

SCHEDULE 2

(introduced by section 39)

INVESTIGATORY POWERS OF A LOCAL WEIGHTS AND MEASURES AUTHORITY

General

- 1 (1) A local weights and measures authority (and its officers) may exercise the powers under [this schedule](#) for the purpose of ascertaining whether an offence under [section 5](#) (supply of fireworks to unlicensed persons) or [section 22](#) (restriction on days of supply of fireworks) has been, or is being, committed.
- (2) A local weights and measures authority (and its officers) may exercise the power under [paragraph 6](#) (power to seize and retain items) in relation to—
 - (a) an item which an officer of the authority reasonably suspects may disclose (by means of testing or otherwise) the commission of an offence under [section 5](#) or [22](#),
 - (b) a firework or pyrotechnic article which an officer of the authority reasonably suspects is liable to forfeiture under this Act, and
 - (c) an item which an officer of the authority reasonably suspects may be required as evidence in proceedings for an offence under [section 5](#) or [22](#).
- (3) A local weights and measures authority (and its officers) may not exercise the power under [paragraph 7](#) (powers in relation to documents) or [paragraph 9](#) (power of entry with warrant) for the purpose mentioned in [sub-paragraph \(1\)](#) unless an officer of the authority reasonably suspects that an offence under [section 5](#) or [22](#) has been, or is being, committed.

Power to purchase fireworks

- 2 (1) An officer of a local weights and measures authority may—
 - (a) make a purchase of a firework to which [Part 2](#) or [section 22](#) applies, or
 - (b) direct or enter into an agreement with a person to secure the acquisition or supply of such a firework.
- (2) For the purposes of exercising the power under [sub-paragraph \(1\)](#), the officer may—
 - (a) at any reasonable time, enter premises to which the public has access (whether or not the public has access at that time), and
 - (b) inspect any product on the premises which the public may inspect.
- (3) The power of entry in [sub-paragraph \(2\)](#) may be exercised without first giving notice or obtaining a warrant.
- (4) In [this paragraph](#), “premises” includes any—
 - (a) land or building,
 - (b) vehicle, vessel, trailer, aircraft or hovercraft,
 - (c) tent or moveable structure,except where the premises are used wholly or mainly as a private dwelling.

Power to observe carrying on of business etc.

- 3 (1) An officer of a local weights and measures authority may enter premises to which the public has access in order to observe the carrying on of a business on those premises.

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- (2) The power under [sub-paragraph \(1\)](#) may be exercised at any reasonable time (whether or not the public has access at that time).
- (3) The power of entry under [sub-paragraph \(1\)](#) may be exercised without first giving notice or obtaining a warrant.
- (4) In this paragraph, “premises” includes any—
 - (a) land or building,
 - (b) vehicle, vessel, trailer, aircraft or hovercraft,
 - (c) tent or moveable structure,
 except where the premises are used wholly or mainly as a private dwelling.

Power to enter premises without warrant

- 4 (1) An officer of a local weights and measures authority may enter premises at any reasonable time.
- (2) In the case of a routine inspection, the power of entry in [sub-paragraph \(1\)](#) may only be exercised if a notice has been given to the occupier of the premises in accordance with the requirements in [sub-paragraph \(3\)](#), unless [sub-paragraph \(4\)](#) applies.
- (3) Those requirements are that—
 - (a) the notice is in writing and is given by the officer,
 - (b) the notice sets out why the entry is necessary and indicates the nature of the offence under [section 42](#) (obstruction), and
 - (c) there are at least two working days between the date of receipt of the notice and the date of entry.
- (4) A notice need not be given if the occupier has waived the requirement to give notice.
- (5) In [this paragraph](#) “routine inspection” means an exercise of the power under [sub-paragraph \(1\)](#) other than where—
 - (a) the power is exercised by an officer who reasonably suspects that an offence has been, or is being, committed under [section 5](#) or [22](#), or
 - (b) the officer reasonably considers that to give notice in accordance with [sub-paragraph \(2\)](#) would defeat the purpose of the entry.
- (6) If an officer enters premises under [sub-paragraph \(1\)](#) that are occupied, otherwise than in the course of a routine inspection, the officer must provide to an occupier a document that—
 - (a) sets out why the entry is necessary, and
 - (b) indicates the nature of the offence under [section 42](#).
- (7) If an officer enters premises under [sub-paragraph \(1\)](#) that are occupied, the officer must produce evidence of the officer's identity and authority to an occupier.
- (8) An officer need not comply with [sub-paragraph \(6\)](#) or [\(7\)](#) if it is not reasonably practicable to do so.
- (9) Proceedings resulting from the exercise of the power under [sub-paragraph \(1\)](#) are not invalid merely because of a failure to comply with [sub-paragraph \(6\)](#) or [\(7\)](#).

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- (10) An officer entering premises under [sub-paragraph \(1\)](#) may be accompanied by such persons, and may take onto the premises such equipment, as the officer considers necessary.
- (11) In [this paragraph](#)—
- “occupier”, in relation to premises, means any person an officer of a weights and measures authority reasonably suspects to be the occupier of the premises,
 - “premises” includes any—
 - (a) land or building,
 - (b) vehicle, vessel, trailer, aircraft or hovercraft,
 - (c) tent or moveable structure,
- except where the premises are used wholly or mainly as a private dwelling,
- “working day” means any day other than—
- (a) Saturday or Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland.

