

Fireworks and Pyrotechnic Articles (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Fireworks and Pyrotechnic Articles (Scotland) Bill, introduced in the Scottish Parliament on 1 February 2022.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 10–FM);
 - a Policy Memorandum (SP Bill 10–PM);
 - a Delegated Powers Memorandum (SP Bill 10–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 10–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

The Bill

Overview

5. Part 1 of the Bill defines key words and expressions used in the Bill.
6. Part 2 of the Bill makes provision for licensing the purchase, acquisition, possession and use of certain fireworks, and regulating the supply of such fireworks to unlicensed persons.

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7. Part 3 of the Bill prohibits people from buying, attempting to buy, giving or otherwise making available certain fireworks or pyrotechnic articles to a person under the age of 18. It also limits the supply and use of certain fireworks to certain periods of the year.
8. Part 4 of the Bill enables local authorities to designate firework control zones that limit the use of certain fireworks in relation to the zone while the designation is in effect.
9. Part 5 of the Bill makes provision prohibiting a person from possessing a pyrotechnic article while travelling to, in the immediate vicinity of, or at a designated venue or event, a public procession or a public assembly.
10. Part 6 of the Bill makes provision in relation to exemptions and enforcement for the purposes of the Bill.
11. Part 7 of the Bill contains general provisions about interpretation, regulations, ancillary provision, Crown application and powers of entry onto Crown land, commencement and the short title.
12. Schedule 1 contains exemptions to certain offences under Parts 2 to 5 of the Bill.
13. Schedule 2 makes provision about the powers of a local weights and measures authority¹ (and its officers) to enforce the offences under sections 5 and 22 in its area, and related matters.

Current relevant legislation

14. The following legislation is referred to in these Explanatory Notes—
 - “the 2003 Act” means the Fireworks Act 2003,
 - “the Fireworks Regulations” means the Fireworks Regulations 2004 (S.I. 2004/1836),
 - “the Pyrotechnic Articles Regulations” means the Pyrotechnic Articles (Safety) Regulations 2015 (S.I. 2015/1553),
 - “the Scottish Fireworks Regulations” means the Fireworks (Scotland) Regulations 2004 (S.S.I. 2004/393).

Part 1: Key concepts

Current definitions of “fireworks” and “pyrotechnic articles”

15. The 2003 Act (see section 1) defines “fireworks” by reference to the British Standard BS 7114 (or any British Standard that replaces it). That British Standard has

¹ See paragraph 111 of these explanatory notes for further details.

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since been replaced by British Standards BS EN 15947:2015 and BS EN 16261:2012. The Explosives Regulations 2014 (S.I. 2014/1638) also define “fireworks”, but by reference to United Nations Recommendations.

16. The Pyrotechnic Articles Regulations define “pyrotechnic article” in a broad sense (in regulation 3(1)) but exclude fireworks from the operation of that definition for the purposes of those regulations (see regulation 3(2)(h)). A similar definition of “pyrotechnic article” is contained in the Explosives Regulations 2014 (see regulation of 2(1)). Both definitions make reference to an article that contains an explosive substance designed to produce heat, light, sound, gas or smoke, or a combination of those effects.

Section 1—Meaning of “firework” and “pyrotechnic article”

17. Section 1 of the Bill defines “firework” for the purposes of the Bill by reference to the current British Standards BS EN 15947:2015 and BS EN 16261:2012 (which ultimately replaced BS 7114) and to any British Standards that replace them. It makes it clear that a firework is a type of pyrotechnic article. In the Bill, unless displaced by express provision, a pyrotechnic article therefore includes a firework.

18. The section also defines “pyrotechnic article” for the purposes of the Bill. This definition is the same as the definition used in the Pyrotechnic Articles Regulations.

Current classification of fireworks and pyrotechnic articles

19. The Scottish Fireworks Regulations and the Fireworks Regulations adopt the classification of fireworks and pyrotechnic articles given in schedule 1 of the Pyrotechnic Articles Regulations. Those classifications are as follows—

- “category F1 fireworks” are fireworks which present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings,
- “category F2 fireworks” are fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas,
- “category F3 fireworks” are fireworks which present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health,
- “category F4 fireworks” are fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge² and whose noise level is not harmful to human health,
- “category T1 theatrical pyrotechnic articles” are theatrical pyrotechnic articles which present a low hazard,
- “category T2 theatrical pyrotechnic articles” are theatrical pyrotechnic articles which are intended for use only by persons with specialist knowledge,

² The specialist knowledge requirements are set out in schedule 4 of the Pyrotechnic Articles Regulations.

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- “category P1 other pyrotechnic articles” are pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which present a low hazard, and
- “category P2 other pyrotechnic articles” are pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which are intended for handling or use only by persons with specialist knowledge.

Section 2—Categories of fireworks

20. Section 2(1) of the Bill defines the different types of fireworks by reference to categories. Those categories are taken from the British Standards identified in the definition of “firework” in section 1. They are the same categories and descriptions used in the other fireworks legislation detailed above.

21. The British Standards set out how a firework should be categorised in more detail. Some descriptions of fireworks, such as sparklers and rockets, can fall within more than one category. This is because the category of a particular firework depends on its net explosive content (NEC).

22. While there are some exceptions—

- F1 fireworks are typically indoor or close proximity fireworks with lower minimum safety distances. These can include small sparklers, ice fountains and party poppers,
- F2 fireworks are outdoor fireworks with a minimum spectator safety distance of 8 metres. These can include roman candles (with an NEC of up to 50g), smaller rockets (with an NEC of up to 75g), and small collections of fireworks that are fused together as batteries (with an NEC of up to 500g) or combinations (with an NEC of up to 600g),
- F3 fireworks are outdoor fireworks with a minimum spectator safety distance of 25 metres. These can include mines and larger rockets (with an NEC of up to 200g), batteries (with an NEC of up to 1000g) or combinations (with an NEC of up to 3000g).

23. F4 fireworks present a high hazard and are not available to members of the public.

24. “Batteries” are collections of the same type of firework fused together. “Combinations” are collections of different types of fireworks fused together.

25. Pyrotechnic articles that are not categorised as fireworks include theatrical pyrotechnic articles, often referred to as stage pyrotechnics or special effects. These items are designed for use on stage and in theatres, or in television shows, films, sporting events and concerts. Examples include maroons and stage gerbs (theatrical fountains). Other pyrotechnic articles that are not categorised as fireworks include devices designed for life saving such as distress flares and distress rockets, and paintball accessories such as smoke devices.

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26. Subsection (2)(a) allows the Scottish Ministers to make regulations to modify the categories of fireworks set out in subsection (1) to take account of, for example, future developments in fireworks technology, standards or specifications.

27. Subsection (2)(b) allows the Scottish Ministers to make regulations specifying the requirements for “specialist knowledge” for the purposes of the definition of a “category F4 firework” set out in subsection (1).

Part 2: Fireworks licensing

28. Part 2 makes provision for a fireworks licensing system as a means of regulating the purchase, acquisition, possession, use and supply of certain fireworks. The effect of Part 2 is that only adults (persons aged 18 years or over) who have a fireworks licence may buy (or otherwise acquire), possess or use those fireworks, unless an exemption applies or the person otherwise has a reasonable excuse. This is enforced by the creation of an offence of acquiring etc. certain fireworks without having a fireworks licence (see section 4) and an offence of supplying certain fireworks to a person who does not have a fireworks licence (see section 5). The provisions are explained in more detail below.

