

FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) ACT 2022

EXPLANATORY NOTES

THE ACT

Overview

Part 3: Restrictions on supply and use of fireworks and pyrotechnic articles

52. **Part 3** prohibits the supply and use of certain fireworks on days other than those which are specified in sections 22 and 23 unless an exemption applies. In addition, section 21 prohibits the provision of most pyrotechnic articles to children unless an exemption applies.

Application of Part 3

Section 20—Application of Part 3

53. **Section 20** sets out the types of fireworks and pyrotechnic articles to which Part 3 applies, by reference to the previously defined categories in section 2. Subsection (1) is modifiable by regulations (to take account of, for example, future developments in fireworks technology, standards or specifications) which are subject to the affirmative procedure.

Prohibition on supply to children

Section 21—Prohibition on providing fireworks or pyrotechnic articles to children

54. There is currently nothing preventing a person who is not an economic operator from making fireworks and pyrotechnic articles available contrary to the minimum age limits.
55. **Section 21** makes it an offence for a person to knowingly buy or attempt to buy a firework or other pyrotechnic article for a person under the age of 18 i.e. a proxy purchase (see subsection (1)(a)). It also makes it an offence for a person to give or otherwise make them available to a person under the age of 18 (see subsection (1)(b)). A person who commits the offence is liable (on summary conviction) to a fine not exceeding level 5 on the standard scale (currently £5,000) or to a term of imprisonment not exceeding 6 months, or both.
56. As set out in section 20(1)(a), section 21 applies to all pyrotechnic articles other than category F1 fireworks and percussion caps for toy guns (intended for use by children under the age of 14). It therefore applies to all other pyrotechnic articles including category F2, F3 and F4 fireworks. Whilst it is unlawful for category F4 fireworks to be sold to the general public, they are included for the purposes of section 21 to make it clear that a person (who may have legally acquired category F4 fireworks) cannot give them to a child. Category F1 fireworks are not included as it is not an offence for a child to possess a category F1 firework. Percussion caps for toys that are intended for use

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Act 2022 (asp 9) which received Royal Assent on 10 August 2022*

by children under the age of 14 are also excluded from the definition of “pyrotechnic article” in the Pyrotechnic Articles (Safety) Regulations 2015 (S.I. 2015/1553) (see regulation 3(2)(e)) meaning that such percussion caps may be sold to children directly.

57. Subsection (3) makes it clear that a person does not commit an offence if the pyrotechnic article was designed to be used as a visual distress signal, and the person providing the pyrotechnic article intended that the recipient (the person under the age of 18) used the pyrotechnic article only in appropriate circumstances. For example, if Person A (who is under the age of 18) is going for a hill walk and Person B gives Person A a safety flare to use if Person A needs to signal for help, then Person B does not commit an offence.
58. The section is subject to some exemptions (see section 38 and paragraphs 9, 25 and 28 of schedule 1).

Days of supply and use of fireworks

Section 22—Restrictions on days of supply of fireworks

59. The Fireworks Regulations 2004 (S.I. 2004/1836) and the Fireworks (Scotland) Regulations 2004 (S.S.I. 2004/393) restrict the days and hours of the day during which category F2, F3 and F4 fireworks may be sold by unlicensed suppliers.
60. The Act builds on that with section 22 restricting the days on which any person may supply category F2 and F3 fireworks to the general public (see also section 20(1)(b)). Those days are listed in subsection (3) and cover specified periods in relation to Vaisakhi, Guy Fawkes Day, Hogmanay, Chinese New Year and Diwali.
61. A person who supplies a category F2 or F3 firework on a day that is not specified in subsection (3) commits an offence and is liable (on summary conviction) to a fine not exceeding level 5 on the standard scale (currently £5,000) or to a term of imprisonment not exceeding 6 months, or both (see subsections (1) and (2)).
62. The definition of “supply” in subsection (8) means that the offence applies to the sale or exchange of fireworks for consideration and the giving away or gifting of fireworks, but **only** when carried out in the course of a business. It does **not** therefore apply to the actions of individuals in their private lives. For example, an individual who gifts fireworks to a friend on a day when this is not allowed will not commit an offence under this section. But both the person who gifted them and the recipient will still commit offences under sections 4(1) and 5(1), respectively, if the recipient does not have a fireworks licence (and no exemption otherwise applies under schedule 1).
63. **Section 22** is subject to some exemptions (see section 38 and paragraphs 10, 16, 20 and 27 of schedule 1). Section 22 does not remove the requirement for a person to have a fireworks licence to acquire these types of firework in the first place unless the person is exempt from this requirement e.g. as a professional organiser of fireworks displays. The exemptions from section 22 mean that a person who falls within the exemptions from section 22 *and* has a fireworks licence (or who is exempt from the requirement to have a licence) may be supplied with this type of firework on a day that is not specified in section 22. For example, an organiser of a public fireworks display on behalf of a charitable or community organisation (see paragraph 21 of schedule 1) may be sold fireworks on any day of the year but must also have a fireworks licence (or be a professional organiser of fireworks displays) in order to acquire the fireworks. A defence to the offence under section 22(1) is available (see subsection (4)) where a person took reasonable steps to ensure that the recipient of the firework was exempt under schedule 1.

Section 23—Alignment of days when licence required to supply

64. Regulation 9(1) of the Fireworks Regulations 2004 (S.I. 2004/1836) provides that a licence is required to supply category F2, F3 and F4 fireworks on any day other than

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those specified in regulation 9(2). Section 23 amends regulation 9 to provide that the days on which such a supply licence is not required is to align with the days on which fireworks may generally be sold under the Act (by virtue of section 22). In the event that the days specified in the Fireworks Regulations 2004 are adjusted, the Act will still bring them into line with the days set out in section 22. However, should those Regulations be replaced or revoked, the power in section 53 of the Act may be used to make such changes as are necessary to maintain the alignment.

Section 24—Restrictions on days of use of fireworks

65. **Section 24** restricts the days on which category F2 and F3 fireworks may be used. Those days are listed in subsection (3) and cover specified periods in relation to Vaisakhi, Guy Fawkes Day, Hogmanay, Chinese New Year and Diwali. These periods extend a few days beyond the corresponding permitted period for supplying fireworks, to give people time to use any fireworks in their possession.
66. A person who uses fireworks on any other day commits an offence and is liable (on summary conviction) to a fine not exceeding level 5 on the standard scale (currently £5,000) or to a term of imprisonment not exceeding 6 months, or both (see subsections (1) and (2)).
67. The section is subject to some exemptions (see section 38 and paragraphs 4, 11, 17 and 21 of schedule 1). The exemptions mean that a person who is exempt under schedule 1 may use a category F2 or F3 firework on any day but this does not remove the requirement to hold a fireworks licence under section 4 to use such a firework unless the person is exempt from the requirement to hold a fireworks licence. This means that only a person who falls within the exemptions from section 24 *and* who has a fireworks licence (or who is exempt from the requirement to have a licence) may use a firework on a day that is not specified in section 24.

Section 25—Compensation

68. **Section 25** enables the Scottish Ministers to make regulations for the payment of compensation to specialist suppliers, distributors and importers of fireworks based in Scotland as a consequence of section 22 coming into force and restricting the days on which fireworks may be sold to the general public. The regulations may make further provision about who qualifies for compensation, set out the circumstances in which compensation is payable, the process for calculating it, claiming it and for having decisions reviewed or appealed.