

# **A consultation on fireworks in Scotland: Your experiences, your ideas, your views**

## **Technical Annex**

**February 2019**

This technical annex provides more detail about the current legislation and regulations on the sale and use of fireworks in Scotland. It should be read in conjunction with the main consultation document which can be found at <https://consult.gov.scot/safer-communities/fireworks>.

## **SALE OF FIREWORKS**

### **Legislative Context**

Under the Scotland Act 1998, the regulation of the sale and supply of goods and services to consumers, and product safety and liability is reserved to the UK Government. Within this, the sale and supply of fireworks is regulated through UK legislation by the [Fireworks Regulations 2004](#) and the [Pyrotechnic Articles \(Safety\) Regulations 2015](#).

In addition, [Article 9 of the Explosives Regulations 2014](#) prohibits the sale or acquisition of more than 50kg of fireworks at a time, except to individuals licensed by the Local Authority. Table 1 gives a more detailed outline of current regulations of the sale of fireworks.

The legislation regarding the sale of fireworks is reserved to UK Government. However, a licence to sell fireworks outside seasonal periods in Scotland is administered at Local Authority level. The process for applying for a licence varies across local authority areas in line with local structures. However, the criteria for granting a licence is generally the same. It typically covers checks on the premises, types fireworks to be sold, and details of the operator including any previous convictions.

The key variance in restriction of sale is a lack of power for Local Authorities to refuse registration of fireworks sellers in the 3 weeks before bonfire night. However, Local Authorities do have powers to take action against retailers making underage sales, or failing to store fireworks securely.

### **Enforcement**

Trading Standards have the power to carry out test purchasing for underage sales in line with identified concerns. In doing so they must consider and abide by the Office of the Surveillance Commissioner's 'Procedures and Guidance oversight arrangements for covert surveillance and property interference conducted by public authorities and to the activities of relevant sources'.

### **Categorisation and Control of Firework Sales**

The online sales of fireworks are regulated by Trading Standards in the same way as conventional sales. All supplies of fireworks, irrespective of the medium of the supply, are governed by the relevant legislation. However the nature of online sales makes enforcement challenging.

Fireworks are categorised as defined by the Pyrotechnic Articles (Safety) Regulations 2015. Table 2 gives an outline of firework categories.

## Table 1: Regulation of the Sale of Fireworks

**Regulation 9** of the Fireworks Regulations 2004 (as amended), which came into force on 7 August 2004, limits the sale of fireworks to seasonal periods unless a retailer is licensed. A licence costs up to £500 and is issued by a local authority, subject to strict criteria. The penalty for operating without a licence is an unlimited fine and/or up to six months in prison.

Periods where selling without a licence is permitted are:

- November 5 (from 15th October to 10 November)
- New Year (from December 26th to 31st)
- Chinese New Year (on the first day of the Chinese New Year and the 3 days immediately preceding it)
- Diwali (on the day of Diwali and the 3 days immediately preceding it)

Under section 31 of the Pyrotechnic Articles (Safety) Regulations 2015, a retailer must **not** sell:

- a Christmas cracker to anyone under the age of 12 years
- F1 category fireworks to anyone under the age of 16
- F2 and F3 category fireworks to anyone under the age of 18
- F4 category fireworks to members of the public.

**The Pyrotechnic Articles Safety Regulations 2010, and subsequently 15**, prohibit the sale of excessively loud fireworks to members of the public.

It is not a legal requirement to have a licence or training to buy “consumer fireworks” (category F1, F2 and F3 fireworks). There is no such thing as a licence or training for members of the public to buy category 4 (professional display) fireworks. These are only available to bonafide professional fireworks companies with all year insurance and licenced storage.

Regulation 10 of the 2004 Regulations requires retailers to display a notice at point of sale, of A3 size, with text a minimum of 16mm high.

Certain items are banned in the UK, including: bangers, air bombs and jumping jacks, regardless of whether these are CE marked and approved for sale in other EU countries.

**Source:** House of Commons briefing paper ‘Regulation of Fireworks’ published November 2018

**Table 2: Categories of Firework**

**Category F1:** 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 which present a low hazard and low noise level and which are intended for outdoor use in confined areas.

**Category F3:** 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 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.

**Category T1:** theatrical pyrotechnic articles which present a low hazard.

**Category T2:** theatrical pyrotechnic articles which are intended for use only by persons with specialist knowledge.

**Category P1:** pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which present a low hazard.

**Category P2:** pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which are intended for handling or use only by persons with specialist knowledge.

**Source:** Schedule 1 to The Pyrotechnic Articles (Safety) Regulations 2015

## **USE OF FIREWORKS**

### **Restrictions on Use**

[Regulation 7 of the Fireworks Regulations 2004](#) concerns the prohibition of the use of certain fireworks at night in England and Wales. This regulation does not apply to Scotland because the subject is devolved, but the restrictions are recreated by [The Fireworks \(Scotland\) Regulations 2004](#) which set out a curfew on fireworks use between 11.00 pm and 7.00 am with the exception of Bonfire Night, New Year, Diwali and Chinese New Year, in order to minimise the risk that fireworks will be used with harmful consequences for people, animals or property.

In addition, local authorities are able to grant dispensations for special events such as local festivals or celebrations. Local authority employees are also exempted for the purpose of local authority fireworks displays, national public celebrations or national commemorative events.

Enforcement of any contravention of the rules restricting use of fireworks is a matter for the Chief Constable and offences are punishable by a fine or up to six months imprisonment.

### **Noise & Misuse**

Excessive and persistent noise from fireworks could potentially constitute a “statutory nuisance” under the [Environmental Protection Act 1990](#). Local Authorities are responsible for addressing such nuisances by issuing an abatement notice. Noise may also be addressed as a common law nuisance. However, most private fireworks displays will be too short-lived to fall into these categories.

It is an offence under [section 80 of the Explosives Act 1875](#) to let off fireworks in a public place. The offence is punishable by a fine. Offenders could also be charged with breach of peace.

The common law offence of Culpable and Reckless Conduct is relevant where a person has set off a pyrotechnic in circumstances where risk is involved. No expert evidence is required in this instance. In all crimes involving reckless conduct, the degree of recklessness required to constitute the crime is an ‘utter disregard of what the consequences of the act in question may be so far as the public are concerned’.

### **Public Firework Displays**

It is for each local authority to decide if it wishes to license public firework displays under its Public Entertainment Licensing regime. The coverage of the regime is set out in [section 41 of the Civic Government \(Scotland\) Act 1982](#), and relies on the use of premises as a “place of public entertainment” for the requirement of a Public Entertainment Licence. This means any place where “members of the public are admitted or may use any facilities for the purposes of entertainment or recreation”.

As a discretionary regime the local authority can limit the scope by resolution, so they can decide whether or not to licence certain public events. Private displays do not fall within the remit of the legislation.



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