

The Highland Council

Agenda Item	6
Report No	CP/16/24

Committee: Communities and Place Committee

Date: 5 September 2024

Report Title: Firework Control Zones

Report By: Assistant Chief Executive – Place

1. Purpose/Executive Summary

- 1.1 The purpose of this report to advise Members of discretionary powers available to local authorities to create Firework Control Zones (FCZs) and to propose a process for the consideration of a community request for an FCZ.

2. Recommendations

2.1 Members are asked to:

- i. **NOTE** the new discretionary power and the guidance on its use provided by the Scottish Government.
- ii. **NOTE** the current situation and approach in the Highland Council area.
- iii. **APPROVE** the proposed process for responding to any community requests.

3. Implications

- 3.1 **Resource** – There will be financial costs associated with staff time, publication, promotion and communication costs. The Scottish Government have confirmed limited funding will be available to local authorities in financial year 24/25 to support designation of FCZs if they are progressed to formal consultation. However, there is no confirmation of funding beyond 2024/25 and it is anticipated that this will be expected to be met from existing resources.

If a FCZ is agreed, this will have resource implications for Police Scotland who are responsible for enforcement of the FCZ.

- 3.2 **Legal** – In 2023 the Fireworks and Pyrotechnics (Scotland) Act 2022 came into force in Scotland. Section 27 of the Act was introduced on 22nd June 2023 enabling local authorities to designate a place within its area as an FCZ. A FCZ is an area within a local authority's boundaries in which it is a criminal offence for a member of the public to ignite designated fireworks, including on private property such as a garden. Police Scotland have responsibility for enforcing offences related to the illegal use of fireworks within FCZs.

3.3 **Risk** – There are existing legal restrictions in place to minimise the potential risks and impacts of fireworks on communities and individuals. The introduction of the discretionary power to create Firework Control Zones is seen as an additional tool for local authorities and partners to consider, where appropriate and proportionate, alongside other preventative and enforcement tools to address specific, significant concerns in an area. There are not considered to be any risk implications for the Council’s objectives.

3.4 **Health and Safety (risks arising from changes to plant, equipment, process, or people)** – There are not considered to be any Health and Safety implications for Council staff. Misuse of fireworks can pose a safety risk for the general public and the use of a Firework Control Zone, where appropriate and proportionate, may reduce risk alongside other preventative and enforcement tools.

3.5 **Gaelic** – There are not considered to be any Gaelic implications.

4. Impacts

4.1 In Highland, all policies, strategies or service changes are subject to an integrated screening for impact for Equalities, Poverty and Human Rights, Children’s Rights and Wellbeing, Climate Change, Islands and Mainland Rural Communities, and Data Protection. Where identified as required, a full impact assessment will be undertaken.

4.2 Considering impacts is a core part of the decision-making process and needs to inform the decision-making process. When taking any decision, Members must give due regard to the findings of any assessment.

4.3 Integrated Impact Assessment - Summary

4.3.1 An Integrated Impact Assessment screening has been undertaken and the conclusions have been subject to the relevant Manager Review and Approval.

4.3.2 The Screening process has concluded that there are no negative impacts. Positive impacts were noted for areas of disability, human rights, climate change and children’s rights & wellbeing. The Scottish Government have published analysis of the consultation responses when the Act was being considered, and a Business and Regulatory Impact Assessment on the Act is available.

4.3.3

Impact Assessment Area	Conclusion of Screening
Equality	Protected characteristics: disability – positive
Socio-economic	no impact
Human Rights	Positive
Children’s Rights & Wellbeing	Positive
Island and Mainland Rural	no impact
Climate Change	Positive
Data Rights	no impact

5. Legislative Background on Firework Control Zones

5.1 Part 4 of the Firework and Pyrotechnic articles (Scotland) Act 2022 introduced a discretionary power for Local Authorities to designate FCZs. This follows a recommendation of the national Firework Review Group that Local Authorities should

be able to establish, with input from communities, whether there is a need for the use of fireworks to be restricted in specific areas.

