems with fireworks. Enforcement of changes needs considered at the same time.

Referring to our earlier consultation response<sup>2</sup>, before any sanctions from the criminal justice system are involved, we suggested that consideration be given to the adoption of a more standard approach from a licensing perspective. It is not clear whether feedback indicated that practices were inconsistent, and that this was contributing to any problems from the public perspective.

The issue of controls on sales is another topic to explore as the purchase of fireworks involves two parties—those licensed to sell and those who purchase. Nothing has been included here about measures already in place such as seeking out proof of age and certification of identification. Should identification include proof of a valid address for the purposes of monitoring post-sale use of the fireworks? Should these requirements apply across the range/classification of fireworks that are sold i.e., from sparklers which are possibly less problematic certainly as far as noise is concerned to what comprise noisy fireworks? Would better records require to be kept by a seller to track those allowed to purchase and who do purchase fireworks? Improving existing measures is the first step – and also the system which currently exist for their enforceability.

These are relevant in considering only then if criminal prosecution is merited where fireworks end up in “the wrong hands” as that would allow them to be tracked back to the source (but there are significant evidential problems if all that remains by way of available evidence is a spent firework.) Are sales to those of relevant age to purchase effectively monitored? We are unaware of any statistics for criminal prosecutions where fireworks have been sold under-age. These would have been helpful in relation to this consultation.

We had also identified issues with evidential requirements such as corroboration in relation to the proof of criminal offences.

Before any creation of additional offences would be considered, it would be useful to ascertain if the criminal law at present does not adequately protect the public from some of these irresponsible actions with fireworks. Are there evidential issues arising?

We indicated that views could best have been obtained from Police Scotland as we understand, at least anecdotally, that the scale of the problem around Bonfire Night may be that the irresponsible use is so

<sup>2</sup> <https://www.lawscot.org.uk/media/362638/2019-05-13-crim-lic-fireworks-final.pdf>

widespread, a perception exists that it is not possible to prevent or intervene effectively. This is not mentioned as a problem in bring in changes and these views seems important.

There has been no suggestion of which we are aware that where criminal offences arise and are prosecuted that the range of sentencing options is not appropriate.

### **Question 1 a). Do you agree that a fireworks licensing system should be introduced in Scotland?**

No comment. Before considering if a licensing scheme should be introduced, we consider that there is a need to set out how that scheme would operate.

We understood previously in relation to the earlier consultation that the legislation on the sale and storage of fireworks is reserved to the UK Government. Under the Scotland Act 1998, the regulation of the sale and supply of goods and services to consumers, and product safety and liability is reserved to the UK Government. Within this, the sale and supply of fireworks is regulated through UK legislation by the Fireworks Regulations 2004 and the Pyrotechnic Articles (Safety) Regulations 2015. How these proposed changes sit within devolved powers remains to be outlined?

There are considerable challenges in introducing a licensing scheme in Scotland. The consultation outlines that there is a proposal for a Bill to be introduced in the Scottish Parliament, but the scope and competence needs to be set out clearly.

There are three options outlined, none of which have been costed. We suspect all would be expensive to put in place. One option lies with Scottish Government – and the others involve setting up a new body which would need to have the expertise- and the third option refers to placing a further burden on local authorities who have the relevant licensing expertise but not the resources to implement such a licensing scheme.

### **Question 2 a). Do you agree that any licensing system should cover the possession and use of fireworks, in addition to their purchase?**

This seems very challenging to administer. How would this work operationally? Is the responsibility at the point of sale? How would this work for online sales?

On the question of resources implications at the licensing clerks' offices, there are burdens constantly being imposed or being potentially being considered to be imposed on them (such as short term lets, tax checks) at a time when resources are stretched to the limit – both financial and staff wise. What consideration has been given to these resource implications?

**Question 3a). Do you agree that a fee to obtain a fireworks licence in Scotland should be introduced?**

To administer any kind of a licensing scheme would require a fee. How would such a fee be set? If no-one can use fireworks without a licence, then we have concerns that this will drive operations under ground as people will not want to buy a licence. Also how is the licence fee to be set as we suspect to set up any of the methods which are outlined would be expensive to operate and administer.

**Question 4 a). Do you have any views on how much the licence fee should be?**

No. Any fee should be proportionate. Surely there should be account taken of the number of fireworks to be set out as much as the numbers who would be viewing them.

Our concerns are that the fee would be disproportionate to operate a complex system so in effect the possession and sale of fireworks would be driven underground.

**Question 5 a). Do you agree that successful completion of an online safety course to obtain a fireworks licence in Scotland should be introduced?**

We can support the introduction of a mandatory online safety course. However, it is the enforcement of the completion of such a course which is important. The consultation does not refer to how often such a course would require to be undertaken.

No account of accessibility or of the protected characteristics has been considered. Online courses can only be completed by those who have computers. This may deny accessibility to a number.

Any such change requires an equality impact assessment.

**Question 6 a). Who do you think would be best placed to run and administer the proposed licensing system?**

No comment. We refer to our answers above. We consider that this would be a complex system to operate.

**Question 7. Please tell us if you have any other comments on the introduction of a licensing system and the proposed process for how the licensing system would be implemented and managed.**

We refer to our comments above.

**Question 8 a). Do you agree with the proposed restrictions on the days fireworks can be used by the general public?**

We understand the purpose of restricting fireworks to certain periods but how does this affect weddings or other celebrations where fireworks may be used. Special events such as the Queen's Jubilee would presumably be exempt.

Also, what consideration is being given to delays where adverse weather conditions mean the cancellation or postponement of any celebrations?

**Question 9 a). Do you agree with the proposed restrictions on the days fireworks can be sold to the general public?**

We refer to our answer above.

**Question 10 a). Do you agree with the introduction of no-firework areas?**

The key aspect relates to proportionality and fit for purpose. We have concerns about how this would operate in practice and how an effective balance is to be achieved. If it is accepted that fireworks are part of accepted celebrations and important in some cultures, just how this would operate in practice would need detailed consideration.

**Question 11 a). Do you agree that consideration, introduction and management of no-firework areas should be led by local authorities?**

No comment. This is a question best answered by local authorities as to timing and resource implications.

**Question 12. Please tell us if you have any comments in relation to how communities can be actively involved in considering the feasibility and introduction of no firework areas, and the decision to introduce these.**

No comment.

**Question 13. Please tell us if you have any comments on the proposed process for how no-firework areas would be implemented, managed and reviewed.**

No comment.

**Question 14. Please tell us if you have any comments in relation to the enforcement of no-firework areas.**

We refer to our comments about how this would operate within the criminal justice system.

**Question 15. Please tell us if there are any other issues you think need to be considered in relation to no-fireworks areas.**

We refer to our answer to Question 14.

**Question 16 a). Do you agree with the introduction of a 'proxy purchasing' offence in relation to fireworks to criminalise the supply of fireworks to young people under the age of 18?**

If the message from the consultation was that the existing law and provisions should be clear, this is part of education which we fully support.

However, we note that the introduction of offences is aimed at the purchase and not the sale of fireworks. Surely need tackled at the same time.

**Question 17. Please tell us if you have any other comments on section one of the consultation that have not been covered by the other questions.**

The consultation refers to several offences being the responsibility of Police Scotland. There is merit in setting out clearly what the existing offences are and how they would apply for instance to the operation of any community no firework zones.







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