

FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) ACT 2022

EXPLANATORY NOTES

THE ACT

Overview

Part 6: Exemptions, enforcement and other matters

Overview

91. This Part makes provision for exemptions to certain offences under Parts 2 to 5, and in relation to enforcement of offences under the Act.
92. The Act provides the officers of each local weights and measures authority powers to enforce the offences of supplying unlicensed persons with fireworks (see section 5) and supplying fireworks otherwise on the permitted days (see section 22) on a commercial basis. In Scotland, a local weights and measures authority is the local authority for the area. In the following explanatory notes, the local weights and measures authority for a local authority area is referred to as “Trading Standards” (for the area) and its officers are referred to as “Trading Standards officers”.
93. Trading Standards (and its officers) already have powers in relation to the sale of fireworks, most notably in connection with sales to underage persons (by virtue of section 12 of the Fireworks Act 2003) and enforcement of these new offences will sit alongside those existing powers. Schedule 2 sets out the specific investigatory powers that are available to Trading Standards (and its officers) for enforcing sections 5 and 22.
94. Constables of Police Scotland have general powers of enforcement across the Act.¹ Part 6 bolsters those powers by providing constables with powers of entry (with a warrant) and powers to stop and search (without a warrant) in appropriate circumstances. Constables are also able to seize and retain fireworks and pyrotechnic articles in connection with the offences, as well as any item found in the course of a search which may be relevant to the commission of the offence.
95. **Part 6** also provides for a number of general provisions in relation to court proceedings for offences under the Act, including extending the time period for summary prosecutions (see section 45) and providing a mechanism for the forfeiture and disposal of any fireworks or pyrotechnic articles that have been seized in connection with the commission of an offence or surrendered following the revocation of a licence (see section 48).

¹ Section 51 defines a constable for the purposes of the Act. Generally, it is a constable of Police Scotland. However, by virtue of section 31 of the Railways and Transport Safety Act 2003, the powers can also be exercised by a constable of the British Transport Police if the offence is being committed in a railway context.

96. Finally, Part 6 also provides for the aggravation of certain offences where they are committed in a manner involving the use of a firework or pyrotechnic article, and where the victim (or intended victim) is an emergency worker (see section 44).

Exemptions

Section 38—Exemptions from offences in Act

97. **Section 38** introduces schedule 1, which provides for exemptions to certain offences under Parts 2 to 5. The schedule is modifiable by regulations.

Powers of local weights and measures authorities

Section 39—Powers of local weights and measures authorities

98. **Section 39** introduces schedule 2, which makes provision about the powers of Trading Standards² (and its officers) to enforce the offences under sections 5 and 22 in its area and related matters.

Powers of constables

Section 40—Power of entry etc. with warrant

99. **Section 40** confers power on a sheriff, summary sheriff³ or justice of the peace to grant a warrant authorising a constable to enter and search premises (including houses, vehicles, and moveable structures like a tent) where the constable has reasonable grounds for believing that an offence has been, or is being, committed under the Act at the premises, or there is evidence at the premises of such an offence having been committed.
100. By virtue of subsection (3), the warrant may authorise the constable to break into premises and search anything in, or anyone on, the premises. The constable can take away anything that the constable thinks is evidence that an offence under the Act is being or has been committed. Subsection (4) allows a constable to require material which is in, for example, digital format to be printed or saved onto a device that the police can take away.

Section 41—Search for fireworks or pyrotechnic articles without warrant

101. Where a constable has reasonable grounds to suspect that a person has committed or may be committing an offence under the Act, the constable may stop and search the person and, if relevant, a vehicle (and anything on or in it). This particularly relates to the possession of fireworks or pyrotechnic articles in circumstances where those items are prohibited such as at a designated sporting event or public assembly. However, it may also be relevant where a person is suspected of having acquired fireworks without having a fireworks licence.
102. Where a constable finds a firework or pyrotechnic article which tends to show that an offence is being (or has been) committed under the Act, the constable can keep that item, as well as any other item found in the course of a search which may be relevant to the commission of the offence, as evidence.

² Described in the Act as a local weights and measures authority.

³ Sheriff is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 by reference to section 134 of the Courts Reform (Scotland) Act 2014 (which states that references to sheriff include references to any other member of judiciary of the sheriffdom, so far as that member has the jurisdiction and competence that attaches to the office of sheriff). Under section 45(1) of the Courts Reform (Scotland) Act 2014 a summary sheriff may, in relation to criminal investigations and proceedings, exercise the jurisdiction and powers that attach to the office of sheriff.

Section 42—Offence of obstructing an officer of a local weights and measures authority

103. **Section 42** makes it an offence for a person to intentionally obstruct or refuse to cooperate with Trading Standards⁴ officers in the exercise of their functions under the Act (see subsection (1)(a)) or to fail to provide the officer with such assistance as may be requested. It is also an offence for a person to intentionally or recklessly supply incorrect information or make an untrue statement to a Trading Standards officer. Obstructing a constable is already an offence under section 90 of the Police and Fire Reform (Scotland) Act 2012.
104. An offence under this section 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 43—Offence of impersonating officer of a local weights and measures authority

105. **Section 43** makes it an offence to claim to be a Trading Standards officer exercising powers under the Act. An offence under this section is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000).

Aggravation of offences against emergency workers

Section 44—Aggravation of offences against emergency workers

106. **Section 44** provides for the aggravation of offences that are committed in a manner involving the use of a firework or pyrotechnic article, and where the victim (or intended victim) is an emergency worker. Subsection (2) provides the definition of “emergency worker”.
107. On conviction, the court is required to state that an offence is aggravated by the use of a firework or pyrotechnic article, record the conviction in a way that shows the offence is so aggravated and take the aggravation into account when determining the appropriate sentence. The court must also state reasons for why the sentence is or is not different from a sentence that would have been imposed had the offence not been aggravated.

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:

⁴ Described in the Act as a local weights and measures authority, (see paragraph 92 for further details).

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

- 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 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.