



# Fireworks and Pyrotechnic Articles (Scotland) Act 2022

2022 asp 9

## PART 6

### EXEMPTIONS, ENFORCEMENT AND OTHER MATTERS

#### *Exemptions*

#### **38 Exemptions from offences in Act**

- (1) [Schedule 1](#) contains exemptions to certain offences under [Parts 2 to 5](#).
- (2) The Scottish Ministers may by regulations—
  - (a) modify [schedule 1](#) to add, amend or remove exemptions,
  - (b) make further provision about the requirements that a person must meet to be treated as being employed by, or in business as, a professional organiser or operator of fireworks displays or pyrotechnics displays for the purposes of [schedule 1](#).
- (3) Regulations under subsection (2) are subject to the affirmative procedure.

#### *Powers of local weights and measures authorities*

#### **39 Powers of local weights and measures authorities**

[Schedule 2](#) makes provision about the powers of a local weights and measures authority (and its officers) to enforce the offences under [sections 5 and 22](#) in its area and related matters.

### *Powers of constables*

#### **40 Power of entry etc. with warrant**

- (1) A sheriff or justice of the peace may grant a warrant under this section authorising a constable to enter premises if the sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting—
  - (a) that an offence under this Act has been, or is being, committed at the premises, or
  - (b) that there is evidence at the premises of the commission of an offence under this Act.
- (2) A warrant granted under this section remains in force for a period of 28 days beginning with the day on which it was granted.
- (3) A warrant granted under this section may authorise a constable to—
  - (a) enter the premises by force if necessary,
  - (b) search the premises and any person found in the premises,
  - (c) seize and retain any item or material found on the premises, or on any person in the premises, if the constable has reasonable grounds for suspecting that it may provide evidence of the commission of an offence under this Act.
- (4) A constable who is authorised by a warrant granted under this section to seize and detain material may, if the material is only capable of being looked at, read, watched or listened to (as the case may be) after conversion from data stored in another form, require that the material—
  - (a) be converted into such a form in a way which enables it to be taken away, or
  - (b) be produced in a form which is capable of being taken away and from which it can be readily converted.
- (5) In this section, “premises” includes any—
  - (a) land or building,
  - (b) vehicle, vessel, trailer, aircraft or hovercraft,
  - (c) tent or moveable structure,(whether or not the premises are used wholly or mainly as a private dwelling).

#### **41 Search for fireworks or pyrotechnic articles without warrant**

- (1) If a constable has reasonable grounds for suspecting that a person has committed or is committing an offence under this Act, the constable may—
  - (a) search that person without warrant, and detain the person for such time as is reasonably required to permit the search to be carried out,
  - (b) stop and search a vehicle (and anything on or in it) without warrant,
  - (c) seize and retain any item found in the course of a search which may be relevant to the commission of the offence.
- (2) A constable who detains a person under [subsection \(1\)](#) must give the person the reason for the detention.

*Offences in relation to enforcement*

**42 Offence of obstructing officer of a local weights and measures authority**

- (1) It is an offence for a person to—
  - (a) intentionally obstruct an officer of a local weights and measures authority who is exercising powers conferred by [schedule 2](#),
  - (b) intentionally fail to comply with any requirement made of the person by an officer of a local weights and measures authority under paragraph 7 or 10 of [schedule 2](#),
  - (c) fail, without reasonable cause, to give an officer of a local weights and measures authority any other assistance or information which the officer may reasonably require of him for the purposes of the exercise of the officer's powers under [schedule 2](#).
- (2) It is an offence for a person, in giving any information which is required of the person by virtue of [subsection \(1\)\(c\)](#)—
  - (a) to make any statement which the person knows is false in a material particular, or
  - (b) recklessly to make a statement which is false in a material particular.
- (3) A person who commits an offence under [this section](#) is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

**43 Offence of impersonating officer of a local weights and measures authority**

- (1) It is an offence for a person who is not an officer of a local weights and measures authority to purport to act as such an officer in the exercise of powers under [schedule 2](#).
- (2) A person who commits an offence under [subsection \(1\)](#) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Aggravation of offences against emergency workers*

**44 Aggravation of offences against emergency workers**

- (1) An offence is aggravated by the use of a firework or pyrotechnic article if—
  - (a) the offence is committed in a manner that involves the use of a firework or pyrotechnic article which is currently lit or ignited (or which has recently been lit or ignited), and
  - (b) a victim (or intended victim) of the offence is an emergency worker.
- (2) For the purpose of subsection (1), an emergency worker is—
  - (a) a person—
    - (i) acting in a capacity mentioned in section 1(3) or 2(3) of the Emergency Workers (Scotland) Act 2005,
    - (ii) acting in a capacity mentioned in section 90(3)(a), (c) or (d) of the Police and Fire Reform (Scotland) Act 2012,
    - (iii) who is a constable of the British Transport Police Force and is acting in that capacity,

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- (b) a person who is assisting such a person in responding to an emergency circumstance.
- (3) Evidence from a single source is sufficient to prove that an offence is aggravated by the use of a firework or pyrotechnic article.
- (4) Subsection (5) applies where it is—
  - (a) libelled in an indictment, or specified in a complaint, that an offence is aggravated by the use of a firework or pyrotechnic article, and
  - (b) proved that the offence is so aggravated.
- (5) The court must—
  - (a) state on conviction that the offence is aggravated by the use of a firework or pyrotechnic article,
  - (b) record the conviction in a way that shows that the offence is so aggravated,
  - (c) take the aggravation into account in determining the appropriate sentence, and
  - (d) state—
    - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
    - (ii) otherwise, the reasons for there being no such difference.
- (6) For the purposes of this section, a person is responding to emergency circumstances if the person—
  - (a) is going anywhere for the purpose of dealing with emergency circumstances occurring there, or
  - (b) is dealing with emergency circumstances or preparing to do so.
- (7) For the purposes of this section, circumstances are “emergency” circumstances if they are present or imminent and—
  - (a) are causing or are likely to cause—
    - (i) serious injury to or the serious illness (including mental illness) of a person,
    - (ii) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings), or
    - (iii) a worsening of any such injury, illness or harm, or
  - (b) are likely to cause the death of a person.
- (8) For the purposes of this section, circumstances to which a person is responding are to be taken to be emergency circumstances if the person believes and has reasonable grounds for believing they are or may be emergency circumstances.

#### *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.

#### **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 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.

#### **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—

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“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>

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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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#### **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.

## **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.