Current law on possession of fireworks and pyrotechnic articles

29. Possession of fireworks has the current restrictions—

- regulation 4 of the Fireworks Regulations prohibits the possession of category F2, F3 and F4 fireworks by persons under the age of 18 in a public place (unless exempted under regulation 6),
- regulation 5 of the Fireworks Regulations prohibits the possession of category F4 fireworks by anyone (unless exempted under regulation 6),
- regulation 6 of the Fireworks Regulations lists persons who, by virtue of the nature of their employment, are not subject to the restrictions in the regulations 4 and 5.

30. Therefore, it is not an offence under the Fireworks Regulations for a person under the age of 18 to possess a category F1 firework in a public or private place, nor it is an offence under the Fireworks Regulations for a person under the age of 18 to possess a category F2 or F3 firework in a private place, such as a private garden.

31. Section 11 of the 2003 Act makes it an offence to contravene a prohibition imposed under the Fireworks Regulations. The penalty for the offence is (on summary conviction) a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.

32. Possession of some pyrotechnic articles (including fireworks) at a designated sports ground or sports event is an offence under Part 2 of the Criminal Law (Consolidation) (Scotland) Act 1995.

Fireworks which require a licence

Section 3—Application of Part 2

33. Section 3 sets out the types of fireworks to which Part 2 applies, by reference to the previously-defined categories set out in section 2. Subsection (1) is modifiable by regulations made under subsection (2) (to take account of, for example, future developments in fireworks technology, standards or specifications) which are subject to the affirmative procedure.

34. Category F4 fireworks (which are fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health) are not included within the licensing system. The licensing system is only meant to regulate the purchase, acquisition, possession and use of category F2 and F3 fireworks by, and supply by and to, the general public. Category F4 fireworks are intended for use only by persons with specialist knowledge (about which further provision may be made by regulations under section 2(2)(b)) and not the general public. Possession of a category F4 firework by the general public is prohibited under regulation 5 of the Fireworks Regulations.

Fireworks licensing

Section 4—Requirement to have fireworks licence

35. Paragraphs 29 to 32 above set out the current law with regard to the possession and supply of fireworks. At present, there are limits on possession and supply with respect to age. Section 4 of the Bill introduces a new requirement to have a fireworks licence. This section is subject to some exemptions (see section 35 and paragraphs 1, 2, 7 and 14 of schedule 1, and the explanatory notes in paragraphs 115 and 136 to 141 below).

36. It is an offence under section 4 to purchase, acquire, possess or use a category F2 or F3 firework without a fireworks licence. The offence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.

37. The offence does not apply if an individual has a reasonable excuse to purchase, acquire, possess or use fireworks. For example, if a person found category F2 fireworks in a park and took them to a police station for surrender, they would not commit an offence as they had a reasonable excuse for having those fireworks in their possession without having a fireworks licence.

38. Schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 contains definitions of words and expressions that apply to the Bill. It defines “person” to include non-natural persons, being “a body of persons corporate or unincorporated and a partnership constituted under the law of Scotland”. Section 4(3) of the Bill makes provision for circumstances where category F2 or F3 fireworks are purchased, acquired,

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possessed or used by a non-natural person (“the organisation”) and requires that only licensed individuals can carry out such activities for the non-natural person.

Section 5—Supply of fireworks to unlicensed persons

39. Where section 4 puts the onus on the person purchasing, acquiring, possessing or using the fireworks to have a fireworks licence, section 5 creates a new offence of supplying fireworks to unlicensed persons. The offence of supplying a firework to persons without a licence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.

40. The onus is on the supplier to check that the person has a fireworks licence (or that an exemption otherwise applies under schedule 1), and it is a defence to show that the supplier took reasonable steps to ascertain this. The section is subject to some exemptions (see section 35 and paragraphs 3, 8, 15 and 25 of schedule 1, and the explanatory notes in paragraphs 115 and 136 to 141 below).

41. Subsection (4) provides that a local weights and measures authority (being the local authority for the area – see paragraph 111 below) must enforce section 5 for its area but only in relation to the supply of fireworks by a person in the course of business.

42. Subsection (5) makes it clear that actions amounting to supplying a firework are not limited to those carried out in the course of a business. Therefore, if a family is gathering in a garden for a celebration and Person A gives a category F3 firework to Person B, Person A commits an offence if Person B does not have a fireworks licence (unless they can prove the defence available in subsection (3)). Person B may also commit an offence under section 4(1) as Person B does not have a fireworks licence.

Process for licensing

Section 6—Applying for fireworks licence: general requirements

43. Section 6 makes it clear that only adults (persons aged 18 years or over) may apply for a fireworks licence.

44. The Scottish Ministers may set out in regulations (under subsection (3)) the general requirements relating to the licence application process, such as the form and manner of the application, the information required in the application, the fees payable and any deadlines for the making of an application. The Scottish Ministers, when setting the fees payable, must have regard to the reasonable costs of the fireworks licensing scheme, but may choose to charge a nominal fee or remit the fee altogether.

Section 7—Applying for fireworks licence: mandatory requirements

45. Fireworks licence applicants will also need to meet the mandatory requirements when applying for a fireworks licence. These are set out in section 7 and applicants must disclose any unspent convictions relating to a “relevant offence”, details of any

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previous fireworks licences that were revoked or cancelled, and provide proof that they have completed a fireworks training course during the 3 months preceding the application. The Scottish Ministers may specify additional mandatory requirements by regulations made under subsection (2).

46. Subsection (4) defines a “relevant offence” as an offence under the Bill, the 2003 Act (or regulations made under it), the Pyrotechnic Articles Regulations, the Explosives Substances Act 1883 or the Explosives Act 1875 (which, together, form the main body of fireworks legislation), as well as any other offence where the misuse of fireworks or pyrotechnics articles has been a significant factor.

Section 8—Fireworks training course

47. Section 8 enables the Scottish Ministers to, by regulations, make provision in relation to the fireworks training course that an applicant must complete before applying for a fireworks licence (see subsection (1)). The course is to be about the safe and appropriate use of fireworks. The regulations may include, among other things, provision relating to the content of the course, the minimum criteria for successful completion of the course, and provide for the accreditation of courses or training providers by the Scottish Ministers (see subsection (2)).

48. In addition, training providers must have regard to any guidance issued by the Scottish Ministers (see subsection (3)) and any such guidance must be published (see subsection (4)).

Section 9—Grant of fireworks licence

49. Section 9 sets out the criteria that must be met before the Scottish Ministers may grant a fireworks licence. One criterion is that the Scottish Ministers must be satisfied that the applicant can be permitted to possess and use fireworks safely and appropriately.

Section 10—Grant of fireworks licence subject to conditions

50. All fireworks licences are subject to the conditions listed in section 10(1). The Scottish Ministers may, by regulations, make provision for any additional or optional conditions that may be attached to a fireworks licence (see subsections (2) and (3)(c)).

51. In addition, the Scottish Ministers may make regulations under subsection (3) determining the duration of licences and the changes in circumstances that licensed persons must notify Scottish Ministers of.

