

SPICe Briefing

Fireworks

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There are a number of existing Acts of Parliament and regulations (at both the UK and Scottish level) which relate to the supply, sale, use, storage and possession of fireworks.

In 2011, the Scottish Society for the Protection of Cruelty to Animals launched a campaign to seek a change in the law in relation to the sale of fireworks and their use. This briefing outlines the current legislative framework in relation to fireworks.



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ORIGIN OF FIREWORKS

The discovery of fireworks, or more accurately, the formulation of gunpowder, is widely believed to have occurred by chance in China approximately 2,000 years ago. It is believed that a Chinese cook accidentally mixed together three common kitchen ingredients of the day - Salt Peter, sulphur and charcoal. These were mixed together to form a black, flaky powder which emitted a loud bang when ignited. The Chinese named the powder “*huo yao*” (fire chemical) and developed it further by inserting the mixture into the hollow of a bamboo stick which, when thrown into fire, caused the gases produced by the ignited powder to explode which blasted the tube apart – the first, very basic firecracker. Thereafter, firecrackers played an important part in Chinese festivities as they were believed to be powerful enough to ward off evil spirits.

In 1560, European chemists managed to make the gunpowder as explosive as possible by experimenting with the ratios of the three ingredients. The final composition (75 per cent Salt Peter, 15 per cent charcoal, and 10 per cent sulphur) is still widely used today. Credit for developing fireworks into the art form they have become has been given to the Italians as they were able to develop aerial shells that launched upwards and exploded into fountains of colour. (Gondhia, R. 2011)

CURRENT LEGISLATION

There are a number of Acts of Parliament and regulations (at both the UK and Scottish level) which relate to the supply, sale, use and possession of fireworks. These include the Fireworks Act 2003 and the subsequent 2004 UK and Scottish regulations. There are also relevant provisions in the Explosives Act 1875 and the more recent Police, Public Order and Criminal Justice (Scotland) Act 2006. Most recently, there are the Pyrotechnic Articles (Safety) Regulations 2010 (“the 2010 Regulations”). The 2010 regulations transpose into UK law European Directive 2007/23 on the placing on the market of pyrotechnic articles. The 2010 Regulations primarily replace the Fireworks (Safety) Regulations 1997 but have wider product coverage and cover the whole of the UK. There are also a number of other pieces of legislation which may be relevant in terms of the use of fireworks and these are also considered below.

The main legislation is as follows:

- the Explosives Act 1875
- the Fireworks Act 2003
- the Fireworks Regulations 2004
- the Fireworks (Scotland) Regulations 2004
- the Manufacture and Storage of Explosives Regulations 2005
- the Pyrotechnic Articles (Safety) Regulations 2010

BRITISH STANDARD 7114

Under Section 11 of the Consumer Protection Act 1987 (“the 1987 Act”), it is an offence to supply goods which fail to comply with general safety requirements. In other words, suppliers of consumer goods, including fireworks, are required to supply goods that meet an acceptable standard of safety under the 1987 Act. Under the Pyrotechnic Articles (Safety) Regulations 2010 (see below), all fireworks supplied in the UK for sale to the public, irrespective of their place of manufacture, must meet the safety standards established by British Standard (BS) 7114.

BS 7114 sets out manufacturing and product safety standards including debris weight limits and labelling requirements. It is published by the [British Standards Institution](#) and comprises 3 parts; classification of fireworks, specification for fireworks and methods of test for fireworks.

BS 7114 firework categorisations are as follows:

- Category 1: fireworks suitable for use inside domestic buildings
- Category 2: fireworks suitable for outdoor use in relatively confined areas
- Category 3: fireworks suitable for outdoor use in large open spaces
- Category 4: fireworks which are not intended for sale to the general public (professional use)

BS category	Common name	General fuse and delay time	General debris distance	Minimum viewing distance
Category 1	Indoor	Various	Various	Various
Category 2	Garden	3-13 seconds	3m	5m
Category 3	Display	5-15 seconds	20m	25m
Category 4	Display (professional)	Not specified	Not specified	Not specified

The Pyrotechnic Articles (Safety) Regulations 2010 specify those fireworks which may be supplied to the general public. All other fireworks may only be supplied to a restricted range of persons and organisations which are specified in the 2010 Regulations (see below).

