

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5055 GIBRALTAR Thursday 1st June 2023

B. 15/23

FIREWORKS (CONTROL) BILL 2023

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THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5055 GIBRALTAR Thursday 1st June 2023

B. 15/23

BILL

FOR

AN ACT to regulate the manufacture, storage, sale, possession and use of fireworks, and for connected purposes.

ENACTED by the Legislature of Gibraltar.

PART 1 INTRODUCTORY

Short title.

1. This Act may be cited as the Fireworks (Control) Act 2023.

Commencement.

2. This Act comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

Scope.

3.(1) This Act shall does not apply to—

- (a) any of His Majesty's Forces;
- (b) any police officer, customs officer, fire officer whilst acting in the course of their employment or duty;
- (c) air, army or naval cadet whilst undertaking training or instruction;
- (d) the use of a pyrotechnic that may fall within the scope of this Act in connection with the management of birds at the airport.

(2) The provisions of section 9 and in Parts 3, 5 and 6 do not apply to persons under the age of 18 where the firework is-

- (a) a sparkler;

- (b) a Christmas cracker; or
- (c) a throwdown that contains no more than 2.5 mg silver fulminate.

Interpretation.

4. In this Act-

“aerial wheel” means tubes containing propellant charges and sparks, flame or noise-producing pyrotechnic composition (or all three), the tubes being fixed to a supporting structure, the principal effect of which is rotation and ascent, with emission of sparks and flames, producing a visual or aural effect (or both) in the air;

“banger” means a firework (other than a firework within section 17(1)(g)(i) (shot tube))-

- (a) which comprises a non-metallic tube which contains pyrotechnic composition and has a fuse; and
- (b) whose functioning principally involves report;

“battery” means an assembly which includes two or more fireworks of the same type;

“Chief Fire Officer” means the Chief Fire Officer appointed under the Fire and Rescue Service Act;

“Christmas cracker” means a paper or foil tube, crimped at each end, enclosing novelties and with one or more snaps running along the length of the tube;

“Commissioner of Police” has the meaning given in the Police Act 2006;

“firework” means any article, intended for entertainment purposes, containing explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions;

“firework category” means a firework falling within a category described in column 1 of Schedule 1;

“flash banger” means a firework (other than a firework falling within section 17(1)(g)(i))-

- (a) which comprises a non-metallic tube containing metal-based pyrotechnic composition; and
- (b) whose functioning principally involves report and a flash of light;

“make available on the market” means to sell or to offer for sale in Gibraltar;

“mini-rocket” means a firework which is designed so that, on functioning, it propels itself into the air and which comprises a body or motor which contains pyrotechnic composition and-

- (a) the outside diameter of which, at the point where the diameter is greatest, is less than 12 millimetres; or
- (b) if equipped with a stick for the purpose of stabilising its flight-
 - (i) where the firework is intended to be made available on the market singly, whose overall length (including the length of any such stick) is less than 900 millimetres or (not including the length of any such stick) is less than 195 millimetres; or
 - (ii) where the firework is intended to be supplied in a primary pack, whose overall length (including the length of any such stick) is less than 400 millimetres or (not including any such stick) is less than 125 millimetres; or
 - (iii) where the firework is intended to be supplied in a selection pack, whose overall length (including the length of any such stick) is less than 300 millimetres; or
- (c) if not equipped with a stick for the purposes of stabilising its flight-
 - (i) whose overall length is less than 300 millimetres; and
 - (ii) is intended to be supplied singly or in a primary pack;

“jumping cracker” means a paper tube containing black powder, folded back on itself several times and bound together, the principal effect of which is reports in succession with jumping motions;

“jumping ground spinner” means a non-metallic tube containing gas and sparks producing pyrotechnic composition, with or without whistling pyrotechnic composition, the principal effect of which is rotation on the ground frequently interrupted by a jumping motion and emission of sparks and flame, with or without an aural effect (other than report);

“Minister means the Minister with responsibility for Public Health;

“person with specialist knowledge” has the meaning given in section 10;

