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The Fireworks Bill

Bill 17 of 2002-03

The *Fireworks Bill* was introduced in the House of Commons on 11 December 2002, by Bill Tynan MP. This Private Member's Bill enables the Secretary of State to make "fireworks regulations" to regulate the supply and use of fireworks; its aim is to reduce noise, nuisance and injuries. Fireworks regulations may include provisions to prohibit the use of fireworks during anti-social hours; make certain specified types of fireworks illegal; introduce a licensing system for retailers; restrict the year-round sale of fireworks; and impose stricter rules on the training of those who give professional displays.

The Bill has received broad support from a number of charities, industries and local authorities. On 13 February 2003, the Government stated its support for the Bill. The Bill is expected to have its Second Reading on 28 February 2003.

This Paper discusses the Bill and provides a detailed explanation of the current legislative and voluntary provisions regulating the importation, sale and use of fireworks in Great Britain. Department of Trade and Industry statistics on the number of fireworks injuries in Great Britain in recent years are reproduced.

Lorraine Conway

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Summary of main points

The aim of the *Fireworks Bill* (Bill 17) is to reduce noise, nuisance and injuries caused by fireworks. This Private Member's Bill would enable the Secretary of State to make regulations (“fireworks regulations”) to secure that there is no risk (or only very minimal risk) that the use of fireworks will cause death, injury or distress to persons or animals (and also alarm or anxiety to persons) or cause destruction of, or damage to, property.

Fireworks regulations can only be made by the Secretary of State after consulting with the Health and Safety Commission, organisations representing the interests of those who will be substantially affected by the proposed regulations, and any other persons he thinks appropriate. In exceptional circumstances, regulations could be made without consultation provided the regulations cease to have effect at the end of a period of not more than 12 months beginning with the day on which the regulations came into force and contain a statement that it appears to the Secretary of State that regulations should be made without delay in order to protect the public.

In addition, fireworks regulations made under the Bill may prohibit the supply of fireworks to, or use by, young persons. Provision may also be included to prohibit the supply, purchase or use of fireworks (or fireworks of a certain description) during specified hours of the day or in specified places or in other specified circumstances. Under the Bill, fireworks regulations may also require that suppliers of fireworks and the premises where the fireworks are to be kept are both licensed and that appropriate information is given in relation to fireworks. Significantly, the licence could restrict the time of the year fireworks could be sold and local or other authorities could refuse or revoke licences. The Bill also provides that fireworks regulations may specify conditions relating to the operation of public fireworks displays and to training courses about fireworks.

This Bill provides powers that are not available under existing consumer safety legislation to provide a new framework for fireworks regulation.¹

On 13 February 2003, the Government gave its support to the *Fireworks Bill*. If the Bill successfully completes its passage through Parliament, it will be brought into force on the appointed day and it will extend to England, Wales and Scotland but not to Northern Ireland.

¹ Section 11 of the *Consumer Protection Act 1987*

CONTENTS

I	Introduction	7
II	Current regulation of fireworks	8
	A. Supply of Fireworks	8
	1. British Standard 7114	8
	2. The Fireworks (Safety) Regulations 1997	9
	3. General Product Safety Regulations 1994	13
	4. The Placing on the Market and Supervision of Transfers of Explosives Regulations 1993	13
	5. Explosives Act 1875	14
	B. Purchase and use of Fireworks	14
	1. <i>Explosives Act 1875 (as amended) and the Fireworks (Safety) Regulations 1997</i>	14
	2. The Firework Industry's Voluntary Code	15
	3. Other 'voluntary' new measures and a fixed penalty notices – pilot scheme	15
	4. Government safety campaigns	16
III	Past initiatives to tighten the control of fireworks	17
	1. <i>The Control of Fireworks Bill 2001-02</i>	17
	2. <i>The Fireworks Bill 2001-02</i>	18
	3. Recent Early Day Motions	19
IV	The <i>Fireworks Bill 2002-03</i>	22
	A. Introduction	22
	B. Power to make regulations about fireworks	22
	C. Prohibition of supply or purchase of fireworks to young persons	24
	D. Prohibition of supply or purchase in certain circumstances	24
	E. Prohibition of supply or purchase of certain fireworks	25

F.	Public fireworks displays	26
G.	Licensing of suppliers	27
H.	Information about fireworks	29
I.	Prohibition of importation of fireworks	29
J.	Training courses	30
K.	Offences	30
L.	Enforcement	31
M.	Repeals and revocation	31
N.	Commencement	31
V	Responses to the <i>Fireworks Bill</i>	32
A.	The Government's position	32
	1. Background - against a complete ban	32
	2. Government Support of the <i>Fireworks Bill</i>	34
B.	Views of charities and other organisations	35
VI	Statistics	40
A.	Firework Injuries in England, Wales and Scotland	40
B.	Firework Offences Committed in England and Wales	41
	Appendix 1	42

I Introduction

A range of measures covering authorisation, manufacture, transport, storage and supply regulates the fireworks industry. Statutory and voluntary regulations now dictate when fireworks can be bought, by whom and the types of fireworks that can be offered for sale.

In recent years, however, there has been increased concern from members of the public and various organisations (including many animal charities) about the increased number of fireworks injuries, particularly among young teenagers, and the public nuisance that the illegal use of fireworks can cause.² Many complaints have concentrated on the noise caused by fireworks being let-off at any time of the day and night. It is against this background that Bill Tynan MP has introduced his Private Members' *Fireworks Bill*. This Bill provides powers that are not available under existing consumer safety legislation to provide a new framework for fireworks regulation.³

Mr Tynan has explained the aims of his Bill as follows:

The misery caused to the general public, and domestic and wild animals by the misuses of fireworks is a growing problem all over the UK. Lack of licensing of retail outlets, periods of sale and noise levels, together with problems with importation, distribution and storage, all contribute to the nuisance caused by fireworks.

This [Bill] will promote the responsible use of fireworks by limiting the hours of the day, confining general sale to the public to a relatively short period before 5th November whilst the introduction of a two tier licensing system would recognise the need for fireworks to be available under strict conditions throughout the year to accommodate the range of cultural festivities in this country from Diwali and Chinese New Year to birthdays and weddings.⁴

A range of organisations (including Blue Cross, the RSPCA and the Scottish Society for the Prevention of Cruelty to Animals) have expressed their support for the principles of the *Fireworks Bill*. Mr Tynan's office has advised that the two organisations most closely involved with the preparation of the Bill were The Guide Dogs for the Blind Association and the Convention of Scottish Local Authorities (COSLA) Task Group.

Commenting on the prospects of success for the Bill, Mr Tynan said:

The *Fireworks Bill* will come before Parliament for debate on Friday 28th February. I know that many charities, local authorities and large numbers of ordinary people have been contacting their MPs to encourage them to reflect their

² Department of Trade and Industry, *Counting the costs: firework accident statistics* (2001)

³ Section 11 of the *Consumer Protection Act 1987*

⁴ Bill Tynan's office press notice, *Bill's Firework Tamer*, 13 February 2003

views and attend on that day. I know that many of my colleagues in Westminster, despite the new sitting hours, are making special arrangements to be there, to ensure these important changes come into the law.⁵

On 13 February 2003, the Government announced its support for the Bill.⁶

In addition to summarising the main provisions of the *Fireworks Bill*, this Paper provides a detailed explanation (with relevant statistics) of the current legislative and voluntary provisions regulating the importation, sale and use of fireworks in Great Britain.

II Current regulation of fireworks

A number of pieces of legislation are involved in the regulation of the supply, sale and use of fireworks specifically and of explosives in general.

A. Supply of Fireworks

1. British Standard 7114

All fireworks sold in this country, irrespective of their place of manufacture, must meet the same safety standards, established by the British Standard on fireworks (**BS 7114**). Regulation 3(1) of the *Fireworks (Safety) Regulations 1997* states:

3.–(1) Subject to paragraphs (3) and (4) and without prejudice to regulation 7 below, no person shall supply a category 1 firework, a category 2 firework or a category 3 firework which does not comply with the relevant requirements of Part 2 of BS 7114 when tested in accordance with the appropriate test method (if any) in Part 3 of BS 7114.

Standard 7114 classifies fireworks into three specific categories considered suitable for use by the general public and a fourth category of fireworks suitable for use only by professional users, as follows:

Category 1 – fireworks suitable for use inside domestic buildings.

Category 2 – fireworks for outdoor use in relatively confined areas.

Category 3 – fireworks for use in large outdoor spaces.

Category 4 – fireworks not intended for sale to the general public.

⁵ Bill Tynan's office press notice, *Bill's Firework Tamer*, 13 February 2003

⁶ Department of Trade & Industry press notice P/2003/94, *Government to support new Bill to crack down on the menace of fireworks misuse*, 13 February 2003

Fireworks and assemblies classified as category 1, category 2 or category 3 must comply with the requirements of BS 7114.⁷ This is in addition to the legal duty placed on suppliers of all consumer goods – under the *Consumer Protection Act 1987* – to supply only those goods that meet an acceptable standard of safety.

