

Fireworks and Pyrotechnic Articles (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 10-EN), a Financial Memorandum (SP Bill 10-FM), a Policy
Memorandum (SP Bill 10-PM), a Delegated Powers Memorandum (SP Bill 10-DPM) and
statements on legislative competence (SP Bill 10-LC).**

Fireworks and Pyrotechnic Articles (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for licensing the purchase, acquisition, possession and use of certain fireworks; to prevent the supply of certain fireworks and pyrotechnic articles to persons under the age of 18; to limit the supply and use of certain fireworks to particular periods; to provide for the creation of firework control zones; to make provision prohibiting possession of fireworks and pyrotechnic articles in certain circumstances; and for connected purposes.

PART 1

KEY CONCEPTS

1 Meaning of “firework” and “pyrotechnic article”

(1) In this Act—

“firework” means a pyrotechnic article which—

(a) is a firework for the purposes of the following British Standards or any British Standard replacing them—

(i) BS EN 15947:2015, or

(ii) BS EN 16261:2012, or

(b) would be a firework for those purposes if it were intended as a form of entertainment,

“pyrotechnic article” means an article which contains explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions.

(2) The Scottish Ministers may by regulations modify subsection (1) to amend or replace the definition of “firework”.

(3) Regulations under subsection (2) are subject to the affirmative procedure.

2 Categories of fireworks

(1) In this Act—

“category F1 firework” means a firework which presents a very low hazard and negligible noise level and which is intended for use in confined areas, including a firework which is intended for use inside domestic buildings,

“category F2 firework” means a firework which presents a low hazard and low noise level and which is intended for outdoor use in confined areas,

“category F3 firework” means a firework which presents a medium hazard, which is intended for outdoor use in large open areas and whose noise level is not harmful to human health,

“category F4 firework” means a firework which presents a high hazard, which is intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health.

(2) The Scottish Ministers may by regulations—

(a) modify subsection (1) to add, amend or remove categories, types, classifications or descriptions of fireworks,

(b) make further provision about the requirements a person must meet to demonstrate “specialist knowledge” for the purposes of the definition of a “category F4 firework”.

(3) Regulations—

(a) under subsection (2)(a) are subject to the affirmative procedure,

(b) under subsection (2)(b) are subject to the negative procedure.

PART 2

FIREWORKS LICENSING

Fireworks which require a licence

3 Application of Part

(1) This Part applies to the following fireworks—

(a) category F2 fireworks, and

(b) category F3 fireworks.

(2) The Scottish Ministers may by regulations modify subsection (1) to add, amend or remove categories, types, classifications or descriptions of fireworks.

(3) Regulations under subsection (2) are subject to the affirmative procedure.

Fireworks licensing

4 Requirement to have fireworks licence

(1) It is an offence for a person, without reasonable excuse, to purchase, acquire, possess or use a firework to which this Part applies without having a fireworks licence.

- (2) A person who commits an offence under subsection (1) 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).
- (3) It is not an offence under subsection (1) for a non-natural person to purchase, acquire, possess or use a firework without having a fireworks licence if such purchase, acquisition, possession or use is done on its behalf by a person who has a fireworks licence.
- (4) This section is subject to section 35 and schedule 1 (exemptions).

5 Supply of fireworks to unlicensed persons

- (1) It is an offence for a person, without reasonable excuse, to supply a firework to which this Part applies to a person who does not have a fireworks licence.
- (2) A person who commits an offence under subsection (1) 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).
- (3) It is a defence for a person charged with an offence under subsection (1) to show that the person took reasonable steps to establish that the person to whom the firework was supplied had a fireworks licence or was exempt under schedule 1.
- (4) It is the duty of each local weights and measures authority to enforce this section in its area in so far as it relates to the supply of fireworks by a person in the course of business.
- (5) In this section, “supply” of a firework includes—
- (a) selling it,
 - (b) exchanging it for a consideration other than money,
 - (c) giving it as a prize or otherwise making a gift of it,
 - (d) otherwise making the firework available.
- (6) This section is subject to section 35 and schedule 1 (exemptions).

Process for licensing

6 Applying for fireworks licence: general requirements

- (1) A person aged 18 years or over may apply to the Scottish Ministers for the grant of a fireworks licence.
- (2) An application for a fireworks licence must—
- (a) comply with any regulations made under subsection (3), and
 - (b) comply with the mandatory requirements in section 7.
- (3) The Scottish Ministers may by regulations—
- (a) set out the form and content of the application,
 - (b) specify the manner in which applications must be made,
 - (c) specify the information to be provided in the application,
 - (d) set the fees payable (if any) and specify to whom the fees are payable, and
 - (e) make provision for the time in which an application must be made.

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- (4) Without limiting the generality of subsection (3)(d), when setting the fees payable under this section the Scottish Ministers—
- (a) must have regard to the reasonable costs of carrying out functions under this Part, but
 - (b) if it is considered appropriate to do so, may charge a nominal fee or remit the fee altogether.
- (5) Regulations under subsection (3) are subject to the negative procedure.