“primary pack” means a package of fireworks of the same type, all of which are either category F1 fireworks, category F2 fireworks or category F3 fireworks, which is intended to be offered for retail sale as a single unit;

“public place” includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise;

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

“selection pack” means a package of fireworks of more than one type intended to be offered for retail sale as a single unit;

“shot tube” means a tube containing propellant charge and a pyrotechnic unit, with or without a transmitting fuse, the principal effect of which is the ejection of the pyrotechnic unit producing a visual effect in the air, an aural effect in the air or both;

“snap” means two overlapping strips of cardboard or paper, or two strings, with a friction-sensitive pyrotechnic composition in sliding contact with an abrasive surface and designed to be held in the hand;

“sparkler” means a hand-held firework that burns slowly while emitting sparks;

“spinner” means a tube containing pyrotechnic composition, with or without aerofoils attached, the principal effect of which is rotation and ascent with the emission of sparks, flames or both, with or without aural effect (other than report);

“throwdown” is a firework that is typically thrown to the ground to produce report;

“wheel” means an assembly-

- (a) which includes a tube or tubes containing pyrotechnic composition;
- (b) which is designed to be attached to a support and to rotate about a fixed point or axis and which is provided with a means of attaching it securely to such a support so that it can rotate; and
- (c) whose functioning involves rotation around a fixed point and the emission of sparks and flames, with or without aural effect.

PART 2 MANUFACTURE, STORAGE AND SALE

Manufacturing

Manufacture.

5.(1) The manufacture of fireworks is prohibited.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

Storage

Storage in commercial premises.

6.(1) Where a fire officer considers that fireworks are being stored in commercial premises in an unsafe manner the Chief Fire Officer may issue a notice that sets out the steps that must be taken in order to mitigate those risks and such notice must be in writing and must state by when the action described in the notice must be complied with.

(2) A notice may be served on the owner of the commercial premises or on any person who appears to be in control of the premises in question.

(3) Where the terms of the notice referred to in subsection (1) have not been complied with the Chief Fire Officer may take such steps as may be necessary in order to mitigate the risks and any costs reasonably incurred by the Chief Fire Officer may be recovered from the owner or occupier of the commercial premises as if it were a civil debt owed to the Government.

(4) In this section “commercial premises” includes a shop, store and warehouse.

(5) A person who has been served with a notice under subsection (1) may within 21 days of the date of the service of the notice, appeal to the magistrate’s court against the issue of the notice or any provision therein.

(6) On hearing an appeal under subsection (5) the court may make such order as it deems fit.

(7) An appeal under subsection (5) does not stay the requirement for compliance with the notice.

Restriction on storage in dwellings: maximum amount.

7.(1) The Minister may by notice in the Gazette specify, by reference to the quantity of individual fireworks or firework categories or a combination of both, or by such other description, the maximum amount of fireworks that may be stored in a dwelling.

(2) In setting the maximum amount under subsection (1) the Minister must consult the Chief Fire Officer and the Commissioner of Police and may consult such other persons having an interest in public health and safety as the Minister deems fit.

Contravening maximum amount.

8.(1) A person who stores fireworks in a dwelling in excess of an amount specified under section 7 commits an offence and is liable on summary conviction to imprisonment for 7 months or a fine at level 4 on the standard scale, or both.

(2) Where fireworks are stored in a dwelling in breach of subsection (1) every adult occupier of that dwelling is liable to be proceeded against but it is a defence where an occupier (“O”) demonstrates that O did not know and could not reasonably have known that there were fireworks in that dwelling.

Sale

Restrictions on sales.

9.(1) Subject to subsection (2), no person may sell or offer for sale fireworks unless-

- (a) it is to a person (“P”) who is 18 years old or over; and
- (b) the firework is one that falls within category F1, F2 or F3.

(2) The sale of category F4 fireworks are prohibited unless the sale is to a person with specialist knowledge.

(3) It is a defence for a person (“D”) charged with the commission of an offence under this section by reason of D’s own conduct to prove that—

- (a) D believed that P was aged 18 or over; and
- (b) P produced as evidence of P’s age—
 - (i) a passport;
 - (ii) an identity card; or
 - (iii) a driver’s licence; and
- (c) that evidence would have convinced a reasonable person.

