

Criminal Justice Committee

**11th Meeting, 2022 (Session 6), Monday 21
March 2022**

Fireworks and Pyrotechnic Articles (Scotland) Bill – Oral Evidence

Note by the clerk

Introduction

1. The [Fireworks and Pyrotechnic Articles \(Scotland\) Bill](#), and [its accompanying documents](#), were introduced in the Parliament by the Minister for Community Safety, Ash Regan MSP, on 1 February 2022.
2. The overarching policy objective of the Bill is to address a broad range of concerns around the sale and use of fireworks and pyrotechnic articles in Scotland. The Bill seeks to achieve this by restricting the sale of certain categories of fireworks to the public, as well as creating powers to limit the days and locations where such fireworks can be used.
3. The Bill will establish new powers for local authorities to create Firework Control Zones, as well as establish new stop and search powers for the police in terms of enforcing the provisions of the Bill.
4. The Bill also establishes new controls on the sale and use of pyrotechnic articles, commonly referred to as distress or signal flares.

Written submissions, public engagement and briefings

5. A [SPiCe Bill Briefing on the Bill](#) has been produced, to inform oral evidence sessions.
6. The Committee's online public call for written views on the Bill closed on Friday 11 March. The Committee received in excess of [150 written submissions](#) and these are available online to read.
7. The Parliament's [Public Engagement Site on the Bill](#) also closed on Friday 11 March. **Paper CJ/S6/22/11/2** in the papers for this meeting contains a summary of engagement contributions on each of the eight provisions in the Bill.

Participants

8. The Committee has scheduled a number of oral evidence taking sessions on the Bill throughout March 2022, this is the second evidence session.
9. At its first meeting on [16 March](#) the Committee took oral evidence from Alasdair Hay, Chair of the Scottish Government's Fireworks Review Group, Assistant Chief Officer Stuart Stevens, Scottish Fire and Rescue Service, David Hamilton, Scottish Police Federation, Rob Holland, National Autistic Society Scotland, Lorraine Gillies, Scottish Community Safety Network, and Gilly Mendes-Ferreira, Scottish SCPA.
10. At today's meeting the Committee will hear from one panel of witnesses:
 - **Chief Inspector Nicola Robison**, Partnerships, Prevention and Community Wellbeing Division, Police Scotland;
 - **David MacKenzie**, Chair, Society of Chief Officers of Trading Standards in Scotland;
 - **Julie Whitelaw**, Interim Head of Housing, Customer and Building Services, West Lothian Council.

Format

11. There will be a virtual meeting with all Members and witnesses participating remotely on the Parliament's video conference system. The meeting will be broadcast live from [2:00 pm on the SPTV website](#).

Written evidence

12. The following written submissions have been received from those witnesses appearing today, and are set out in **Annex A** as follows-
 - Police Scotland (Page 3)
 - Society of Chief Officers of Trading Standards in Scotland (Page 8)
 - COSLA (Page 13) - *Owing to time constraints, West Lothian Council was unable to provide a written submission, however COSLA have provided the Committee with a written submission on behalf of the wider local government sector and this is included for information.*

Clerks to the Committee
17 March 2022

ANNEX A – WRITTEN SUBMISSIONS

Name of organisation: **POLICE SCOTLAND**

I refer to the above Bill and wish to bring to your attention some additional Police Scotland information that may assist the Criminal Justice Committee in its scrutiny of the Bill.

I am pleased to confirm that Police Scotland has prepared a response to the online Bill consultation questions (which I have also included with this letter), however I believe the attached Police Scotland [‘Report on the illicit use of fireworks and pyrotechnics’](#), provides further helpful contextual and statistical information.

This report, which was completed in autumn 2021 under the auspices of my colleague ACC Mark Williams, has been collated from a variety of sources and details the challenges faced by Police Scotland when responding to the illicit use of these articles.

Gary Ritchie
Assistant Chief Constable

Call for views - Questions and Responses from Police Scotland

2.1 Overall Views

What are your overall views on the Scottish Government’s plans to restrict the sale and use of certain types of fireworks and pyrotechnic articles in Scotland, as set out in the Bill?

Police Scotland is supportive of the Scottish Government’s plans and believes this Bill is a crucial step towards making events safer for all attending them. As an organisation, Police Scotland has serious concerns that these articles present a very real risk to life and has been working on addressing this risk for more than five years.