7 Applying for fireworks licence: mandatory requirements

- (1) When applying for a fireworks licence, an applicant must—
- (a) disclose any convictions in relation to a relevant offence (unless the convictions are spent for the purposes of the Rehabilitation of Offenders Act 1974),
 - (b) disclose details of any previous fireworks licences that were revoked or cancelled, and
 - (c) provide evidence of having completed a fireworks training course on the safe and appropriate use of fireworks that complies with section 8, no earlier than 3 months before making the application.
- (2) The Scottish Ministers may by regulations specify additional mandatory requirements that an applicant for a fireworks licence must meet.
- (3) Regulations under subsection (2) are subject to the negative procedure.
- (4) In this section, “relevant offence” means—
- (a) an offence under this Act,
 - (b) an offence under—
 - (i) the Fireworks Act 2003 and any regulations made under that Act,
 - (ii) the Pyrotechnic Articles (Safety) Regulations 2015 (S.I. 2015/1553),
 - (iii) the Explosives Substances Act 1883, or
 - (iv) the Explosives Act 1875, and
 - (c) any other offence where the misuse of fireworks or pyrotechnic articles has been a factor.

8 Fireworks training course

- (1) The Scottish Ministers may by regulations make provision in relation to fireworks training courses for the purposes of section 7(1)(c).
- (2) Regulations under subsection (1) may include provision for—
- (a) training requirements, such as—
 - (i) the content of such courses,
 - (ii) the accreditation by the Scottish Ministers of such courses and the persons providing such courses, and

(iii) requiring that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be specified in the regulations,

(b) the form of such courses,

(c) the minimum criteria for successful completion of such courses, and

(d) how successful completion of such courses is recorded.

(3) Any person providing a fireworks training course must have regard to any guidance issued by the Scottish Ministers for the purposes of this section.

(4) The Scottish Ministers must publish any such guidance (and may revise or revoke that guidance).

(5) Regulations under subsection (1) are subject to the negative procedure.

9 Grant of fireworks licence

The Scottish Ministers may grant a fireworks licence only if—

(a) a valid application and any applicable fees have been received,

(b) the requirements under sections 6 and 7 have been met, and

(c) they are satisfied that the applicant can be permitted to possess and use fireworks safely and appropriately.

10 Grant of fireworks licence subject to conditions

(1) All fireworks licences are subject to the following conditions—

(a) a licence is valid only for the person named on the licence and is not transferable,

(b) a licence is valid only for the period specified on the licence, and

(c) a licensed person must inform the Scottish Ministers of any change of circumstances specified in regulations under subsection (3)(b).

(2) The Scottish Ministers may also attach to a fireworks licence any additional or optional conditions specified in regulations under subsection (3)(c).

(3) The Scottish Ministers may by regulations—

(a) determine the length of time for which licences may be granted,

(b) specify the changes of circumstances that a licensed person must inform the Scottish Ministers of, and

(c) make provision for any additional or optional conditions that may be attached to a fireworks licence.

(4) Regulations under subsection (3) are subject to the negative procedure.

11 Register of fireworks licence applications and licensed persons

(1) The Scottish Ministers must establish and maintain a register of fireworks licence applications and licensed persons.

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- (2) The Scottish Ministers may by regulations make provision for—
- (a) the details of licence applications required to be kept on the register, including whether or not an application was granted and, if applicable, the grounds for refusal,
 - 5 (b) the details about licensed persons required to be kept on the register, and
 - (c) the length of time such details are to be kept on the register.
- (3) Regulations under subsection (2) are subject to the negative procedure.

12 Revocation of fireworks licence

- (1) The Scottish Ministers may revoke a person's fireworks licence if—
- 10 (a) the person breaches any condition of the licence, or
 - (b) the person is convicted of a relevant offence (whether or not the convicting court cancelled the fireworks licence under section 13).
- (2) A person whose fireworks licence is revoked under this section is prohibited from applying for a new fireworks licence—
- 15 (a) in a case where the licence was cancelled by a court under section 13, within the period specified in section 13(3), or
 - (b) in any other case, within the period of 12 months beginning with day on which the licence was revoked.
- (3) A fireworks licence is revoked by the Scottish Ministers giving notice of the revocation to the person who has the fireworks licence.
- 20 (4) A notice under subsection (3) must—
- (a) be given no later than 7 days before it is to take effect, and
 - (b) require the person to surrender—
 - 25 (i) the person's fireworks licence, and
 - (ii) any firework to which this Part applies in the person's possession,in the manner and by the date specified in the notice.
- (5) It is an offence for a person, without reasonable excuse, to fail to comply with the requirements of a notice given under subsection (3).
- (6) A person who commits an offence under subsection (5) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- 30 (7) If a person appeals under section 14 against a decision to revoke the person's fireworks licence—
- (a) the revocation does not take effect, but
 - (b) the person must still comply with the requirements of the notice given under subsection (3),
- 35 pending the determination or withdrawal of the appeal.
- (8) In this section, "relevant offence" has the meaning given in section 7(4).

