



# Fireworks and Pyrotechnic Articles (Scotland) Act 2022

2022 asp 9

## PART 6

### EXEMPTIONS, ENFORCEMENT AND OTHER MATTERS

#### *Miscellaneous*

#### **45 Time limit for prosecution of offences**

Summary proceedings for an offence under this Act may be commenced at any time within the period of 12 months beginning with the day on which the offence was committed.

#### **Commencement Information**

- II** S. 45 not in force at Royal Assent, see [s. 56\(2\)](#)  
**I2** S. 45 in force at 10.10.2022 by [S.S.I. 2022/280](#), [reg. 2](#), [sch.](#)

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

- (1) This section applies for the purposes of a trial in proceedings for an alleged offence under this Act.
- (2) Where an item—
  - (a) is labelled as a firework or other pyrotechnic article, or
  - (b) is not so labelled but is found within a container which is labelled as containing fireworks or other pyrotechnic articles,the item is presumed to be a firework or pyrotechnic article as described on the label or, as the case may be, container.
- (3) At the trial, a party to the proceedings may rebut the presumption mentioned in subsection (2) by proving that, at the time the offence is alleged to have been

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committed, the item was not a firework or other pyrotechnic article of the description on the item or the container.

- (4) A party may lead evidence for the purpose of rebutting the presumption only if the party has given notice of the intention to do so to the other parties—
- (a) not less than 7 days before the intermediate diet, or
  - (b) if there is no intermediate diet, not less than 28 days before the date of the trial.

**Commencement Information**

- I3** S. 46 not in force at Royal Assent, see [s. 56\(2\)](#)  
**I4** S. 46 in force at 10.10.2022 by [S.S.I. 2022/280](#), reg. 2, [sch.](#)

**47 Certificates as to proof of certain matters**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In the table in schedule 9 (certificates as to proof of certain routine matters), at the end insert—

“The Fireworks and Pyrotechnic Articles (Scotland) Act 2022.

|  |  |   |
|--|--|---|
| Sections 4(1) and 5(1)                             | A person authorised to do so by the Scottish Ministers | In relation to a person identified in the certificate, that on the date specified in the certificate the person had, or as the case may be, did not have, a fireworks licence (within the meaning of Part 2 of that Act).   |
| Sections 4(1), 5(1), 21(1), 22(1), 24(1) and 27(2) | A person authorised to do so by the Scottish Ministers | That the particular item identified in the certificate is— <ol style="list-style-type: none"> <li>(a) a firework within the meaning of section 1(1) of that Act, and</li> <li>(b) of such category of firework (construed in accordance with section 2(1) of that Act) as is specified in the certificate.</li> </ol> |
| Sections 21(1), 35(1) and 36(1)                    | A person authorised to do so by the Scottish Ministers | That the particular item identified in the certificate is a pyrotechnic article within the meaning of section 1(1) and (2) of that Act.”  |

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#### Commencement Information

- I5** S. 47 not in force at Royal Assent, see **s. 56(2)**  
**I6** S. 47 in force at 10.10.2022 by **S.S.I. 2022/280, reg. 2, sch.**

## 48 Forfeiture and disposal of fireworks and pyrotechnic articles

- (1) **This section** applies where—
  - (a) the Scottish Ministers revoke a person's licence by giving notice under **section 12(3)**,
  - (b) a court convicts a person of an offence under this Act, or
  - (c) a court cancels a person's fireworks licence under **section 13(2)**.
- (2) **Subsection (3)** applies where—
  - (a) a firework to which **Part 2** applies is surrendered in pursuance of a notice given under **section 12(3)** which revokes a person's fireworks licence, and
  - (b) the person appeals against the decision to revoke the person's fireworks licence (and does not withdraw that appeal prior to its determination).
- (3) Where **this subsection** applies—
  - (a) if the appeal is successful, the firework must be returned,
  - (b) if the appeal is unsuccessful, the sheriff may make such order for the disposal of the firework as the sheriff considers appropriate.
- (4) **Subsection (5)** applies where—
  - (a) a firework to which **Part 2** applies is surrendered in pursuance of a notice given under **section 12(3)** which revokes a person's fireworks licence, and
  - (b) the person—
    - (i) does not appeal against the decision to revoke the person's fireworks licence, or
    - (ii) makes and subsequently withdraws an appeal against such a decision.
- (5) Where **this subsection** applies, the firework is to be disposed of in such manner as the chief constable considers appropriate.
- (6) The court by which a person is convicted or, as the case may be, which cancels a person's fireworks licence may make an order for the forfeiture or disposal of any firework or pyrotechnic article—
  - (a) to which the offence relates, or
  - (b) which is possessed by the person.
- (7) A constable may seize and retain a firework or pyrotechnic article which may be the subject of an order for forfeiture under **this section**.
- (8) Where a court orders the disposal of a firework or pyrotechnic article seized and retained under this Act by a constable or an officer of a local weights and measures authority, the firework or pyrotechnic article may be disposed of in such manner as the chief constable or, as the case may be, the local weights and measures authority considers appropriate.

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#### Commencement Information

- I7** S. 48 not in force at Royal Assent, see [s. 56\(2\)](#)  
**I8** S. 48(1)(b)(6)(7)(8) in force at 10.10.2022 by [S.S.I. 2022/280](#), [reg. 2](#), [sch.](#)

### 49 Individual culpability for offending by an organisation

- (1) [Subsection \(2\)](#) applies where—
- (a) an offence under this Act is committed by a relevant organisation, and
  - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of—
    - (i) a responsible official of the organisation, or
    - (ii) an individual purporting to act in the capacity of a responsible official.
- (2) The responsible official (or, as the case may be, the individual purporting to act in that capacity), as well as the organisation, commits the offence.
- (3) “Relevant organisation” means—
- (a) a company,
  - (b) a partnership (including a limited liability partnership),
  - (c) another body or association.
- (4) “Responsible official” means—
- (a) in the case of a company—
    - (i) a director, secretary, manager or similar officer, or
    - (ii) where the affairs of the company are managed by its members, a member,
  - (b) in the case of a limited liability partnership, a member,
  - (c) in the case of a partnership other than a limited liability partnership, a partner,
  - (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

#### Commencement Information

- I9** S. 49 not in force at Royal Assent, see [s. 56\(2\)](#)  
**I10** S. 49 in force at 10.10.2022 by [S.S.I. 2022/280](#), [reg. 2](#), [sch.](#)

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