Section 11—Register of fireworks licence applications and licensed persons

52. Section 11 requires the Scottish Ministers to establish and maintain a register with details of all fireworks licence applications and all persons who have a fireworks

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licence. The details to be held on the register may be provided for by regulations made under subsection (2).

Section 12—Revocation of fireworks licence

53. Section 12 enables the Scottish Ministers to revoke a person’s fireworks licence if that person breaches a licence condition or is convicted of a “relevant offence” (as defined under section 7(4) – see paragraph 46 above). Subsections (3) to (7) set out the process for revocation via a notice of revocation, and make it an offence to fail to comply with the notice. The offence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) (see subsection (6)).

54. The ability of the Scottish Ministers to revoke a licence where a person is convicted of a relevant offence enables the Scottish Ministers to revoke a licence where the court has chosen not to cancel the licence. That may arise in circumstances where the Scottish Ministers have a wider range of information available than the convicting court did and conclude that the person cannot possess and use fireworks safely and appropriately. It also enables the Scottish Ministers to require the surrender of a convicted person’s licence and any fireworks in their possession where the convicting court did not do so. This is achieved by means of giving a notice of revocation (albeit the licence has already ceased to have effect due to its cancellation by the convicting court).

Section 13—Notification of convictions and cancellation of fireworks licence

55. Section 13 allows a court to cancel a person’s fireworks licence if the person is convicted of a relevant offence (as defined in section 7(4) - see paragraph 46 above) (see subsection (2)). The court must inform the Scottish Ministers of the cancellation and may make an order for forfeiture of any fireworks in that person’s possession. In addition, if the court does not cancel a person’s fireworks licence but the person has been convicted of a “relevant offence”, the court must inform the Scottish Ministers of the conviction to allow them to note that on the register and consider instigating the revocation process under section 12.

Section 14—Appeals

56. Section 14 enables a person to appeal to the sheriff against a decision of the Scottish Ministers relating to a refusal to grant a fireworks licence, a decision to attach a condition to the person’s fireworks licence, or the revocation of a person’s fireworks licence (see subsection (1)). Where the person resides in Scotland, the appeal must be made to a sheriff of the sheriffdom in which the person resides. In all other cases, the appeal must be made to a sheriff at Edinburgh sheriff court (see subsection (7)).

Offences relating to fireworks licence applications

Section 15—False statements

57. Section 15 makes it an offence to knowingly or recklessly make a false statement (in respect of a material matter) for the purposes of obtaining a fireworks licence. The

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offence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.

Section 16—False or altered licences and documents

58. Section 16 makes it an offence to produce a false fireworks licence or a false document that claims to prove the person is exempt from the requirement to have a fireworks licence. The offence is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.

General

Section 17—Power of Scottish Ministers to make arrangements for certain functions

59. Section 17 enables the Scottish Ministers to make arrangements for a person to perform some or all of their functions under Part 2. This does not include the power to make regulations under the Part. Ultimately, the responsibility for the performance of the function still rests with the Scottish Ministers. The section also makes it clear that, despite any arrangement by the Scottish Ministers for another person to perform a function under this Part, the Scottish Ministers are not prevented from performing the function themselves.

Section 18—Power to make further provision

60. Section 18 gives the Scottish Ministers the power to make (by regulations) further provision for the purposes of Part 2 of the Bill.

Section 19—Regulations: consultation

61. Section 19 requires the Scottish Ministers to, before making any regulations under Part 2 (except regulations under section 3 modifying the types of fireworks to which the licensing scheme under Part 2 applies), consult such persons as they consider are likely to be interested in or affected by the licensing of fireworks. Examples of such persons include fireworks manufacturers and retailers, Police Scotland, the Scottish Ambulance Service, the Scottish Fire and Rescue Service, and the general public.

Part 3: Restrictions on supply and use of fireworks and pyrotechnic articles

62. Part 3 prohibits the supply and use of certain fireworks on days other than those which are specified in sections 22 and 23 unless an exemption applies. In addition, section 21 prohibits the provision of most pyrotechnic articles to children unless an exemption applies.

Current law on supply of fireworks and pyrotechnic articles

Age restrictions on supply

63. Regulation 31 of the Pyrotechnic Articles Regulations sets minimum age limits for the supply of certain fireworks and pyrotechnic articles—

- Christmas cracker (which is a category F1 firework)—12 years,
- category F1 firework (other than a Christmas cracker)—16 years,
- category F2 and F3 fireworks—18 years,
- category T1 theatrical pyrotechnic article—18 years, and
- category P1 other pyrotechnic article—18 years.

64. For other more hazardous categories (category F4 fireworks, T2 theatrical pyrotechnic article and P2 other pyrotechnic article), regulation 32 of the Pyrotechnic Articles Regulations restricts supply to only persons with specialist knowledge (as detailed in schedule 4 of those Regulations).

65. These restrictions apply to economic operators only (i.e. any person in the supply chain). It is an offence for an economic operator to contravene or fail to comply with any requirement of regulation 31 or 32 of the Pyrotechnic Articles Regulations.

Other relevant restrictions on supply

66. Regulation 9 of the Fireworks Regulations restricts the supply of category F2, F3 and F4 fireworks, meaning that only licensed suppliers may do so. An exception is made for certain permitted periods that generally cover Guy Fawkes Day, Hogmanay, Diwali and Chinese New Year, and during those periods unlicensed suppliers may supply category F2, F3 and F4 fireworks.

67. In addition to this, regulation 3A of the Scottish Fireworks Regulations limits the supply of category F2, F3 and F4 fireworks to between the hours of 07.00 and 18.00, but with some exemptions including for professional organisers or operators of fireworks displays, businesses who supply fireworks, local authorities, and organisers of certain public fireworks displays.

Current law on the use of fireworks and pyrotechnic articles

68. Regulation 3 of the Scottish Fireworks Regulations specifies the permitted fireworks nights (and times during those nights) on which category F2, F3 and F4 fireworks may be used—

- from 23.00 on the first day of the Chinese New Year to 01.00 the next day,
- from 23.00 on 5 November to midnight on 5 November,
- from 23.00 on the day of Diwali to 01.00 the next day, and
- from 23.00 on 31 December to 01.00 the next day.

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69. On all other nights, the use of fireworks is permitted from 18.00 to 23.00.

70. As it is an offence under section 80 of the Explosives Act 1875 to use fireworks in a public place, this means that any fireworks used in accordance with regulation 3 of the Scottish Fireworks Regulations must only be used in a private place.

71. There are no similar day or time of day restrictions on when other pyrotechnic articles may be used.

Application of Part 3

Section 20—Application of Part 3

72. Section 20 sets out the types of fireworks and pyrotechnic articles to which Part 3 applies, by reference to the previously defined categories in section 2. Subsection (1) is modifiable by regulations (to take account of, for example, future developments in fireworks technology, standards or specifications) which are subject to the affirmative procedure.

Prohibition on supply to children

Section 21—Prohibition on providing fireworks or pyrotechnic articles to children

73. There is currently nothing preventing a person who is not an economic operator from making fireworks and pyrotechnic articles available contrary to the minimum age limits.