13 Notification of convictions and cancellation of fireworks licence

- (1) This section applies if a person who has a fireworks licence is convicted of a relevant offence.
- (2) The court may cancel the person’s fireworks licence.
- 5 (3) A person whose fireworks licence is cancelled under this section is prohibited from applying for a new fireworks licence within the period of 12 months beginning with the day on which the licence was cancelled.
- (4) If the court cancels the person’s fireworks licence, it—
- (a) must notify the Scottish Ministers of the cancellation, and
- 10 (b) may make an order for forfeiture under section 43.
- (5) If the court does not cancel the person’s fireworks licence, it must notify the Scottish Ministers of the conviction.
- (6) In this section, “relevant offence” has the meaning given in section 7(4).

14 Appeals

- 15 (1) A person may appeal to the appropriate sheriff against a decision of the Scottish Ministers—
- (a) to refuse to grant the person a fireworks licence under section 9,
- (b) to attach a condition to the person’s fireworks licence under section 10(2), or
- (c) to revoke the person’s fireworks licence under section 12(1).
- 20 (2) An appeal must be made within the period of 21 days beginning with the day on which the decision appealed against was made.
- (3) An appeal under this section is to be determined on the merits (and not by way of review).
- (4) The sheriff hearing the appeal may consider any evidence or other matter, whether or not it was available at the time the Scottish Ministers made the decision being appealed against.
- 25 (5) On determining the appeal, the sheriff may—
- (a) dismiss the appeal,
- (b) give the Scottish Ministers such direction as the sheriff considers appropriate in respect of the decision that is the subject of the appeal.
- 30 (6) The determination of the sheriff may be appealed against only on a point of law.
- (7) In this section, “the appropriate sheriff” means—
- (a) in a case where the appellant resides in Scotland, a sheriff of the sheriffdom in which the appellant resides, or
- 35 (b) in a case where the appellant resides outwith Scotland, a sheriff of the sheriffdom of Lothian and Borders, sitting at Edinburgh.

Offences relating to fireworks licence applications

15 False statements

- (1) It is an offence for a person to knowingly or recklessly make any statement which is false in any material particular for the purposes of obtaining a fireworks licence.
- (2) A person who commits an offence under subsection (1) 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).

16 False or altered licences and documents

- (1) It is an offence for a person to produce a false fireworks licence or other false document purporting to prove an exemption under schedule 1.
- (2) A person who commits an offence under subsection (1) 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).

General

17 Power of Scottish Ministers to make arrangements for certain functions

- (1) The Scottish Ministers may make arrangements for a person to perform some or all of their functions under this Part.
- (2) Subsection (1) does not include any power of the Scottish Ministers to make regulations under this Part.
- (3) The making of arrangements under this section to perform a function does not—
- (a) affect the Scottish Ministers' responsibility for the performance of the function, or
 - (b) prevent the Scottish Ministers from performing the function.

18 Power to make further provision

- (1) The Scottish Ministers may by regulations make further provision for the purposes of this Part.
- (2) Without limiting the generality of subsection (1), regulations under that subsection may make provision—
- (a) about the application processes under this Part (for example, specifying any required supporting documents or making provision about the verification of applications),
 - (b) about the sharing of information (for example, in connection with the verification of applications or the enforcement of this Part),
 - (c) in relation to the fireworks licence (for example, specifying its form and content).
- (3) Regulations under subsection (1) are subject to the negative procedure.

19 Regulations: consultation

- (1) Before making any regulations under this Part, the Scottish Ministers must consult such persons as they consider are likely to be interested in or affected by the licensing of fireworks.
- (2) Subsection (1) does not apply to regulations under section 3.

PART 3

RESTRICTIONS ON SUPPLY AND USE OF FIREWORKS AND PYROTECHNIC ARTICLES

Application of Part

20 Application of Part

- (1) In this Part—
- (a) section 21 applies to all pyrotechnic articles other than—
- (i) category F1 fireworks, and
- (ii) percussion caps for toys that are intended for use by children under the age of 14,
- (b) section 22 applies to—
- (i) category F2 fireworks, and
- (ii) category F3 fireworks, and
- (c) section 23 applies to—
- (i) category F2 fireworks, and
- (ii) category F3 fireworks.
- (2) The Scottish Ministers may by regulations—
- (a) modify subsection (1)(a) to add, amend or remove categories, types, classifications or descriptions of fireworks or pyrotechnic articles, and
- (b) modify subsection (1)(b) or (c) to add, amend or remove categories, types, classifications or descriptions of fireworks.
- (3) Regulations under subsection (2) are subject to the affirmative procedure.

Prohibition on supply to children

21 Prohibition on providing fireworks or pyrotechnic articles to children

- (1) It is an offence for a person to knowingly—
- (a) buy or attempt to buy a firework or other pyrotechnic article to which this section applies for a person under the age of 18, or
- (b) give or otherwise make available a firework or other pyrotechnic article to which this section applies to a person under the age of 18.
- (2) A person who commits an offence under subsection (1) 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).

- (3) It is not an offence under subsection (1) for a person to buy or attempt to buy a pyrotechnic article for, or give or otherwise make one available to, a person under the age of 18 if—
- (a) the manufacturer of the pyrotechnic article designed it to be used as a visual distress signal, and
 - (b) the person intends that the person under the age of 18 will use the pyrotechnic article only in appropriate circumstances.
- (4) This section is subject to section 35 and schedule 1 (exemptions).