Under *Part II* of the *CPA 1987*, it is an offence for the supplier of any consumer good (unless specifically exempted) to supply goods that are not "reasonably safe" with regard to all the circumstances, including "any standards of safety published by any person either for goods of a description which applies to the goods in question or for matters relating to goods of that description" (Section 10 (2) (b)). "Standards", in this context, "are expected to be British Standards although those from Europe or elsewhere may be taken into account but only if the level of safety provided by them is sufficiently high".⁸ Part II of the Act empowers trading standards officers to prevent suppliers selling unsafe goods by means of a suspension notice, to prosecute suppliers who do this, and to seize the goods in question. Those found guilty of this offence are liable on summary conviction to imprisonment of up to six months and/or a maximum fine set at level 5 on the standard scale (i.e., currently £5,000).

In the case of fireworks, trading standards officers will use BS 7114 as their definition of a safe firework.⁹

2. The Fireworks (Safety) Regulations 1997

The *Fireworks (Safety) Regulations 1997* (the 1997 Regulations) make provision relating to the safety of fireworks and assemblies which include fireworks.¹⁰

Regulation 3(1) provides that fireworks and assemblies classified as category 1, category 2 or category 3 under British Standard 7114 must comply with that Standard.

The 1997 Regulations are careful to define each type of firework in turn. For example, an "aerial shell" is defined as a firework:

- (a) which is designed to be projected from a mortar tube;
- (b) which contains a propellant charge, a bursting charge and either pyrotechnic units and/or loose pyrotechnic composition; and
- (c) whose functioning involves ascent and subsequent bursting of the firework case and ejection of any pyrotechnic units;

⁷ Regulation 3(1) of the *Fireworks Safety Regulations 1997*, SI 1997 No 2294

⁸ 'Encyclopaedia of Consumer Law', Sweet & Maxwell 1994; commentary on Section 10(2)(b) of the *Consumer Protection Act 1987*, paragraph 1432

⁹ HC Deb 9 December 1993 c343w

¹⁰ SI 1997 No 2294

but, for the avoidance of doubt, shall not include a rocket.

An "aerial maroon" is defined in the Regulations as a firework:

- (a) which is designed to be projected from a mortar tube;
- (b) which contains a propellant charge and a bursting charge; and
- (c) whose functioning involves ascent and report;

but, for the avoidance of doubt, shall not include a rocket.

A "maroon- in-mortar" is defined in the Regulations as:

- (a) an assembly comprising an aerial maroon inside a mortar tube, from which the aerial maroon is designed to be projected; or
- (b) an assembly comprising two or more mortar tubes one of which contains an aerial maroon, where the maroons are designed to be projected from the tubes.

A 'shell in mortar' is defined as:

- an assembly comprising an aerial shell inside a tube, from which the aerial shell is designed to be projected; or
- (b) an assembly comprising two or more tubes at least one of which contains an aerial shell, where the shells are designed to be projected from the tubes.

It is clear that aerial shells and aerial maroons are similar in design. Both devices are projected from the mortar tube at a very high speed and pose the same risk to users.

The 1997 Regulations prohibit the supply of all sizes of aerial shells, aerial maroons, shells in mortar, maroons in mortar and any firework combinations which include any of these devices but with exceptions for certain persons who may still be supplied with these devices. A 'combination' means an assembly that includes two or more fireworks, at least one of which is an aerial shell or an aerial maroon, and which has one or more points of ignition. The aim of the Regulations is to prevent the injury or death of inexperienced users of these fireworks.

Importantly, the Regulations do not ban aerial shells and similar devices from properly organised professional displays. They only ban their use by members of the general public. However, rockets are specifically excluded from the Regulations.

In addition to banning aerial shells and maroons, the *Fireworks (Safety) Regulations 1997* made further provisions including the following measures:

- A requirement that all fireworks intended for use by the public must comply with BS 7114.
- A permanent ban on the supply to the public of category 3 bangers (including flash bangers, jumping crackers and Chinese crackers) and fireworks with erratic flight.
- An increase in the minimum age of persons who can be supplied with fireworks from 16 to 18. (Supply of caps, cracker snaps, novelty matches, party-poppers, serpents and throwdowns are exempted from this prohibition, but remain subject to the prohibition on sale to persons apparently under the age of 16 in the *Explosives Act 1875* (as amended)).
- A prohibition on retailers splitting large boxes of fireworks and selling them individually (previously part of the voluntary agreement).
- An increase in the permitted length of hand-held sparklers from 450mm to 470mm.
- A prohibition on the supply to the public of category 2 bangers (all bangers are now banned).
- A prohibition on the supply of mini-rockets except for the purpose of special effects in the theatre, film and television.
- A requirement for sparklers to carry an additional warning “not suitable for children under five years of age”.
- A requirement that all fireworks not suitable for use by the general public (as defined in the 1997 Regulations) have clear warning labels to that effect.
- Imposition of size limits for supply to the public of certain fireworks such as Roman Candles, mines, batteries (e.g. a cake of Roman Candles), wheels and combinations.

Under Regulation 5 of the 1997 Regulations, the following exemptions apply to the prohibitions on supply:

- (a) any person whose trade or business is the professional organisation or professional operation of firework displays;
- (b) any person whose trade or business, or part of whose trade or business, is the supply of fireworks or assemblies, for the purpose of supplying them in accordance with the provisions of these Regulations;
- (c) any local authority for the purposes of a firework display;

(d) any person for use, in the course of a trade or business of his, for special effects purposes in the theatre, on film or on television;

(e) any local authority, enforcement officer or other body, where that authority or body:

(i) has enforcement powers, conferred by or under enactment, applying to the firework or assembly in question; and

(ii) before it purchases the goods, informs the supplier that the purchase is to be made for the purposes of ascertaining whether any provision made by or under any enactment and relating to the safety of the goods has been contravened in relation to those goods;

(f) any department of the Government of the United Kingdom for the purposes of a firework display put on by that department. For use by that department at a national public celebration or a national commemorative event or for use by that department for research or investigations purposes;

(g) any person who:

(i) is in business as a supplier of goods designed and intended for use in conjunction with fireworks or assemblies; and

(ii) intends to use the firework or assembly in question solely for the purposes of testing those goods to ensure that, when used in conjunction with fireworks or assemblies of the same type, they will perform their intended function or comply with any provision made by or under any enactment and relating to the safety of those goods; or

(h) any establishment of the naval, military or air forces of the Crown for the purposes of a firework display or for use at a national public celebration or a national commemorative event.

Local authorities trading standards officers are responsible for the day to day enforcement of the *Fireworks (Safety) Regulations 1997*. In addition to suspending the supply of fireworks that contravene the 1997 Regulations, trading standards officers may seek orders for forfeiture of stocks and prosecute suppliers (this applies to anyone in the distribution chain, including retailers). Penalties for infringement of the Regulations are, on conviction in a Magistrates' Court, a fine of up to £5,000 and/or a prison sentence of up to six months.

The Regulations do not, however, apply to Northern Ireland where fireworks are subject to separate legislation. In Northern Ireland new regulations came into effect on 6 May 2002, which require a licence for the possession, sale, acquisition, handling or use of all fireworks except those suitable for indoor use. The introduction of these regulations was

felt to be necessary because of the widespread misuse of fireworks generally throughout the community of Northern Ireland and, particularly, against the security forces in public order situations.¹¹

3. General Product Safety Regulations 1994

The *General Product Safety Regulations 1994* (the 1994 Regulations) impose a general prohibition on supplying unsafe goods, including fireworks.

It is an offence under the 1994 Regulations for a retailer to supply to any person a product which he knows, or should have presumed on the basis of the information in his possession, to be a dangerous product. In assessing whether a particular type of firework is safe, BS 7114 would be taken into account.

However, because the *Fireworks (Safety) Regulations 1997* provide their own safety requirements for fireworks,¹² the 1994 Regulations will only apply to fireworks if some remote aspect of safety is not covered by the 1997 Regulations.

4. The Placing on the Market and Supervision of Transfers of Explosives Regulations 1993

There exists in Great Britain a market in imported fireworks and suppliers are under exactly the same obligations, established by the *Consumer Protection Act 1987* and the *Fireworks (Safety) Regulations 1997*, in terms of these fireworks. In addition, the importation of any fireworks can only be authorised by the Health and Safety Executive (HSE), which uses BS 7114 as the standard by which to allow any imports. The *Placing on the Market and Supervision of Transfers of Explosives Regulations 1993* (POMSTER), which came into effect on 1 December 1993, replaced the old licensing system with a legal requirement that the supply of all explosives, including fireworks, must be authorised by the HSE. The HSE will not grant authorisation unless the fireworks fully meet existing standards.

Following the introduction of POMSTER, the Government has been concerned to reassure consumers that imported fireworks are not subject to any different safety criteria from those covering British fireworks.

On 2 June 1998, in a written answer to a PQ asked by Mrs Ewing, Mr Nigel Griffiths said:

There have been no changes to import controls on fireworks since November 1996.

The *Fireworks (Safety) Regulations 1997*, which I made in September 1997, introduced a number of firework safety measures including banning bangers,

¹¹ HC Deb 23 October 2002 c262

¹² Regulation 3(1)

flash bangers, fireworks with erratic flight, aerial shells, maroons and other large fireworks from sale to the public. The Regulations also place limits on the size of certain fireworks – such as Roman Candles – that can be sold to the public. These restrictions apply both to imported fireworks and to those manufactured in the United Kingdom.

