

Fireworks

Responsible officer

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1.0 Summary

- 11 This report provides an overview of work that has been undertaken to put into place a December 2019 Council resolution containing actions that sought to mitigate the alarm, distress or anxiety caused to people and animals by fireworks. It also provides members with an overview of the legal framework around fireworks, including the powers and responsibilities of the local authority, and explains how the local authority currently carries out its duties within the legal framework outlined in the report.

2.0 Recommendations

- 2.1 Officers recommend that the committee notes the report and provides any recommendations it believes will support officers in their regulation of the sale and discharge of fireworks.

3.0 Opportunities and risks

- 3.1 Ensuring that Shropshire Council maintains effective regulatory services results in the safe storage, sale and use of fireworks in Shropshire.
- 3.2 A failure to maintain effective regulatory services could increase the risk of the unsafe storage, sale and use of fireworks. This in turn risks distress arising from the anti-social use of fireworks, or injury arising from their unsafe use.

4.0 Financial assessment

- 4.1 There are no direct financial implications in agreeing the recommendation in 2.1. However, any recommendations made by the committee may result in a financial cost or benefit.

5.0 Background

- 5.1 In recent years, Council has twice asked Shropshire Council officers to investigate how it can strengthen its regulation and licensing of fireworks and public fireworks displays.

5.2 In December 2019, Council unanimously resolved:

- To encourage all public firework displays within Shropshire being appropriately advertised in advance of the event, allowing residents to take precautions for their animals and vulnerable people
- To actively promote a public awareness campaign about the impact of fireworks on animal welfare and vulnerable people (including the precautions that can be taken to mitigate risks)
- To encourage events to consider the use of silent displays with music for the youngest children and to protect animals.
- To compile and display on its website and via social media, a list of public firework displays with appropriate information to enable residents to take precautions for their animals and vulnerable people
- To make representations to the Government via the relevant Portfolio Holder urging it to limit the maximum noise level of fireworks to 90dB for those sold to the public for private displays
- To encourage local suppliers of fireworks to stock “quieter” fireworks for public display”

5.3 In order to implement this resolution officers took the following action.

5.4 *To encourage all public firework displays within Shropshire being appropriately advertised in advance of the event, allowing residents to take precautions for their animals and vulnerable people.*

As part of the council’s events management process, its Public Events Safety Advisory Group Guidance 2020

(<https://www.shropshire.gov.uk/media/16617/guidance-for-event-organisers-september-2020-v2.pdf>) was amended to highlight this issue, and where an event organiser approaches the Safety Advisory Group (SAG) for advice, the partners that constitute the SAG encourage event organisers to act in accordance with the guidance.

The second Covid-19 ‘lockdown’ resulted in the cancellation of all public fireworks displays in 2020; however, as part of the specific Covid-19 event management process that was in operation immediately prior to implementation of the second lockdown, the event organisers of public firework events were being contacted to ensure events that were being organised were Covid-secure. This incorporated questions to determine when and how displays would take place. It is anticipated that the principles that have driven the Covid-19 event management process are likely to continue post-Covid, and will provide a greater degree of engagement with event organisers, including those who organise public fireworks displays. This will give further opportunities to advance the firework safety advice in the future.

- 5.5 *To actively promote a public awareness campaign about the impact of fireworks on animal welfare and vulnerable people (including the precautions that can be taken to mitigate risks).*

Firework safety campaign materials (<https://www.gov.uk/guidance/consumer-safety-awareness-campaigns-materials#fireworks-campaign>), produced by the Office of Product Safety and Standards (OPSS), were publicised through council social media platforms between 22 October and 8 November 2020.

The council's webpages relating to fireworks storage and sale included a link to the bonfire and firework safety campaign run by the Shropshire Fire and Rescue Service.

- 5.6 *To encourage events to consider the use of silent displays with music for the youngest children and to protect animals.*

This forms part of the advice to event organisers, which is included in the council's public events Safety Advisory Group (SAG) Guidance 2020 and is reiterated by SAG partners when public fireworks event organisers seek further advice from the SAG.