It is hoped that the provisions within the Bill will help to bring about a cultural change amongst those who currently misuse these articles by educating and persuading them to use these articles responsibly while also providing police officers with new powers to better deal with those individuals who refuse to acknowledge the risk at which they are placing themselves and others.

2.2 Types of fireworks covered by licensing system

The Bill proposes to establish a new licensing system for members of the public who wish to buy and use CAT F2 and CAT F3 fireworks in Scotland. This would require members of the public to undertake an online training course and pay

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between £30 and £50 for a licence, before they could buy or use CAT F2 and CAT F3 fireworks.

What are your views on this proposal?

Police Scotland are supportive of any training being offered to the public that would encourage the safe and responsible use of such fireworks.

2.3 Restrictions on supply of fireworks

Currently, the public can buy CAT F2 and CAT F3 fireworks all year round in Scotland. The Bill would make the following changes-

CAT F2 and CAT F3 fireworks could only be sold to members of the public on 37 days a year, on the following specified dates, which are inclusive-

- *7 April to 14 April (an eight-day period)*
- *27 October to 10 November (a 15-day period)*
- *26 December to 31 December (a six-day period)*
- *The three days immediately before Chinese New Year and on the day of Chinese New Year (a four-day period)*
- *The three days immediately before Diwali and on the day of Diwali (a four-day period).*

What are your views on the proposed restricted periods on which CAT F2 and CAT F3 fireworks can be purchased by the public?

Police Scotland welcome clearly defined dates for the purposes of applying the proposed legislation.

2.4 Restrictions on the use of fireworks

It is currently legal in Scotland for CAT F2, CAT F3 and CAT F4 fireworks to be set off and used between the hours of 6.00 PM to 11.00 PM (a five-hour period) each night of the year, except for the following dates—

- *from 11:00 pm on the first day of the Chinese New Year to 01.00 am the next day (a two-hour period),*
- *from 11 .00 PM on 5 November to midnight on 5 November (a one-hour period),*
- *from 11.00 PM on the day of Diwali to 01.00 AM the next day (a two-hour period),*
- *from 11.00 PM on 31 December to 01.00 AM the next day (a two-hour period).*

The Bill would restrict when people can set off and use CAT F2, CAT F3 and CAT F4 fireworks to the following days-

- *Between 7 April to 16 April (a 10-day period)*
- *Between 27 October to 12 November (a 17-day period)*
- *Between 26 December to 2 January (an eight-day period)*

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- *From the third day immediately before Chinese New Year to the seventh day after the first day of Chinese New Year (an 11-day period)*
- *From the third day immediately before Diwali to the seventh day after the first day of Diwali (an 11-day period).*

What are your views on the proposed changes to the days on which fireworks can be used?

Police Scotland welcome clearly defined dates and time for the purposes of applying the proposed legislation.

2.5 *Criminal offences*

While a person must be aged 18 years or over to buy CAT F2 and CAT F3 fireworks, at the moment an adult can give CAT F2 and CAT F3 fireworks to someone under the age of 18 years.

The Bill would make it a criminal offence for someone aged 18 years or over to knowingly supply CAT F2 or CAT F3 fireworks to someone under 18 years.

The Bill would also make it a criminal offence for a person, “without reasonable excuse”, to purchase, acquire, possess or use a Cat F2 or CAT F3 firework without having a fireworks licence. It would also be an offence to sell these types of firework to someone over 18 years old who didn't have a licence.

The maximum penalty for these offences, if convicted, is a fine of anywhere up to £5,000 and/or a sentence of up to 6 months in prison.

What are your views on these new criminal offences?

With regards to relevant offences under Section 7(4), it may be necessary to have a wider list of offences to include the likes of Wilful Fireraising or Culpable and Reckless Fireraising in order to promote a more positive impact on community safety and wellbeing. Clarification is requested the on process for ascertaining if an applicant has previous relevant offences as Police Scotland will not be a statutory consultee.

Schedule 1, Paragraphs 25 and 26 – This covers supply of fireworks from businesses within Scotland to addresses out with Scotland, however it is of concern that residents in Scotland may purchase fireworks from out with Scotland. It is appreciated that the Policy Memorandum explains existing enforcement is already in place for importation of goods but it is a point worthy of note.

