

*These notes relate to the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (asp 9) which received Royal Assent on 10 August 2022*

# FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) ACT 2022

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## EXPLANATORY NOTES

### THE ACT

#### *Overview*

#### **Part 6: Exemptions, enforcement and other matters**

#### **Miscellaneous**

#### ***Section 45—Time limits for prosecution of offences***

108. **Section 45** extends the usual time limit for starting the prosecution of a summary offence under the Act from 6 to 12 months. This is in keeping with other fireworks legislation.

#### ***Section 46—Presumptions in proceedings under this Act***

109. **Section 46** creates a presumption that, where an item is labelled as a firework or pyrotechnic article or is within labelled packaging, then it is to be treated as such (and the category or type described) for the purpose of a trial for an alleged offence involving the item. This presumption can be rebutted on a balance of probabilities, but in order to lead evidence to do so, notice has to be given to the other parties not less than 7 days before the intermediate diet or, if there is no such diet, 28 days before the date of the trial.

#### ***Section 47—Certificates as to proof of having fireworks licence***

110. **Section 47** makes it possible for a person authorised by the Scottish Ministers to provide a certificate to court which proves whether or not:

- a person held a fireworks licence on a specific date for the purpose of prosecuting an offence relating to a licence,
- that a particular item is a firework or pyrotechnic article for the purposes of the Act and, where it is a firework, the category of firework in question.

111. The issuing of a certificate is likely to arise where an item that is thought to be a firework or pyrotechnic article is not properly labelled, has been ignited (and so the label damaged) or is a homemade item and the enforcement authorities have the item tested in advance of the trial. A certificate can also be issued when the presumption that a labelled item is a firework or pyrotechnic article has been challenged.

#### ***Section 48—Forfeiture and disposal of fireworks and pyrotechnic articles***

112. **Section 48(1)** sets out the different situations where the forfeiture and disposal of fireworks or pyrotechnic articles seized or surrendered may occur. This may arise where the Scottish Ministers revoke a person's licence, a court convicts a person of an offence

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under the Act or where a court convicts a person for a relevant offence (defined in section 7(4)) and chooses to cancel the person's licence.

113. Subsections (2) to (5) cater for the situation where the Scottish Ministers revoke a person's fireworks licence. In those circumstances, any category F2 or F3 fireworks the person has are to be surrendered (see section 12(3) and (4)(b)). If the person appeals the revocation, the fireworks are kept until such time as the appeal is determined and, if the appeal is successful, the fireworks are to be returned. However, if the person doesn't appeal or the appeal is unsuccessful, the provision allows for the fireworks to be disposed of in a suitable manner.
114. Subsections (6) to (8) deal with the circumstances where a person's licence is cancelled by a court in connection with an offence (see section 13), or the person has been convicted of an offence under the Act (without a licence being cancelled) and fireworks or pyrotechnic articles belonging to the person have either been taken by the police as evidence or are known to be in the person's possession. In these circumstances, the court which has convicted the person may order the fireworks or pyrotechnic articles to be forfeited and disposed of in a suitable manner.

***Section 49—Individual culpability for offending by an organisation***

115. **Section 49** makes provision where offences under the Act are committed by legal entities such as companies, partnerships, and associations. Where an offence under the Act is committed by a "relevant organisation", this section provides that the relevant organisation and, in some cases, a "responsible individual" in that organisation are both to be held responsible. This section ensures that those running legal entities who are responsible for the decisions leading to an offence under the Act can also be prosecuted for it.