74. Section 21 makes it an offence for a person to knowingly buy or attempt to buy a firework or other pyrotechnic article for a person under the age of 18 i.e. a proxy purchase (see subsection (1)(a)). It also makes it an offence for a person to give or otherwise make them available to a person under the age of 18 (see subsection (1)(b)). A person who commits the offence is liable (on summary conviction) to a fine not exceeding level 5 on the standard scale (currently £5,000) or to a term of imprisonment not exceeding 6 months, or both.

75. As set out in section 20(1)(a), section 21 applies to all pyrotechnic articles other than category F1 fireworks and percussion caps for toy guns (intended for use by children under the age of 14). It therefore applies to all other pyrotechnic articles including category F2, F3 and F4 fireworks. Whilst it is unlawful for category F4 fireworks to be sold to the general public, they are included for the purposes of section 21 to make it clear that a person (who may have legally acquired category F4 fireworks) cannot give them to a child. Category F1 fireworks are not included as it is not an offence for a child to possess a category F1 firework. Percussion caps for toys that are intended for use by children under the age of 14 are also excluded from the definition of “pyrotechnic article” in the Pyrotechnic Articles Regulations (see regulation 3(2)(e)) meaning that such percussion caps may be sold to children directly.

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76. Subsection (3) makes it clear that a person does not commit an offence if the pyrotechnic article was designed to be used as a visual distress signal, and the person providing the pyrotechnic article intended that the recipient (the person under the age of 18) used the pyrotechnic article only in appropriate circumstances. For example, if Person A (who is under the age of 18) is going for a hill walk and Person B gives Person A a safety flare to use if Person A needs to signal for help, then Person B does not commit an offence.

77. The section is subject to some exemptions (see section 35 and paragraphs 9 and 16 of schedule 1, and the explanatory notes in paragraphs 115 and 136 to 141 below).

Days of supply and use of fireworks

Section 22—Restrictions on days of supply of fireworks

78. As detailed previously (see paragraphs 66 to 67), the Fireworks Regulations and the Scottish Fireworks Regulations restrict the days and hours of the day during which category F2, F3 and F4 fireworks may be sold by unlicensed suppliers.

79. The Bill builds on that with section 22 restricting the days on which any person may supply category F2 and F3 fireworks to the general public (see also section 20(1)(b)). Those days are listed in subsection (3) and cover specified periods in relation to Vaisakhi, Guy Fawkes Day, Hogmanay, Chinese New Year and Diwali.

80. A person who supplies a category F2 or F3 firework on a day that is not specified in subsection (3) commits an offence and is liable (on summary conviction) to a fine not exceeding level 5 on the standard scale (currently £5,000) or to a term of imprisonment not exceeding 6 months, or both (see subsections (1) and (2)).

81. The definition of “supply” in subsection (8) means that the offence applies to the sale or exchange of fireworks for consideration and the giving away or gifting of fireworks, but **only** when carried out in the course of a business. It does **not** therefore apply to the actions of individuals in their private lives. For example, an individual who gifts fireworks to a friend on a day when this is not allowed will not commit an offence under this section. But both the person who gifted them and the recipient will still commit offences under sections 4(1) and 5(1), respectively, if the recipient does not have a fireworks licence (and no exemption otherwise applies under schedule 1).

82. Section 22 is subject to some exemptions (see section 35 and paragraphs 10, 17, 21 and 26 of schedule 1, and the explanatory notes in paragraphs 115 and 136 to 141 below). Section 22 (restricting the supply of category F2 or F3 fireworks to certain days) does not remove the requirement for a person to have a fireworks licence to acquire these types of firework in the first place unless the person is exempt from this requirement e.g. as a professional organiser of fireworks displays. The exemptions from section 22 mean that a person who falls within the exemptions from section 22 *and* has a fireworks licence (or who is exempt from the requirement to have a licence) may be supplied with this type of firework on a day that is not specified in section 22. For

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example, an organiser of a public fireworks display on behalf of a charitable or community organisation (see paragraph 21 of schedule 1) may be sold fireworks on any day of the year but must also have a fireworks licence (or be a professional organiser of fireworks displays) in order to acquire the fireworks. A defence to the offence under section 22(1) is available (see subsection (4)) where a person took reasonable steps to ensure that the recipient of the firework was exempt under schedule 1.

Section 23—Restrictions on days of use of fireworks

83. Section 23 restricts the days on which category F2 and F3 fireworks may be used. Those days are listed in subsection (3) and cover specified periods in relation to Vaisakhi, Guy Fawkes Day, Hogmanay, Chinese New Year and Diwali. These periods extend a few days beyond the corresponding permitted period for supplying fireworks, to give people time to use any fireworks in their possession.

84. A person who uses fireworks on any other day commits an offence and is liable (on summary conviction) to a fine not exceeding level 5 on the standard scale (currently £5,000) or to a term of imprisonment not exceeding 6 months, or both (see subsections (1) and (2)).

85. The section is subject to some exemptions (see section 35 and paragraphs 4, 11, 18 and 22 of schedule 1, and the explanatory notes in paragraphs 115 and 136 to 141 below). The exemptions mean that a person who is exempt under schedule may use a category F2 or F3 firework on any day but this does not remove the requirement to hold a fireworks licence under section 4 to use such a firework unless the person is exempt from the requirement to hold a fireworks licence. This means that only a person who falls within the exemptions from section 23 *and* who has a fireworks licence (or who is exempt from the requirement to have a licence) may use a firework on a day that is not specified in section 23.

Section 24—Compensation

86. Section 24 enables the Scottish Ministers to make regulations for the payment of compensation to specialist suppliers, distributors and importers of fireworks based in Scotland as a consequence of section 22 coming into force and restricting the days on which fireworks may be sold to the general public. The regulations may make further provision about who qualifies for compensation, set out the circumstances in which compensation is payable, the process for calculating it, claiming it and for having decisions reviewed or appealed.

Part 4: Firework control zones

87. Part 4 establishes the concept of firework control zones which, if designated by a local authority, are places within the area of the local authority in relation to which the use of fireworks is restricted, including the use of fireworks on private land. Part 4 requires local authorities to take certain steps before designating a place as a firework control zone.

Section 25—Application of Part 4

88. Section 25 sets out the types of fireworks to which Part 4 applies, by reference to the previously-defined categories in section 2. Subsection (1) is modifiable by regulations made under subsection (2) to take account of, for example, future developments in fireworks technology, standards or specifications. The regulations are subject to the affirmative procedure.

Section 26—Firework control zones

89. Section 26 enables a local authority to designate a place within its area as a firework control zone (see subsection (1)). The place designated under this section may typically be a small identifiable place within the local authority area. While it is a matter for local judgement, it is not expected that a local authority could designate the whole local authority area as a firework control zone. If needed, the Scottish Ministers have a power under section 30(1) to make regulations that may be used to limit the size of area that may be designated a firework control zone or impose an overall limit on how much of its area may be so designated. Section 26(1) also permits a local authority to amend a zone, the period of time that a zone has effect or revoke a zone. In each case, the relevant procedure set out in Part 4 needs to be followed.

90. It is an offence to ignite a firework within a firework control zone, or knowingly or recklessly throw or cast a lit firework, or fire a firework, into the zone (see subsection (2)). A person who commits an offence is liable (on summary conviction) to a fine not exceeding level 5 on the standard scale (currently £5,000) or to a term of imprisonment not exceeding 6 months, or both (see subsection (4)). If a person used a firework according to the manufacturer's instructions and that firework accidentally entered a firework control zone after being ignited, that person would not commit an offence so long as the firework was not deliberately aimed into the firework control zone and the person was not reckless as to the direction in which the firework was fired.