I am currently discussing with the firework industry the ‘traceability’ of imported fireworks to improve the interception of dangerous ones.¹³

On 14 October 2002 the Government announced that it would be imposing a crackdown on illegal markets in fireworks with improved co-ordination of intelligence between Customs and Excise, Health and Safety Executive and Trading Standards Departments.¹⁴

5. Explosives Act 1875

Under the *Explosives Act 1875*¹⁵ it is an offence to keep fireworks (except for private use) on premises which have not been registered or licensed by the local authority for that purpose. The offence is punishable by a maximum fine of £5,000.

B. Purchase and use of Fireworks

1. Explosives Act 1875 (as amended) and the Fireworks (Safety) Regulations 1997

The legislative provisions regulating the use of fireworks are contained in the *Fireworks (Safety) Regulations 1997* and the *Explosives Act 1875* (as modified by the *Control of Explosives Regulations 1991* and as amended by the *Explosives (Age of Purchase) Act 1976* and the *Consumer Protection Act 1987*).

Under the terms of the Acts and Regulations it is an offence:

- (i) to sell fireworks to persons apparently under 18 years old (the maximum statutory penalty for this offence is £5,000);
- (iii) to throw or discharge a firework in a street or a public place (the maximum statutory penalty for this offence is £5,000);
- (iv) to sell or expose fireworks for sale in a street or public place; or
- (v) to tamper with or alter fireworks (tampering with fireworks without a licence can result in a fine, imprisonment, or both).

¹³ HC Deb 2 June 1998 c162w

¹⁴ Department of Trade and Industry press notice P/2002/627, *Johnson unveils new package of measures to tackle fireworks misuse*, 14 October 2002

¹⁵ As modified by the *Control of Explosives Regulations 1991*

2. The Firework Industry's Voluntary Code

In addition to the legislative provisions regulating the industry, the firework industry itself has undertaken various voluntary initiatives to promote the safer use of fireworks. It introduced a number of voluntary measures between 1969 and 1974 and these were brought together in the 1976 Firework Package Deal which was endorsed by the Government.¹⁶

All of the provisions of the original voluntary agreement have been enforced subsequently by legislation. The only exception is the requirement that the period during which fireworks are generally available for sale in the shops should be limited to three weeks before November 5th and a few days thereafter. This provision remains a voluntary undertaking by the fireworks industry. It is not legally binding. There are currently no provisions in the *Consumer Protection Act 1987* that allow the Government to regulate the selling period.

3. Other 'voluntary' new measures and a fixed penalty notices – pilot scheme

On 15 October 2002, Melanie Johnson, Consumer Minister, announced a package of measures designed to reduce noise, nuisance and injuries from fireworks. The new measures, imposed by the voluntary restraint of the fireworks industry, came into effect on 1 January 2003. They:

- stop the supply of air bombs¹⁷;
- ensure that no firework exceeds 120 Decibels noise level – which is comparable to the level of noise acceptable in the work place (before using protection) under the health and safety at work legislation;
- limit supply of noisy fireworks (113-120 Decibels) to larger higher cost products/packs;
- limit supply of smaller rockets (beyond the requirements of the *Fireworks (Safety) Regulations 1997*).

The Government confirmed that subject to consultation, it will enshrine the voluntary ban on air bombs in legislation (through an order under section 11 of the *Consumer Protection Act 1987*).¹⁸

¹⁶ HC Deb 25 November 1975 c85W

¹⁷ Air bombs are described as a cheap kind of noisy Roman candle costing between twenty pence and one pound.

¹⁸ Department of Trade and Industry press notice P/2002/627, *Johnson unveils new package of measures to tackle fireworks misuse*, 14 October 2002

The Home Office are piloting fixed penalty notices of £40 in four areas for persons aged over 18 caught throwing fireworks in the street. The four police forces involved in piloting the scheme are: West Midlands (including British Transport Police operating within the West Midlands area); Essex Police; Metropolitan Police (Croydon division only); and the North Wales Police (central division only).

Fixed penalty notices came into force in three pilot areas on 12 August 2002 (with North Wales Police starting the pilot on 2 September 2002) under the seventh commencement order for the *Criminal Justice and Police Act 2001*. The power is discretionary and will be used by officers where appropriate. Officers will also have at their disposal the usual powers to arrest and charge an offender with the case being dealt with in the courts if necessary.

Payment of a fixed penalty involves no admission of guilt or record of criminal conviction, though the alleged offender has the right to opt for trial by court and risk conviction. Failure to pay the penalty or opt for trial by court may lead to a fine equivalent to one and a half times the amount of penalty being imposed on the defaulter. Persons under 18 years of age will not be eligible to receive penalty notices for disorder offences.

The Health and Safety Executive (HSE) has also set up a fireworks enforcement liaison working group with local authorities, DTI and Customs and Excise. The aim of the working group is to improve the sharing of information and intelligence. HSE has also developed, with Customs and Excise and local authorities, ways to obtain and disseminate information on importers of fireworks.

4. Government safety campaigns

The DTI promotes firework safety through the Home Safety Network Campaigns. The campaign is re-launched before 5th November each year.

In the autumn of 2002, the DTI launched a new national safety campaign. The campaign's slogan "fool with fireworks and bang goes your image", sought to highlight the injuries teenagers have suffered from fireworks misuse. The poster and TV campaign was targeted at 12 areas of the country where the problem of firework misuse and injury is most acute.¹⁹

¹⁹ The 12 areas were: Liverpool, Bradford, Manchester/Salford/Oldham, Birmingham, Leeds, Wolverhampton, Nottingham, Portsmouth, Sheffield, Newcastle/Gateshead, Greater Strathclyde and Newport

III Past initiatives to tighten the control of fireworks

In recent years, the question of greater regulation of the sale and use of fireworks has been discussed on several occasions in Parliament.²⁰

The Government has given some figures of the number of representations received on a wide range of issues relating to fireworks in reply to PQs and on the DTI website²¹:

<u>Period</u>	<u>MPs</u>	<u>Public</u>
1 October to 31 December 1999	119	260
1 January to 30 September 2000	65	109
1 October to 31 December 2000	111	129
1 January to 30 September 2001	125	501
1 October to 19 December 2001	348	653
5 September to 5 December 2002	359	1,225

During January 2002, two separate Bills proposing greater regulation of the sale and use of fireworks were introduced to the Commons under the Ten Minute Rule: Barry Gardiner's *Control of Fireworks Bill* and Joan Ryan's *Fireworks Bill*.²² In addition, several Early Day Motions have been tabled, calling for greater restriction on the sale and use of fireworks.

1. The *Control of Fireworks Bill* 2001-02

On 8 January 2002, Barry Gardiner presented the *Control of Fireworks Bill* under the Ten Minute Rule.²³ The Bill sought to introduce additional regulations to the existing scheme. It provided for the mandatory training of those who operate public firework displays. It also proposed the introduction of a system of licensing for traders which would enable the licence to be revoked if the trader flouted the law. Furthermore, it sought to regulate the time of the year when fireworks are on sale and provide powers to limit firework use to specific times.

During the Bill's first reading debate, Mr Gardiner criticised the voluntary code of the firework industry as ineffective. He also questioned the deterrent effect of the prohibition on sales to those under eighteen because neither the maximum penalty nor a custodial sentence had ever been imposed. He argued that a system of licensing of vendors would enable suitable sanctions to be applied to those traders who flouted the regulations:

²⁰ See for example HC Deb 30 October 2001 c228WH *et seq*; HC Deb 19 December 2001 c350-2 *et seq*

²¹ HC Deb 19 December 2001 c459W; HC Deb 22 January 2002 c738W and Department of Trade and Industry website: <http://www.dti.gov.uk/ccp/topics!/facts/fireworks.htm>

²² Bills 78 and 101 of 2001-2002 respectively

²³ Bill 78 2001-02

The point is that there is no power under current legislation to revoke a vendor's registration. What is required, and what trading standards has repeatedly asked for, is a proper system of licensing that would enable it to enforce the laws and ensure that such a sanction applied to those traders who flout the regulations. My Bill will provide that.²⁴

Robert Key opposed the Bill on the basis that it would fail to tackle what he said was the main problem caused by fireworks – noise nuisance. He argued that all the other issues which Mr Gardiner raised in his speech, particularly safety concerns, could be dealt with through amendments to existing legislation. He also objected to the use of fireworks being restricted to a certain period of the year:

The hon. Gentleman wants the Government to restrict the times of year at which fireworks can be bought. Great! On 4 November people will stock up with fireworks for the year. Nor do I wish to be a spoilsport. I love seeing fireworks all the year round - at birthday parties and celebrations for all sorts of very good reasons. It is only the British that celebrate 5 November; the rest of the world has fireworks all the year round. People just have a different approach.

Can hon. Members imagine statutory instruments deciding the times of year when people can set off fireworks, as the hon. Gentleman proposes? They would have to vary from summer to winter and between Land's End and John O'Groats according to the daylight hours.²⁵

The Bill made no further progress.

Cheryl Gillan presented an almost identical Bill, the *Control of Fireworks (No 2) Bill* 2001-02, under Standing Order No 57 later in the session, but it made no progress.

2. The *Fireworks Bill* 2001-02

On 27 February 2002, Joan Ryan introduced another *Fireworks Bill* also under the Ten Minute Rule. This Bill sought "to make provision with respect to the retail sale of fireworks and the use of fireworks by the general public."²⁶ The Bill sought to ban the sale of fireworks to the general public and permit only trained professionals to use fireworks at organised licensed displays.

