

Briefing for the Public Petitions Committee

Petition Number: [PE1687](#)

Main Petitioner: Jane Erskine

Subject: Regulation of fireworks displays in Scotland

Calls on the Parliament to urge the Scottish Government to review existing regulations governing fireworks displays in Scotland, particularly in terms of private fireworks displays in rural locations, in order to protect animals from fear and distress and prevent subsequent injury.

Background

Throughout the year, fireworks are widely used to mark public and private celebrations as well as traditional events. Since fireworks are explosives, there are strict rules in place across the UK regulating the sale, possession and use of fireworks.

Fireworks legislation

Regulation of the sale of fireworks is regarded as a consumer safety issue and as such is a reserved matter.

The Fireworks Act 2003 is an enabling Act conferring power on the Secretary of State in England and Wales and the Scottish Ministers, to make provision for the control of fireworks and explosives by regulation in order to secure that there is either no risk, or a minimal risk compatible with use, that fireworks will cause death, injury or distress to persons or animals, or damage to property.

The Fireworks Regulations 2004 and the Fireworks (Scotland) Regulations 2004 are designed to tackle the anti-social use of fireworks.

The Fireworks (Scotland) Regulations 2004 deal primarily with the timings of curfew. Adult fireworks¹ are prohibited from use during night hours (between 23.00 and 07.00).

Exceptions to this are as follows:

- Until 01.00 on the nights of Chinese New Year, Diwali and New Year's Eve

¹ There are different categories of firework in terms of indoor/outdoor fireworks, power and noise levels etc.

- Until 24.00 on 5th November
- Local authority employees running local authority firework displays, national public celebrations or national commemorative events - before granting such a dispensation, the local authority must be satisfied that there is no risk of death of persons or injury, alarm, distress or anxiety to persons; death of animals or injury or distress to animals; or destruction of, or damage to property.

Enforcement of curfews is a matter for the Chief Constable (in effect, Police Scotland).

In addition, under section 80 of the Explosives Act 1875 it is an offence to throw or discharge a firework in a street or public place. This is also enforced by the police, and a fixed penalty notice of £80 applies.

The Animal Health and Welfare (Scotland) Act 2006

In the background information to the petition, the petitioner has referred to the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”). The 2006 Act includes provisions on causing unnecessary suffering to protected animals².

The petitioner states, correctly, that section 19(2) of the 2006 Act places the onus on an owner to protect an animal from harm. Section 19(2) provides that where a person is responsible for an animal, an offence would be committed if unnecessary suffering was caused to the animal by them failing to take some action, where that person knew or ought reasonably to have known that the omission would cause, or would be likely to cause, suffering. It is not necessary to show that the person actually knew that their act or omission would cause suffering, but only that they ought to have known. The petitioner states that, as the onus lies with the owner of an animal to take all reasonable steps to prevent distress or actual harm, if an event at which fireworks will be used is private, there are no reasonable steps that an animal owner can reasonably take, and there does not appear to be a similar onus placed on the organisers of the private event.

However, section 19(1) of the 2006 Act also provides that it is an offence for any person, by an act, to cause unnecessary (physical or mental) suffering to a protected animal where the person committing the act knew or ought reasonably to have known, that the act would cause, or would be likely to cause, suffering.

In determining whether suffering is unnecessary, regard must be had to various considerations, including whether the suffering could reasonably have been avoided or reduced, whether the conduct was in compliance with any

² An animal is a “protected animal” if it is: of a kind which is commonly domesticated in the British Islands; under the control of man on a permanent or temporary basis; or not living in a wild state.

relevant enactment or the provisions of a licence or a code of practice, and whether the conduct was for a legitimate purpose.

Scottish Government Action

The Scottish Government has stated that it recognises the distress that noise from fireworks can cause animals but points out that responsibility for regulating the noise which can be emitted from fireworks lies with the UK Government. The relevant legislation here is the Pyrotechnic Articles (Safety) Regulations 2015.

In response to PQ [S5W-12294](#) (October 2017), the Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham MSP, stated that the Scottish Government has no plans to review existing regulations in this area.

UK Government Action

In September 2016, Margot James, the Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, provided a written answer to a PQs on the regulation of fireworks asked by Martyn Day MP.

Martyn Day: To ask the Secretary of State for Business, Energy and Industrial Strategy, if he will assess the potential effect on (a) public safety and (b) animal welfare of restricting fireworks displays to regulated organised displays only.

Margot James: Limiting firework displays to regulated organised displays only is not supported, on public safety grounds, by the current available evidence. Official statistics, from NHS Digital, demonstrate that there is a downwards trend in hospital admissions in England, arising from the discharge of fireworks, with 114 such admissions in 2014/15. The Government will continue to focus on reducing accidents and nuisance by encouraging industry, retailers and others to promote responsible use through guidance and public education.

The Government accepts that fireworks can have a detrimental effect on some animals. However, we consider that if users follow guidance on the correct and sensible use of fireworks, and owners of animals take appropriate precautions, these can help to avoid or reduce any detrimental effects.

The UK Government has stated recently that it has no plans to extend or amend the legislation relating to fireworks³.

Graham Ross
Senior Researcher
19 April 2018

³ See House of Commons Library briefing [E-petition 201947 relating to fireworks](#) (January 2018)

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