THE EXPLOSIVES ACT 1875

Under section 80 of the Explosives Act 1875 (as amended) it is an offence to throw or discharge a firework in a street or public place. Anyone found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5,000).

THE FIREWORKS ACT 2003

The Fireworks Act 2003 (“the 2003 Act”) is an enabling piece of legislation which aims to reduce the noise, nuisance and injuries caused by fireworks. The relevant Fireworks Bill was introduced

into the House of Commons as a Private Member's bill by Bill Tynan who was then MP for Hamilton South (the constituency was abolished in 2005). The Bill gained support from the government of the day and also had support from a number of external organizations¹. The then Scottish Executive believed that it would be prudent to use the opportunity offered by the Bill to introduce comprehensive regulation making powers covering the sale and use of fireworks across Great Britain and therefore suggested that the Bill should be extended to Scotland. Consequently, a Sewel Motion was considered and agreed to by the Scottish Parliament in June 2003. (Scottish Parliament 2003)

The 2003 Act confers powers on the Secretary of State to make regulations about fireworks.

This includes:

- prohibition of supply to young persons
- prohibition of supply in certain circumstances (eg time of day, location)
- prohibition of supply of certain fireworks (such as fireworks in categories 3 and 4 – see above)
- regulation of public firework displays
- licensing of suppliers
- provision of information about fireworks
- prohibition of importation of fireworks

THE FIREWORKS REGULATIONS 2004

The Fireworks Regulations 2004 (SI 2004/1836) apply to England, Wales and Scotland with the exception of regulation 7 relating to curfews (this aspect is covered in the Fireworks (Scotland) Regulations 2004 (SSI 2004/393) described below). The main Regulations include:

Regulation 4 - currently prohibits those under 18 from possessing an “adult firework” in a public place. Adult fireworks are defined in Regulation 3, and are essentially all fireworks that comply with British Standard BS7114 except:

- Caps
- Cracker snaps
- Novelty matches
- Party poppers
- Serpents
- Sparklers
- Throwdowns

Regulation 5 - prohibits a person of any age possessing (in a public place or elsewhere) the most powerful ‘category 4’ fireworks (used in professional displays - see above). Regulation 6 outlines exceptions to the above prohibition, essentially for professional fireworks display organizers, and designated local authority employees or contractors.

¹ Organisations supporting the Bill included the Guide Dogs for the Blind Association, the RSPCA and the SSPCA.

Regulation 9 - requires suppliers of adult fireworks to hold a licence for each premises except at specified times of the year. For example, licences are not required:

- on the first day of the Chinese New Year (in January/February) and the three days immediately preceding it
- on the day of Diwali² (usually in October/November) and the three days immediately preceding it
- during the period beginning 15th October and ending on 10th November or
- during the period beginning on the 26th December and ending on 31st December

Licences for supply outwith the above dates are issued by local authorities.

Regulation 10 - requires suppliers of adult fireworks to inform customers that it is a criminal offence to supply adult fireworks to those under 18, and indeed for those under 18 to possess adult fireworks. The actual supply to and possession of adult fireworks to under 18s is a criminal offence under the 2010 Regulations (see below).

THE FIREWORKS (SCOTLAND) REGULATIONS 2004

These regulations were made by Scottish Ministers under the 2003 Act through powers conferred by an Order under section 63(1)(b) of the Scotland Act, and deal primarily with the timings of curfew. Adult fireworks are prohibited from use during night hours (between 23.00 and 07.00).

Exceptions to this are as follows:

- Until 01.00 on the nights of Chinese New Year, Diwali and New Year's Eve
- Until 24.00 on 5th November
- Local authority employees running local authority firework displays, national public celebrations or national commemorative events
- Other dispensations granted by the local authority

Enforcement of curfews is a matter for the Chief Constable of each police force.

Section 76 of the Police Public Order and Criminal Justice (Scotland) Act 2006 (see below) also provides the police with stop, search and seizure powers in relation to offences under the 2003 Act (possession by under-18s, and possession of category 4 fireworks).