Introducing the Bill, Ms Ryan criticised the inadequacy of the voluntary code and raised the problem of noise nuisance and its impact not only on people but also on domestic animals, livestock and wildlife. She criticised current legislation as inadequate, before

²⁴ HC Deb 8 January 2002 c418

²⁵ HC Deb 8 January 2002 c420

²⁶ Bill 101 2001-02

arguing that the retail sale of fireworks to the general public should be prohibited, as provided for by her Bill:

Only those who are trained and licensed should be able to access and use fireworks, because even when they are used within the law and with the best of intentions, they are still proving hazardous. Addressing the many problems caused by fireworks requires far more than the further enforcement of current statutes or the entrenching of the voluntary code into law. A statutory code that emulates the current voluntary code would not prevent the problems that I have identified from manifesting themselves around 5 November.²⁷

She concluded:

A ban on the retail sale of fireworks to the general public is the only way satisfactorily to address the many problems created by fireworks and to restore them to their role as a celebratory and pleasurable phenomenon. There is tremendous need - and equally tremendous public support - for this Bill, and it is with both of these things in mind that I urge Members to support it.

Mr Robert Key, who spoke in opposition to Barry Gardiner's Bill, also opposed Joan Ryan's Bill. Again, he stated that the Bill would not address the main concern of most people – that of noise nuisance. He argued that the Bill would not prevent cruelty to animals nor prevent antisocial use by “bad neighbours or yobs.” Instead, Mr Key urged the Government to strengthen the role of port trading standards officers in the interception of imported illegal fireworks, before concluding as follows:

I invite the House to consider that it would be a much better proposition to work with the industry and the Government to achieve the objective that we all want—far less noise from fireworks. People do not object to the visual display; in almost every case it is the noise. That point has been made in letter after letter. The fireworks industry action plan should be supported by the House ...

The Bill is not only restrictive but will not work...²⁸

3. Recent Early Day Motions

There have been many Early Day Motions (EDMs) tabled, calling for greater restriction on the sale and use of fireworks in order to reduce accidents, noise and nuisance. For example:

a. EDM 346 2001-02 Sale and Misuse of Fireworks

Kevin Brennan

²⁷ HC Deb 27 February 2002 c711

²⁸ HC Deb 27 February 2002 c714

That this House notes the increasing nuisance caused by reckless and dangerous misuse of fireworks, and that the sale of fireworks is taking place for many weeks before 5th November; further notes that the 400th anniversary of the Gunpowder Plot will occur in 2005; and believes that before that date the Government should bring forward legislation to better regulate and restrict the sale of fireworks.

82 signatures

b. *EDM 419 2001-02 Firework Restrictions*

Syd Rapson

That this House urges the Government to make it an offence of breach of the peace if fireworks are used by private individuals on days other than 5th November, and to encourage the manufacturers to restrict the power and noise of fireworks to a reasonable limit.

36 signatures

c. *EDM 682 2001-02 Firework Displays*

Howard Stoaite

That this House notes the significant recent increase in private firework displays throughout the calendar year; further notes with concern the great distress to domestic animals and livestock and the nuisance to residents which they can cause; and urges the Government to consider introducing legislation aimed at reducing the noise nuisance of firework displays and to launch a national campaign to encourage people to buy fireworks only for use during traditional celebrations such as 5th November and Diwali.

63 signatures

d. *EDM 791 2001-02 Fireworks and Animals*

John Barrett

That this House notes the recent report of the Scottish Society for the Prevention of Cruelty to Animals entitled 'Fireworks and Animals', which estimates that at least 8,000 animals received veterinary attention for problems directly related to fireworks in Scotland in 2001, that the duration of animals' exposure to firework stress and injury stretched far beyond 5th November, with some vets receiving cases as early as September and that in some cases, animals have had to be put down due to injury or stress associated with fireworks; is particularly disturbed by and condemns the cases of deliberate attacks on animals, including one reported episode where fireworks were let off in a car containing two dogs; agrees with the SSPCA's conclusions that the sale and use of fireworks should be restricted to a strict time window, which would allow pet owners to plan in

advance and that people planning fireworks displays should be actively encouraged to consider the effects on neighbouring animals; and believes that this information only serves to back up the widespread feeling within the House that the sale and use of fireworks must be better regulated.

112 signatures

e. EDM 1761 2001-02 Fireworks Voluntary Code

David Crausby

That this House welcomes the initiative announced by the Government to ban air bombs and to introduce a range of new measures to reduce the number of firework injuries; however is very disappointed that the ban is on a voluntary basis and does not come into effect until 1st January 2003; notes that every year in the weeks running up to the 5th November, and for weeks afterwards people, animals and emergency services all over the country have to endure the unnecessary terror and disruption of the indiscriminate, inappropriate and inconsiderate use of fireworks; calls on the Government urgently to rectify the inadequacy of the current fireworks voluntary code and to amend existing legislation so that it can be enforced effectively to ensure that the problems created by fireworks are eradicated.

81 signatures

f. EDM 92 2002-03 Firework controls

Cheryl Gillan

That this House welcomes The Guide Dogs for the Blind Association's campaign to increase controls on the sale and use of fireworks; notes the cost, in human and financial terms, incurred as a result of the premature retirement, sedation, or retraining of guide dogs which have been traumatised by fireworks; further notes the increase in firework-related injuries, as well as the threat fireworks pose to the wellbeing and peace of mind of many older people; calls for the proper licensing of firework retailers and display organisers; calls for limits to be placed on the times of the year during which fireworks can be bought by the public, and the times of the day during which they can be used; and recognises that concern about fireworks is now shared by an increasingly broad range of people and organisations who do not want to ruin anyone's celebrations, but do not want to see people's lives ruined either.

116 signatures at 25 February 2003

Amendment proposed by Derek Wyatt:

at end add ' and suggests that both the sale of fireworks and the organisation of bonfires should be licensed by local authorities.'

g. EDM 143 2002-03 Control of Fireworks

Alan Meale

That this House shares the concerns of the Guide Dogs for the Blind, Hearing Dogs for Deaf People, Assistance Dogs UK, the RSPCA and many other voluntary organisations who believe that the time has now come for the strengthening of regulations concerning fireworks in the UK, including further limitations on their noise levels, periods in which they can be sold, together with regulations governing the periods of their sale and use and the introduction of a licensing system for retailers and public display organisers.

119 signatures at 25 February 2003

IV The Fireworks Bill 2002-03

The Bill consists of 19 clauses and a schedule. The first ten clauses deal with fireworks regulations whilst those numbered 11 to 19 are supplementary clauses. An outline of the main provisions of the Bill is set out below. This outline relies, in part, on the interpretation given to the provisions in the Bill's own Explanatory Notes.²⁹

A. Introduction

Clause 1(1) defines the term 'fireworks' as all devices which are classified as fireworks for the purposes of the British Standard 7114 specification (or any British Standard Specification replacing it) or would be fireworks for those purposes if they were intended as a form of entertainment.

By virtue of clause 1(2), the Secretary of State may by regulations substitute a new definition of 'fireworks' in place of the definition given in clause 1(1).

All references in the Bill to supplying fireworks are intended to be interpreted widely to include selling them; exchanging them for any consideration other than money; and giving them as a prize or otherwise making a gift of them. However, clause 1(3) also makes it clear that the Bill is only concerned with those supplying fireworks in the course of business.

B. Power to make regulations about fireworks

Clauses 2 to 10 are concerned with fireworks regulations.

²⁹ Bill 17-EN

Clause 2 provides that the Secretary of State may by fireworks regulations make any provision he considers appropriate to ensure that either there is no risk that the use of fireworks will result in the consequences stated in clause 2(2) or to ensure that such risk is the minimum that is compatible (i.e. acceptable) with the fireworks being used. The consequences stated in clause 2(2) are:

- 2(2) (a) death of persons or injury, alarm, distress or anxiety to persons,
- (b) death of animals or injury or distress to animals, and
- (c) destruction of, or damage to, property.

In effect, the Bill provides powers that are not available under existing consumer safety legislation.³⁰

Clauses 2(5) and 2(7) clarify the power of the Secretary of State to make fireworks regulations. Under clause 2(5) this power to make regulations under clause 2(1) includes the power to make different provision for different cases, and to make any incidental, supplementary, consequential and transitional provision which the Secretary of State considers appropriate. Clause 2(7) makes it clear that the Bill should not be construed as in any way limiting provisions made in safety regulations under section 11 of the *Consumer Protection Act 1987*.

Significantly, clause 2(2) covers both human and animal welfare. Currently, there is no provision in fireworks legislation specifically to protect animals, although under section 1 of the *Protection of Animals Act 1911* it is an offence to cause any unnecessary suffering to any domestic or captive animals.³¹

Before making fireworks regulations under clause 2(1), the Secretary of State is required under clause 2(3) to consult with the Health and Safety Commission, organisations representing the interests of those who will be substantially affected by the proposed regulations, and any other persons he thinks appropriate. An exception to this consultation process is provided by clause 2(4) which states:

- (4) But subsection (3) does not apply if the regulations are to-
 - (a) cease to have effect at the end of a period of not more than twelve months beginning with the day on which they come into force, and
 - (b) contain a statement that it appears to the Secretary of State that the need to protect the public requires that the regulations should be made without delay.