91. The use of fireworks is not completely banned within a firework control zone. Part 4 only applies to those fireworks specified in section 25(1), namely category F2, F3 and F4 fireworks. The use of category F1 fireworks is permitted within a firework control zone. There are also some exemptions which apply to this section (see section 35 and paragraphs 5, 12, 19 and 23 of schedule 1, and the explanatory notes in paragraphs 115 and 136 to 141 below).

92. While the default position is that a zone operates throughout the period it has effect, it is also possible for a local authority to specify that a firework control zone will only operate on particular days. This enables the local authority to ensure that the zone takes account of local circumstances and only operates when required.

Section 27—Prior consultation on proposals

93. Section 27 places a duty on local authorities to prepare and publish (as the case may be) key details of any proposal for the designation of a firework control zone, or any proposal to amend or revoke any such zone. Each proposal must set out the

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reasons behind what is proposed, the boundaries of the zone, the date from which it is to have effect, how long it is to have effect and details of the consultation that the authority is to conduct.

94. The local authority is then required to consult persons who are likely to be affected by or have an interest in the proposed firework control zone. This is not limited to just residents and businesses located within the proposed firework control zone, but also other members of the community in or near the proposed firework control zone as well as organisations that would be affected by firework activity such as Police Scotland, the Scottish Fire and Rescue Service and the Scottish Ambulance Service.

Section 28—Publication of decision on proposal

95. Section 28 requires a local authority to publish a decision on a proposal for a firework control zone (or its amendment or revocation) as soon as practicable after the decision is made, and at least 60 days before the proposal is to have effect, in order to give the local community sufficient notice of the designation. The local authority must also explain any changes made from the original proposal and how it had regard to the views expressed during the consultation process under section 27.

Section 29—Review of operation and effectiveness

96. Section 29 requires a local authority to carry out reviews of the operation and effectiveness of its firework control zones. It is open to the local authority to carry out reviews of one, some or all of its zones at any given time. This ensures that an authority can determine what is most appropriate for its circumstances while still ensuring that the zones are reviewed to verify that they are still required. An authority may also combine a review of a zone with a proposal to amend or revoke a zone. This may arise where, for example, the authority believes that it is appropriate to extend the period a zone is to have effect but wishes to make sure that it is working effectively before doing so. Combining a proposal to review a zone with a proposal to amend or revoke it allows for views on both proposals as part of the same consultation.

97. Following a review, the local authority must publish a report on its findings and thereafter make such proposals in relation to the zone (or zones) as it considers appropriate (if any).

98. Subsection (4) makes it clear that the Scottish Ministers can set a minimum frequency for reviews under this section. The provision should be read in the context of section 28 more generally, and may make different provision for different purposes. For example, different frequencies may apply to zones with certain characteristics (duration, size, location, etc.).

Section 30—Power to make further provision

99. Section 30 gives the Scottish Ministers the regulation-making power to make further provision about firework control zones and the procedure for designating, amending or revoking them. Those regulations are subject to the negative procedure.

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Subsection (2) is a non-exhaustive list of matters about which the Scottish Ministers may make further provision.

Section 31—Guidance

100. Section 31 requires local authorities to have regard to any guidance issued by the Scottish Ministers for the purposes of Part 4 (see subsection (1)), and requires the Scottish Ministers to publish any such guidance (see subsection (2)).

Part 5: Pyrotechnic articles at certain places or events

101. Part 5 prohibits the possession of any pyrotechnic article (subject to modification by regulations of the types of prohibited articles) without reasonable excuse while a 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 a public procession or a public assembly.

Current law on possession of pyrotechnic articles and fireworks at certain events

102. Part 2 of the Criminal Law (Consolidation) (Scotland) Act 1995 contains controls on alcohol and controlled articles at designated sports grounds and sporting events. The power to make a designation is in section 18 of that Act, and includes the designation of a sporting event (or class of sporting event) taking place outside Great Britain.

103. Section 20(3) to (6) of that Act deals with possession of a controlled article or substance at a designated sports ground, making it an offence (without lawful authority) to possess a controlled article or substance at a designated sports ground during a designated sporting event. The definition for “controlled article or substance” in subsection (8) includes an item whose main purpose is the emission of a flare, smoke or visible gas, and any article which is a firework. It includes distress flares, fog signals, and pellets and capsules (otherwise intended to be used as fumigators or for testing pipes). But some non-pyrotechnic articles, such as matches, cigarette lighters and heaters, are excluded. (This definition is a bit wider than the definition of pyrotechnic article used in the Bill. This is because, for the purposes of the Bill, a pyrotechnic article must contain an explosive substance and create its effect through self-sustained exothermic chemical reactions.)

Section 32—Application of Part 5

104. Section 32 applies Part 5 to all pyrotechnic articles, including fireworks.

Section 33—Prohibition of pyrotechnic articles at certain places or events

105. Section 33 makes it an offence for a person to possess (without reasonable excuse) a pyrotechnic article at certain places or events.

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106. In particular, it is an offence to possess a pyrotechnic article while travelling to, in the immediate vicinity of, or attending a designated venue or event. In addition, it is an offence to possess such an article while travelling to, participating in, or otherwise attending—

- a public procession conducted in accordance with Part 5 of the Civic Government (Scotland) Act 1982 (which requires that notice is given to the relevant local authority and Police Scotland, that the procession is not prohibited by the local authority, and that any conditions imposed by the local authority are complied with), or a public procession to which Part 2 of the Public Order Act 1986 applies, or
- a public assembly of more than 20 people. (In Scotland, section 16 of the Public Order Act 1986 defines a “public assembly” as “an assembly of 20 or more persons in a public place which is wholly or partly open to the air”.)³

107. Subsection (4) makes it clear that travelling to a designated venue or event, or public procession or public assembly, includes situations where a person is travelling there but does not intend to enter the venue, attend the event, or participate in the procession or assembly.

108. The section is subject to some exemptions (see section 35 and paragraphs 6, 13, 20 and 24 of schedule 1, and the explanatory notes in paragraphs 115 and 136 to 141 below).

Section 34—Designation of venues or events

109. Section 34 enables the Scottish Ministers to make regulations to designate certain venues and events for the purposes of Part 5. The Scottish Ministers may designate sports grounds (or classes of them) whether or not the grounds are used for sporting events; sporting events (or classes of them); venues to be used for music events including places regulating entry etc. to an event and places providing accommodation for attendees of the event; and music events (or classes of them).

Part 6: Exemptions and enforcement

Overview

110. This Part makes provision for exemptions to certain offences under Parts 2 to 5, and in relation to enforcement of offences under the Bill.

111. The Bill provides the officers of each local weights and measures authority powers to enforce the offences of supplying unlicensed persons with fireworks (see section 5) and supplying fireworks otherwise on the permitted days (see section 22) on a commercial basis. In Scotland, a local weights and measures authority is the local

³ The amendment of the Public Order Act 1986 by section 57 of the Anti-social Behaviour Act 2003 (to change this definition to refer to such an assembly of two or more persons) forms part of the law of England and Wales only.