THE MANUFACTURE AND STORAGE OF EXPLOSIVES REGULATIONS 2005

The Manufacture and Storage of Explosives Regulations 2005 ("the 2005 Regulations") repealed most of the Explosives Act 1875 (see above) and introduced a new regulatory regime in relation to the manufacture and storage of explosives. Key requirements of the Regulations include:

- the prohibition of the supply or acquisition of more than 50kgs of fireworks without evidence of a legal place of storage. This requirement is intended to address concerns over the illicit supply of fireworks by illicit traders without legal storage

² Diwali (or Deepawali) is the Hindu festival of lights and is marked by four days of celebration.

- anyone manufacturing or storing explosives must take appropriate measures to prevent fire or explosion; to limit the extent of any fire or explosion should one occur; and protect persons in the event of a fire or explosion
- in most cases a separation distance must be maintained between the explosives building and neighbouring inhabited buildings. This is intended to ensure that risks to those living or working in the area are kept to an acceptable level. If there is development in this separation zone then the quantity that may be kept must be reduced
- with certain exceptions a licence is required for the manufacture or storage of explosives. The Health and Safety Executive (HSE) licences manufacturing activities because of the greater risks involved. HSE also licences larger explosives storage facilities. Stores holding less than two tonnes of explosives are normally either licensed or registered by the local authority or the police
- HSE may not grant a licence for a manufacturing facility or larger store until the local authority has given its assent (normally following a public hearing)
- the 2005 Regulations introduce the power for licensing authorities to refuse or revoke a licence or registration if either the site is unsuitable or the applicant is unfit. This power is accompanied by provisions concerning the making of representations and appeal
- licensing authorities are required to maintain registers of licensed and registered premises and to make the information available to members of the public – although these rights are subject to some restrictions because of security concerns

THE PYROTECHNIC ARTICLES (SAFETY) REGULATIONS 2010

The Pyrotechnic Articles (Safety) Regulations 2010 (“the 2010 Regulations”) revoke the Fireworks (Safety) Regulations 1997 and repeal or revoke other legislation related to pyrotechnic articles (see regulation 49). The Department for Business, Innovation and Skills has produced the following guidance: [Guidance on the Pyrotechnic Articles \(Safety\) Regulations 2010](#) (Department for Business, Innovation and Skills 2010).

The 2010 Regulations deal with the harmonisation of standards and the safety of pyrotechnic articles placed on the market. The products covered include fireworks, theatrical pyrotechnics, and other pyrotechnic articles including car air-bag detonators, shroud cutters, and a wide variety of specialist articles. The 2010 Regulations do not generally deal with the use of these items and do not cover military and civil use explosives or marine equipment which is covered by other legislation. The Regulations also define those products which are available to the general public and the specific age restrictions on sale and those articles which are only for supply to specialists. (Department for Business, Innovation and Skills 2010)

Under the old Firework Safety Regulations 1997, samples of fireworks were either tested when they entered the country or as they were found in the retail supply chain – a somewhat ad hoc arrangement. Under the requirements of the new 2010 Regulations, all fireworks for use by the public must be used in compliance with the new 2010 Regulations and should be ‘CE’ marked showing that they meet EU requirements set out in [Directive 2007/23/EC](#) and thus comply with the Regulations. However, there is a transition period whereby fireworks that meet current safety requirements can continue to be sold until July 2017. (House of Commons Library 2011)

Other notable requirements of the 2010 Regulations are:

- Category 1 fireworks must not be supplied to anyone under the age of 16 years. Christmas crackers, party poppers, novelty matches, indoor fireworks, cracker snaps, serpents and throwdowns all fall within Category 1, among other low hazard, low noise fireworks
- Category 2 and 3 fireworks (which include sparklers) must not be supplied to persons under the age of 18
- Packets of sparklers must carry an additional warning that they are not to be given to children under 5 years of age
- Retail boxes of fireworks must not be split for sale individually
- All fireworks not suitable (as determined by the Regulations) for use by the general public must bear the warning – “For use only by persons with specialist knowledge”

Failure to comply with these requirements can result in prosecution and a fine of up to £5,000, or a prison sentence of up to three months, or both.

