

FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) ACT 2022

EXPLANATORY NOTES

THE ACT

Overview

Part 2: Fireworks licensing

22. [Part 2](#) makes provision for a fireworks licensing system as a means of regulating the purchase, acquisition, possession, use and supply of certain fireworks. The effect of Part 2 is that only adults (persons aged 18 years or over) who have a fireworks licence may buy (or otherwise acquire), possess or use those fireworks, unless an exemption applies, or the person otherwise has a reasonable excuse. This is enforced by the creation of an offence of acquiring etc. certain fireworks without having a fireworks licence (see section 4) and an offence of supplying certain fireworks to a person who does not have a fireworks licence (see section 5). The provisions are explained in more detail below.

Fireworks which require a licence

Section 3—Application of Part 2

23. [Section 3](#) sets out the types of fireworks to which Part 2 applies, by reference to the previously defined categories set out in section 2. Subsection (1) is modifiable by regulations made under subsection (2) (to take account of, for example, future developments in fireworks technology, standards or specifications) which are subject to the affirmative procedure.
24. Category F4 fireworks (which 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) are not included within the licensing system. The licensing system is only meant to regulate the purchase, acquisition, possession, and use of category F2 and F3 fireworks by, and supply by and to, the general public. Category F4 fireworks are intended for use only by persons with specialist knowledge (about which further provision may be made by regulations under section 2(2)(b)) and not the general public. Possession of a category F4 firework by the general public is prohibited under regulation 5 of the Fireworks Regulations 2004 ([S.I. 2004/1836](#)).

Fireworks licensing

Section 4—Requirement to have fireworks licence

25. [Section 4](#) of the Act introduces a new requirement to have a fireworks licence. This section is subject to some exemptions (see section 38 and paragraphs 1, 2, 7 and 14 of schedule 1).

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26. It is an offence under section 4 to purchase, acquire, possess or use a category F2 or F3 firework without a fireworks licence. The offence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.
27. The offence does not apply if an individual has a reasonable excuse to purchase, acquire, possess or use fireworks. For example, if a person found category F2 fireworks in a park and took them to a police station for surrender, they would not commit an offence as they had a reasonable excuse for having those fireworks in their possession without having a fireworks licence.
28. Schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 contains definitions of words and expressions that apply to the Act. It defines “person” to include non-natural persons, being “a body of persons corporate or unincorporated and a partnership constituted under the law of Scotland”. Section 4(3) of the Act makes provision for circumstances where category F2 or F3 fireworks are purchased, acquired, possessed or used by a non-natural person (“the organisation”) and requires that only licensed individuals can carry out such activities for the non-natural person.

Section 5—Supply of fireworks to unlicensed persons

29. Where section 4 puts the onus on the person purchasing, acquiring, possessing or using the fireworks to have a fireworks licence, section 5 creates a new offence of supplying fireworks to unlicensed persons. The offence of supplying a firework to persons without a licence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.
30. The onus is on the supplier to check that the person has a fireworks licence (or that an exemption otherwise applies under schedule 1), and it is a defence to show that the supplier took reasonable steps to ascertain this. The section is subject to some exemptions (see section 38 and paragraphs 3, 8, 15 and 26 of schedule 1).
31. Subsection (4) provides that a local weights and measures authority (being the local authority for the area) must enforce section 5 for its area but only in relation to the supply of fireworks by a person in the course of business.
32. Subsection (5) makes it clear that actions amounting to supplying a firework are not limited to those carried out in the course of a business. Therefore, if a family is gathering in a garden for a celebration and Person A gives a category F3 firework to Person B, Person A commits an offence if Person B does not have a fireworks licence (unless they can prove the defence available in subsection (3)). Person B may also commit an offence under section 4(1) as Person B does not have a fireworks licence.

Process for licensing

Section 6—Applying for fireworks licence: general requirements

33. **Section 6** makes it clear that only adults (persons aged 18 years or over) may apply for a fireworks licence.
34. The Scottish Ministers may set out in regulations (under subsection (3)) the general requirements relating to the licence application process, such as the form and manner of the application, the information required in the application, the required supporting documents, the fees payable and any deadlines for the making of an application. The Scottish Ministers, when setting the fees payable, must have regard to the reasonable costs of the fireworks licensing scheme, but may choose to charge a nominal fee or remit the fee altogether.

Section 7—Applying for fireworks licence: mandatory requirements

35. Fireworks licence applicants will also need to meet the mandatory requirements when applying for a fireworks licence. These are set out in section 7 and applicants must disclose any convictions relating to a “relevant offence”, details of any previous fireworks licences that were revoked or cancelled and provide proof that they have completed a fireworks training course during the 3 months preceding the application. The Scottish Ministers may specify additional mandatory requirements by regulations made under subsection (2).
36. Subsection (4) defines a “relevant offence” as an offence under the Act, the Fireworks Act 2003 (or regulations made under it), the Pyrotechnic Articles (Safety) Regulations 2015 (S.I. 2015/1553), the Explosives Substances Act 1883 or the Explosives Act 1875 (which, together, form the main body of fireworks legislation), or certain fire-related offences, as well as any other offence where the misuse of fire, fireworks or pyrotechnics articles has been a significant factor.