- 5.7 *To compile and display on its website and via social media, a list of public firework displays with appropriate information to enable residents to take precautions for their animals and vulnerable people.*

A list of events was not produced in 2020 due to Covid-19; however, the OPSS fireworks safety campaign materials that were publicised on social media did include general advice and information to help enable residents to take precautions for themselves, any vulnerable people in their community and their animals. In the future, when public fireworks events are more likely to take place in normal circumstances, a list of events will be published.

- 5.8 *To make representations to the Government via the relevant Portfolio Holder urging it to limit the maximum noise level of fireworks to 90dB for those sold to the public for private displays.*

Representations have not been made directly to Government; however, the portfolio holder, Cllr Gwilym Butler, has been made aware of the work of the OPSS in relation to fireworks, in particular the recent "Fireworks evidence base: report" (<https://www.gov.uk/government/publications/fireworks-evidence-base-report>), and accepts that there remains value in making representations with respect to the maximum noise level of fireworks. This is currently being discussed and will be agreed with the portfolio holder.

- 5.9 *To encourage local suppliers of fireworks to stock “quieter” fireworks for public display”.*

The council’s webpages that provide the information for local suppliers to register/licence to store and sell fireworks includes a section on public safety. This highlights to suppliers that fireworks offer much enjoyment but that they can also cause distress and for this reason, in the interests of public safety, the council encourages the suppliers of fireworks to offer quieter or silent fireworks.

- 5.10 On 17 December 2020 Council received a motion that stated that: “This Council recognises the concerns expressed by members of the public and animal welfare groups about the impact on animals and vulnerable people by loud fireworks in residential areas, whilst also accepting the enjoyment fireworks bring to many people. Council resolved to ask overview and scrutiny to investigate the issue of fireworks and to report back to council.
- 5.11 The chairs of Shropshire Council’s Place Overview Committee initially agreed to convene a meeting dedicated to exploring the powers available to Shropshire Council to further regulate the sale and use of fireworks. However, an initial investigation by Shropshire Council’s overview and scrutiny officer concluded that Shropshire Council’s powers in relation to regulating fireworks was very limited. The chair of the Place Overview Committee therefore agreed to include this item on the agenda of the committee’s meeting on 8 April 2021.

6.0 Fireworks: Legal framework

- 6.1 There are several existing acts of Parliament and regulations which cover the manufacture, importation, storage, distribution, supply, possession and use of fireworks:
- **Consumer Protection Act 1987** (provides for the making of safety regulations and investigatory powers and creates offences for non-compliance)
 - **Fireworks Act 2003** (provides power to make regulations with specific provisions about fireworks and creates offences for non-compliance; controls regulating public fireworks displays and fireworks training courses have not yet been enacted by any regulations)
 - **Fireworks Regulations 2004** (made under the Consumer Protection Act 1987 and the Fireworks Act 2003)
 - **Pyrotechnic Articles (Safety) Regulations 2015**
 - **Explosives Act 1875** (limited application to fireworks with most relevant controls now contained within the more recently enacted legislation)
 - **Explosives Regulations 2014**
 - **Health and Safety at Work etc. Act 1974**
- 6.2 The duty to administer and enforce the legislation set out above is shared between the Local Authority, the Police, the Health and Safety Executive

(HSE)and, in limited situations, also HMRC. Powers are granted to each agency to undertake administrative procedures, market surveillance, monitoring and enforcement to ensure explosives, including fireworks, are manufactured, imported, stored, distributed and used in such a way as to reduce the risk of death of persons or injury, alarm, distress or anxiety to persons; death of animals or injury or distress to animals; or destruction of, or damage to, property.