- 5.2 A FCZ is an area within which it is a criminal offence for a member of the public to ignite a firework, including in private gardens. Police are responsible for enforcement of restrictions imposed by a FCZ and, where there are reasonable grounds, have powers of search without warrant of persons and vehicles and to seize and retain any item found that may be relevant to the commission of the offence. The maximum penalties for offences are £5000 or 6 months imprisonment.
- 5.3 The Act defines 4 categories of fireworks:
- “Category F1 firework” means a firework which presents a very low hazard and negligible noise level and which is intended for use in confined areas, including a firework which is intended for use inside domestic buildings,
 - “Category F2 firework” means a firework which presents a low hazard and low noise level and which is intended for outdoor use in confined areas,
 - “Category F3 firework” means a firework which presents a medium hazard, which is intended for outdoor use in large open areas and whose noise level is not harmful to human health,
 - “Category F4 firework” means a firework which presents a high hazard, which is intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health.
- 5.4 The offences under a FCZ apply to categories F2, F3 and F4. It does not apply to category F1 fireworks, which will still be permitted within firework control zones subject to any other legal controls on their use. Category F1 fireworks are indoor or close proximity fireworks with minimal safety distances. These can include sparklers, novelty items, indoor fireworks, and party poppers.
- 5.5 Public firework displays will continue to be permitted within an area designated as a firework control zone, subject to certain requirements including local licensing requirements. It is not an offence to use fireworks in a firework control zone if it is:
- For the purpose of a public fireworks display by a professional fireworks operator; or
 - For the purpose of a public fireworks display organised by a community group, sports club, or other similar organisations.
- 5.6 The Act states that, before designating a place as a firework control zone or amending or revoking an existing firework control zone, a local authority must prepare and publish a proposal in relation to the designation, amendment or revocation of the zone. The local authority must also carry out a consultation on the proposal.
- 5.7 The Act outlines that a proposal for designating, amending or revoking a firework control zone must set out:
- The **reasons** for the proposed new firework control zone, or for amending or revoking an existing zone.
 - The **boundaries** of the zone.
 - The **date** from which the zone **is to have effect** and the proposed date that the zone **is to cease to have effect**.
 - The **dates of the consultation** on the zone proposal, and **how the consultation will be conducted**.

5.8 The Act further includes a requirement to review consultation responses and thereafter to publish the decision on the proposal. When the decision is to proceed with the creation of a FCZ, publication must be at least 60 days before the FCZ is to have effect. A local authority is also required to carry out reviews of the operation and effectiveness of any FCZ that has been created. This could lead to a decision to revoke an existing FCZ.

6. Scottish Government Guidance on Firework Control Zones

6.1 The Scottish Government has published 'Firework Control Zones Guidance for Local Authorities', to which local authorities must have regard. The Guidance supports local authorities to make informed decisions concerning the designation, amendment, or revocation of firework control zones.

6.2 The FCZ guidance makes clear that a FCZ is not intended to be a catch-all solution to deal with issues involving fireworks. If a local authority and local partners consider a firework control zone to be appropriate, it is expected that a FCZ would be utilised alongside other preventative and enforcement tools to have maximum effect. Existing approaches and tools utilised by local authorities to deal with issues involving fireworks are outlined in the 'Alternative Approaches to FCZs' section of the FCZ guidance, alongside case studies from local authorities where alternative approaches have worked well and have had a positive impact in communities.

6.3 The FCZ guidance also emphasises the need for a partnership approach with FCZ consideration, particularly with Police Scotland on understanding the feasibility of enforcement of a potential zone and to enable discussions around enforcement to underpin considerations.

7. Existing Legal Controls on Fireworks

7.1 The FCZ guidance notes that the discretionary power to designate a firework control zone is a tool in a suite of approaches including legislation which are already in place to address the misuse of fireworks.

- It is illegal for the general public to throw or cast or fire any firework in or into any highway, street, thoroughfare or public space.
- It is illegal for adults to buy or supply fireworks to anyone under the age of 18 - with the exception of F1 fireworks.