THE SSPCA CAMPAIGN

As mentioned above, the Scottish Society for the Prevention of Cruelty to Animals (SSPCA) recently launched a campaign to seek a change in the law in relation to the sale of fireworks and their use. The Society’s Chief Superintendent Mike Flynn stated:

"We're asking for a restriction, not a ban, on the days it's legal to use fireworks and tighter laws on their sale. Because the current legislation is so relaxed, fireworks can be set off on any given day and for weeks and months on end rather than being limited to the major festival periods. This leaves pet owners and farmers unable to make adequate provisions for their animals. We've been made aware of numerous incidents over the years where animals have come to serious harm and even death as a result of fireworks being set off near them. Animals will panic and flee at the sound of the bang and this can result in road traffic accidents. We've received reports of wild swans flying into electricity pylons and horses being badly injured after running through barbed wire fences. We're also aware of incidents where farm animals have aborted their young soon after nearby firework displays." (SSPCA 2011)

On 15 November 2010, Ed Davey, the UK Minister with responsibility for consumer affairs provided the following written answer to a Parliamentary Question on possible reform of fireworks legislation:

- Mr Fabian Hamilton: To ask the Secretary of State for Business, Innovation and Skills:
 - (1) if he will bring forward legislative proposals to increase the maximum penalty which may be imposed on those who misuse fireworks;
 - (2) if he will bring forward proposals to introduce minimum pricing for fireworks;
 - (3) if he will bring forward proposals to prohibit the sale of fireworks to the public;
 - (4) if he will bring forward proposals to increase the maximum penalty which may be imposed for offences related to the sale of fireworks to minors.

Mr Davey: There are no plans to revise the legislation relevant to the sale and use of fireworks. (Hansard 2010)

More recently, on 21 December 2010, the Minister was asked about consolidating existing legislation:

- Nicky Morgan: To ask the Secretary of State for Business, Innovation and Skills if he will assess the merits of consolidating existing legislation regulating the sale and use of fireworks.

Mr Davey: There are no plans to consolidate the legislation regulating the sale and use of fireworks. The Government believes that the current package of fireworks regulations offers robust measures to regulate the supply, possession and use of fireworks which are generally widely understood. (Hansard 2010a)

The following Parliamentary Questions, raised in the Scottish Parliament, are also relevant:

- **Question S4W-03609** - Christina McKelvie (Hamilton, Larkhall and Stonehouse) (Scottish National Party) (Date Lodged 26/10/2011):

To ask the Scottish Executive whether it will consider amending the Fireworks (Scotland) Regulations 2004 to place tighter restrictions on the (a) number and (b) type of retail outlet able to qualify for a licence to sell fireworks outside the regulated periods.

Answered by Fergus Ewing (08/11/2011):

The Scottish Government has no functions in relation to the sale of fireworks. (Scottish Parliament 2011)

- **Question S4W-03610** - Christina McKelvie (Hamilton, Larkhall and Stonehouse) (Scottish National Party) (Date Lodged 26/10/2011):

To ask the Scottish Executive whether it will consider amending the Fireworks (Scotland) Regulations 2004 to limit the periods during which fireworks can be sold, purchased and discharged.

Answered by Fergus Ewing (08/11/2011):

The Scottish Government has no functions in relation to the sale of fireworks.

The Fireworks (Scotland) Regulations 2004 restrict when fireworks can be set off and have had a significant impact, demonstrated by a marked reduction in incidents reported to the police.

The Scottish Government has no plans at present to review existing regulations but we will continue to monitor complaints received by ministers and MSPs. Regulations cannot eradicate all fireworks related incidents but they have reduced them significantly. (Scottish Parliament 2011)

At the time of writing, there are no plans to amend the current legislation by either the UK Government or the Scottish Government.

OTHER LEGISLATION

There are various other pieces of legislation which may be engaged in relation to the use of fireworks and these are outlined below.

Environmental Protection Act 1990

Section 80 of the Environmental Protection Act 1990 ("the 1990 Act") includes provisions which stipulate that a local authority's Environmental Health Department must take all reasonable steps to investigate complaints about excessive noise. The authority may write to the person causing the nuisance informing them that a complaint has been made and ask them to take any steps that may be necessary to reduce noise. If they believe a statutory nuisance is occurring or likely to occur or recur they must take action.