7.0 Storing fireworks

- 7.1 The Explosives Regulations 2014 address a wide range of matters relating to explosives and specifically require a person to hold a licence from the **local authority** to store up to two tonnes of fireworks. Strict safety measures to reduce the risk of fire, explosion, unauthorised access, etc. must be maintained and failure to do so can lead to the revocation of a licence. To store more than two tonnes requires a licence from the HSE. Either body may inspect storage facilities, irrespective of who issues the licence.
- 7.2 A licence can be refused if the proposed site or, within it, any place where the storage of fireworks is proposed to take place is unsuitable or the applicant is not a fit person to store fireworks. A licence can be revoked where there has been a change in circumstances such that the site or, within it, any place in which fireworks are stored that the licence relates to is no longer suitable or where it appears that the licensee is not a fit person. The rationale for a refusal or a revocation must be made clear to the applicant.
- 7.3 A register of granted licences is held by the relevant licensing authority (local authority, HSE or police, depending on the nature of the explosives) with specific information recorded as required by the regulations.
- 7.4 There is a prohibition concerning the acquisition and supply of fireworks, which means that no person may acquire more than 50 kilograms of fireworks unless they, or another person on their behalf, holds a valid licence for the storage of those fireworks; or sell or otherwise transfer to any other person more than 50 kilograms of fireworks unless the other person shows to the person selling or otherwise transferring the fireworks a valid licence for the storage of those fireworks.

8.0 Regulating the production of fireworks

- 8.1 The Pyrotechnic Articles (Safety) Regulations 2015 require relevant conformity assessment procedures and declarations to be made by manufacturers and importers of fireworks to ensure conformity with essential safety requirements. The regulations also place a duty on distributors to act with due care to ensure conformity. The fireworks must also be marked/labelled correctly and supplied with appropriate instructions and safety information in accordance with the regulations. These requirements are linked to European and UK harmonised standards and approval by notified or approved bodies that have the necessary skills and expertise to undertake the conformity assessment processes.

- 8.2 The regulations categorise fireworks according to their hazard level:
- Category F1 fireworks are fireworks which present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings.
 - Category F2 fireworks are fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas.
 - Category F3 fireworks are fireworks which present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health.
 - Category F4 fireworks are fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health.
- 8.3 For category F1, F2 and F3 fireworks, the essential safety requirements state that the maximum noise level is 120 dB, measured at the relevant safety distance. There is no specific noise limit for category F4 fireworks; however, by reference to the legal definition, the noise associated with such fireworks must not be harmful to human health.
- 8.4 Manufacturers, importers and distributors are prohibited from making fireworks available to children:
- for a category F1 firework, other than a Christmas cracker, (e.g. party poppers, serpents, novelty matches), a person must be 16
 - for a category F2 firework or a category F3 firework (including sparklers), a person must be 18
- 8.5 There is a prohibition on making available on the market in the UK category F4 fireworks and specific types of category F2 and F3 fireworks, e.g. bangers, mini rockets, spinners, except to someone with specialist knowledge. Retailers are prohibited from breaking up selection or primary packs of fireworks.
- 8.6 The **local authority** (as the weights and measures authority) is responsible for market surveillance, i.e. compliance/conformity checks, on category F1, F2 and F3 fireworks and the HSE is responsible for category F4. The regulations provide a range of enforcement powers to undertake market surveillance activities, including, sampling and testing, age-restricted sales test purchasing and, where non-conformity is found, compliance, withdrawal and recall notices. There are specific offences for failing to comply with each of the requirements of the regulations and where offences are suspected, investigations are undertaken, which can lead to legal proceedings, or other formal action, in line with Shropshire Council's Better Regulation and Enforcement Policy.
- 8.7 The penalty for committing an offence in respect of a category F1, F2 or F3 firework is an unlimited fine or up to 3 months' imprisonment or both. For a

category F4 firework related offence it is an unlimited fine or imprisonment for up to 2 years or both.