7.2 The Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 brought in tighter controls on way the public can use and access fireworks:

- Restricted the times of day fireworks can be **used** by the general public to between 6pm and 11pm, with the exception of 5 November (when they can be used from 6pm until midnight), New Year's Eve, the night of Chinese New Year and the night of Diwali (when they can be used from 6pm until 1am).
- Restricted the times of day fireworks can be **supplied** to the public to during daytime hours of 7am and 6pm, alongside existing requirements on retailers around the sale and storage of fireworks.

- Limited the quantity of fireworks that can be supplied to the general public to 5kg at any one time.

8. Current Position in the Highlands

8.1 The Council and its partners consider anti-social behaviour, including firework misuse, that are impacting local communities through a number of partnership forums to ensure appropriate and proportional responses. This includes the Highland Outcome Improvement Plan Community Safety and Resilience Delivery Group, Safety Advisory Groups (SAGs) for organised events and through general discussions with communities such as through Community Council meetings.

8.2 The Council and its partners undertake a range of both prevention and intervention activities regarding the deliberate misuse of fireworks. These include:

- Support of national initiatives such as the annual Operation Moonbeam which is a well-established and recognised multi-agency response to the challenges of the bonfire night period.
- Encouraging the attendance of public fireworks display such as the Inverness Bonfire and Fireworks display.
- Support local public fireworks displays.
- Proactive enforcement of the legal requirements on firework sale and supply by the Council's Trading Standards team.
- Community engagement and awareness raising particularly through educational input at primary and secondary schools in the lead up to bonfire night.
- Responding to community concerns on specific issues.
- Requirement for public entertainment licence for premises used for fireworks displays.
- SEPA have issued advice to bonfire organisers on appropriate materials to minimise pollution.
- Environmental Health responding to noise complaints related to firework displays. In recent years this has included displays related to wedding venues, resolved through discussions with operators.

8.3 The Council's Trading Standards team actively enforces provisions covering both the safe storage of fireworks and in relation to quantities and times of day of sale. The main findings have been:

- a) The number of retailers in Highland selling fireworks has been declining for many years, down now to 18 from 23 two years ago. This is probably due to increasingly stricter legislation and has resulted in a concentration of sales in large national supermarket chains, although some of these have also recently stopped selling fireworks.
- b) Not every premises is visited every year but unannounced routine inspections for safe storage are carried out based on risk and ensuring that all premises are visited at least every few years. 2023 saw 12 inspections with 5 having non-compliances; 2022 had 13 inspections with 8 non-compliant; 2021 23 and 15. The non-compliances were all fairly minor and were all resolved during the visit or a prompt re-visit. The lack of major non-compliances (no formal action has been required for many years) is thought to be due to the continued programmes of unannounced visits.
- c) Two years ago, when the new provisions on time of day and quantity of sale came into force, several shops failed undercover "test purchases" by Trading Standards to check compliance. Officers have worked with the businesses involved to

improve their procedures and there have been no repeats since. Compliance levels in relation to these matters is now very high.

- d) In line with findings across most of Scotland, there has been no evidence in Highland of illegal supply, i.e. sales by unlicensed traders or sale of illegal fireworks. This is being monitored and any relevant intelligence received will be acted on.

8.4 In general, there are not considered to be major issues of anti-social behaviour related to firework misuse in the Highlands such has been seen in recent years in some central belt areas e.g. Niddrie in 2023. As in any area in Scotland, there are reports each year to the Police and the Council of local instances of deliberate misuse of fireworks and general complaints on disturbance caused by fireworks.

8.5 Police Scotland have provided the table below on reports of fireworks misuse:

Public Nuisance Incidents - AB16 (Fireworks), Highlands and Island Division.
Period: 1st January 2019 to 31st July 2024 (Inclusive)

Council Area	2019	2020	2021	2022	2023	2024
Highland	18	17	15	9	8	2

All statistics are provisional and should be treated as management information. All data have been extracted from Police Scotland internal systems and are correct as at 1/8/2024.

8.6 Following discussions on the introduction of the discretionary FCZ powers, officers from the Council, Police Scotland and the Scottish Fire & Rescue Service have reviewed previous levels of complaints and concerns. At the moment, based on the evidence, it is felt that current approach is appropriate and proportionate. There is therefore no Partnership proposal to consider the use of the discretionary power.