2.6 *Compensation scheme for businesses*

The Scottish Government plans to set up a compensation scheme for those business owners whose income may be greatly impacted by the Bill because their main business is importing and/or selling fireworks. The Government estimates there may be about nine to ten such businesses in Scotland.

Do you have any views on a proposed compensation scheme?

Police Scotland would offer no comment on this aspect of the bill.

2.7 Firework Control Zones

The Government proposes to give local councils the power to establish local Firework Control Zones (FCZs) in their areas. The details of how this will work is to be set out by the Scottish Government in a national framework of regulations.

While a FCZ is in operation, it would be a criminal offence to use CAT F2 or CAT F3 fireworks in the zone. It would also be an offence to use CAT F4 fireworks in FCZ (which are professional fireworks used for public displays or events).

Do you have any views on the proposals for FCZs?

Police Scotland generally supports the introduction of Firework Control Zones (FCZs) in order to limit any adverse impact of fireworks in our communities provided the use of FCZs is proportionate in responding to community concerns. Police Scotland may have further comment on this once the national framework of regulations is published.

It is noted that Clause 27 of the Bill requires Local Authorities to consult ‘any other persons or bodies that the local authority considers to have a connection with, be interested in or affected by the proposal’ and although FCZs are a matter for Local Authorities, any further clarification on specific responsibilities expected of other agencies in the planning or application stage would be welcomed.

2.8 Restrictions at Certain Designated Places or Events

The Bill will give the Scottish Government new powers to make regulations to control the possession or use of any fireworks or distress and signal flares at certain locations (such as sports grounds) or at certain events (such as public music festivals, or public marches/processions).

Do you have any views on the restrictions of the use of fireworks and pyrotechnic articles at certain events, and the restricted use of pyrotechnic articles more generally?

Police Scotland has separately submitted a report to the Convener of the Scottish Parliament Criminal Justice Committee which details the impact of the illicit use of fireworks and other pyrotechnics at events.

It is our firm view that restrictions are required in order to bring about a change in behaviour and culture amongst those who put themselves and others at risk. Police Scotland recognises that proposals in the Bill seek to provide a proportionate response to the identified risks surrounding the illicit use of fireworks and pyrotechnics. Police Scotland recognises

that in the absence of evidence justifying wider offences or wider police powers at this time, the Bill has been drafted to address the current identified risks posed by the illicit use of fireworks and pyrotechnics. It is therefore crucial that the Bill and any subordinate Regulations or Orders are capable of being readily amended to address emerging issues or changes to behavioural patterns within a reasonable timescale.

There are, however, some practical concerns regarding how police officers will evidence the fact that a suspect was *‘travelling to, in the immediate vicinity of... a designated venue or event’* and the definition of possession of a pyrotechnic article at a ‘public assembly’ particularly where there are fewer than 20 persons already participating in an assembly when a suspect is detected, given the provisions within the Public Order Act 1986, Section 16. Similarly, the position in relation to fireworks and pyrotechnics at assemblies which do not meet the definition within the Public Order Act 1986, Section 16 (i.e. are not in a public place or are wholly or partly open to the air) is unclear.

The illicit use of pyrotechnics at events is recognised by Police Scotland as a risk to all those who attend events, police officers and staff included, and it is therefore crucial that the practical application of all terminology in the Bill is fully understood as the Bill scrutiny process continues.

Name of organisation: SOCIETY OF CHIEF OFFICERS OF TRADING STANDARDS IN SCOTLAND (SCOTSS)

Introduction

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) is a Scottish Charitable Incorporated Organisation (SC047951). Our members are professional trading standards managers representing every Scottish local authority trading standards service. The Society liaises with local council colleagues across the UK, and engages with government and others around the operation of the consumer protection landscape, providing leadership and consistency to Scotland's 31 trading standards teams. We aim to educate, coordinate, and support.

Overall views

What are your overall views on the Scottish Government's plans to restrict the sale and use of certain types of fireworks and pyrotechnic articles in Scotland, as set out in the Bill?

