

**REPORT TO: POLICY AND RESOURCES COMMITTEE - 14 JUNE 2004**

**REPORT ON: FIREWORKS REGULATIONS 2004**

**REPORT BY: DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)**

**REPORT NO: 486-2004**

## **1.0 PURPOSE OF REPORT**

1.1 The purpose of this report is to advise the Committee of proposals to introduce a number of prohibitions on the importation, sale, possession and use of fireworks with the aim of tackling anti-social behaviour.

## **2.0 RECOMMENDATION**

2.1 The Committee's instructions are sought regarding a response to the consultation document.

## **3.0 FINANCIAL IMPLICATIONS**

3.1 The Local Authorities Co-Ordinators of Regulatory Services (Lacors) are to advise the Government on the total costs in relation to the following:-

- the cost to licensing bodies for granting dispensations to the proposed curfew;
- the increase in administration costs to local authorities for licensing all year round suppliers;
- the cost of creating a system to receive and act upon information passed to local authorities regarding importation from the Commissioners of Customs and Excise; and
- the enforcement of the proposed new regime.

## **4.0 LOCAL AGENDA 21 IMPLICATIONS**

4.1 There are no Local Agenda 21 implications arising directly out of this report.

## **5.0 EQUAL OPPORTUNITIES IMPLICATIONS**

5.1 There are no Equal Opportunities implications arising directly out of this report.

## **6.0 MAIN TEXT**

6.1 The Fireworks Act 2003 received Royal Assent on 18 September 2003. The purpose of this legislation is to reduce the noise, nuisance and injuries caused by the misuse of fireworks, which forms part of the broader public concern with the problem of anti-social behaviour.

6.2 The Act enables the Secretary of State for Trade and Industry to make regulations (Fireworks Regulations) 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 scope of the Act is twofold in its approach in that it allows the Government to tackle issues regarding the supply of fireworks as well as their use or misuse.

6.3 It is now proposed to introduce Regulations imposing a number of limited prohibitions on the importation, sale, possession and use of fireworks with the aim of tackling their anti-social use. The Department of Trade and Industry and the Scottish Executive have issued a joint consultation document entitled "Fireworks Regulations 2004" seeking views on the proposals. Copies of the consultation document can be obtained from Group Secretaries and a copy has also been placed in the Members' Lounge.

#### 6.4 The Regulations propose:

- to make permanent the emergency Fireworks Regulations 2003 under which it is an offence for anyone under the age of 18 to possess fireworks in a public place, and for anyone other than a fireworks professional to possess category 4 fireworks, that is professional display fireworks;

With respect to both the possession offences the Home Office are working to provide suitable powers to the Police to make the offences both arrestable and punishable by fixed penalty notices in England. The Scottish Executive is considering the position for Scotland.

- to create a curfew on the use of fireworks between 11 pm and 7 am, with the inclusion of exemptions;

The exemptions are either traditional (5 November) or those which possess religious or cultural significance to constituent minorities (Diwali). These exemptions will not, however, mean that fireworks can be set off throughout what is defined as night hours but rather permission is extended to 2 am. The use of fireworks will, therefore, be prohibited between 2 am and 7 am on these occasions. Dispensations for curfews may be obtained by firework display operators and other pyro-technicians for public events from the local authority.

Views are invited as to who the appropriate enforcement authority would be.

- to prohibit the supply to the public of category 3 fireworks that exceed 120 decibels;

The enforcement of this proposal would fall to Trading Standards Officers.

- the creation of a licensing regime whereby those intending to supply fireworks to the public all year round are required to apply for a licence to do so;

The sale to the general public of fireworks is to be restricted outside of the following periods

- 4 days before and including the day of Diwali (usually in October/November);
- 4 days before and including the day of Chinese New Year (usually in January/February);
- 4 days before and including 31 December;
- 3 weeks before and 5 days after 5 November.

Those who wish to supply outside of these periods will have to apply to the relevant Licensing Authority (either the Health and Safety Executive, the Fire Service or the Local Authority) for an annual licence. The cost of the licence will be £200 and the Licensing Authority may refuse it on the grounds of either a potential increase in anti-social behaviour or injuries as a result of usage outside of the defined periods.

