

REPORT TO: POLICY AND RESOURCES COMMITTEE - 17TH DECEMBER 2001
REPORT ON: THE SALE OF FIREWORKS
REPORT BY: DIRECTOR OF SUPPORT SERVICES
REPORT NO: 820-2001

1.0 PURPOSE OF REPORT

1.1 This Report advises the Committee of the present legal framework for the sale of fireworks and requests the Committee's instructions regarding the position which the City Council is to adopt in relation to possible changes to the law.

2.0 RECOMMENDATIONS

2.1 The Committee's instructions are sought regarding the following options:-

- (i) The Council calls for the retail sale of fireworks to be completely banned and made a criminal offence by the Westminster Parliament; or
- (ii) The Council calls for the retail sale of fireworks to be banned except in the few days before November 5th by the Westminster Parliament; or
- (iii) The Council calls for the retail sale of fireworks to be banned by the Westminster Parliament except to those like the Council who would hold an organised display; or
- (iv) The Council calls for the Firework (Safety) Regulations 1997 to be updated by the Westminster Parliament to prohibit the sale of powerful and noisy fireworks in addition to (ii) and (iii) above; or
- (v) The Council agrees to promote a local byelaw incorporating option (i) or options (ii), (iii) and (iv) and calls on the Westminster Parliament to allow its promotion; or
- (vi) The Council calls upon the Scottish Ministers to approve the promotion of a local byelaw on the sale of fireworks as a pilot scheme under Section 110 of the Civic Government (Scotland) Act 1982 and to seek any devolved powers as may be necessary to allow this; or
- (vii) The Council calls upon the Scottish Ministers to seek such necessary devolved powers as may be needed to designate the retail sale of fireworks as an additional activity in terms of Section 44 of the Civic Government (Scotland) Act 1982 which would thereby enable the Council to introduce a licensing system for the retail sale of fireworks; or
- (viii) No action is taken pending the progress of the Manufacturing and Storage of Explosives Regulations 2002.

If the Council wish to pursue one or more of these possible changes it is suggested that the most appropriate way forward would be for the Director of Support Services to be given a remit to press for the Council's preferred option. This might take various forms including the lobbying of MPs and MSPs.

3.0 FINANCIAL IMPLICATIONS

3.1 There are no financial implications arising directly out of this Report.

4.0 LOCAL AGENDA 21 IMPLICATIONS

4.1 There are no Local Agenda 21 implications arising directly out of this Report. A total or partial ban on the sale of fireworks would however have a positive impact on pollution.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 There are no equal opportunities implications arising directly out of this Report.

6.0 BACKGROUND

- 6.1 The use of fireworks other than at an organised display has caused concern regarding public safety, and in particular the safety of children, for some time now.
- 6.2 It is understood that the incidence of accidents and misuse is increasing rather than reducing despite efforts by the Scottish Executive, Local Authorities, the Police and the Fire Brigade to educate people in the safe use of fireworks.
- 6.3 Locally, the following represent some of the issues which arose this year in the run up to and following November 5th:-
- Two post boxes and a waste bin were destroyed in the Hilltown area through the misuse of fireworks;
 - Large numbers of complaints were received from members of the public regarding extremely loud fireworks which let off explosions similar to that of military ordnance;
 - Alarm and concern was expressed by elderly people, parents of young children and owners of domestic pets regarding the frightening interruption of their normal life;
 - Larger fireworks (including fireworks which require a safety distance of 25 yards and which contain several pounds of explosives) were increasingly affordable;
 - Some local retailers persistently failed to observe the law regarding the sale of fireworks to persons under the age of 16 and the restrictions on the volume of fireworks which can be stored for sale;
 - A perception that both the quantity of fireworks and the period of time over which they were sold have increased.
- 6.4 The Dundee Federation of Tenants' Associations and West End Community Council have formally contacted the City Council to ask what action it intends to take as a result of these difficulties.