We think that the provisions in the Bill are reflective of the recommendations provided by the Fireworks Review Group. We have three main areas of interest:

- **That the provisions to be enforced by local authority Trading Standards services are feasible and can be implemented in practice. In principle, we are satisfied that they are likely to be practical and able to be implemented. We make no further comment on that.**
- **That powers given to local authority Trading Standards to enforce the relevant provisions are sufficient to enable effective enforcement. See below for details.**
- **That local authority Trading Standards services are sufficiently funded to enable effective enforcement. See our response to the question on "Other Issues" for details.**

As stated above, one key interest for us is over the enforcement of the obligations imposed on businesses with regard to the licensing system and the restrictions on dates of sale, which will be the responsibility of local authority Trading Standards services.

Officers cannot enforce effectively without sufficient powers to enable inspection and investigation.

We think that the powers given to Trading Standards officers in the Bill will enable good enforcement to be carried out. The powers are extensive, covering "routine" situations such as a standard inspection (eg entry to premises, requiring provision of relevant documents and reasonable assistance), and escalated circumstances where significant wrongdoing must

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be investigated (eg seizure of goods, entry under warrant). Long experience of enforcing a wide range of consumer protection laws has demonstrated the powers that are required by Trading Standards to be effective and the Bill recognises these. While extensive, the powers are not overly burdensome on businesses. Officers must use the powers in a reasonable and proportionate manner and the Bill's provisions protect businesses against inappropriate use of the powers.

Types of fireworks covered by licensing system

What are your views on this proposal?

We are pleased to see that a national licensing scheme has been proposed, as opposed to separate schemes for each local authority. This will reduce the potential complexity and potential for confusion of 32 separate local authority schemes and will simplify compliance activities for fireworks retailers.

We also agree with the exclusion of F1 fireworks (eg party poppers) from these provisions, as requiring a licence to purchase those items would be disproportionate.

Restrictions on supply of fireworks

What are your views on the proposed restricted periods on which CAT F2 and CAT F3 fireworks can be purchased by the public?

We limit any comment here to the practical impact on local authority Trading Standards services. We do not foresee any difficulties in relation to the dates in April and October/November, or generally in relation to the Chinese New Year or Diwali. However, some of the December dates coincide with local public holidays. Work that is required to be carried out on such days will require extra funding to cover overtime payments etc. This is a small but important part of the overall considerations on funding enforcement which we discuss under "Other issues" below.

Restrictions on the use of fireworks

What are your views on the proposed changes to the days on which fireworks can be used?

Trading Standards' role with fireworks concerns sale, supply and storage, with little input to tackling the community "nuisance" elements. Therefore, we make no further comment here.

Criminal offences

What are your views on these new criminal offences?

We understand that the Police will enforce these offences, not Trading Standards. However, Trading Standards has widespread experience of enforcing laws on "age restricted products" such as tobacco and vaping

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products, where a "proxy purchase" offence is an important part of the suite of measures aimed at protecting young people from potentially hazardous products. As such, we strongly support these new provisions for fireworks.

Compensation scheme for businesses

What are your views on a proposed compensation scheme?

We think this is an important consideration, as there are likely to be some businesses that will be significantly affected by the new provisions. Local authority Trading Standards services work closely with businesses and have an awareness of their needs. Trading Standards' role involves the protection of both consumers and reputable businesses.

Firework Control Zones

What are your views on the proposals for Firework Control Zones?

The Bill places the duty to consider applications for fireworks control zones onto the "local authority" rather than "the local weights & measures authority", who will enforce the restrictions upon supply in parts 2 & 3 above. It is to be hoped that the guidance that will be provided relating to fireworks control zones will provide detail as to which specific department of the local council has responsibility for his function. Our opinion is that this decision should be made by Elected Members, and should be administered by Licensing teams with little if any role for Trading Standards.

If no responsibility is allocated, there is scope for different local authorities to allocate this function to different parts of the authority. Different schemes across different authorities will cause confusion amongst groups that intend to campaign both for (or against) fireworks control zones across multiple local authorities (e.g. national animal welfare charities etc).

Restrictions at certain designated places or events

What are your views on the restrictions of the use of fireworks and pyrotechnic articles at certain events, and the restricted use of pyrotechnic articles more generally?

This seems like a sensible enabling provision that allows for possible extra restrictions after appropriate discussion, consultation etc. These matters are at most tangential to Trading Standards activities.