9. Community Requests for a FCZ

9.1 The Act does not make provision about community requests. The FCZ guidance comments that Local authorities should, where possible, establish a local process to give communities the ability to make the case for the designation of a FCZ, through a "community request".

9.2 The purpose of a community request is to provide communities themselves with a route to ask a local authority to formally consider whether a zone should be designated, amended or revoked in a particular place within its area. A community making a community request for a place can be any group of people who feel they have something in common. This may be that they live in the same area or that they share an interest or characteristic.

9.3 The FCZ guidance provides information on the community request process that states it should include:

1. **An application process** which may include a local threshold such as an evidential threshold (e.g. number of complaints or incidents) or relate to an existing Council procedure such as existing petition process. Reasons for an application could include:
 - Misuse of fireworks/injuries
 - Impact on vulnerable groups
 - Environmental protection
 - Animal welfare

2. **The process to consider and either proceed with or refuse the community request**, which should include the criteria to be applied to applications for a FCZ to ensure consistency
3. **If the decision is to proceed with the community request**, this would then follow the statutory process as outlined above in paragraphs 4.6-4.8
4. **If the decision is to refuse the community request**, a response should be provided detailing reasons for the refusal and the method of requesting a review of the decision.

9.4 The guidance provides outline timescales for the community request process:

Table 1: Indicative timelines from a community request being made to a zone being designated

Task	Indicative Timing
Community request received, considered, and response issued	4 weeks
If community request accepted, Local Authority develops consultation proposal for a zone	4 weeks
Consultation on proposed zone undertaken	12 weeks
Consultation responses considered and analysed	4 weeks
Decision on a zone publicised	At least 60 days prior to the decision taking effect.
TOTAL	32 weeks

10. Proposed Process for Community Requests in Highland

10.1 Following the FCZ guidance, the following process is recommended for community requests. This process has been developed following specific internal and partnership engagement, specifically with Police Scotland and SFRS. A flowchart summarising the process is provided in **Appendix 1**. Note discussions on the proposed process have been undertaken with Police Scotland and SFRS who are supportive of the approach.

1. **Initial enquiry** – community representatives will be encouraged to contact the Council to discuss their concerns and their proposals and reasons for a FCZ.
2. **Application** – if a community group wish to request a FCZ, a detailed application will be required which must cover:
 - a) the views and experiences of the community and the reason(s) they feel a FCZ is required.
 - b) detailed evidence to support the proposal, in line with the guidance provided by the Scottish Government.
 - c) what alternative approaches have been tried.
 - d) what consultation has been undertaken within the community – groups will be encouraged to engage with their Community Council (if it is not the Community Council making the application).
 - e) the boundaries of the proposed zone.
 - f) The date from which the proposed zone is to have effect and the proposed date that the zone is to cease to have effect.

3. Application consideration – the application will:

- a) Assessed by Council officers to ensure it has fulfilled all aspects of the application form. Groups will be asked to provide additional evidence if information is missing.
- b) The application will then be considered by the relevant Safety Advisory Group (SAG), which will include Council Officers, Police Scotland and SFRS, to ensure it fulfils the criteria in terms of the Scottish Government guidance and is therefore a valid application. The SAG will determine if it is a valid application and can therefore proceed. The SAG may determine that alternative approaches have not been effectively tried and that, in line with SG guidance, these should be exhausted prior to consideration of a FCZ.
- c) If the SAGs decision is to reject the community request, a response will be provided detailing reasons for the refusal, and the method of requesting a review. Should the community body wish to request a review, they would be required to address the points made in the reason for refusal and the subsequent review would be considered by the Assistant Chief Executive Place.

4. If the decision is to accept the community request, the Council will then follow the statutory process:

- a) The Council will develop the consultation proposal for the proposed FCZ.
- b) The Council will commence a consultation on the proposed zone, publicising the consultation and promoting this with key groups within the relevant area.
- c) The Council will consider and analyse consultation responses. This will be done in conjunction with partners through the SAG.
- d) A report will be prepared for the relevant Area Committee to make the final decision on designating the FCZ.
- e) If designation is agreed, the decision on the zone will publicised, at least 60 days prior to the decision taking effect.
- f) If the Area Committee decides not to proceed with the designation, the Council are required to publish a document explaining the decision. Note there is no right of appeal against a decision not to proceed with designation.