Days of supply and use of fireworks

22 Restriction on days of supply of fireworks

- (1) It is an offence for a person to supply fireworks to which this section applies on days other than those specified in subsection (3).
- (2) A person who commits an offence under subsection (1) 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).
- (3) The supply of fireworks to which this section applies is permitted only between the following days (inclusive of the first and last day specified)—
- (a) 7 April to 14 April,
 - (b) 27 October to 10 November,
 - (c) 26 December to 31 December,
 - (d) the first day of Chinese New Year and the 3 days immediately preceding it,
 - (e) the first day of Diwali and the 3 days immediately preceding it.
- (4) It is a defence for a person charged with an offence under subsection (1) to show that the person took reasonable steps to establish that the person to whom the fireworks were supplied was exempt under schedule 1.
- (5) It is the duty of each local weights and measures authority to enforce this section in its area.
- (6) The Scottish Ministers may by regulations modify subsection (3) to add, amend or remove a day or a period of days.
- (7) Regulations under subsection (6) are subject to the affirmative procedure.
- (8) In this section, “supply” of fireworks includes—
- (a) selling them,
 - (b) exchanging them for any consideration other than money, and
 - (c) giving them as a prize or otherwise making a gift of them,
- but does not include supplying them otherwise than in the course of a business.
- (9) This section is subject to section 35 and schedule 1 (exemptions).

23 Restriction on days of use of fireworks

- (1) It is an offence for a person to use fireworks to which this section applies on days other than those specified in subsection (3).
- (2) A person who commits an offence under subsection (1) 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).
- (3) The use of fireworks to which this section applies is permitted only between the following days (inclusive of the first and last day specified)—
- (a) 7 April to 16 April,
 - (b) 27 October to 12 November,
 - (c) 26 December to 2 January,
 - (d) the 3 days immediately preceding the first day of Chinese New Year to the seventh day after the first day of Chinese New Year,
 - (e) the 3 days immediately preceding the first day of Diwali to the seventh day after the first day of Diwali.
- (4) The Scottish Ministers may by regulations modify subsection (3) to add, amend or remove a day or a period of days.
- (5) Regulations under subsection (4) are subject to the affirmative procedure.
- (6) This section is subject to section 35 and schedule 1 (exemptions).

Compensation

24 Compensation for specialist firework businesses affected by section 22

- (1) The Scottish Ministers may by regulations make provision for or about the payment of compensation to relevant persons in consequence of—
- (a) the coming into force of section 22, or
 - (b) the coming into force of a modification under section 22(6) which further limits the days on which fireworks may be supplied.
- (2) In subsection (1), a “relevant person” is a person whose trade or business was wholly or mainly concerned with the supply, distribution or importation of fireworks in Scotland immediately before the coming into force of section 22 or a modification of the kind described in subsection (1)(b).
- (3) Without limiting the generality of subsection (1), regulations under that subsection may—
- (a) make further provision about who qualifies as a relevant person,
 - (b) set out the circumstances in which compensation is payable,
 - (c) make provision about the calculation of compensation,
 - (d) set out the procedure to be followed in connection with claiming compensation,
 - (e) provide for the review of decisions made under the regulations, and
 - (f) make provision about appeals against decisions made under the regulations.
- (4) Regulations under this section are subject to the negative procedure.

PART 4

FIREWORK CONTROL ZONES

25 Application of Part

- (1) This Part applies to—
- (a) category F2 fireworks,
 - (b) category F3 fireworks, and
 - (c) category F4 fireworks.
- (2) The Scottish Ministers may by regulations modify subsection (1) to add, amend or remove categories, types, classifications or descriptions of fireworks.
- (3) Regulations under subsection (2) are subject to the affirmative procedure.

26 Firework control zones

- (1) At any time, a local authority may (in accordance with this Part)—
- (a) designate a place within its area as a firework control zone,
 - (b) amend a zone (including the period for which it is to have effect or days on which it is to operate), or
 - (c) revoke a zone.
- (2) It is an offence for a person to—
- (a) ignite a firework to which this Part applies in a firework control zone, or
 - (b) knowingly or recklessly—
 - (i) throw or cast a lit firework to which this Part applies into a firework control zone, or
 - (ii) fire a firework to which this Part applies into a firework control zone.
- (3) A firework control zone operates and the offence in subsection (2) applies on all days that the zone has effect, unless the designation specifies particular days on which the zone is to operate, in which case the offence applies on those days only.
- (4) A person who commits an offence under subsection (2) 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).
- (5) This section is subject to section 35 and schedule 1 (exemptions).

27 Prior consultation on proposals

- (1) Before designating a place as a firework control zone or amending or revoking a zone, a local authority must—
- (a) prepare and publish its proposal in relation to the designation, amendment or revocation of the zone, and
 - (b) consult—
 - (i) persons who live or work in the place which will be affected by the proposal,
 - (ii) other members of the local community in or near the place,

(iii) any other persons or bodies that the local authority considers to have a connection with, be interested in or affected by the proposal.

(2) The proposal must, in particular, set out—

- 5 (a) the reasons for the proposed designation of a place as a firework control zone, or, as the case may be, the amendment or revocation of a zone,
- (b) the boundaries of the zone,
- (c) the date from which the proposal is to have effect and the date on which it is proposed that the zone is to cease to have effect,
- (d) the consultation dates, and
- 10 (e) how the consultation is to be conducted.