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authority for the area. In the following explanatory notes, the local weights and measures authority for a local authority area is referred to as “Trading Standards” (for the area) and its officers are referred to as “Trading Standards officers”.

112. Trading Standards (and its officers) already have powers in relation to the sale of fireworks, most notably in connection with sales to underage persons (by virtue of section 12 of the Fireworks Act 2003) and enforcement of these new offences will sit alongside those existing powers. Schedule 2 sets out the specific investigatory powers that are available to Trading Standards (and its officers) for enforcing sections 5 and 22.

113. Constables of Police Scotland have general powers of enforcement across the Bill.⁴ Part 6 bolsters those powers by providing constables with powers of entry (with a warrant) and powers to stop and search (without a warrant) in appropriate circumstances. Constables are also able to seize and retain fireworks and pyrotechnic articles in connection with the offences, as well as any item found in the course of a search which may be relevant to the commission of the offence.

114. Part 6 also provides for a number of general provisions in relation to court proceedings for offences under the Bill, including extending the time period for summary prosecutions (see section 41) and providing a mechanism for the forfeiture and disposal of any fireworks or pyrotechnic articles that have been seized in connection with the commission of an offence or surrendered following the revocation of a licence (see section 43).

Exemptions

Section 35—Exemptions from offences in Act

115. Section 35 introduces schedule 1, which provides for exemptions to certain offences under Parts 2 to 5. The schedule is modifiable by regulations.

Powers of local weights and measures authorities

Section 36—Powers of local weights and measures authorities

116. Section 36 introduces schedule 2, which makes provision about the powers of Trading Standards⁵ (and its officers) to enforce the offences under sections 5 and 22 in its area and related matters.

⁴ Section 45 defines a constable for the purposes of the Bill. Generally, it is a constable of Police Scotland. However, by virtue of section 31 of the Railways and Transport Safety Act 2003, the powers can also be exercised by a constable of the British Transport Police if the offence is being committed in a railway context.

⁵ Described in the Bill as a local weights and measures authority, (see paragraph 111 for further details).

Powers of constables

Section 37—Power of entry etc. with warrant

117. Section 37 confers power on a sheriff, summary sheriff⁶ or justice of the peace to grant a warrant authorising a constable to enter and search premises (including houses, vehicles, and moveable structures like a tent) where the constable has reasonable grounds for believing that an offence has been, or is being, committed under the Bill at the premises, or there is evidence at the premises of such an offence having been committed.

118. By virtue of subsection (3), the warrant may authorise the constable to break into premises and search anything in, or anyone on, the premises. The constable can take away anything that the constable thinks is evidence that an offence under the Bill is being or has been committed. Subsection (4) allows a constable to require material which is in, for example, digital format to be printed or saved onto a device that the police can take away.

Section 38—Search for fireworks or pyrotechnic articles without warrant

119. Where a constable has reasonable grounds to suspect that a person has committed or may be committing an offence under the Bill, the constable may stop and search the person and, if relevant, a vehicle (and anything on or in it). This particularly relates to the possession of fireworks or pyrotechnic articles in circumstances where those items are prohibited such as at a designated sporting event or public assembly. However, it may also be relevant where a person is suspected of having acquired fireworks without having a fireworks licence.

120. Where a constable finds a firework or pyrotechnic article which tends to show that an offence is being (or has been) committed under the Bill, the constable can keep that item, as well as any other item found in the course of a search which may be relevant to the commission of the offence, as evidence.

Section 39—Offence of obstructing an officer of a local weights and measures authority

121. Section 39 makes it an offence for a person to intentionally obstruct or refuse to co-operate with Trading Standards⁷ officers in the exercise of their functions under the Bill (see subsection (1)(a)) or to fail to provide the officer with such assistance as may

⁶ Sheriff is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 by reference to section 134 of the Courts Reform (Scotland) Act 2014 (which states that references to sheriff include references to any other member of judiciary of the sheriffdom, so far as that member has the jurisdiction and competence that attaches to the office of sheriff). Under section 45(1) of the Courts Reform (Scotland) Act 2014 a summary sheriff may, in relation to criminal investigations and proceedings, exercise the jurisdiction and powers that attach to the office of sheriff.

⁷ Described in the Bill as a local weights and measures authority, (see paragraph 111 for further details).

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be requested. It is also an offence for a person to intentionally or recklessly supply incorrect information or make an untrue statement to a Trading Standards officer. Obstructing a constable is already an offence under section 90 of the Police and Fire Reform (Scotland) Act 2012.

122. An offence under this section is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.

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

123. Section 40 makes it an offence to claim to be a Trading Standards officer exercising powers under the Bill. An offence under this section is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000).

Miscellaneous

Section 41—Time limits for prosecution of offences

124. Section 41 extends the usual time limit for starting the prosecution of a summary offence under the Bill from 6 to 12 months. This is in keeping with other fireworks legislation.

Section 42—Certificates as to proof of having fireworks licence

125. Section 42 makes it possible for a person authorised by the Scottish Ministers to provide a certificate to court which proves whether or not a person held a fireworks licence on a specific date for the purpose of prosecuting an offence relating to a licence.

Section 43—Forfeiture and disposal of fireworks and pyrotechnic articles

126. Section 43(1) sets out the different situations where the forfeiture and disposal of fireworks or pyrotechnic articles seized or surrendered may occur. This may arise where the Scottish Ministers revoke a person's licence, a court convicts a person of an offence under the Bill or where a court convicts a person for a relevant offence (defined in section 7(4)) and chooses to cancel the person's licence.

127. Subsections (2) to (5) cater for the situation where the Scottish Ministers revoke a person's fireworks licence. In those circumstances, any category F2 or F3 fireworks the person has are to be surrendered (see section 12(3) and (4)(b)). If the person appeals the revocation, the fireworks are kept until such time as the appeal is determined and, if the appeal is successful, the fireworks are to be returned. However, if the person doesn't appeal or the appeal is unsuccessful, the provision allows for the fireworks to be disposed of in a suitable manner.

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128. Subsections (6) to (8) deal with the circumstances where a person’s licence is cancelled by a court in connection with an offence (see section 13), or the person has been convicted of an offence under the Bill (without a licence being cancelled) and fireworks or pyrotechnic articles belonging to the person have either been taken by the police as evidence or are known to be in the person’s possession. In these circumstances, the court which has convicted the person may order the fireworks or pyrotechnic articles to be forfeited and disposed of in a suitable manner.

Section 44—Individual culpability for offending by an organisation

129. Section 44 makes provision where offences under the Bill are committed by legal entities such as companies, partnerships and associations. Where an offence under the Bill is committed by a “relevant organisation”, this section provides that the relevant organisation and, in some cases, a “responsible individual” in that organisation are both to be held responsible. This section ensures that those running legal entities who are responsible for the decisions leading to an offence under the Act can also be prosecuted for it.

Part 7: General

Section 45—Interpretation

130. Section 45 provides definitions for terms used throughout the Bill. But see also sections 1 and 2 which define “fireworks”, “pyrotechnic articles” and the categories of fireworks used in the Bill.

Section 46—Regulations

131. Section 46 allows regulations under the Act to include the ancillary provision listed, and to make different provision for different purposes.