In other words, fireworks regulations can be quickly brought into force by the Secretary of State without consultation provided the regulations are of a temporary nature (i.e. with

³⁰ Section 11 of the *Consumer Protection Act 1987*

³¹ The penalty on conviction is a fine of up to £5,000 and/or up to six months imprisonment. Enforcement of this section rests with trading standards, the police or the RSPCA as appropriate

a shelf life of no more than 12 months) and the Secretary of State has stated that these emergency regulations are needed to protect the public.

Section 18 of the *Consumer Protection Act 1987* gives the Secretary of State power to require a person to provide information for the purposes of deciding whether to make, vary or revoke any safety regulations under section 11 of the Act. (There are offences for failure to comply with any such notice). Under clause 2(6) of the *Fireworks Bill*, section 18 of the *Consumer Protection Act 1987* will also apply in relation to firework regulations.

C. Prohibition of supply or purchase of fireworks to young persons

Clause 3 of the Bill is concerned with prohibiting the supply, purchase or possession of fireworks (or fireworks of a description specified in the Regulations) to young persons. Clauses 3(1) and (2) state:

3(1) Firework regulations may include provision prohibiting persons from-

- (a) supplying, or
- (b) offering or agreeing to supply,

fireworks, or fireworks of a description specified in the regulations, to persons who are below an age so specified.

(2) Fireworks regulations may include provision prohibiting the purchase or possession of fireworks, or fireworks of a description specified in the regulations, by persons who are below an age so specified.

However, clause 3(3) provides that an exception or dispensation from this prohibition may be contained in the fireworks regulations.

D. Prohibition of supply or purchase in certain circumstances

Clause 4 of the Bill is concerned with prohibiting the supply, purchase, possession or use of fireworks in certain circumstances.

Under clause 4(1), fireworks regulations introduced by the Secretary of State may include provision prohibiting the supply, purchase, possession or use of fireworks (or fireworks of a specified description) during **specified hours** of the day.

At present, the Government has little scope to prevent fireworks from being used during anti-social hours. Under the *Consumer Protection Act 1987*, the Government can only make regulations controlling fireworks where this relates to public safety; loud fireworks being let-off late at night, whilst a serious issue, is not a question of safety. Such activity could be deemed a statutory nuisance under Part III of the *Environmental Protection Act*

1990.³² This Act provides local authorities with powers to prevent or abate noise nuisance from premises and land. It is for local authority environmental health officers to judge whether a problem complained about may be considered a ‘statutory nuisance’ and to act accordingly. In addition, local authorities may adopt the *Noise Act 1996*, enabling penalties of £100 to be applied following a ten minute warning for excessive noise caused between 11 pm and 7am. However, it is difficult to enforce this legislation in relation to fireworks.

Clause 4(2) provides that fireworks regulations may include provision prohibiting the supply, exposing for supply, purchase, possession or use of fireworks (or fireworks of a specified description) at specified places or in specified circumstances. Again, fireworks regulations may contain an exception or dispensation to this prohibition by virtue of clause 4(3).

E. Prohibition of supply or purchase of certain fireworks

Clause 5 of the Bill is concerned with prohibiting the supply, purchase or possession of certain types of fireworks.

Clause 5(1) provides that fireworks regulations may include provision prohibiting the supply of fireworks of a specified description generally or prohibiting such supply to persons of a specified description.

5(1) Fireworks regulations may include provision –

- (a) prohibiting persons from supplying, or offering or agreeing to supply, fireworks of a description specified in the regulations, or
- (b) prohibiting persons from supplying, or offering or agreeing to supply, fireworks of a description specified in the regulations to persons of a description so specified.

Clause 5(2) provides that fireworks regulations may include provision prohibiting the purchase or possession of fireworks of a specified description generally or prohibiting the purchase or possession of such fireworks by persons of a specified description.

5(2) Fireworks regulations may include provision –

- (a) prohibiting the purchase or possession of fireworks of a description specified in the regulations, or
- (b) prohibiting the purchase or possession of fireworks of a description specified in the regulations by persons of a description so specified.

In effect, clause 5 would enable the Secretary of State to introduce regulations to ban certain types of fireworks altogether (for example, those considered to be dangerous or excessively noisy) or to restrict their supply, purchase or possession only to those

³² This is the responsibility of the Department of the Environment, Food and Rural Affairs (DEFRA)

properly trained. Specifically, clause 5(3) provides that specified descriptions of persons prohibited from buying or using certain fireworks would include persons who do not satisfy any specified conditions that relate to the matters mentioned in clause 5(4) as regards training, experience and insurance cover:

5(3) The descriptions of persons which may be specified in fireworks regulations by virtue of subsection (1) or (2) include in particular persons who do not satisfy any conditions which are specified in the regulations and relate to any of the matters mentioned in subsection (4).

(4) Those matters are-

- (a) the satisfactory completion of a course, or courses, of training relating to fireworks and the means of proving the satisfactory completion of such a course or courses,
- (b) proficiency or experience in the use of fireworks and the means of proving such proficiency or experience, and
- (c) the possession of insurance cover against liability arising from the use of fireworks and the means of proving possession of such cover.

Clause 5(5) provides that an exception or dispensation from such prohibition may be contained in the fireworks regulations.

F. Public fireworks displays

Clause 6 is a straightforward clause concerned with the holding of public fireworks displays. For the purposes of the Bill the term ‘public fireworks display’ is defined by clause 6(5) as:

...a fireworks display at which the public, or any section of the public, are present (whether or not they have paid to be).

The definition does not include private parties and private club functions from which the public are excluded.

Clause 6(1) provides that fireworks regulations may include provision prohibiting persons from operating a public fireworks display unless specified conditions are complied with. Namely,

- a) notice of the display has been given in accordance with the regulations to any local or other authority specified in the regulations;
- b) any other information relating to the display which is required by the regulations to be given to any local or other authority has been so given;
- c) any fee imposed by any local or other authority in accordance with the regulations has been paid; and

- d) such other conditions relating to the holding of public fireworks displays as are specified in the regulations have been complied with.

Clause 6(2) provides that fireworks regulations may include a provision prohibiting persons from operating public fireworks displays unless specified conditions are complied with including any conditions relating to training. In effect, regulations made under the Bill could impose strict rules on the training of those who hold professional fireworks displays.

Under current legislation, most public fireworks displays are covered by the *Health and Safety at Work Act 1974*. This requires that the safety of operators and the public must be safeguarded. However, whilst the Government encourages all operators to be properly trained, it does not have the power to introduce mandatory fireworks training schemes.

Under clause 6(3) of the *Fireworks Bill* regulations may also include provision prohibiting persons from operating, or assisting in the operation of, public fireworks displays if they are below a specified age.

As before, clause 6(4) provides that an exception or dispensation from such prohibition may be contained in the fireworks regulations.

G. Licensing of suppliers

The licensing of those supplying fireworks is dealt with by **clause 7**.

Under current legislation, it is an offence to keep fireworks (except those for private use) on premises which have not been registered or licensed for that purpose. The Health and Safety Executive and Trading Standards enforce this law. However, clause 7 of the Bill goes much further.

Clause 7(1) provides that fireworks regulations may include provision prohibiting persons (or persons of a specified description) from supplying, exposing for supply or possessing for supply fireworks (or fireworks of a specified description) unless:

- a) they are licensed in accordance with the regulations, and
- b) the fireworks are supplied, exposed for supply or kept at premises which are so licensed.

In other words, clause 7(1) permits the Secretary of State, should he think it appropriate, to introduce fireworks regulations that would prohibit a supplier from supplying fireworks unless both he and the premises at which the fireworks are kept are licensed.

Clause 7(2) provides for licensing arrangements if such a prohibition is imposed. It is clear that the local or other authority may grant, vary or revoke an application for a licence:

- 7(2) If fireworks regulations impose any prohibition by virtue of subsection (1), they may contain provision-
- (a) specifying the local or other authority by which a licence relating to any person or premises may be granted, varied and revoked,
 - (b) relating to the grant, variation and revocation of licences,
 - (c) about conditions which may be attached to licences (including, in particular, conditions as to the time of year for which persons or premises are licensed),
 - (d) for the charging of fees for the grant or variation of licences, and
 - (e) about appeals against refusals to grant or vary, or variations of, licences.

It is significant that under clause 7(2)(c), the licence may have conditions attached, including conditions as to the time of year for which persons or premises are licensed. Under this provision it would be possible to restrict the periods during which fireworks could be sold. Currently, under a long-standing voluntary code of practice, the fireworks industry has agreed that fireworks should only be sold in the three weeks before 5th November and for a few days afterwards, and for a similar period around New Year. However, this voluntary agreement has been criticised for not working with many retailers offering fireworks for sale all year round. Without primary legislation the Government has no power to enforce this voluntary code. The Government has also pointed out that in a multi-cultural society, there are a number of festivals where the use of fireworks is traditional (for example, Diwali and Chinese New Year) and it needs to ensure that it does not take action which would prevent or undermine these festivals.³³

Clause 7(2)(c) of the Bill would make it possible for local or other authorities to restrict the year-round sale of fireworks. It has also been suggested that the local or other authority could introduce a two-tier licensing system for retailers with tougher vetting procedures and powers to withdraw a licence. In practice, this would mean that some retailers would only be licensed to sell fireworks for a limited period; perhaps, only for the three weeks before 5th November. Other retailers, with a full licence, would be able to sell fireworks for all celebrations.

Clauses 7(3) and (4) of the Bill provide that a person may not be licensed to supply fireworks unless specified conditions are satisfied by the person or his employees (or both). Those conditions may relate to the satisfactory completion of a course, or courses of training about fireworks.