(3) The proposal may set out specific days on which the zone is to operate for the purpose of section 26(3).

28 Publication of decision on proposal

15 (1) Following a consultation on a proposal published under section 27(1), a local authority must publish a document which—

- (a) confirms whether or not it is proceeding with the proposal,
- (b) sets out any changes to the proposal which have been made (whether or not as a result of the consultation), and
- (c) explains how it had regard to the views expressed during the consultation process.

20 (2) The local authority must publish the document—

- (a) as soon as practicable after the decision in relation to the proposal is made, and
- (b) at least 60 days before the day on which the proposal is to have effect.

29 Review of operation and effectiveness

25 (1) A local authority must carry out reviews of the operation and effectiveness of its firework control zones.

(2) A review under this section may—

- (a) be in respect of one or more firework control zones, and
- (b) be combined with a proposal under section 27 to amend or revoke a zone.

(3) On completion of a review, the local authority must—

- 30 (a) prepare and publish a report of the review's findings, and
- (b) make such proposals in relation to the zone (or zones) as it considers appropriate.

(4) Regulations made under section 30 may specify a minimum frequency for reviews under this section.

30 Power to make further provision

35 (1) The Scottish Ministers may by regulations make further provision about firework control zones and the procedures to be followed to designate a place as a zone, or to amend or revoke one.

- (2) Without limiting the generality of subsection (1), regulations under that subsection may—
- (a) set limits on—
 - (i) the size of place that may be designated a firework control zone,
 - (ii) the cumulative area that a local authority may designate as such zones,
 - (b) specify the manner in which a local authority is to designate a place as a zone, or to amend or revoke one,
 - (c) specify information that must be included when designating a place as a zone, or amending or revoking one,
 - (d) make further provision in relation to zones that operate on specific days only,
 - (e) make further provision relating to the consultation process,
 - (f) make provision relating to the publication of documents required under this Part,
 - (g) make further provision in relation to the reviewing and reporting on the operation and effectiveness of zones in its area.
- (3) Regulations under subsection (1) are subject to the negative procedure.

31 Guidance

- (1) Local authorities must have regard to any guidance issued by the Scottish Ministers for the purposes of this Part.
- (2) The Scottish Ministers must publish any such guidance (and may revise or revoke that guidance).

PART 5

PYROTECHNIC ARTICLES AT CERTAIN PLACES OR EVENTS

32 Application of Part

- (1) This Part applies to all pyrotechnic articles (including fireworks).
- (2) The Scottish Ministers may by regulations modify subsection (1) to add, amend or remove categories, types, classifications or descriptions of fireworks or pyrotechnic articles.
- (3) Regulations under subsection (2) are subject to the affirmative procedure.

33 Prohibition of pyrotechnic articles at certain places or events

- (1) It is an offence for a person, without reasonable excuse, to possess a pyrotechnic article to which this Part applies while the person is—
 - (a) travelling to, in the immediate vicinity of, or attending a designated venue or event, or
 - (b) travelling to, participating in, or otherwise attending—
 - (i) a public procession, or
 - (ii) a public assembly.

- (2) A person convicted of an offence under subsection (1) 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).
- (3) In this section—
- 5 “designated venue or event” means a venue or event designated by the Scottish Ministers under section 34,
- “public assembly” has the meaning given in section 16 of the Public Order Act 1986,
- “public procession” means—
- 10 (a) a procession in public conducted in accordance with Part 5 of the Civic Government (Scotland) Act 1982, or
- (b) a public procession to which Part 2 of the Public Order Act 1986 applies.
- (4) For the purpose of subsection (1), the reference to a person travelling to a designated venue or event, public procession, or public assembly includes a reference to a person travelling to the locality of the venue, event, procession or assembly whether or not they intend to enter the venue, attend the event or participate in the procession or assembly.
- 15
- (5) This section is subject to section 35 and schedule 1 (exemptions).

34 Designation of venues or events

- 20 (1) For the purposes of this Part, the Scottish Ministers may by regulations designate—
- (a) a sports ground or class of sports grounds (whether or not the grounds are used for sporting events),
- (b) a sporting event or class of sporting events (whether or not attendees have paid to attend),
- 25 (c) a venue that is to be used for a music event, including any place that is to be used by a person responsible for the organisation of a music event for the purpose of—
- (i) regulating entry to, or departure from, the event, or
- (ii) providing accommodation or other facilities for those attending the event,
- 30 (d) a music event or class of music events (whether or not attendees have paid to attend).
- (2) Regulations under subsection (1) are subject to the negative procedure.

PART 6

EXEMPTIONS AND ENFORCEMENT

Exemptions

35 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—
- (a) under subsection (2)(a) are subject to the affirmative procedure,
 - (b) under subsection (2)(b) are subject to the negative procedure.

Powers of local weights and measures authorities

36 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

37 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).

38 Search for fireworks or pyrotechnic articles without warrant

- 5 (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,
 - 10 (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

15 **39 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,
 - 20 (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.
- 25 (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.
- 30 (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).