Power to inspect and test fireworks

- 5 (1) An officer of a local weights and measures authority may—
- (a) inspect a firework or an item suspected to be a firework on the premises,
 - (b) arrange for a firework or an item suspected to be a firework to be tested (and may seize and retain the firework or item under [paragraph 6](#) to do so).
- (2) Inspection and testing under [this paragraph](#) may be carried out only for the purposes of determining—
- (a) whether or not an item is a firework, or
 - (b) the category of a firework (or suspected firework) for the purposes of this Act (see [section 2](#)).

Power to seize and retain items

- 6 (1) An officer of a local weights and measures authority may seize and retain an item other than a document (for which see [paragraph 7](#)).
- (2) An officer seizing an item under [this paragraph](#) from premises which are occupied must produce evidence of the officer's identity and authority to an occupier of the premises before seizing it.
- (3) The officer need not comply with [sub-paragraph \(2\)](#) if it is not reasonably practicable to do so.
- (4) An officer seizing an item under [this paragraph](#) must take reasonable steps to—
- (a) inform the person from whom it is seized that it has been seized, and
 - (b) provide that person with a written record of what has been seized.
- (5) An item seized under [this paragraph](#) (except an item seized for the purpose in [paragraph 1\(2\)\(b\)](#)) may not be detained—
- (a) for a period of more than 3 months beginning with the day on which it was seized, or

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- (b) where the item is reasonably required to be retained for a longer period by the officer for a purpose for which it was seized, for longer than it is required for that purpose.

Powers in relation to documents

- 7 (1) An officer of a local weights and measures authority may, at any reasonable time—
- (a) require a person who is offering to supply fireworks to the public in the course of a business (“the trader”), an employee of the trader or any other person acting on behalf of the trader, to produce any document relating to the trader's business to which the trader, employee or other person has access,
 - (b) take copies of, or copies of any entry in, any such document,
 - (c) seize and retain any such document which the officer reasonably suspects may be required as evidence.
- (2) The powers in sub-paragraph (1) include power to require the trader, employee or other person to give an explanation of the document.
- (3) Where a document required to be produced under [sub-paragraph \(1\)](#) contains information recorded electronically, the power under that sub-paragraph includes power to require the production of a copy of the document in a form in which it can easily be taken away and in which it is visible and legible.
- (4) [This paragraph](#) does not permit an officer to require a person to create a document other than as described in [sub-paragraph \(3\)](#).
- (5) An officer seizing a document under [this paragraph](#) from premises which are occupied must produce evidence of the officer's identity and authority to an occupier of the premises before seizing it.
- (6) The officer need not comply with [sub-paragraph \(5\)](#) if it is not reasonably practicable to do so.
- (7) An officer seizing a document under [this paragraph](#) must take reasonable steps to—
- (a) inform the person from whom it is seized that it has been seized, and
 - (b) provide that person with a written record of what has been seized.
- (8) [This paragraph](#) does not permit an officer to require a person to produce or seize any document which the person would be entitled to refuse to produce in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (9) In [sub-paragraph \(8\)](#), “communications” means—
- (a) communications between a professional legal adviser and the adviser's client, or
 - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- (10) In [this paragraph](#), “occupier”, in relation to premises, means any person an officer of a weights and measures authority reasonably suspects to be the occupier of the premises.

Power to break open container etc.

- 8 (1) An officer of a local weights and measures authority may, for the purpose of exercising the powers under paragraph 5, 6 or 7, require a person with authority to do so to—
- (a) break open any container, or
 - (b) access any electronic device in which information may be stored or from which it may be accessed.
- (2) Where a requirement under sub-paragraph (1) has not been complied with, the officer may, for the purpose of exercising any of the powers in paragraph 7—
- (a) break open the container, or
 - (b) access the electronic device.
- (3) Sub-paragraph (1) or (2) applies if and to the extent that the exercise of the power under that sub-paragraph is reasonably necessary for the purposes for which that power may be exercised.
- (4) In this paragraph “container” means anything in which an item or document may be stored.

Power of entry with warrant

- 9 (1) A sheriff may grant a warrant under this section authorising an officer of a local weights and measures authority to enter premises if the sheriff is satisfied, by evidence on oath, that—
- (a) there are reasonable grounds for suspecting—
 - (i) that an offence under section 5 or 22 has been, or is being, committed at the premises, or
 - (ii) that there is an item or document on the premises that the officer has the power to inspect or require to be produced, and
 - (b) one of the following conditions is met—
 - (i) access to the premises has been or is likely to be refused and notice of the officer’s intention to apply for a warrant under this paragraph has been given to the occupier of the premises,
 - (ii) it is likely that items or documents on the premises would be concealed or interfered with if notice of entry on the premises were given to the occupier of the premises, or
 - (iii) the premises are unoccupied or the occupier of the premises is absent and it might defeat the purpose of the entry to wait for the occupier’s return.
- (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) An officer may be accompanied by such persons, and may take onto the premises such equipment, as the officer considers necessary.
- (4) A warrant granted under this section may authorise an officer to—
- (a) enter the premises by force if necessary,
 - (b) exercise the powers in paragraph 5, 6, 7 or 8.