Other issues

Those issues which the Scottish Government proposes to deal with in regulations after the Bill has been passed into law? (Set out in the Delegated Powers Memorandum)

The following are our observations in relation to the financial memorandum. I hope this is an appropriate place to include these points.

We agree that some provisions of the Bill will lead to an increase in costs to the Scottish Administration and local government. Whilst the Scottish Government will receive a new income stream through the new licensing provisions, local weights & measures authorities will incur significant additional costs relating to inspections, trader advice & test purchasing. Local authorities will also incur costs dealing with applications for firework control zones.

We agree that costs will be highest in the first three years and that costs will reduce and flatten in subsequent years

We also anticipate that there will not be any significant savings or changes to revenue for local authorities.

Specific funding for the undertaking of this important work is welcome but note that the wider context is that Trading Standards services must exist in a viable and sustainable form to be able to deliver the enforcement, even with additional funding.

The main cost for these provisions is Trading Standards officer time to carry out these activities and the associated preparation and support tasks. The estimated cost used for the purposes of this Financial Memorandum is £400 per officer day.

We would suggest that the funding model used for the 2021 Fireworks Enforcement Programme (as agreed between Scottish Government and SCOTSS) should be used as the basis for the funding model to fund local authority trading standards services to carry out trader advice & enforcement work relating to sections 5 & 22. This model worked well in 2021 and ensured that the funding went directly to the relevant trading standards services.

Any alternative funding mechanism risks resources not reaching Trading Standards teams, undermining the likely effectiveness of enforcement. Successful implementation of these policies is very dependent on effective enforcement which will only be achieved if the funding goes to Trading Standards as intended.

As suggested in paragraph 67 of the financial memorandum, the funding should cover:

- Test purchasing (price of items purchased).**
- Storage and disposal (fireworks are explosives and require specialist handling)**
- Officer training on the new provisions and procedures.**
- National coordination by SCOTSS, including collation of results, liaison with other agencies, financial management and full reporting on activities and outcomes.**
- A programme of advice and enforcement in relation to online sales**

Costings are provided for Basic, Enhanced & Comprehensive enforcement activities (plus a separate funding pot for online activity).

As stated above, the wider context is important: local Trading Standards services need a sustainable structure and workforce in order to have the expertise to use the extra funding to deliver the desired outcomes. With obligations and duties increasing at the same time as resources and expertise dwindle, there is a real danger of local services not being sustainable.

We would recommend that funding is made available to allow Trading Standards to carry out Comprehensive enforcement activities. This would ensure that there would be a programme of direct engagement with practically all firework licensed premises to advise on and check compliance, followed up with written guidance for businesses plus an extensive covert test purchase programme to check compliance. This would be combined with local publicity and a media campaign to inform businesses, consumers and others.

Finally, while we agree that the work done in 2021-22 gives some indication of demand, there is unpredictability around how much extra “reactive” work will result from the new provisions, e.g. numbers of complaints received regarding the licensing scheme and resulting investigations. Therefore, it is possible that the figures being discussed are underestimate of needs.

Name of organisation: COSLA

Introduction

We welcome the opportunity to respond to the call for evidence on the Fireworks and Pyrotechnic Articles (Scotland) Bill.

COSLA largely endorses the evidence provided by the Society of Chief Officers of Trading Standards in Scotland (SCOTSS) about the Bill and its practical and financial implications for Local Government. This submission also draws upon COSLA's response to the Scottish Government's national consultation on fireworks carried out in 2019 and largely aims to draw the Committee's attention to the resource implications for Local Government of some of the Bill's proposals.

Fireworks form an important part of the celebration of community and sporting events across Scotland. That said, COSLA is aware that in some local communities the use of fireworks has resulted in related noise, animal welfare and antisocial behaviour complaints.

Licensing system

COSLA recognises that a complete ban on all fireworks could lead to a rise in the availability of black-market fireworks with a loss of control over sales and the potential for less safe products. We have previously called for giving consideration to higher category fireworks i.e. CAT3 fireworks not being sold to the public, given they have exclusion/separation distances of 25m, making them unsafe for use in the great majority of domestic gardens.

The Bill's proposals to establish a new licensing system for members of the public acknowledge the risks linked to using HT2 and HT3 fireworks and also align with the recommendation made by the Fireworks Review Group, which COSLA sat on.