Clause 7(5) provides that an exception or dispensation from such prohibition may be contained in the fireworks regulations.

³³ Department of Trade and Industry fact sheet on fireworks available from:
<http://www.dti.gov.uk/ccp/topics!/facts/fireworks.htm>

H. Information about fireworks

The aim of **clause 8** is to ensure that appropriate instructions and/or warnings are given to those handling or using fireworks.

Clause 8(1) provides that fireworks regulations may include provision for securing that appropriate information is given and inappropriate information is not given in relation to fireworks, or fireworks of a specified description. Such information may, by clause 8(2), include marks, warnings or instructions to be put on or with the fireworks. Alternatively, the information may be given to any person specified in the regulations.

Clause 8(3) provides that an exception or dispensation from such requirement may be contained in the fireworks regulations. Whilst clause 8(4) provides that if fireworks regulations impose any requirement by virtue of this section, they may also contain provision requiring the keeping of records by any person to whom information is given.

I. Prohibition of importation of fireworks

The prohibition of the importation of fireworks is dealt with by **clause 9**.

Most fireworks sold to the general public in the UK originate in China. However, whether fireworks are imported or made in the UK, all fireworks intended for use by the public must meet the requirements of the *Fireworks (Safety) Regulations 1997* and British Standard 7114.

Under clause 9 of the Bill, fireworks regulations may include provision prohibiting persons from:

- (a) importing
 - (b) completing the manufacture of, or
 - (c) placing on the market
- fireworks, or fireworks of a specified description, unless any requirements to give information have been satisfied.

To avoid any doubt, clause 9(2) provides that if a prohibition concerns the completion of manufacture or placing on the market of fireworks, the fireworks regulations shall specify the circumstances in which a person completes the manufacture of the fireworks or places the fireworks on the market.

Clauses 9(3) and (4) are identical to clauses 8(3) and (4) of the Bill. Clause 9(3) provides that an exception or dispensation from such prohibition may be contained in the fireworks regulations. Clause 9(4) provides that if fireworks regulations impose any prohibition by virtue of this section, they may also contain a provision requiring the keeping of records by any person to whom information is given under the regulations.

J. Training courses

Clause 10(1) provides that where fireworks regulations specify conditions relating to the satisfactory completion of training, the regulations may also make provision for the creation and provision of training courses to be provided by:

- a) the Secretary of State;
- b) a body or bodies established or recognised by the Secretary of State; or
- c) licensed persons.

Clauses 10(2) to (5) provide for the licensing arrangements and the running of courses if such training courses are to be provided by licensed persons.

K. Offences

The Bill creates three new offences. Under **clause 11(1) to (3)** a person is guilty of an offence if they:

- a) contravene a prohibition imposed by fireworks regulations;
- b) fail to comply with a requirement imposed by or under fireworks regulations to give or not to give information;
- c) make a statement falsely or recklessly in a material particular when a requirement to give information is imposed by or under fireworks regulations.

A person guilty of an offence under clause 11 is liable on summary conviction to:

- a) imprisonment for a term not exceeding six months, and/or
- b) a fine not exceeding level 5 on the standard scale (currently £5,000).

Clause 11(5) provides that fireworks regulations may not provide for any contravention of the regulations to be an offence.

Clause 11(6) of the Bill simply applies section 11(3) (paragraphs (c), (e) and (f)) of the *Consumer Protection Act 1987* to fireworks regulations as well as to safety regulations. Section 11(3) is concerned with the commencement of proceedings.

Clause 11(7) of the Bill also refers to the *Consumer Protection Act 1987*. It applies section 39 of the Act, the defence of 'due diligence', to certain offences under clause 11 of the Bill. In other words, it could be a defence for a person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Clause 11(8) of the Bill also provides a defence for a contravention of a prohibition under clause 3(1) of the Bill. Under clause 11(8) it is a defence for a person to show that he had no reason to suspect that the person to whom he supplied, offered to supply or agreed to supply fireworks was below the age specified in the regulations.

Clause 11(9) of the Bill also applies section 40(2) and (3) of the *Consumer Protection Act 1987* (offences by bodies corporate) to an offence under clause 11 of the Bill.

L. Enforcement

Certain provisions of the *Consumer Protection Act 1987* concerning enforcement of safety regulations also apply to fireworks regulations by virtue of **clause 12**(1) and (2) of the Bill. Clause 12(3) amends schedules 14 and 15 of the *Enterprise Act 2002* for the purpose of restricting the disclosure of information obtained by the Secretary of State in the exercise of any function under the Bill.

Clause 13 applies the provisions of section 47 of the *Consumer Protection Act 1987* to the Bill. That section preserves a person's right to claim privilege in refusing to answer questions or produce documents.

Clause 14 extends the power to make regulations conferred by clause 3 or clause 4(2) of the Bill so as to cover 'explosives' as well as fireworks. Clause 14(2) states that for the purposes of this Bill, 'explosives' has the same meaning as in the *Explosives Act 1875*, although the Secretary of State may by regulations substitute a new definition of 'explosives'.

M. Repeals and revocation

Clause 15 brings the schedule to the Bill (concerned with repeals and revocation) into effect. As a consequence of the provisions of the Bill relating to the making of fireworks regulations, certain provisions of the *Explosives Act 1875* are superseded and therefore repealed by clause 15.

N. Commencement

Clause 18(1) states that clauses 1 to 16 of the Bill (and the schedule) do not come into force until a day appointed by order made by the Secretary of State by statutory instrument; and different commencement days may be appointed for different purposes.

Clause 19(2) confirms that the Bill will extend to England, Wales and Scotland but not to Northern Ireland.

V Responses to the *Fireworks Bill*

A. The Government's position

1. Background - against a complete ban

The Government has stated on a number of occasions that it does not believe that the case has been made for introducing a complete ban on the sale of fireworks to the public. It has argued that such a ban could lead to the development of a black market in fireworks and could also encourage people to produce homemade devices.³⁴

On 26 November 2001, in reply to a PQ on whether a ban on the use of fireworks by members of the public should be introduced, Melanie Johnson, said:

We have no plans to ban the sale of fireworks to the general public... The Fireworks (Safety) Regulations 1997 prohibit from sale to the public several types of noisy category 3 fireworks, such as aerial shells, and restrict the sale of others. We will, of course consider any representations that are made.³⁵

On 13 December 2001, replying to another PQ, she said that existing regulation provided the 'right level of control over the sale of fireworks':

Bob Spink: To ask the Secretary of State for Trade and Industry (1) what recent representations she has had regarding the inappropriate use of fireworks; (2) what action the police and local councils can take to control the inappropriate use of fireworks; (3) what action she plans to control the inappropriate use of fireworks; and if she will make a statement.

Miss Melanie Johnson: The Department has received representations from the public concerning the impact of noise, the misuse of fireworks in public places and issues of safety.

Under current legislation it is an offence under section 80 of the Explosives Act 1875 to throw or set off fireworks in any highway, street or thoroughfare or public place. The power to enforce this section of the Act rests with the police.

All fireworks sold to the public must also comply with the Fireworks (Safety) Regulations 1997. The regulations, among other things, ban certain types of larger and more powerful products from retail sale, set the minimum age for purchasing fireworks at 18 years and require that all fireworks for sale must

³⁴ Department of Trade and Industry fact sheet on fireworks available from:
<http://www.dti.gov.uk/ccp/topics!/facts/fireworks.htm>

³⁵ HC Deb 26 November 2001 c672W

comply with the British Standard (BS7114). Local authority trading standards officers enforce the regulations.

In addition the Department runs an annual fireworks safety campaign, working closely with police, fire brigades and local authorities to promote safety messages during the firework season. This year over 25,000 safety toolkits were distributed to schools for use in the classroom to heighten awareness of the dangers of fireworks and to promote considerate behaviour.

We believe that the current restrictions on the sale of fireworks and rules on their use, backed up by an active safety campaign, provide the right level of control over the sale of fireworks. We have no present plans to introduce further controls but will continue to keep the position under review.³⁶

On 28 May 2002, in response to a series of questions asked about public concern regarding the misuse of fireworks, Lord Sainsbury of Turville (Parliamentary Under-Secretary of State, DTI) indicated a willingness to look at further action:

My Lords, we have received a significant number of representations concerning the use of fireworks. We recognise the depth of public feeling on these issues, particularly in respect of the noise and nuisance caused by the misuse of fireworks. We are actively considering across Government what action can be taken within existing legislation to address the growing problem. We are also having further talks with the fireworks industry.³⁷

During these exchanges and in answer to a question from Baroness Fookes, Lord Sainsbury of Turville stated that the Government was not thinking in terms of an outright ban of fireworks:

Baroness Fookes: My Lords, first, I declare an interest as vice-president of the National Campaign for Firework Reform. Does the Minister believe that if fireworks were new, they would be allowed, given that they are somewhat dangerous? That being the case, I ask the Minister not to rule out the possibility of an outright ban on everything except public organised displays.