(4) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

Person with specialist knowledge.

10.(1) A person is a person with specialist knowledge if that person has a valid qualification that attests to that person having undertaken training in the handling and use of category F4 fireworks.

(2) For the purposes of subsection (1) a qualification issued in Gibraltar or outside Gibraltar may be relied upon, subject to any regulations made under subsection (3).

(3) The Minister may make regulations regarding the issue, recognition and renewal of qualifications as the Minister deems fit and where regulations have been made this section must be construed subject to those regulations.

Notice in premises where fireworks are sold.

11.(1) A notice displaying the following statement—

“It is illegal to sell fireworks to, or procure fireworks for, anyone under the age of 18 in circumstances prohibited by law.”,

must be exhibited at every premises in which fireworks are sold, and must be so exhibited in a prominent position where the statement is readily visible to persons at the point of sale of the fireworks.

(2) The dimensions of the notice to be exhibited in accordance with subsection (1) must be at least 297 millimetres by 420 millimetres and the statement must be such that no character is less than 36 millimetres high.

Failure to exhibit notice.

12. Where—

- (a) any person carries on a business involving the sale of fireworks at any premises; and
- (b) no notice is exhibited at those premises in accordance with section 11; or
- (c) the notice exhibited does not conform with the requirements of section 11,

that person commits an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

Labelling and markings.

13.(1) No person may make available on the market any firework unless it complies with the labelling requirements set out in Schedule 2.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

(3) The Minister may by order amend Schedule 2 by adding to, deleting or amending any entry and such amendments may include a requirement for fireworks to bear such markings as the Minister considers appropriate.

PART 3
PROVISIONS RELATING TO MINORS

Minors: possession of firework in a public place.

14.(1) A person under the age of 18 years who possess a firework in a public place commits an offence and is liable on summary conviction to imprisonment for 2 months or to a fine at level 1 on the standard scale, or both.

(2) If a customs officer or police officer has reasonable grounds to suspect that any person is in possession of a firework in contravention of subsection (1), the officer may—

- (a) search that person, and detain that person for the purpose of conducting a search;
- (b) search any vehicle or vessel in which the officer suspects that the firework may be found, and for that purpose require the person in control of the vehicle or vessel to stop it;
- (c) seize and detain, for the purposes of proceedings under this Act, anything found in the course of the search which appears to the officer to be evidence of an offence against this section.

(3) Where a power of search, seizure and detention of property under this section is exercised, it must be exercised in accordance with the provisions in the Criminal Procedure and Evidence Act 2011 relating to search, seizure and detention.

(4) Nothing in this section affects any power of search or any power to seize or detain property which is exercisable by a customs or police officer apart from this section.

Procuring firework for a person under 18 years.

15.(1) A person (“P”) who procures a firework for a person under the age of 18 years (the “relevant person”) commits an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

(2) It shall be a defence for a person charged with an offence under subsection (1) to prove—

- (a) that P believed that the relevant person (“R”) was aged 18 or over; and
- (b) R produced as evidence of R’s age—
 - (i) a passport;
 - (ii) an identity card; or
 - (iii) a driver’s licence; and

- (c) that evidence would have convinced a reasonable person.

PART 4
FURTHER RESTRICTIONS AND PROHIBITIONS

Provisions for category F4 fireworks.

16.(1) No person may possess a category F4 firework unless that person falls under an exemption in subsections (2) or (3).

(2) For the purposes of subsection (1) the following are exempt-

- (a) a person who is a person with specialist knowledge;
- (b) a person who is employed in, or whose trade or business (or part of whose trade or business) is, the supply of fireworks or assemblies, for the purpose of supplying them in accordance with the provisions of this Act;
- (c) any person employed by or otherwise acting on behalf of an enforcement authority or other body, where—
 - (i) the authority or body has enforcement powers, conferred by or under any enactment, applying to the firework in question; and
 - (ii) the person so employed possesses the firework in question for the purposes of the authority or body exercising those enforcement powers; or
- (d) a person who is employed or contracted by the Government and who, in the course of that person's employment or in the execution of the contract, possesses the firework in question for any of the following purposes—
 - (i) the putting on of a firework display by the Government;
 - (ii) the use by the Government of the firework in question at a national public celebration or a national commemorative event; or
 - (iii) the use by the Government of the firework in question for research or investigations.