10.2 The Council's website will provide further information on fireworks legislation and on FCZs as detailed in **Appendix 2**.

10.3 A community request cannot be made by an individual, however complaints about antisocial behaviour concerning fireworks can be made by individuals and reported to Police Scotland by telephoning 101 or 999 depending on severity. Concerns about underage sales, unlicensed trading and illegal fireworks can be reported to the Council's Trading Standards service.

Designation: Assistant Chief Executive - Place

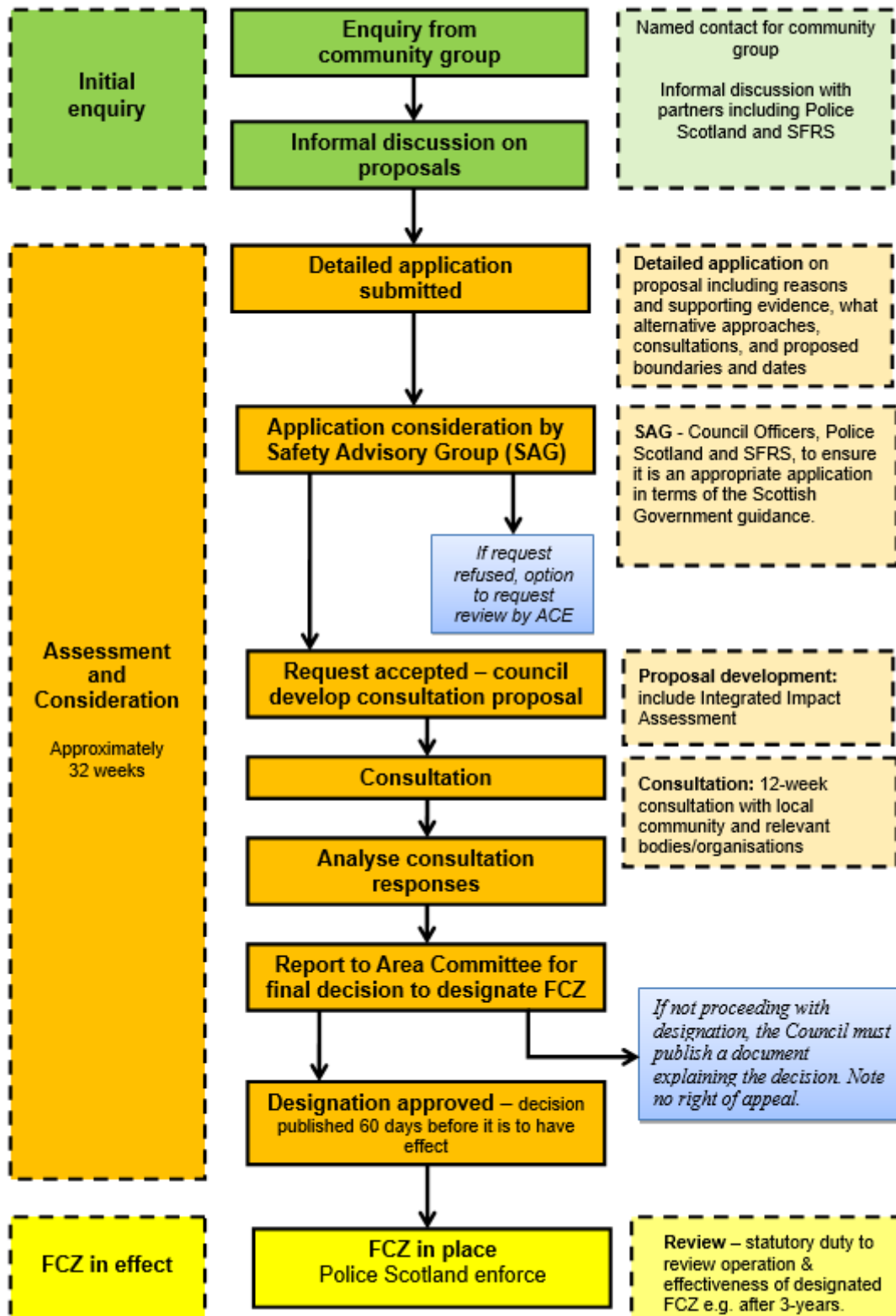
Date: 21 August 2024

Author: Alan Yates, Strategic Lead - Environmental Health & Bereavement Services

Background Papers:

Scottish Government - [Firework control zones: guidance for local authorities](#)

Flowchart - THC Community Request for FCZ



Existing:

https://www.highland.gov.uk/directory_record/738755/fireworks_and_other_pyrotechnics

Additional webpage proposed:

Fireworks & Firework Control Zones

Fireworks & The Law

Introduction

Fireworks are controlled by various pieces of legislation. Below is a brief summary of the main provisions of public interest.

Misuse

It is illegal for the general public to throw, or cast, or fire, any firework in or into any highway, street, thoroughfare or public space. This includes to throw or fire from a private place into a public place, street, highway etc.

It is illegal for the general public to use fireworks before 6pm or after 11pm; except on the 5th November; Hogmanay, Chinese New Year and Diwali, when fireworks can be used till midnight.

This is enforced by Police Scotland.

Purchase

It is illegal to sell fireworks, except F1 fireworks, to any person under the age of eighteen.

It is illegal for anyone to buy or supply fireworks, except F1* fireworks, for any person under the age of eighteen.

** F1 fireworks, sometimes known as indoor fireworks, include party poppers, novelty crackers and certain sparklers. The firework category is on the product packaging*

This is enforced by the Council's Trading Standards team

Storage

Any business wishing to store and/or sell fireworks must obtain an explosives licence issued by Highland Council's Trading Standards. A licence can be issued to store up to two tonnes, by net explosives content (NEQ), of fireworks. There is a fee for the licence. It is an offence to store fireworks without a licence.

This is enforced by the Council's Trading Standards team

Whom to contact

For concerns about fireworks misuse or deliberate fire raising, telephone Police Scotland on 101 or in an emergency ALWAYS telephone 999.

For explosives licence enquiries or concerns over sale of fireworks contact the Council's Trading Standards team by e-mail at trading_standards@highland.gov.uk

Anonymous reporting can also be done through Crimestoppers at <https://crimestoppers-uk.org/>

Advice on firework safety is available from Scottish Fire & Rescue Service at <https://www.firescotland.gov.uk/outdoors/fireworks-and-bonfires/>

Fireworks Control Zones (FCZ)

Introduction

The Fireworks and Pyrotechnic Articles (Scotland) Act 2022 gives local authorities the power to create FCZ. However, this is a discretionary power, not compulsory requirement.

What are Firework Control Zones?

A firework control zone (FCZ) is a defined geographic area within a local authority's boundaries where it is illegal for the general public to ignite a firework, except F1* fireworks. This prohibition includes setting off fireworks on private property e.g. a garden.

** F1 fireworks, sometimes known as indoor fireworks, include party poppers, novelty crackers and certain sparklers. The firework category is on the product packaging.*

Controlling the use of fireworks

An FCZ is one option that can be used as part of a specific targeted response to issues associated with firework misuse. The local authority and partners will first consider alternative options that may be equally, or more effective, such as

- Community engagement and/or awareness raising.
- Engagement and diversionary activities for young people.
- Early intervention in areas of concern.
- Enforcement activities under the Fireworks (Scotland) Miscellaneous Amendments Regulations 2021

Community Request for a Fireworks Control Zone

If there is a recognised and regular problem with fireworks misuse and other measures have not been able to resolve the problem; then a community group can request a FCZ.

It is important to realise that only a recognised community group can make a request. A request from an individual will not be considered.

The decision to consider a FCZ will be based upon all available evidence, be proportionate and balanced against alternative options, as referred to above.

The 2022 Act requires local authorities to undertake extensive statutory consultation with the local community, before a FCZ can be created. Note following Scottish Government guidance, the process for designating a FCZ may take over 32 weeks to conclude.

Firework Control Zones are enforced only by Police Scotland.

Please email new-generic-email@highland.gov.uk for more details.