For the purposes of the 1990 Act, a statutory nuisance is "a noise emitted from premises so as to be prejudicial to health or a nuisance". If the noise continues, an Environmental Health Officer can issue an abatement notice requiring the person to stop causing the nuisance. If the person, without reasonable excuse, fails to comply with the notice, he or she is guilty of an offence and can be prosecuted. Ultimately, it would be for local authority environmental health officers to judge whether a private fireworks party may be considered a nuisance. It is also worth noting that since firework noise is relatively short-lived, it may prove difficult in practice to locate the source.

Antisocial Behaviour (Scotland) Act 2004

Generally, the inappropriate use of fireworks is considered to be antisocial behaviour under [Guidance](#) produced alongside the Antisocial Behaviour (Scotland) Act 2004 ("the 2004 Act"). As such, a sheriff, on receipt of an application from a local authority, may make an antisocial behaviour order where the following conditions are satisfied:

- the specified person (the person to whom the order relates) is at least 12 years of age
- the specified person has engaged in antisocial behaviour towards a relevant person (a person who resides within the area of the local authority making the application)
- that an antisocial behaviour order is necessary for the purpose of protecting relevant persons from further antisocial behaviour by the specified person (Scottish Executive 2004)

There are also a number of provisions contained within the 2004 Act which may be relevant with regard to noise emitting from fireworks. For example, the 2004 Act includes provisions pertaining to noise nuisance and places a duty on local authorities to investigate complaints of excessive noise from properties and to issue a warning notice if the noise being investigated exceeds permitted levels (permitted levels will be determined by a local authority officer). The 2004 Act provides that an offence is committed if, after a warning notice has been served, noise continues and exceeds permitted levels. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale.

As pointed out above, it is worth noting that noise emitting from fireworks is likely to be short-lived and may therefore prove difficult to investigate. It is also likely that local authorities will take into account any celebrations which are recognised in the relevant regulations such as the

Chinese New Year, Diwali, etc (see above) when determining whether noise levels emitting from fireworks are excessive.

Animal Health and Welfare (Scotland) Act 2006

Section 19 of the Animal Health and Welfare (Scotland) Act 2006 sets out the circumstances in which a person who causes a protected animal to suffer commits an offence. (An animal is deemed to be “protected” if it is of a kind which is commonly domesticated in the British Islands; under the control of a man on a permanent or temporary basis; or is not living in a wild state).

Unnecessary suffering includes mental and/or physical suffering and can be caused in two ways; either by taking action which causes unnecessary suffering or by failing to take steps to prevent unnecessary suffering. Section 19(4) sets out a non-exhaustive list of considerations to which the courts are to have regard in determining whether suffering is unnecessary. These considerations include whether the suffering could reasonably have been avoided or reduced; compliance with any relevant enactment or licence or code of practice issued on a statutory basis; the purpose of the conduct; the proportionality of the suffering to the purpose; and whether the conduct was that of a reasonably competent and humane person.

A person who commits an offence under section 19 is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding £20,000 or to both. Again, it would be a matter for the relevant authorities to decide whether the use of fireworks and any subsequent suffering caused to animals constituted an offence under section 19 of the Act.

The Police, Public Order and Criminal Justice (Scotland) Act 2006

Section 76 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 provides the police with stop, search and seizure powers in relation to offences under the Fireworks Act 2003.

Section 76 amends the Fireworks Act 2003 to give police powers of search, seizure and arrest without warrant in relation to possession offences created by regulations under that Act. Sections 3 and 5 of the 2003 Act enable regulations to make provision prohibiting the possession of fireworks by persons of a specified age and provision prohibiting the possession of fireworks of a specified description including by persons of a specified description.

At present, the Fireworks Regulations 2004 (see above) provide that, subject to regulation 6 of those regulations, no person under the age of 18 years shall possess an adult firework in a public place and no person shall possess a firework classified as category 4 under Part 1 of BS 7114, which are generally the largest and most powerful fireworks.

The provision at section 76 sets out the powers of a constable in relation to searching, detaining or arresting a person when the constable has reasonable grounds to believe that the person is committing an offence in relation to the possession of fireworks, as well as powers of seizure.

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