It is critical that adequate awareness raising and messaging is developed to make the public aware of the new licensing system as well as the new restrictions resulting from the Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 coming into effect last June.

The system will have resource implications for Local Authorities linked to local enforcement, which are discussed at the end of this submission.

Restrictions on supply and use of fireworks

Reducing the period in the build-up to 5 November (Bonfire Night) as well as the other days proposed in the Bill in which fireworks can be sold should reduce the number of incidences regarding fireworks being let off inappropriately.

Criminal offences

The Bill would make it a criminal offence for a person, “without reasonable excuse”, to purchase, acquire, possess or use a CAT F2 or CAT F3 firework without having a fireworks licence. It would also be an offence to sell these types of fireworks to someone over 18 years old who didn’t have a licence. The maximum penalty for these offences, if convicted, would be a fine of anywhere up to £5,000 and/or a sentence of up to 6 months in prison.

We feel that enforcement will play a role. However, penalties should be proportionate. COSLA is acutely aware of the damage that a short-term prison sentence can cause for an individual and its impact on those close to them, as well as housing and employment. We would therefore feel that the possibility of time in prison for someone convicted should only be considered as a last resort. This would align with our position around reducing the use of our expensive prisons unless absolutely necessary.

A range of methods should be used to raise awareness of the risks and dangers of the misuse of fireworks such as early intervention activities in schools through informing young people of the dangers of fireworks. Media campaigns should highlight the consequences of the misuse of fireworks through the use of statistics and examples of injuries caused by fireworks, as well as ensuring that those who intend to purchase CAT 2 or CAT3 fireworks are aware of new regulations.

Firework Control Zones

The creation of “no firework” areas or zones where it is not permitted for fireworks to be set off was another of the recommendations of the Fireworks Review Group. We feel that it will be critical for local communities to be involved in influencing local decisions on the safe and acceptable use of fireworks. It will be critical for Local Government to inform the development of guidance for creating zones locally.

Resource Implications for Local Authorities

COSLA was represented on the Local Authority Short Life Working Group convened by the Scottish Government which helped inform the estimated costs for local authorities. While we do not wish to criticise the work of Scottish Government and the Group, we do feel it is important to highlight that the practical and financial implications for Local Government as a result of the Bill need careful consideration. We support the comments made by SCOTSS on this part of the Bill. It is critical that Local Authorities are *fully funded* for the total cost of implementation and ongoing enforcement.

As recognised in the financial memorandum, some provisions of the Bill will lead to an increase in costs to the Local Government, particularly around trader advice, test purchasing and setting up of firework control zones. This will especially be the case in the first three years, with costs expected to reduce and flatten thereafter. The memorandum acknowledges that there will

be no significant savings or changes to revenue for local authorities and we agree with this assessment.

Enforcement responsibility will be undertaken by Trading Standards in respect of the commercial supply of fireworks to persons without a licence (Part 2) and the restricted days of sale of fireworks (Part 3). Local Authorities will also have to bear the costs of setting up firework control zones and reviewing their operation and effectiveness. The majority of the costs, as highlighted in the memorandum, will be around scoping and setting up a firework control zone. There will also be some general administrative costs to LAs generated by the Bill.

In its report to the Scottish Government, the Fireworks Review Group noted the resource constraints on Trading Standards, who – among other things – play a key role in ensuring fireworks are stored safely and that fireworks are not sold to those under the age of 18. It is key that Trading Standards services are viable and sustainable, especially in terms of workforce capacity, to deliver the relevant provisions in the Bill, even with additional ad-hoc funding. Additionally, SCOTSS recommend that we should budget for the maximum enforcement activity in years 1 & 2. This would equate to £132,200 in year 1 and £193,200 in year 2 & 41,000 thereafter.

We accept that the financial implications of provisions are not easily estimated, and we did welcome the collaborative approach taken by Scottish Government on the development of the Financial Memorandum. While the Memorandum provides estimated costings for Local Authorities, the actual total costs may not be fully known until after implementation of the Bill given potential uncertainties, for example around the actual number of applications to establish firework control zones that LAs will receive. For this reason, some type of post-implementation financial assessment of the Bill's impact on Local Government may be required, if we are to ensure that Local Authorities are fully resourced to deliver the Bill's provisions.