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- (5) If the premises are occupied when the officer enters them, the officer must produce the warrant for inspection to an occupier of the premises.
- (6) [Sub-paragraph \(7\)](#) applies if the premises are unoccupied or the occupier is temporarily absent.
- (7) On leaving the premises, the officer must—
 - (a) leave a notice on the premises stating that the premises have been entered under a warrant under [this paragraph](#), and
 - (b) leave the premises as effectively secured as the officer found them.
- (8) In [this paragraph](#)—
 - “occupier”, in relation to premises, means any person an officer of a weights and measures authority reasonably suspects to be the occupier of the premises,
 - “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).

Power to require assistance from person on premises

- 10 If an officer of a local weights and measures authority has entered premises under [paragraph 4\(1\)](#) or under a warrant under [paragraph 9](#), the officer may require any person on the premises to provide such assistance or information as the officer reasonably considers necessary.

Access to seized items and documents

- 11 (1) [This paragraph](#) applies where a thing seized by an officer of a local weights and measures authority under [this schedule](#) is retained by the authority.
- (2) If a request for permission to be granted access to that thing is made to the local weights and measures authority by a person who had custody or control of it immediately before it was seized, the authority must allow that person access to it under the supervision of an officer of the authority.
- (3) If a request for a photograph or copy of that thing is made to the local weights and measures authority by a person who had custody or control of it immediately before it was seized, the authority must—
- (a) allow that person access to it under the supervision of an officer of the authority for the purpose of photographing or copying it, or
 - (b) photograph or copy it, or cause it to be photographed or copied.
- (4) Where anything is photographed or copied under [sub-paragraph \(3\)](#), the photograph or copy must be supplied to the person who made the request within a reasonable time from the making of the request.
- (5) [This paragraph](#) does not require access to be granted to, or a photograph or copy to be supplied of, a thing if the local weights and measures authority has reasonable grounds for believing that to do so would prejudice the investigation for the purposes of which it was seized.

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- (6) A local weights and measures authority may recover the reasonable costs of complying with a request under [this paragraph](#) from the person by whom or on whose behalf it was made.
- (7) References in [this paragraph](#) to a person who had custody or control of a thing immediately before it was seized include a representative of such a person.

Notice of testing of item

- 12 (1) [Sub-paragraphs \(2\) and \(3\)](#) apply where—
 - (a) a firework purchased (or acquired under direction or by arrangement) by an officer of a local weights and measures authority under [paragraph 2](#) is submitted to a test and as a result proceedings are brought for an offence under [section 5](#) or [22](#), or
 - (b) a firework or item seized by an officer of a local weights and measures authority under [paragraph 6](#) is submitted to a test.
- (2) The local weights and measures must inform the relevant person of the results of the test.
- (3) The local weights and measures authority must allow a relevant person to have the firework or item tested if it is reasonably practicable to do so.
- (4) In [sub-paragraph \(2\)](#), “relevant person” means the person from whom the firework or item was purchased or seized.
- (5) In [sub-paragraph \(3\)](#), “relevant person” means—
 - (a) in a case within [sub-paragraph \(1\)\(a\)](#), a person who is a party to the proceedings, or
 - (b) in any other case, a person referred to in [sub-paragraph \(4\)](#).

Application for release of firework, item or document

- 13 (1) [This paragraph](#) applies where a firework, item or document is being retained as the result of the exercise of a power under [this schedule](#).
- (2) A person with an interest in the firework, item or document may apply to a sheriff for an order requiring it to be released to that or another person.
- (3) The sheriff may make an order requiring a firework, item or document to be released only if satisfied that condition A or B is met.
- (4) Condition A is that—
 - (a) no proceedings have been brought for an offence as the result of the investigation in the course of which the firework, item or document was seized, and
 - (b) the period of 12 months beginning with the day on which the firework, item or document was seized has expired.
- (5) Condition B is that—
 - (a) proceedings of the kind mentioned in [sub-paragraph \(4\)\(a\)](#) have been brought, and
 - (b) those proceedings have been concluded without the firework, item or document being forfeited.

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Compensation

- 14 (1) [This paragraph](#) applies where an officer of a local weights and measures authority has seized and retained a firework or item under [this schedule](#) for a purpose within [paragraph 1\(2\)\(a\)](#).
- (2) The local weights and measures authority must pay compensation to any person with an interest in the firework or item in respect of any loss or damage caused by the seizure and retention if—
- (a) the firework or item has not disclosed an offence under [section 5](#) or [22](#), and
 - (b) the power to seize and retain the firework or item was not exercised as a result of any neglect or default of the person seeking the compensation.
- (3) Any dispute about the right to or amount of any compensation payable under [this paragraph](#) is to be determined by a single arbitrator appointed by the parties or, if there is no agreement between the parties as to that appointment, by the sheriff.