Section 47—Ancillary provision

132. Section 47 allows the Scottish Ministers, by regulations, to make standalone ancillary provision in relation to the Act, once enacted, or any provision made under it. Any regulations making ancillary provision which textually amends primary legislation will be subject to the affirmative procedure; otherwise any regulations making ancillary provision under this power will be subject to the negative procedure (see subsections (2) and (3)).

Section 48—Crown application: criminal offences

133. The Bill will apply to the Crown by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010. In line with usual practice for Acts of the Scottish Parliament, section 48 has the effect that the Crown cannot be found criminally liable in terms of the offences created by the Bill. However, through the mechanism in subsection (2), any unlawful conduct on the part of Crown bodies can be declared unlawful by the Court of Session. Subsection (3) has the effect that this section does not exempt civil servants etc. from criminal prosecution.

Section 49—Crown application: powers of entry

134. Section 49 deals with the possibility that the police or Trading Standards officers may need to search Crown land (the different types of which are set out in the left-hand column). As there can be security and other considerations in relation to searching Crown land, there is an additional step of seeking permission from the appropriate authority before entry may be taken and the search carried out.

Section 50—Commencement

135. Section 50 makes provision in relation to the commencement of the Bill. The sections on interpretation, regulations, ancillary provision, commencement and the short title come into force automatically on the day after the Bill for the Act receives Royal Assent. The other provisions will come into force in accordance with regulations made by the Scottish Ministers.

Schedule 1—Exemptions

136. Schedule 1 sets out exemptions to certain offences in Parts 2 to 5. These exemptions generally relate to persons whom, by virtue of their employment, should not be criminalised for purchasing, acquiring, possessing or using fireworks contrary to the Bill, such as those employed by a regulatory authority (defined in section 45), professional organisers or operators of a fireworks display or pyrotechnics display, those who carry out a business in accordance with the Pyrotechnics Regulations and organisers of a public fireworks display.

137. Paragraphs 1 to 6 set out exemptions in relation to regulatory authorities (who are defined under section 45 as the Chief Constable of the Police Service of Scotland, the Health and Safety Executive, a local authority and a local weights and measures authority). Exemptions are set out in relation to the following offences: purchase etc. of fireworks by a person without a fireworks licence who is acting on behalf of a regulatory authority; supply of fireworks between unlicensed persons who are employed by a regulatory authority; use of fireworks by a person acting on behalf of a regulatory authority on a restricted day; a person acting on behalf of a regulatory authority igniting fireworks in a firework control zone; and possession by an employee of a regulatory authority of certain pyrotechnic articles at a designated venue or event, public procession or public assembly.

138. Paragraphs 7 to 13 set out exemptions relating to persons employed by, or in business as, a professional organiser or operator of firework displays in so far as the person is acting in connection with that business. Exemptions are set out in relation to the following offences: purchase etc. of fireworks by such a person without a fireworks licence; supply to such a person without a fireworks licence; giving or otherwise making available fireworks or pyrotechnic articles to such a person who is under 18 years of age; supply of fireworks to, or use of fireworks by, such a person on a restricted day; ignition of fireworks in a firework control zone by such a person; or possession of certain pyrotechnic articles at a designated venue or event, public procession, or public assembly by such a person.

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139. Paragraphs 14 to 20 set out exemptions relating to a person either employed by a business, or whose own trade or business is the manufacture, importation, distribution or supply of fireworks, in so far as the person is acting in connection with that trade or business. Exemptions are set out in relation to the following offences: purchase etc. of fireworks by such a person without a fireworks licence; supply to such a person without a fireworks licence; giving or otherwise making available fireworks or pyrotechnic articles to such a person who is under the age of 18 for purposes necessary in connection with that person's trade or business; supply of fireworks to, or use of fireworks by, such a person on a restricted day; ignition of fireworks in a firework control zone by such a person; or possession of certain pyrotechnic articles at a designated venue or event, public procession or public assembly by such a person.

140. Paragraphs 21 to 24 set out exemptions relating to a person organising a public fireworks display on behalf a charitable, religious, youth, recreational, community, political or similar organisation in so far as the person is acting for the purpose of putting on such a display. Exemptions are set out in relation to the following offences: supply of fireworks to, or use of fireworks by, such a person on a restricted day; ignition of fireworks in a firework control zone by such a person; or possession of certain pyrotechnic articles at a designated venue or event, public procession or public assembly by such a person. However, as noted in paragraphs 82 and 85 above, these exemptions do not remove the requirement to have a fireworks licence.

141. Paragraphs 25 and 26 deal with situations where the purchaser is outwith Scotland and the fireworks are also to be delivered outwith Scotland. This means that it is not an offence under section 5 for a person to supply a category F2 or F3 firework to a person who does not have a fireworks licence if the person being supplied is outwith Scotland and the firework is delivered outwith Scotland. Also, it is not an offence under section 22 to supply a category F2 or F3 firework to a person on a day that is not specified in subsection (3) of that section if the person being supplied is outwith Scotland and the firework is delivered outwith Scotland.

Schedule 2—Investigatory powers of a local weights and measures authority (Trading Standards)

General

142. Paragraph 1 of schedule 2 sets out some overarching limits governing the use of the investigatory powers conferred on Trading Standards⁸ by virtue of the schedule. In the main, Trading Standards may use the powers for investigating if offences are being committed under sections 5 and 22.⁹ However, to be able to use the more intrusive powers (such as seizing items or documents, requiring information to be produced or

⁸ Described in the Bill as a local weights and measures authority, (see paragraph 111 for further details).

⁹ Supplying unlicensed persons with fireworks (section 5) and selling fireworks otherwise on the permitted days (section 22) on a commercial basis.

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seeking a search warrant) a Trading Standards officer has to reasonably suspect that an offence is being committed.

143. In addition, where the powers relate to taking entry to premises, the provisions make clear that access to a private dwelling may only occur where a warrant has been obtained from a sheriff.

Power to purchase fireworks (test purchases)

144. Paragraph 2 of schedule 2 enables Trading Standards officers to carry out test purchases from suppliers of fireworks and pyrotechnic articles in order to ascertain if offences are being committed. To do so, Trading Standards officers can enter any premises which are generally open to the public, inspect products and make purchases. They may also have persons who do not have a fireworks licence attempt to carry out a purchase¹⁰ in order to see if the seller commits an offence.

Power to observe carrying on of business etc.

145. Paragraph 3 of schedule 2 enables Trading Standards officers to enter premises and watch how business is conducted. This may be combined with other powers, such as the power to make test purchases or the power to inspect a firework or items suspected to be a firework.

Power to enter premises without warrant

146. Paragraph 4 of schedule 2 enables Trading Standards officers to visit any premises which aren't used as a private dwelling for the purposes of checking whether an offence is being committed under section 5 or 22. This is broader than the powers of entry conferred in relation to test purchases or observing business as the premises in question don't have to be open to members of the public. For example, it may be appropriate to visit premises such as warehouses where fireworks are stored or an office where records relating to sales are kept.

147. In most cases, the officers will notify the occupiers of the premises that they are coming to carry out a routine inspection. This is done by giving notice in writing at least two working days between the date of receipt of the notice and the inspection. The manner in which notice may be given is regulated by section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010.

148. However, where the officer believes that an offence may be being committed or that giving notice would defeat the purpose of the inspection, the officer can enter the premises without giving notice. They may not use force to take entry if it is refused, but the person refusing entry may commit an offence under section 39 (obstructing an officer of a local weights and measures authority).