40 Offence of impersonating officer of a local weights and measures authority

- 35 (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.

*Miscellaneous***41 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.

42 Certificates as to proof of having fireworks licence

- (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—

<p>“The Fireworks and Pyrotechnic Articles (Scotland) Act 2022.</p>	<p>A person authorised to do so by the Scottish Ministers.</p>	<p>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 the Fireworks and Pyrotechnic Articles (Scotland) Act 2022).”.</p>
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43 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—
- 5 (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.
- 10 (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.

15 **44 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—
- 20 (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—
- 25 (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—
- 30 (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,
- 35 (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

PART 7

GENERAL PROVISIONS

45 Interpretation

In this Act—

5 “chief constable” means the chief constable of the Police Service of Scotland,
“constable” has the same meaning as in section 99(1) of the Police and Fire Reform
(Scotland) Act 2012,

10 “firework control zone”, in relation to the area of a local authority, means a place
within the area which has been designated as a firework control zone by the local
authority under section 26(1) (and a reference to such a zone includes a zone as
it has been amended),

“fireworks licence” means a fireworks licence granted by the Scottish Ministers
under section 9,

15 “licensed person” means a person who has a fireworks licence (and a reference
to an unlicensed person is to be construed accordingly),

“public fireworks display” means a fireworks display at which the public, or any
section of the public, are present (whether or not they have paid to be) that
complies with regulations made under section 6 of the Fireworks Act 2003 (if
any),

20 “regulatory authority” means—

- (a) the Chief Constable of the Police Service of Scotland,
- (b) the Health and Safety Executive,
- (c) a local authority,
- (d) a local weights and measures authority.

46 Regulations

25 Any power of the Scottish Ministers to make regulations under this Act, other than
section 50, includes power to make—

- (a) different provision for different purposes,
- (b) incidental, supplementary, consequential, transitional, transitory or saving provision.

47 Ancillary provision

- 30 (1) The Scottish Ministers may by regulations make any incidental, supplementary,
consequential, transitional, transitory or saving provision they consider appropriate for
the purposes of, in connection with or for giving full effect to this Act or any provision
made under it.
- 35 (2) Regulations under subsection (1) may modify any enactment (including this Act).
- (3) Regulations under subsection (1)—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part
of the text of an Act (including this Act), but
 - (b) otherwise, are subject to the negative procedure.

48 Crown application: criminal offences

- (1) No contravention of any provision made by this Act makes the Crown criminally liable.
- (2) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (1), any provision made by or under this Act applies to a person in the public service of the Crown as it applies to other persons.

49 Crown application: powers of entry

- (1) A warrant granted under section 37 or schedule 2 is exercisable in relation to Crown land specified in column 1 of the following table only with the consent of the person specified in the corresponding entry in column 2 of the table (the “appropriate authority”).

Crown land	Appropriate authority
Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown Estate (that is, the property, rights and interests under the management of the Crown Estate Commissioners)	The Crown Estate Commissioners
Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Scottish Crown Estate	The person managing the land
Land an interest in which belongs to Her Majesty in right of the Crown other than land forming part of the Crown Estate or the Scottish Crown Estate	The office-holder in the Scottish Administration or, as the case may be, the Government department managing the land
Land an interest in which belongs to Her Majesty in right of Her private estates	The person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers
Land an interest in which belongs to an office-holder in the Scottish Administration	The office-holder in the Scottish Administration
Land an interest in which belongs to a Government department	The Government department
Land an interest in which is held in trust for Her Majesty by an office-holder in the Scottish Administration for the purposes of the Scottish Administration	The office-holder in the Scottish Administration
Land an interest in which is held in trust for Her Majesty for the purposes of a Government department	The Government department

(2) In subsection (1)—

- (a) the reference to Her Majesty's private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862,
- (b) “Government department” means a department of the Government of the United Kingdom,
- (c) “Scottish Crown Estate” means the property, rights and interests to which section 90B(5) of the Scotland Act 1998 applies.

(3) It is for the Scottish Ministers to determine any question that arises as to who in accordance with subsection (1) is the appropriate authority in relation to any land, and their decision is final.

50 Commencement

- (1) This section and sections 45, 46, 47 and 51 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
- (a) include transitional, transitory or saving provision,
- (b) make different provision for different purposes.

51 Short title

The short title of this Act is the Fireworks and Pyrotechnic Articles (Scotland) Act 2022.

SCHEDULE 1
(introduced by section 35)

EXEMPTIONS

Regulatory authorities or those acting under the direction of a regulatory authority