(3) This section does not prohibit the possession of any firework by a person who is employed in, or whose trade or business (or part of whose trade or business) is, the transport of fireworks and who possesses the firework in question for the purposes of that person's trade, employment or business.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

Prohibitions on making available certain category F2 and F3 fireworks.

17.(1) No person may make available on the market a category F2 firework or a category F3 firework of any of the following descriptions-

- (a) an aerial wheel;
- (b) a banger, flash banger or double banger;
- (c) a jumping cracker;
- (d) a jumping ground spinner;
- (e) a spinner;
- (f) a mini-rocket;
- (g) a shot tube-
 - (i) which produces a report as its principal effect; or
 - (ii) the inside diameter of which is greater than 30mm;
- (h) a battery containing bangers, flash bangers or double bangers;
- (i) a combination (other than a wheel) which includes one or more bangers, flash bangers or double bangers.

(2) Subsection (1)(b) does not prohibit the making available on the market of a category F2 firework or category F3 firework as part of a wheel.

(3) Subsection (1) does not prohibit the sale of a category F2 firework or category F3 firework falling within that subsection to a person with specialist knowledge.

(4) No person may sell by retail a category F2 firework or category F3 firework which that person-

- (a) has removed or caused to be removed from a selection pack or primary pack; or
- (b) knows to have been removed from a selection pack or primary pack.

(5) A person who contravenes a provision of this section commits an offence and is liable on summary conviction to imprisonment for 12 months or to a fine at level 5 on the standard scale, or to both.

**PART 5
USE OF FIREWORKS**

Use of fireworks: private property.

18.(1) Subject to section 20, no person may use a firework in private property except in the period beginning at 11 pm on 31st December and ending at 1 am the following day.

(2) The Minister may make regulations for the purposes of prescribing other dates and times when fireworks may be used and those regulations may amend subsection (1).

(3) This section does not apply to the use of category F1 fireworks.

(4) A person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(5) In this section “use” is to be interpreted widely and includes lighting a fuse or making a firework operate by any other means.

Use of fireworks: public areas.

19. Subject to section 20 if person throws, casts or fires any firework in or into a highway, street, thoroughfare or public place that person commits an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

Use of fireworks: exemptions.

20. Sections 18 and 19 do not apply-

- (a) where a person is employed or contracted by the Government or an agency of the government and that person uses fireworks—
 - (i) for the purposes of putting on a firework display; or
 - (ii) at a national public celebration or a national commemorative event; or
- (b) where the use of fireworks was in accordance with a permit or licence issued under regulations made under this Act or issued under any other enactment.

**PART 6
ENFORCEMENT**

Destruction.

21. Where a person has been convicted of an offence under this Act, a court may in addition to the imposition of a penalty order the destruction of-

- (a) any firework; and

- (b) any materials intended to be used for the manufacture of fireworks.

Corporate liability.

22. Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

Fixed Penalty Notices

Fixed penalties.

23. The Minister may make regulations for the discharging of liability for offences under this Act by the payment of a fixed penalty.

**PART 7
GENERAL**

Schedule 1.

24.(1) Column 1 of Schedule 1 describes the categories for fireworks and column 2 sets out a description and the characteristics of fireworks falling within that category.

(2) The Minister may by Order amend Schedule 1 by adding, removing or amending any entry.

Regulations.

25. The Minister may by Regulations-

- (a) make further provision regarding the sale of fireworks;
- (b) make further provision regarding the use of fireworks in public areas;
- (c) may provide for further exemptions to the prohibitions in sections 18 and 19
- (d) create offences and provide for penalties and section 23(b) of the Interpretation and General Clauses Act does not apply to any such regulations;
- (e) provide for the charging of fees in respect of matters contained in this Act or in regulations made under it.

Consequential amendments.