Lord Sainsbury of Turville: My Lords, it is always rather difficult to answer such hypothetical questions. There are many things that we happily enjoy which might well be banned in the current climate. As I said, at present we are not thinking in terms of an outright ban. We want to examine the issues of noise and nuisance, which cause a great deal of distress to many people as well as to their animals.³⁸

³⁶ HC 13 December 2001 c 943-4W

³⁷ HL Deb 28 May 2002 c1137

³⁸ HL Deb 28 May 2002 c1139

However, the Government has acknowledged that over the last year there has been increased concern about the use of fireworks, and a large number of complaints from the public relating to noise, neighbourhood safety and general nuisance from fireworks. In response, it has been considering with enforcement authorities, the fireworks industry and retailers what action can be taken within existing legislation to address people's concerns.

On 14 October 2002, Melanie Johnson, Consumer Minister, announced a package of measures designed to reduce noise, nuisance and injuries from fireworks.³⁹ This initiative was launched after the number of injuries among young teenagers rose by more than 50 per cent in 2001. The new measures, imposed by the voluntary restraint of the fireworks industry, came into effect on 1 January 2003. They stop the supply of air bombs; ensure that no firework exceeds 120 Decibels noise level; limit supply of noisy fireworks (113-120 Decibels) to larger higher cost products/packs; and limit supply of smaller rockets (beyond the requirements of the *Fireworks (Safety) Regulations 1997*).

The Government remains unconvinced that a complete ban on the sale of fireworks to members of the public is necessary.

2. Government Support of the *Fireworks Bill*

On 13 February 2003, the Government announced its support for Bill Tynan's *Fireworks Bill*. Melanie Johnson said:

I know the misery that fireworks can cause. There is too much noise, with fireworks being let off late into the night and lasting for far too long beyond the traditional fireworks season.

A few months ago I announced new measures to tackle the number of fireworks injuries, including a ban on air bombs that cause up to half of all firework accidents in the street.

This new Bill, which the Government is supporting, will provide a raft of new powers to control the misuse of fireworks.

It aims to put an end to neighbourhood nuisance and anti-social behaviour that is so often seen around bonfire night and beyond, and I welcome it wholeheartedly.⁴⁰

Home Office Minister, John Denham, also expressed Government support for the Bill:

³⁹ Department of Trade and Industry press notice P/2002/627, *Johnson unveils new package of measures to tackle fireworks misuse*, 14 October 2002

⁴⁰ Department of Trade and Industry press notice P/2003/94, *Government to support new Bill to crack down on the menace of fireworks misuse*, 13 February 2003

We strongly support this Bill. There is growing concern about anti-social and criminal use of fireworks.

They are not just a nuisance. Their repeated and late-night use, for longer and longer periods throughout the year, is causing unbearable noise, fear and intimidation.⁴¹

The Scottish Executive has stated its support for the provisions of the Bill.⁴² Andy Kerr, Minister for Finance and Public Services, said:

The Executive has made it clear for some time that it is committed to stamping out the injuries and upset which can be caused to families and pets by the irresponsible use of fireworks. Fireworks can enhance special occasions for people across our communities to enjoy but far too often it leads to grief and misery.

The new Bill, which the UK Government is supporting, will provide a raft of new powers to control firework use.

It aims to put an end to nuisance and misery caused around bonfire night and beyond – more than 80 victims in Scotland last year testifies to that – and I welcome it whole heartedly.⁴³

B. Views of charities and other organisations

Some members of the public and various organisations have called for a complete ban on the sale of fireworks. The main reasons put forward for introducing a ban are on safety grounds, the prevention of criminal damage, reducing the distress caused to vulnerable groups in society and to stop the suffering of animals. The majority of complaints are about the loudness of fireworks and the fact that they are often let off late at night.

Briefly, supporters of a ban argue that:

- Current legislation is ineffective. While regulations introduced in 1997 raised the age limit of firework sales from 16 to 18, most injuries are still being caused to those below the age of 16.

⁴¹ Ibid.

⁴² Fireworks legislation is regarded as a consumer safety issue and as such is a reserved power. Specifically, the *Fireworks (Safety) Regulations 1997* were made under the *Consumer Protection Act 1987*. The *Placing on the Market and Supervision of Transfers of Explosives Regulations 1993* (POMSTER) are made jointly under the *European Communities Act 1972* and the *Health and Safety at Work Act 1974*. The Regulations are primarily concerned with safety requirements for explosives and security controls for their transfer. On that basis the Health & Safety Executive regard the regulations as a reserved matter.

⁴³ Scottish Executive press notice, *Crackdown on abuse of fireworks*, 14 February 2003

- Criminal damage caused by the misuse of fireworks is increasing. The indiscriminate use of fireworks poses a danger to members of the public.
- There is a perceived increase in the noise of fireworks.⁴⁴
- Fear, anxiety and distress are caused to the more vulnerable members of society (particularly the elderly) by the use of loud fireworks day and night.
- Loud firework noise causes distress to domestic and wild animals, and fireworks themselves can be used to harm and abuse animals.
- Many shops ignore the firework industry's voluntary code and sell fireworks all year round.

The National Campaign for Firework Safety (NCFS), set up in 1969, has published the results of a survey on the types of fireworks being offered for sale on the internet in 2001. Commenting on the findings of the survey, Noel Tobin, Director of the NCFS, emphasized the ease with which fireworks defined by British Standard 7114 as category 3 (fireworks only suitable for use in large outdoor spaces) and category 4 (fireworks not intended for sale to the general public) could be purchased over the internet:

The first survey shows that 361 fireworks have been freely available on the Internet many in category 4 which are banned to the public. Many can be purchased for as little as £6. They have tags on them, audacious tags, showing the industry's insensitivity with descriptions such as 'The loudest meanest biggest air bombs. Loud thunderous reports how loud, Loud!

Our interest is in who makes fireworks? Who sells fireworks? Who imports fireworks? We are concerned with fireworks laws. We want to see regulations, based on safety, which will address the problems of when fireworks go on sale, who should sell the larger category 3 and 4 fireworks used in the large organised firework displays, how and where should they be stored, together with [a] level on the quantity stored there. Who should control the large firework displays. In short we want to see a sea change in the acceptance of the fireworks injuries that happen year after year.

Too many children and animals have been killed and seriously injured by fireworks because of a ridiculously outdated and dangerous tradition Guy Fawkes. It is far too easy to access the dangerous and explosive category 3 and 4 fireworks.⁴⁵

⁴⁴ The British Standard makes no reference to any maximum noise levels produced by fireworks or, indeed, to any controls over this aspect of their use

⁴⁵ National Campaign for Firework Safety <http://www.angelfire.com/co3/NCFS/index.html>

The NCFS has also called for fireworks to be judged by the level of noise they make.⁴⁶

The Convention of Scottish Local Authorities (COSLA), and the Fireworks Task Group set up by it, have recently looked at the question of the regulation of fireworks. According to COSLA, during 2001 many local authorities throughout Scotland received unprecedented complaints in relation to fireworks, covering a diverse range of issues from general anti-social behaviour to cruelty and abuse of animals and, most commonly, in relation to noise. In February 2001, COSLA set-up a multi-authority Fireworks Task Group, with North Lanarkshire Council leading the Group.⁴⁷ Its remit was to consult with various interested parties to identify the scale and extent of the problem and to consider the need for any change to the regulatory framework.

On 24 October 2002, the Fireworks Task Group published a report of its findings. In its report, the Group summarised the views of various organisations including the Police Association, the Fire Service, trading standards officers, the fireworks industry, the Scottish Retail Consortium, community councils and voluntary organisations. It is impossible to reproduce in this Paper the views of all those consulted, but it was undoubtedly the view of many organisations (including the Police Association and the Chief and Assistant Chief Fire Officers Association) that the noise and nuisance created by fireworks had increased in recent years resulting in an increase in fireworks injuries and was responsible for creating undue fear, anxiety and distress in communities. Many organisations recommended the introduction of a strict licensing regime for fireworks suppliers administered by local authorities.

Conversely, the fireworks industry highlighted its commitment to the introduction of voluntary measures to combat fireworks misuse including stopping the importation and supply of the ‘air bomb’ (which appeared to be the most often abused firework); the removal of noisy items from the ‘pocket money’ bracket; the establishment of a maximum noise level for all fireworks; and the further reduction of the number of noisy items in the remainder of the market.

The Scottish Retail Consortium did not support the call for additional licensing or registration requirements in relation to the sale of fireworks. The Consortium believes that existing powers should be used to better regulate the sale and use of fireworks and that a licensing regime will not stop fireworks from being misused by people who may buy them legally.

Following its consultations with various interested parties, the Task Group’s report concluded:

⁴⁶ Ibid.

⁴⁷ The Group comprised elected representatives from fourteen local authorities in Scotland

Recent years have witnessed an increased awareness, from all parts of our community to the damaging effects of the indiscriminate use of fireworks. The consequences of firework misuse are manifested by fear, anxiety and distress to the more vulnerable members of our society, by the harm and injuries that are caused, particularly to young people and by incidents of criminal damage and anti-social behaviour with which their use is often associated.

There now appears to be a general consensus in Scotland that action is required by the Government, by Local Government and by enforcement and regulatory agencies to address these issues, while recognising that the employment of fireworks by responsible individuals to commemorate national, cultural or individual life events is an acceptable form of behaviour, provided that it does not compromise the legitimate expectations of the wider community.⁴⁸

A number of animal charities have conducted their own surveys on the distress caused to animals by loud fireworks and have petitioned for the reform of fireworks regulations. For example, the Scottish Society for the Prevention of Cruelty to Animals (SSPCA) conducted a survey in 2001 of 193 veterinarian practices and sought their views in dealing with incidents involving animals and fireworks – this study accounted for 60% of veterinarian practices across Scotland. According to the SSPCA, the survey produced a 45% response rate, with 90% of those responding stating that they had treated animals for firework-related problems, ranging from stress and anxiety to fatal injury, requiring animals to be ‘put down’.⁴⁹ The SSPCA considers that firework usage should be restricted to official displays, or to a strict time window in order to allow pet owners to plan in advance to protect their pets.