- 5 1 It is not an offence under section 4(1) (requirement to have fireworks licence) for a person to purchase, acquire, possess or use a firework without having a fireworks licence if the person is employed by a regulatory authority (and is acting in that capacity).
- 2 It is not an offence under section 4(1) for a person to purchase or acquire a firework without having a fireworks licence if the person is acting under the direction of a regulatory authority for the purposes of determining whether an offence under section 5(1) or 21(1) is being committed.
- 10 3 It is not an offence under section 5(1) (supply of fireworks to unlicensed persons) for a person to give or otherwise make available a firework to a person who does not have a fireworks licence if—
- 15 (a) the person giving or otherwise making available the firework is employed by a regulatory authority (and is acting in that capacity), and
- (b) the unlicensed person is also employed by a regulatory authority (and is acting in that capacity).
- 4 It is not an offence under section 23(1) (restriction on days of use of fireworks) for a person to use a firework contrary to section 23(3) if—
- 20 (a) the person is employed by, or acting under the direction of, a regulatory authority, and
- (b) the firework is used in connection with the regulatory authority's functions.
- 5 It is not an offence under section 26(2)(a) (firework control zones) for a person to ignite a firework in a firework control zone if—
- 25 (a) the person is employed by, or acting under the direction of, a regulatory authority, and
- (b) the firework is used in connection with the regulatory authority's functions.
- 6 It is not an offence under section 33(1) (prohibition on pyrotechnic articles at certain places or events) for a person to possess a pyrotechnic article in the circumstances described in that subsection if the person is employed by a regulatory authority (and is acting in that capacity).
- 30

Professional organisers or operators of fireworks displays or pyrotechnics displays

- 7 It is not an offence under section 4(1) (requirement to have fireworks licence) for a person to purchase, acquire, possess or use a firework without having a fireworks licence if—
- 35 (a) the person is employed by, or in business as, a professional organiser or operator of fireworks displays, and
- (b) the firework is purchased, acquired, possessed or used in connection with that business.
- 40

8 It is not an offence under section 5(1) (supply of fireworks to unlicensed persons) for a person to supply a firework to a person who does not have a fireworks licence if the unlicensed person is employed by, or in business as, a professional organiser or operator of fireworks displays.

5 9 It is not an offence under section 21(1) (prohibition on providing fireworks or pyrotechnic articles to children) for a person to give or otherwise make available a firework or pyrotechnic article to a person under the age of 18 if—

(a) the person under the age of 18 is employed by, or in business as, a professional organiser or operator of fireworks displays or pyrotechnic displays, and

10 (b) the firework is given or made available for the purposes of putting on a fireworks display or pyrotechnics display for the person's employer or in the course of the person's business (as the case may be).

10 It is not an offence under section 22(1) (restriction on days of supply of fireworks) for a person to supply a firework contrary to section 22(3) if the firework is supplied to a person who is employed by, or in business as, a professional organiser or operator of fireworks displays.

15

11 It is not an offence under section 23(1) (restriction on days of use of fireworks) for a person to use a firework contrary to section 23(3) if—

(a) the person is employed by, or in business as, a professional organiser or operator of fireworks displays, and

20

(b) the firework is used for the purposes of putting on a fireworks display for the person's employer or in the course of the person's business (as the case may be).

12 It is not an offence under section 26(2)(a) (firework control zones) for a person to ignite a firework in a firework control zone if—

25

(a) the person is employed by, or in business as, a professional organiser or operator of fireworks displays, and

(b) the firework is used for the purposes of putting on a fireworks display for the person's employer or in the course of the person's business (as the case may be).

13 It is not an offence under section 33(1) (prohibition on pyrotechnic articles at certain places or events) for a person to possess a pyrotechnic article in the circumstances described in that subsection if—

30

(a) the person is employed by, or in business as, a professional organiser or operator of firework displays or pyrotechnics displays, and

(b) the pyrotechnic article is possessed in connection with that business.

35 *Business or supply in accordance with Pyrotechnic Articles (Safety) Regulations 2015*

14 It is not an offence under section 4(1) (requirement to have fireworks licence) for a person to purchase, acquire, possess or use a firework without having a fireworks licence if—

(a) the person is employed by a business engaged in, or whose trade or business (or part of whose trade or business) is, the manufacture, importation, distribution or supply of fireworks in accordance with the provisions of the Pyrotechnic Articles (Safety) Regulations 2015 (S.I. 2015/1553), and

40

(b) the firework is purchased, acquired, possessed or used for purposes which are necessary in connection with that trade or business.

15 It is not an offence under section 5(1) (supply of fireworks to unlicensed persons) for
5 a person to supply a firework to a person who does not have a fireworks licence if the
unlicensed person is employed by a business engaged in, or whose trade or business
(or part of whose trade or business) is, the manufacture, importation, distribution or
supply of fireworks in accordance with the provisions of the Pyrotechnic Articles (Safety)
Regulations 2015.

16 It is not an offence under section 21(1) (prohibition on providing fireworks or pyrotechnic
10 articles to children) for a person to give or otherwise make available a firework or
pyrotechnic article to a person under the age of 18 if—

(a) the person under the age of 18 is employed by a business engaged in, or whose
trade or business (or part of whose trade or business) is, the manufacture,
importation, distribution or supply of fireworks or pyrotechnic articles in accordance
15 with the provisions of the Pyrotechnic Articles (Safety) Regulations 2015, and

(b) the firework or pyrotechnic article is given or made available for purposes which
are necessary in connection with that trade or business.

17 It is not an offence under section 22(1) (restriction on days of supply of fireworks) for
20 a person to supply a firework contrary to section 22(3) if the firework is supplied to a
person who is employed by a business engaged in, or whose trade or business (or part
of whose trade or business) is, the supply of fireworks in accordance with the provisions
of the Pyrotechnic Articles (Safety) Regulations 2015.