7.0 PRESENT LEGAL FRAMEWORK

- 7.1 The present legal framework is mainly contained within the Explosives Act 1875 which provides for a licensing scheme in respect of small firework factories and gunpowder stores. However, the retail dealing of fireworks is only regulated by a registration procedure.
- 7.2 The procedure requires a person to apply annually to the local authority for registration but that person only requires to accept rules regarding the safe storage of the fireworks and does not have to undergo any examination of their fitness to sell them.
- 7.3 In addition the registration procedure does not allow for refusal of a person's application for registration, for example because they are not thought to be fit persons, or suspension of their registration, for example if they sell to persons under 18.
- 7.4 The retail sale of alcohol and second hand goods is restricted by law to those who are "fit and proper" and licences may be suspended if appropriate. It may be seen as surprising that no similar provisions exist in the case of the sale of fireworks.
- 7.5 The Fireworks Act 1951 made provision for the seizure of dangerous fireworks, provision regarding explosive factories and small firework factories and imposed a requirement to make marks on and not deface fireworks but did not change the provisions of the 1875 Act regarding the retail sale of fireworks.
- 7.6 The Fireworks (Safety) Regulations 1997 which were made under the Consumer Protection Act 1987 prohibit the supply of certain fireworks and also prohibit the sale of fireworks to persons under the age of 18. There are criminal penalties in the case of non-compliance. It appears however that certain manufacturers are circumventing the purpose of the 1997 Regulations by the use of improved designs and more powerful gunpowder.
- 7.7 The Health and Safety Executive have recently drafted new regulations under the Health & Safety at Work Act 1974. The draft regulations are entitled the Manufacture and Storage of Explosives Regulations 2002. They would introduce a more detailed licensing system for the storage of fireworks and allow local authorities to refuse a licence or refuse registration for the

first time. They are however unlikely to become law before 2003. It is also possible that they will not become law. Some years ago a Bill was put forward in the Westminster Parliament to control the retail sale of fireworks but the Bill was "talked out".

8.0 POSSIBLE CHANGES TO THE PRESENT LEGAL FRAMEWORK

8.1 It should be noted, first of all, that the control of fireworks has not been devolved to the Scottish Parliament but is reserved to the Westminster Parliament. For that reason certain possible changes to the present legal framework can only be made by the Westminster Parliament as things currently stand. There are, however, certain actions that only the Scottish Executive could take as things currently stand. If the Westminster Parliament were to devolve responsibility for the control of fireworks to the Scottish Parliament all the following possible changes could be made at Holyrood rather than at Westminster. Further devolution of responsibilities from Westminster to Holyrood is possible with the agreement of both Parliaments under the Scotland Act 1998.

8.2 There are various changes possible to the present legal framework:-

- (i) The retail sale of fireworks could be completely banned and made a criminal offence by the Westminster Parliament;
- (ii) The retail sale of fireworks could be banned except in the few days before November 5th by the Westminster Parliament;
- (iii) The retail sale of fireworks could be banned by the Westminster Parliament except to those like the Council who would hold an organised display. This would operate like a "licence to purchase" fireworks;
- (iv) The Firework (Safety) Regulations 1997 could be updated by the Westminster Parliament to prohibit powerful and noisy fireworks;
- (v) An approach could be made to the Scottish Ministers to allow the promotion of a local byelaw on the sale of fireworks as a pilot scheme under Section 110 of the Civic Government (Scotland) Act 1982. The promotion of byelaws is, however, a time-consuming process which can take longer than a year particularly where objections to the proposed byelaws are received when a public inquiry must be held. In addition, it may be necessary to demonstrate that byelaws are desirable because the issue they seek to address is a matter of particular concern in that particular local authority area (as opposed to all local authority areas as may be the case here).;
- (vi) The Scottish Ministers could be asked to designate the retail sale of fireworks as an additional activity in terms of Section 44 of the Civic Government (Scotland) Act 1982 which would thereby enable the Council to introduce a licensing system for the retail sale of fireworks.

(It should however be noted that the Scottish Ministers may take the view that the regulation of fireworks is not a devolved matter and that they are therefore unable to allow the promotion of a byelaw or designate the retail sale of fireworks as an additional activity.)

If the Council wish to pursue one or more of these possible changes it is suggested that the most appropriate way forward would be for the Director of Support Services to be given a remit to press for the Council's preferred option. This might take various forms including the lobbying of MPs and MSPs.

It would also be possible to do nothing but await the progress of the Manufacturing and Storage of Explosives Regulations.

9.0 CONSULTATIONS

9.1 The Chief Executive, Director of Finance and Director of Environmental and Consumer Protection have been consulted in the preparation of this report.

10.0 BACKGROUND PAPERS

10.1 No background papers as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing this Report.

Director of Support ServicesDate