The Royal Society for the Prevention of Cruelty to Animals (RSPCA) has also published a report, ‘Quiet Please’, about the distress caused to animals from loud fireworks. The report reveals that, contrary to guidance from experts in the fireworks industry, it is possible to control noise levels through a firework’s construction. The RSPCA is calling for the Government to set a maximum noise level of 95dB for fireworks available to the public. According to the RSPCA, noise level studies have indicated this is likely to minimise distress to animals, but allow people to continue to enjoy fireworks at home.

Commenting on Mr Tynan’s *Fireworks Bill*, which it supports, Chris Lawrence, RSPCA Chief Veterinary Officer, said:

The RSPCA believes urgent measures must be taken to stop distress and injury to animals. There is a voluntary ban on the fireworks industry selling fireworks louder than 120dB but suffering to animals would be reduced if these fireworks were sold only to professionals for public displays, which should be organised

⁴⁸ Convention of Scottish Local Authorities, *Fireworks Task Force (Report from North Lanarkshire)*, 24 October 2002

⁴⁹ Ibid.

according to strict guidelines. Also we would like to see shops selling fireworks to the public required to have a licence.⁵⁰

The Guide Dogs for the Blind Association, which has worked closely with Bill Tynan on his *Fireworks Bill*, has also begun a petition to “Regulate Fireworks Now”. The petition calls for an end to the disruption and distress caused to guide dogs and their owners by fireworks. The Association is calling for the licensing of firework retailers and organisers of public fireworks displays; limitation of noise levels; and the specifying of a limited number of dates in the public calendar around which fireworks can be sold. Outside of these dates, sales would not be permitted to the public.

Twelve leading animal welfare and trade organisations have agreed a common position in their support of Bill Tynan’s Bill.⁵¹ They are:

- Blue Cross
- The Guide Dogs for the Blind Association
- National Canine Defence League
- Battersea Dogs Home
- RSPCA
- SSPCA
- Pro-Dogs
- National Dog Wardens Association
- Pet Care Trust
- Wood Green Animal Shelters
- Cats Protection League; and
- Kennel Club

In addition, Mr Tynan’s office has advised that other organisations are also supporting the Bill, including:

- The British Horse Society;
- The British Medical Association;
- The Trade Union Congress (TUC); and
- The National Farmers Union (NFU).

Significantly, Mr Tynan’s office has also advised that three groups representing the fireworks industry have also stated their support for the Bill, namely:

- The Fireworks Association;
- The British Pyrotechnists’ Association; and

⁵⁰ <http://www.rspca.org.uk/servlet/contentServer?pagename=RSPCA/News/NewsFeature>

⁵¹ Blue Cross press statement, 12 February 2003

- The Explosives Industry Group of the Confederation of British Industry (CBI).

VI Statistics

A. Firework Injuries in England, Wales and Scotland

Each year the Consumer Safety Unit of the DTI carries out a census of all fireworks related injuries receiving hospital treatment during a four-week period comprising the run-up to 5 November and a few days afterwards (14 October to 10 November). Over 250 hospitals with an A&E Department submit returns. Statistics on firework injuries requiring hospital treatment have been recorded in this way for England and Wales since 1962 (when they stood at 2,800). Since 1969 the statistics have included Scotland.

Injuries dropped to below 1000 in the mid 1970s (largely due to the voluntary code action by the fireworks industry) before increasing to over 1000 in 1993. Injuries in 1994 showed a 50 per cent increase from 1993 to 1574 and in 1995 the figure was only slightly less (1529).

Reproduced in the Appendix is a DTI table setting out the number of firework injuries in Great Britain during the four week period around Bonfire Night for the years 1996 to 2001, by location of accident, type of firework involved, outcome of injury, and age group of injured.⁵²

From this table it is clear that the total number of persons recorded as attending hospital casualty departments in Great Britain during the 2000 bonfire night period was 972, representing a decrease of 8% on the 1999 figure of 1056. This must be set against a decrease in sales of fireworks of around 30%. In 2000, there were falls in the number of injuries from some types of fireworks. Injuries caused by bangers, rockets and Roman candles fell to 93, 135 and 90 respectively (compared to the 1999 figures of bangers 132, rockets 211 and Roman candles 130). Sparkler injuries fell from 134 in 1999 to 104 in 2000 – a decrease of 22 per cent. Injuries in the 16-20 age group fell 22 per cent from 119 in 1999 to 93 in 2000. Injuries to children aged under thirteen also fell by 10 per cent from 391 in 1999 to 350 in 2000. However injuries to 13 to 15 year-olds rose by 8 per cent from 142 in 1999 to 154 in 2000.

The latest available data on firework injuries is for the 2001 firework season when the total number of firework injuries was 1,362. This represents an increase of 40 per cent on the previous year's total of 972. There were no deaths in the 2001 Bonfire period but the DTI is aware of one death occurring outside the recording period.

Surveying the DTI's statistics as a whole, it is clear that the lowest number of injuries occurred in 1998 (a total of 831injuries), since when the numbers have increased. In 2001,

⁵² Department of Trade and Industry, *Counting the Costs: Firework Accident Statistics* (2000, 2001)

44% of all injuries occurred at a family or private firework party. One-third of injuries (32%) occurred through casual accidents in the street or other public place. Less than one-in eight (12%) of injuries occurred at a large public firework display.

B. Firework Offences Committed in England and Wales

On 1 February 2002, in reply to a PQ, the Home Office Minister outlined the number of people charged with offences relating to the misuse of fireworks:

Mark Tami: To ask the Secretary of State for the Home Department (1) how many people were charged with offences relating to the misuse of fireworks in the last six months; [30269] (2) how many complaints were received by each police force in the UK relating to firework incidents during the Christmas and new year period. [30268].

Mr. Denham: The available information, from the Home Office Court Proceedings Database, relating to England and Wales for 2000 is shown in the table. These data show persons proceeded against for offences where it is possible to identify specific firework misuse. Statistics for 2001 are not yet available. Information held centrally does not enable offences involving personal injury or damage to property from fireworks to be identified, as the circumstances behind any offence are not collected. No information is collected centrally on complaints received by police forces relating to firework incidents. Persons proceeded against for offences relating to the misuse of fireworks in England and Wales 2000 (1,2)

Statute/offence description	Proceeded against
Explosives Act 1875, sec. 80	
Throwing, casting or firing any firework in or into any highway, street etc, public place	61
Sporting Events (Control of Alcohol, etc) Act 1985, sec.2A(1)	
Being in possession of fireworks etc., in or when entering a designated sports ground	3
Total	64

(1) These data are on a principal offence basis. (2) Staffordshire police force were only able to submit sample data for persons proceeded against and convicted in the magistrates courts for the year 2000. Although sufficient to estimate higher orders of data these data are not robust at a detailed level and have been excluded from this table.⁵³

⁵³ HC Deb 1 February 2002 c577-8W

Appendix 1

Firework Injuries In Great Britain 1996-2001*

(4 Week Period In October - November)

	2001	2000	1999	1998	1997	1996
<u>Place Of Accident</u>						
1. Family or private party	598	421	447	320	378	428
2. Semi public party (e.g. scouts, club)	73	56	72	79	56	100
3. Large public display	158	119	153	132	137	223
4. Casual incident in street or other public place	442	279	296	226	256	379
5. Indoors	17	19	19	20	22	23
6. Other	40	49	65	44	21	75
7. Not Specified	34	29	4	10	38	5
<u>Type Of Firework</u>						
1. Banger	114	93	132	130	189	273
2. Rocket	264	135	211	168	158	222
3. Air Bomb	102	96	90	79	50	82
4. Roman Candle	120	90	130	71	58	79
5. Sparkler	136	104	134	129	200	196
6. Other proprietary fireworks	117	112	110	200	104	136
7. Home made or extracted powder	14	6	23	27	18	17
8. Not known (not bonfires)	494	336	207	27	125	228
9. Not Specified	1	0	19	0	6	0
<u>Outcome Of Injury</u>						
1. No further treatment required	498	366	408	290	359	373
2. Referred to G.P.	129	114	137	96	115	141
3. Referred to out-patient dept. of this or other hospital	469	323	342	278	301	463
4. Detained in this hospital for at least one night	70	40	43	26	49	58
5. Transferred to another hospital	73	52	31	20	22	38
6. Died	0	2	0	0	0	2
7. Not known	115	52	86	115	23	158
8. Not Specified	8	23	9	6	39	0
<u>Age Group Of Injured Persons</u>						
1. Over 20 years	508	375	404	312	389	437
2. 18-20	67	40	58	44	45	71
3. 13-17	337	207	203	174	171	321
4. Under 13	450	350	391	287	303	388
5. Not Known	0	0	0	14	0	16
<u>Total Eye Injuries</u>						
	372	254	290	250	262	413
<u>Year Total</u>						
	1362	972	1056	831	908	1233

* Department of Trade and Industry, *Counting the Costs; Firework Accident Statistics*, (2000, 2001).