18 It is not an offence under section 23(1) (restriction on days of use of fireworks) for a
person to use a firework contrary to section 23(3) if—

(a) the person is employed by a business engaged in, or whose trade or business (or
part of whose trade or business) is, the manufacture, importation, distribution or
supply of fireworks in accordance with the provisions of the Pyrotechnic Articles
25 (Safety) Regulations 2015, and

(b) the firework is used for purposes which are necessary in connection with that
30 trade or business.

19 It is not an offence under section 26(2)(a) (firework control zones) for a person to ignite
a firework in a firework control zone if—

(a) the person is employed by a business engaged in, or whose trade or business (or
part of whose trade or business) is, the manufacture, importation, distribution or
supply of fireworks in accordance with the provisions of the Pyrotechnic Articles
35 (Safety) Regulations 2015, and

(b) the firework is used for purposes which are necessary in connection with that
trade or business.

20 It is not an offence under section 33(1) (prohibition on pyrotechnic articles at certain
40 places or events) for a person to possess a pyrotechnic article in the circumstances
described in that subsection if—

(a) the person is employed by a business engaged in, or whose trade or business (or
part of whose trade or business) is, the manufacture, importation, distribution or
supply of fireworks or pyrotechnic articles in accordance with the provisions of
45 the Pyrotechnic Articles (Safety) Regulations 2015, and

- (b) the pyrotechnic article is possessed in connection with that business.

Organiser of a public fireworks display

- 21 It is not an offence under section 22(1) (restriction on days of supply of fireworks) for
5 a person to supply a firework contrary to section 22(3) if the firework is supplied to a
person who is the organiser of a public fireworks display on behalf of a charitable,
religious, youth, recreational, community, political or similar organisation.
- 22 It is not an offence under section 23(1) (restriction on days of use of fireworks) for a
person to use a firework contrary to section 23(3) if—
- 10 (a) the person is the organiser of a public fireworks display or is assisting such an
organiser, and
- (b) the firework is used for the purposes of putting on a public fireworks display on
behalf of a charitable, religious, youth, recreational, community, political or similar
organisation.
- 23 It is not an offence under section 26(2)(a) (firework control zones) for a person to ignite
15 a firework in a firework control zone if—
- (a) the person is the organiser of a public fireworks display or is assisting such an
organiser, and
- (b) the firework is used for the purposes of putting on a public fireworks display on
20 behalf of a charitable, religious, youth, recreational, community, political or similar
organisation.
- 24 It is not an offence under section 33(1)(b) (prohibition on pyrotechnic articles at certain
places or events) for a person to possess a pyrotechnic article in the circumstances
described in that paragraph if—
- 25 (a) the person is the organiser of a public fireworks display or is assisting such an
organiser, and
- (b) the pyrotechnic article is possessed for the purposes of putting on a public fireworks
display on behalf of a charitable, religious, youth, recreational, community, political
or similar organisation.

Persons outwith Scotland

- 30 25 It is not an offence under section 5(1) (supply of fireworks to unlicensed persons) for
a person to supply a firework to a person who does not have a fireworks licence if the
unlicensed person is outwith Scotland and the firework is to be delivered outwith
Scotland.
- 35 26 It is not an offence under section 22(1) (restriction on days of supply of fireworks) for
a person to supply a firework contrary to section 22(3) if the firework is supplied to a
person who is outwith Scotland, but only where the firework is to be delivered outwith
Scotland.

SCHEDULE 2
(introduced by section 36)

INVESTIGATORY POWERS OF A LOCAL WEIGHTS AND MEASURES AUTHORITY

General

- 5 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.
- 10 (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,
- 15 (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.
- 20 (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

- 25 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.
- 30 (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.
- 35 (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.
- 5 (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,
 - 10 (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

- 15 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—
- 20 (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 39 (obstruction), and
 - (c) there are at least two working days between the date of receipt of the notice and the date of entry.
- 25 (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—
- 30 (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—
- 35 (a) sets out why the entry is necessary, and
 - (b) indicates the nature of the offence under section 39.
- (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).

5 (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—

10 “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,

15 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

20 (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,

25 (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

30 (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).

35 (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
 - (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.

5 *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—

(a) break open any container, or

10 (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.

15 (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.

20 *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—

25 (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—

30 (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

35 (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—
- 5 (a) enter the premises by force if necessary,
(b) exercise the powers in paragraph 5, 6, 7 or 8.
- (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.
- 10 (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—
- 15 “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,
20 (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
25 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.
- 30 (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.
- 35 (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 (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.

10 (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

15 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

20 (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.

25 (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

30 (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.

35 (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—

40 (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.

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.

Fireworks and Pyrotechnic Articles (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for licensing the purchase, acquisition, possession and use of certain fireworks; to prevent the supply of certain fireworks and pyrotechnic articles to persons under the age of 18; to limit the supply and use of certain fireworks to particular periods; to provide for the creation of firework control zones; to make provision prohibiting possession of fireworks and pyrotechnic articles in certain circumstances; and for connected purposes.

Introduced by: Keith Brown
Supported by: Ash Regan
On: 1 February 2022
Bill type: Government Bill

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