

Audrey Nicoll MSP
Convener
Criminal Justice Committee
Scottish Parliament

31th May 2022

Our ref: 310522FS0955

Dear Convener,

Fireworks and Pyrotechnic Articles (Scotland) Bill - Stage 2 - 25th May 2022

After watching the Committee meeting, we would like to comment as follows:-

- 1) We welcome and support Amendment 89 (and group amendments), proposed by Jamie Greene, indeed we would also suggest that Health & Safety Executive are added to the list. The existing provision within the legislation states that the Minister “must consult such persons as they consider are likely to be interested in or affected by the licensing of fireworks”. We have extreme concerns regarding this, as ironically, the Bill was drafted and published, without the industry having sight of any details prior to publication. This is not the first occasion that the Scottish Government has taken this approach. Legislation regarding the periods of sale and use, introduced in 2021, had to be hurriedly amended AFTER being put into law after the Industry highlighted issues with it. Hopefully the Committee can therefore understand our apprehension with regard to this provision and the vagueness of the definition on those who need to be consulted.

Furthermore, we would caution against giving the Minister the powers to amend permitted F2 & F3 fireworks. This could and would create further differences between Scotland and the rest of the UK, create an even bigger risk of a black market between Scotland and the rest of the UK! The list of permitted F2 & F3 Fireworks within the UK is clearly defined, and for the Scottish Government to have the power to change this is extremely concerning as it will impact multiple pieces of legislation and technical standards, plus create a separate tier of legislation and standards, something that The Health & Safety Executive have specifically cautioned the Scottish Government against.

- 2) We welcome and support Amendment 47 (and grouped amendments) proposed by Katy Clark. Again, we have seen that previous attempts by the Scottish Government to introduce pyrotechnics legislation without parliamentary scrutiny, has resulted in mistakes, errors and additional amendments having to be hurriedly implemented.
- 3) We welcome and support Amendment 38 proposed by Jamie Greene. We can find no reason why the Minister would require negative powers to alter or amend the definition or requirements of a person with Specialist Knowledge. Again, this would create a separate tier of legislation which could be implemented without any proper scrutiny.

- 4) We wholeheartedly welcome and support Amendment 59 proposed by Jamie Greene. The Scottish Government has a real opportunity to examine the existing legislation and in doing this, it would not only gain a full understanding of the existing powers available to the enforcement community surrounding the misuse of fireworks. The BFA feels that there is either a fundamental failure on the part of enforcement and the judiciary to understand the existing legislation, or a fundamental willingness to utilise this legislation. If the latter, any additional legislation will be pointless, as there is nothing that will increase the appetite to pursue further convictions! Several Committee members highlighted their concerns that there may well be a lack of willingness on the part of enforcement to enforce the existing legislation. It was stated during the meeting that part of legislation should be to act as a deterrent. The value of any deterrent is based on the knowledge that it will be implemented when required. Since the existing legislation is not being implemented, what deterrent is going to be presented with new legislation!

The BFA firmly believes that the core issue is that existing legislation is not being used, and what little evidence exists from Cops, supports this. The Scottish Government is pursuing flawed legislation based on public views and opinions, while existing legislation is being ignored by the Scottish Government, the Police and the Judiciary. We do not make this statement lightly and have repeatedly stated this to Westminster, The Firework Review Group, The Minister and to the Justice Committee.

The Scottish Government is not stating that the existing legislation is not fit for purposes. The Scottish Government has not acknowledged that enforcement of the existing legislation is virtually non-existent, yet the Scottish Government feels that more legislation is required! The misuse of fireworks is illegal, this legislation will not make it “more” illegal.

Therefore a comprehensive review of the existing legislation should be of primary importance, not an afterthought and certainly not something that should be completely disregarded.

- 5) We wholeheartedly support Amendment 127 proposed by Jamie Greene. In adopting this amendment, The Scottish Government has a real opportunity to not only improve fireworks safety, but to also minimise the risk of unintended consequences. By working with the industry, the message of the safe, considerate and responsible use of fireworks would be channelled through official retailers. By working with the industry, we could provide vital training to enforcement authorities on what to look for with regard to illegal storage, selling and illegal product.

Through working with the industry on public messaging and enforcement training, the Scottish Government could achieve its goals of misuse reduction, reduced injuries, minimising the creation of a blackmarket and achieve this at a fraction of the costs associated with its current proposals. As we have stated on numerous occasions, proposals which will not work!

- 6) In respect of the licensing requirements, the Minister stated that a delivery driver would have a legal obligation to check for a licence, as they do with other age restricted products. Delivery drivers have a duty to check for age verification on age restricted products, not a licence. Notwithstanding this, the way to circumvent this (and we see already) is to send the product in plain packaging. This not only makes the courier unaware that any licence is required, but it also makes them unaware that any age verification is required and puts everyone at risk through unsafe transportation of pyrotechnics. Once again, this highlights the unintended consequences of ill thought strategy, making matters worse, not better.

Also, for the record, the Minister states that Fireworks can only be delivered by specialist couriers. This is incorrect, fireworks (under ADR regulations) can be delivered in limited quantities (up to 500kg

NEM of 1.4G and/or upto 50kg 1.3G) by any courier, without an ADR licence. Once again, this highlights the danger of legislating without a full understanding of the existing legislation.

The Minister also stated that she had sent a letter detailing their plans in respect of illegal retailers, etc. Sadly the Minister has (once again) failed to share such plans with the industry.

The Minister also states that the licensing scheme is designed to ensure a high degree of compliance. Again, we would highlight that such a scheme (regardless of the details) has completely failed in Northern Ireland, where the degree of compliance is a fraction of those who are using fireworks (on average 516 licences issued for a population of 1.89 million). We question where the Minister obtained her supporting evidence for such a claim.

- 7) In respect of Amendment 68, it is important to understand that where fireworks are being used by a community group or organisation, it is very rare for a single individual to acquire, store and set up and fire a firework display. Under the proposed licensing scheme, it appears that each and every person involved in the event would have to possess a licence. So if 4 people were involved, the cost could be £200 just for licensing!

Furthermore, as way of inclusion for the public record, be under no misapprehension, this Bill will NOT reduce the misuse of Fireworks. It will have precisely the opposite effect and will create a blackmarket for fireworks in Scotland, the likes of which has never been seen before. It will create stockpiling of fireworks and it will lead to more injuries. The Scottish Government may well state they will review the situation in a few years, however by that time it will be too late and it will be impossible to rollback the creation of the blackmarket.

The Bill is overly complex, confusing, unenforceable and crucially, does not and will not address the wilful misuse of fireworks. Something that existing legislation is more than capable of dealing with, and yet nobody appears to acknowledge or accept this, let alone enforce it!

Finally, many of the proposals within the Bill are not new. They have been tried in the past (in some shape or form) by various countries around the world. They have tried and they have failed. This has prompted greater restrictions, which again have failed.

Despite the advice from the BFA, the BPA and considering the evidence from Association of Chief Constables, Association of Chief Fire Officers and the Health and Safety Executive, the Scottish Government is continuing with a Bill that will make matters far worse. Also, despite listening to reservations being raised by Committee Members themselves, some Members choose to simply vote along party lines, rather than considering the safety of the public.

Yours sincerely



Lawrence Black
Secretary BFA



Steve Raper
Chairman BFA



Fraser Stevenson
Vice Chairman BFA