- a requirement that all suppliers to the public, whether internet, mail-order or retail/wholesale, display a notice informing consumers of the law regarding underage sales and possession;

The enforcement of this proposal would fall to Trading Standards Officers.

- the creation of an importation requirement whereby all importers of fireworks will provide Customs and Excise with details as to the destination of their product so as to allow for a port to point-of-sale audit trail to help clamp down on illegal storage and distribution;

The enforcement of this proposal would fall to the relevant Authority (either Health and Safety Executive or Trading Standards Officers).

6.5 These proposals are complementary to the recent proposed Fireworks (Safety) (Amendment) Regulations 2004 which are expected to come into force late in May. These Regulations propose:

- a ban on the supply of air bombs;
- the tightening-up of the definition of mini rockets; and
- a change of the “due diligence” defence to that of “strict liability” for suppliers in relation to the sale of fireworks to those under the age of 18.

6.6 It is hoped that both of the proposed Regulations will be made soon in order to reduce the potential that fireworks may be misused in the 2004 fireworks season.

6.7 Responses to the proposals must be received by Friday, 2 July 2004.

6.8 Consultees are asked for their views on several questions. The following questions are most relevant to the Council:

- (a) Can the current Possession Regulations, that is those making it an offence to possess fireworks by the under 18s or for members of the public to possess category 4 fireworks, be improved in any way?
- (b) Is the proposed curfew set at an appropriate time?
- (c) Are the Police best suited to enforce the curfew?
- (d) Do consultees believe that 120 decibels is the appropriate level at which to set a maximum limit for category 3 fireworks?
- (e) Do consultees have views on how best to implement the maximum 120 decibel limit for category 2 fireworks given the restrictions in section 5 of the Fireworks Act 2003 i.e. is the Government’s plan to reference the new British Standard (BS EN 14035) the best approach?
- (f) Are the powers that the Home Office is working to secure for the police sufficient to be able to deal with enforcement of the possession offences? Would these powers be appropriate for Scotland?
- (g) Will the proposed Regulations contribute to a reduction in the anti-social use of fireworks and a reduction in firework-related injuries?

## **7.0 VIEWS OF THE ENVIRONMENTAL HEALTH AND TRADING STANDARDS DEPARTMENT**

7.1 The Head of Environmental Health and Trading Standards agrees that legislation would be appropriate to allow effective enforcement and ensure a "level playing field".

7.2 He agrees that there should be a form of prohibition on the sale of air bombs. These products, primarily because they are affordable, are attractive to young people with a tendency to use them irresponsibly and cause a nuisance. They also cause the most injuries.

7.3 He agrees that it would be appropriate to make the sale of fireworks to those under the age of eighteen a strict liability offence.

7.4 Rather than a licensing system being introduced only for those who intend to supply fireworks to the public all year round he would have preferred that all suppliers of fireworks would have to apply for a licence.

7.5 He agrees that the proposal to display a notice informing consumers of the law regarding under age sales and possession (like cigarettes and alcohol) would be an effective way to remind both retailers and purchasers of their legal obligations.

7.6 He believes that the requirement to provide information to Customs and Excise will provide useful information on the resultant storage and supply provided information is passed effectively between the relevant enforcement agencies.

7.7 He agrees that 120 decibels is the appropriate level at which to set a maximum limit for Category 3 Fireworks and welcomes the Government's plan to reference the new British Standard (BS EN 14035).

## **8.0 CONSULTATIONS**

8.1 The Chief Executive, Depute Chief Executive (Finance) and Head of Environmental Health and Trading Standards have been consulted in the preparation of this report.

## **9.0 BACKGROUND PAPERS**

9.1 Fireworks Regulations 2004 - Consultation on Proposals to Tackle the Anti-Social Use of Fireworks through the Regulation of Use and Supply - Department of Trade and Industry and Scottish Executive - April 2004.

**10.0 Name PATRICIA McILQUHAM**

**Depute Chief Executive (Support Services)**

**Date: 7th June 2004**