9. Sale, possession and use of fireworks

- 9.1 The Fireworks Regulations 2004 set out a package of measures to regulate the sale, possession and use of fireworks.
- 9.2 It is an offence for anyone under the age of 18 to possess an adult firework, meaning category F2, F3 and F4 fireworks, in a public place. "Public place" includes any place to which, at the material time, the public have or are permitted access, whether on payment or otherwise. It should also be noted that under section 134 of the Policing and Crime Act 2017 there is an offence to possess a pyrotechnic article (for example, a firework, flare or smoke bomb) at a qualifying musical event. Under the Explosives Act 1875, it is also an offence to throw, cast or fire any fireworks in or into any highway, street or thoroughfare, or in any public place.
- 9.3 Category F4 fireworks are not permitted for 'amateur/home' possession/use and can only be in the possession of and used by professionals/businesses that specifically work with fireworks, e.g. for organised displays. The Police have responsibility for enforcing this provision.
- 9.4 There is a prohibition during night hours, between 11 pm and 7 am, on the use of adult fireworks (categories F2, F3, F4 but not category F1 or category F2 sparklers), which is enforced by the Police. There are exceptions for certain traditional or cultural events. These are 'permitted fireworks nights' and:
- begin at 11 pm on the first day of the Chinese New Year and end at 1 am the following day
 - begin at 11pm and end at midnight on 5th November
 - begin at 11 pm on the day of Diwali and end at 1 am the following day
 - begin at 11 pm on 31st December and end at 1 am the following day
- Local authorities are also permitted to put on their own displays outside these times for local purposes and for national and commemorative events.
- 9.5 The traditional periods where selling fireworks without a **licence** is permitted are:
- November 5th - from 15th October to 10 November
 - New Year - from December 26th to 31st
 - Chinese New Year - on the first day of the Chinese New Year and the 3 days immediately preceding it
 - Diwali - on the day of Diwali and the 3 days immediately preceding it
- However, **registration** with the local authority is still required.
- 9.6 Those intending to supply adult fireworks to the public outside the traditional selling periods (i.e. all year round) are required to hold a licence to supply fireworks, either from the **local authority**, fire service or HSE. A licence costs

£500 and is issued by a **local authority**, subject to strict criteria. Licences can be refused or revoked if the applicant has committed offences under specified fireworks, explosives or health and safety legislation.

- 9.7 Retailers are required to display a notice at the point of sale stating: “It is illegal to sell category F2 fireworks or category F3 fireworks to anyone under the age of eighteen” and “It is illegal for anyone under the age of eighteen to possess any category F2 fireworks or category F3 fireworks in a public place.” The notice is required to be A3 size, with text a minimum of 16mm high.
- 9.8 Where the total amount of explosives contained in adult fireworks supplied in a single transaction exceeds 50kg, the supplier must keep specific traceability information for 3 years and provide the information to the local licensing authority on request.
- 9.9 Importers of fireworks must give traceability information to HMRC.
- 9.10 The penalty for breaching prohibitions and restrictions under the Fireworks Regulations 2004 is a fine of up to £5,000 or up to six months imprisonment or both. Alternatively, under provisions in the Criminal Justice and Police Act 2001, the Police can serve a fixed penalty notice of £90 for specific offences and can do the same for the offence of throwing fireworks in the highways, etc., under the Explosives Act 1975.
- 9.11 The penalty for possessing a pyrotechnic article at a qualifying musical event is a fine of up to £1,000 or up to a maximum of 51 weeks imprisonment or both.

10.0 Other relevant legislation

- 10.1 Under section 80 of the Environmental Protection Act 1990 (EPA 1990), the Council is responsible for investigating any complaints from residents about excessive noise. Officers must ensure that reasonable steps are taken to ascertain whether the noise is serious enough such that a Statutory Nuisance is occurring or is likely to occur or recur. If that is the case and the noise is continuing the Council is under a duty to serve a noise abatement notice on the person or business responsible. If the notice is not complied with then prosecution can follow.
- 10.2 Ultimately it is for officers to use their professional judgement on whether a private fireworks party is a Statutory Nuisance. In practice, since firework noise is short-lived it is unlikely that the bar would be met and unless there are repeat events over a period of time then it is difficult to take effective action.
- 10.3 There are also powers under the Anti-Social Behaviour, Crime and Policing Act 2014, if fireworks from a particular source were determined to be having a detrimental effect on the quality of life of those in the locality, be persistent or continuing in nature, and be considered to be unreasonable. Again, as with

statutory nuisance, a one-off private party would be unlikely to meet the definition, but action could potentially be taken where there are repeated unreasonable incidents involving fireworks. A written warning must be issued first and if there is failure to heed the warning it may then lead to a Community Protection Notice. If a Community Protection Notice is breached, further sanctions are available such as prosecution or a fixed penalty notice as an alternative.

List of background papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

House of Commons Library *Regulations of Fireworks* November 2020

Department for Communities and Local Government *Celebrating with bonfires and fireworks: A community guide* March 2015

Cabinet Member (Portfolio Holder)

Portfolio Holder – Communities, Place Planning and Regulatory Services

Local Member

All

Appendices

None