¹⁰ Paragraph 2 of schedule 1 provides that an unlicensed person acting under the direction of Trading Standards does not commit an offence in these circumstances.

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149. Where the premises are occupied, the officer must produce evidence of their identity and provide a document setting out why entry is necessary and indicating the nature of the offence of obstructing the officer.

Power to inspect and test fireworks

150. Paragraph 5 of schedule 2 confirms that a Trading Standards officer can inspect and test a firework or an item suspected to be a firework on premises to which entry has been taken under paragraph 4 or 9. Where necessary, the item can be removed from the premises for testing. This may be relevant where there is doubt over whether an item is a firework or a firework of a particular category.

Power to seize and retain items

151. Paragraph 6 of schedule 2, which must be read with paragraph 1(2), enables a Trading Standards officer to seize and retain an item (other than a document, to which different rules apply - see paragraph 158). The item involved might be a firework or a piece of evidence which tends to show that an offence has been committed. Where items are to be seized, the officer must first produce evidence of their identity and authority to do so.

152. Where an item is taken, the officer must take reasonable steps to tell the person from whom it has been taken that it has been seized and provide the person with a record of what item has been taken. The “reasonable steps” element covers the possibility that the person from whom items are taken may not be on the premises at the time and that the officer must therefore try to make them aware of the situation.

153. Sub-paragraph (5) places limits on how long any item seized may be held before it is to be returned. The default is three months but it may be longer if it is reasonably required to be so for the purpose for which it was taken, or if the item is ultimately likely to be forfeited, in which case it may never be returned (see section 43).

Powers in relation to documents

154. Paragraph 7 of schedule 2 details the powers that a Trading Standards officer has in relation to documents. This provision needs to be read with the limitations in paragraph 1(3).

155. It is worth noting for these purposes that “document” takes its meaning from schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010, namely: “document” means anything in which information is recorded in any form (and references to producing a document are to be read accordingly),’. This is a broad definition and includes information stored in electronic formats.

156. The officer has a range of powers in relation to documents, as set out in paragraphs (a) to (c) of sub-paragraph (1).

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157. The first power is that the officer can require a person who is offering fireworks for sale (“the trader”) or an employee of (or other person acting on behalf of the trader) to produce any document relating to the business to which the person has access. The second is that the officer can make copies of those documents (or any part of them) and the third is that the officer can seize and retain those documents. In addition, an officer can require a person producing a document to explain what it is, and failure to do so may be an offence under section 39.

158. However, paragraph 1(3) of schedule 2 limits the use of such powers to where the officer has reason to suspect that an offence is being committed. And an officer cannot require the production of a document which is legally privileged (such as a letter from a solicitor giving legal advice).

159. Where the document is in electronic format, the officer may require a copy of the document to be produced in a format that can be taken away. For example, this may be by printing out a page from a database or transferring information onto a portable storage device. However, a person can’t otherwise be asked to create a document (for example by bringing different sources of information together).

160. As with the power relating to the seizure of items other than documents, the officer must take reasonable steps to tell the person from whom the document is seized that it has been taken and provide a written record of what has been taken.

Power to break open container etc.

161. Paragraph 8 of schedule 2 enables a Trading Standards officer to break open containers in order to be able to inspect, copy or seize and retain items or documents where the officer reasonably suspects that an offence has been or is being committed. In this context, containers may be a variety of different things, ranging from a locked cupboard or safe to a computer hard drive or mobile phone.

Power of entry with warrant

162. Paragraph 9 of schedule 2 provides a means for a Trading Standards officer to obtain a search warrant from a sheriff or summary sheriff¹¹ in certain situations. In order to do so, the officer must—

- reasonably suspect that an offence under section 5 or 22 has been, or is being, committed (in accordance with paragraph 1(3) of schedule 2),
- satisfy the sheriff, by evidence on oath, that there are reasonable grounds for suspecting that: (i) such an offence 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

¹¹ For an explanation of the authority of a summary sheriff to grant a warrant, see the footnote relating to “summary sheriff” in paragraph 117.

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- satisfy the sheriff (again on oath) that one of the three conditions in paragraph 9(1)(b) is met.

163. A warrant granted under this paragraph lasts for 28 days. It may entitle an officer to—

- enter the premises for which the warrant is granted, using force if necessary,
- exercise the powers in paragraphs 5 to 8 of schedule 2.

164. It also entitles an officer to be accompanied onto the premises by such other persons as the officer thinks necessary and also to take such equipment onto the premises as the officer thinks necessary. For example, it may be necessary for a locksmith to attend to open any locked containers.

165. Unlike the power of entry in paragraph 4, the officer may be authorised to enter a private dwelling under a warrant granted by a sheriff. This may be necessary in cases where a person is operating a business from home. It also covers the situation where a person is operating out of a vehicle or vessel that someone lives in (such as a campervan or houseboat).

166. If the premises are unoccupied when the officer exercises the power of search under the warrant, the officer has to leave a notice for the occupier informing them that the premises have been entered under a search warrant and must also make sure that the premises are secured as effectively as they were when the officer forced entry.

Power to require assistance from a person on premises

167. Paragraph 10 of schedule 2 is a power available when a Trading Standards officer is visiting or inspecting premises under paragraph 4 or has taken entry under a warrant granted under paragraph 9. While there, the officer can require any person who is on premises to provide the officer with such assistance as the officer reasonably considers necessary. For example, this might involve providing access to locked areas or helping the officer locate and inspect items. A person who fails to help the officer in this way may be committing an offence under section 39.

Access to seized items and documents

168. Paragraph 11 of schedule 2 provides for a person who has had an item or a document seized as part of an investigation to have supervised access to the item or be able to take or request a copy of the document. However, access can be denied if there are reasonable grounds for believing that it might risk the investigation in some way to allow the person to see the item or have a copy.

169. Where a person requests access to an item or a copy of a document, Trading Standards can recover the costs involved in meeting the request.

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Notice of testing fireworks and items

170. Paragraph 12 of schedule 2 provides for a person who is (or is to be) prosecuted as a result of a test of a firework or a pyrotechnic item to be told about the results of the test and given the opportunity (if possible) to arrange for the item to be tested by someone else.

Application for release of firework, item or document

171. Paragraph 13 of schedule 2 enables a person who has an interest in a firework, item or document which has been retained by Trading Standards to apply to a sheriff for the release of the item. A sheriff may do so only where either (i) no proceedings for an offence have been brought within the period of 12 months from the day on which the thing was taken, or (ii) proceedings have been brought and are finished and the thing has not been forfeited as part of those proceedings.

172. An application under this paragraph is to be made by summary application; see rule 1.4 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (S.I. 1999/929).

Compensation

173. Paragraph 14 of schedule 2 makes provision for the payment of compensation by Trading Standards in circumstances where a firework or item has been seized in relation to a suspected offence but no offence has been disclosed. Provided that the person from whom the item was taken was not negligent or in some way responsible for the item being taken (for example by not co-operating with the investigation) they are entitled to compensation for any loss or damage suffered as a result of the item being taken and kept. Any disagreement as to the amount of compensation is to be resolved by arbitration.

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Fireworks and Pyrotechnic Articles (Scotland) Bill

Explanatory Notes

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