Section 8—Fireworks training course

37. Section 8 enables the Scottish Ministers to, by regulations, make provision in relation to the fireworks training course that an applicant must complete before applying for a fireworks licence (see subsection (1)). The course is to be about the safe, lawful and appropriate use of fireworks. The regulations may include, among other things, provision relating to the content of the course, the minimum criteria for successful completion of the course, and provide for the accreditation of courses or training providers by the Scottish Ministers (see subsection (2)).
38. In addition, training providers must have regard to any guidance issued by the Scottish Ministers (see subsection (3)) and any such guidance must be published (see subsection (4)).

Section 9—Grant of fireworks licence

39. Section 9 sets out the criteria that must be met before the Scottish Ministers may grant a fireworks licence. One criterion is that the Scottish Ministers must be satisfied that the applicant can be permitted to possess and use fireworks safely, lawfully and appropriately.

Section 10—Fireworks licence: conditions and further provision

40. All fireworks licences are subject to the conditions listed in section 10(1). The Scottish Ministers may, by regulations, make provision for any additional conditions that must, or optional conditions that may, be attached to a fireworks licence (see subsections (2) and (4)(d)).
41. In addition, the Scottish Ministers may make regulations under subsection (4) determining the form and content of licences, duration of licences and the changes in circumstances that licensed persons must notify the Scottish Ministers of.

Section 11—Register of fireworks licence applications and licensed persons

42. Section 11 requires the Scottish Ministers to establish and maintain a register with details of all fireworks licence applications and all persons who have a fireworks licence. The details to be held on the register may be provided for by regulations made under subsection (2).

Section 12—Revocation of fireworks licence

43. Section 12 enables the Scottish Ministers to revoke a person’s fireworks licence if that person breaches a licence condition or is convicted of a “relevant offence” (as defined under section 7(4)). Subsections (3) to (8) set out the process for revocation via a notice

of revocation, and make it an offence to fail to comply with the notice. The offence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) (see subsection (6)).

44. The ability of the Scottish Ministers to revoke a licence where a person is convicted of a relevant offence enables the Scottish Ministers to revoke a licence where the court has chosen not to cancel the licence. That may arise in circumstances where the Scottish Ministers have a wider range of information available than the convicting court did and conclude that the person cannot possess and use fireworks safely and appropriately. It also enables the Scottish Ministers to require the surrender of a convicted person's licence and any fireworks in their possession where the convicting court did not do so. This is achieved by means of giving a notice of revocation (albeit the licence has already ceased to have effect due to its cancellation by the convicting court).

Section 13—Notification of convictions and cancellation of fireworks licence

45. **Section 13** allows a court to cancel a person's fireworks licence if the person is convicted of a relevant offence (as defined in section 7(4)) (see subsection (2)). The court must inform the Scottish Ministers of the cancellation and may make an order for forfeiture of any fireworks in that person's possession. In addition, if the court does not cancel a person's fireworks licence but the person has been convicted of a "relevant offence", the court must inform the Scottish Ministers of the conviction to allow them to note that on the register and consider instigating the revocation process under section 12.

Section 14—Appeals

46. **Section 14** enables a person to appeal to the sheriff against a decision of the Scottish Ministers relating to a refusal to grant a fireworks licence, a decision to attach an optional condition to the person's fireworks licence, or the revocation of a person's fireworks licence (see subsection (1)). Where the person resides in Scotland, the appeal must be made to a sheriff of the sheriffdom in which the person resides. In all other cases, the appeal must be made to a sheriff at Edinburgh sheriff court (see subsection (7)).

Offences relating to fireworks licence applications

Section 15—False statements

47. **Section 15** makes it an offence to knowingly or recklessly make a false statement (in respect of a material matter) for the purposes of obtaining a fireworks licence. The offence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.

Section 16—False or altered licences and documents

48. **Section 16** makes it an offence to produce a false fireworks licence or a false document that claims to prove the person is exempt from the requirement to have a fireworks licence. The offence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.

General

Section 17—Power of Scottish Ministers to make arrangements for certain functions

49. **Section 17** enables the Scottish Ministers to make arrangements for a person to perform some or all of their functions under Part 2. This does not include the power to make regulations under the Part. Ultimately, the responsibility for the performance of the

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function still rests with the Scottish Ministers. The section also makes it clear that, despite any arrangement by the Scottish Ministers for another person to perform a function under this Part, the Scottish Ministers are not prevented from performing the function themselves.

Section 18—Power to make further provision

50. **Section 18** gives the Scottish Ministers the power to make (by regulations) further provision for the purposes of Part 2 of the Act.

Section 19—Regulations: consultation

51. **Section 19** requires the Scottish Ministers to, before making any regulations under Part 2 (except regulations under section 3 modifying the types of fireworks to which the licensing scheme under Part 2 applies), consult such persons as they consider are likely to be interested in or affected by the licensing of fireworks. Examples of such persons include fireworks manufacturers and retailers, Police Scotland, the Scottish Ambulance Service, the Scottish Fire and Rescue Service, and the general public.