26.(1) The Explosives Act is amended as follows-

- (a) omit section 9;
- (b) after section 11 insert-

“Relationship to Fireworks Act 2023.

- 12. This Act does not apply to a firework to which the Fireworks Act 2023 applies.”.

(2) In the Commonwealth Park Rules 2014 omit regulation 8(10)(a).

**SCHEDULE 1
FIREWORK CATEGORIES**

section 4(1), 24

COLUMN 1 CATEGORIES	COLUMN 2 DESCRIPTION AND CHARACTERISTICS
CATEGORY F1:	<p>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</p> <p>the safety distance must be at least 1 metre, unless the manufacturer's label states otherwise</p> <p>the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance</p>
CATEGORY F2:	<p>fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas;</p> <p>the safety distance must be at least 8 metres, unless the manufacturer's label states otherwise</p> <p>the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance</p>
CATEGORY F3:	<p>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</p> <p>the safety distance must be at least 15 metres, unless the manufacturer's label states otherwise</p> <p>the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance</p>
CATEGORY F4:	<p>fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge (commonly known as fireworks for professional use) and whose noise level is not harmful to human health</p>

**SCHEDULE 2
LABELLING**

Section 13

1. Fireworks made available on the market must be labelled in accordance with this paragraph-

- (a) the name and type of the pyrotechnic article, its registration number and its product, batch or serial number, the relevant category and instructions for use;
- (b) the labelling must include the net explosive content (NEC);
- (c) fireworks must also display the following minimum information-
 - (i) category F1: where appropriate: ‘for outdoor use only’ and a minimum safety distance;
 - (ii) category F2: ‘for outdoor use only’ and, where appropriate, minimum safety distance(s);
 - (iii) category F3: ‘for outdoor use only’ and minimum safety distance(s);
 - (iv) category F4: ‘for use only by persons with specialist knowledge’ and minimum safety distance(s).

2. If the firework does not provide sufficient space for the labelling requirements referred to in paragraph 1(a) or (b) the information must be provided on the packaging.

EXPLANATORY MEMORANDUM

This Bill makes provisions for the manufacture, sale and use of fireworks.

Clause 3 exempts certain persons from the scope of the Act. In particular, the restrictions that are applicable to persons under the age of 18 are not applied where the firework is a sparkler, a Christmas cracker or a throwdown.

Part 2 of the Bill contains provisions relating to the manufacture, storage and sale.

Clause 5 prohibits the manufacturing of fireworks.

Clause 6 confers a power on the Chief Fire Officer to control the unsafe storage of fireworks in commercial premises. Clause 7 allows the Minister to place a restriction on the quantities of fireworks that may be kept in dwellings.

Clause 9 restricts the sale of category F1, F2 and F3 fireworks to persons that are at least 18 years old, with the exception of category F4 fireworks. Category F4 fireworks may only be sold to persons who are certified for the use of those types of fireworks.

Clauses 11 places obligations on sellers to display notices that state the age limitations on sale.

Clause 12 requires that fireworks be labelled and marked in accordance with the information and details set out in Schedule 2.

Part 3 of the Bill contains provisions that apply to minors.

Under clause 14 minors are prohibited from possessing fireworks and these may be taken away by customs or police officer.

Clause 15 provides a restriction on the procuring of fireworks for a minor.

Part 4 of the Bill contains further restrictions and prohibitions.

Clause 16 relates to category F4 fireworks and contains a list of persons who are exempt from the restriction on possession of these fireworks.

Clause 17 includes a ban on a number of firework types.

Part 5 contains provisions relating to the use of fireworks.

Under clause 18 the use of fireworks in private property is permitted around the New Year's Eve festivities and is not permitted at any other time unless authorised. Category F1 fireworks are exempted.

Clause 19 provides that the use of fireworks in, from public areas is never permitted unless authorised.

Part 6 contains provisions about enforcement and contains a regulation making power for the purposes of fixed penalty notices.

Part 7 contains general provisions including consequential amendments to other enactments.

Schedule 1 sets out the different firework categories and their characteristics.

The Bill provides for penalties for breaches of individual provisions and permits a court to issue destruction orders, where appropriate.

