

# **AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015**

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## **EXPLANATORY NOTES**

### **STRUCTURE AND SUMMARY OF THE ACT**

#### **Part 1 – Air Weapons**

6. The provisions in this Part establish a licensing regime in relation to air weapons. This regulates the use, possession, purchase, acquisition, manufacture, sale, transfer, repair and testing of such weapons. Accordingly, the provisions of Part 1 were notified<sup>1</sup> in draft to the European Commission in accordance with the Technical Standards Directive (Directive [98/34/EC](#), as amended)<sup>2</sup>.

#### **Meaning of air weapon**

##### ***Section 1 – Meaning of “air weapon”***

7. **Section 1** defines the term “air weapon” for the purposes of the Part. Subsection (2) adopts the definition from section 1(3)(b) of the Firearms Act 1968 (“the 1968 Act”). Section 1(3)(b) of the 1968 Act provides that an air weapon is an air rifle, air gun or air pistol which does not fall within section 5(1) of the 1968 Act and which is not of a type declared by the Secretary of State by rules to be “specially dangerous”. The [Firearms \(Dangerous Air Weapons\) \(Scotland\) Rules 1969 \(S.I. 1969/270\)](#) as amended are the applicable rules made by the Secretary of State.
8. The effect of this is that the Part applies to air weapons capable of a muzzle energy equal to or lower than 12 foot pounds (ft/lb), or 6 ft/lb for an air pistol (approximately 16.27 joules and 8.13 joules respectively). Air weapons above these thresholds – or those that come within section 5(1) of the 1968 Act, for example by being disguised as another object, or designed or adapted to use a self-contained gas cartridge system – will continue to require to be held on a Firearms Certificate issued under the 1968 Act. Note that section 48 of the Firearms (Amendment) Act 1997 provides that any reference to an air rifle, air pistol or air gun in the Firearms Acts 1968 to 1997 includes a reference to any such rifle, pistol or gun which is powered by compressed carbon dioxide and therefore such weapons also fall to be licensed by the Part.
9. Subsection (4)(b)(i) adds a lower power threshold of one joule (approximately 0.74 ft/lb) to this definition, so that air weapons with a muzzle energy of one joule or below do not require to be held on an air weapon certificate. Subsection (4)(a) excludes air weapons that are not captured by the definition of “firearm” at section 57(1) of the 1968 Act, that is “a lethal barrelled weapon of any description from which any shot,

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<sup>1</sup> Notified on 18 March 2015 under Notification No. 2015/0130/UK.

<sup>2</sup> Directive [98/34/EC](#) of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ L 204, 21.7.1998, p. 37), as amended by Directives [98/48/EC](#) (OJ L 217, 5.8.1998, p. 18) and [2006/96/EC](#) (OJ L 363, 20.12.2006, p. 81), Regulation (EU) No 1025/2012 (OJ L 316, 14.11.2012, p. 12) and a 2003 Act concerning the conditions of accession of various other Member States (OJ L 236, 23.9.2003, p. 33).

bullet or other missile can be discharged”. This means that, although certain air powered weapons may exceed 1 joule of muzzle energy, they do not fall to be regulated under this Part if they are not firearms for the purposes of the 1968 Act – for example, low powered airsoft weapons or paintball guns. Subsection (4)(b)(ii) also excludes air weapons designed for use only under water, for example spear guns, from requiring a certificate. Such weapons are excluded from existing UK firearms legislation by regulation 2 of the [Firearms \(Dangerous Air Weapons\) \(Scotland\) Amendment Rules 1993 \(S.I. 1993/1541\)](#).

10. Subsection (3) sets out that component parts and sound moderators for air weapons are included in the definition of “air weapon”, and require to be held on an air weapon certificate.

## **Air weapon certificates**

### ***Section 2 – Requirement for air weapon certificate***

11. This section makes it an offence for a person to use, possess, purchase or acquire an air weapon (as defined in section 1) without holding a valid air weapon certificate or otherwise than in accordance with the Part. Subsection (2) specifies that this offence is triable summarily or on indictment, and sets out the maximum penalties for both. The offence attracts strict liability. A “person” includes non-natural (e.g. corporate bodies) as well as natural persons.
12. Subsection (3) introduces schedule 1, which sets out a number of exemptions from the requirement to hold an air weapon certificate, and certain other offences created by the Part. Commentary on schedule 1 begins at paragraph 267 of these Notes. Subsection (4) provides the Scottish Ministers with the power to add, remove or modify exemptions in schedule 1 by regulations. Such regulations are subject to the affirmative procedure in the Scottish Parliament.

### ***Section 3 – Application for grant or renewal of air weapon certificate***

13. This section sets out the process by which an individual can apply for an air weapon certificate, or the renewal of a certificate which has previously been granted. Subsection (1) states that applications must be made to the Chief Constable of the Police Service of Scotland, and sets a lower age limit of 14 for applicants.
14. Subsection (2) provides that applications for an air weapon certificate must be made in the form specified in regulations issued under section 36 and must be verified as set out in section 4. Additionally, applicants below the age of 18 must provide information specified in section 7. If an application is not accompanied by the required information it cannot be considered by the Chief Constable. Separately, section 35(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.
15. Subsection (3) requires the Chief Constable to keep a register of all applications for a new or renewed air weapon certificate, even if the application is ultimately unsuccessful.

### ***Section 4 – Verification of applications***

16. This section, combined with section 3(2)(a), requires an application for a new or renewed air weapon certificate to be verified by an appropriate individual before it can be considered by the Chief Constable. Subsection (2) sets out who can verify an application and subsection (3) requires the verifier to confirm the accuracy of any information supplied with the application. In every case the verifier must have known the applicant personally for at least two years, but not be related to them (see the definition of “relative” in section 40) or be ordinarily resident outside the United Kingdom, or be a Registered Firearms Dealer or be a constable or member of police

staff of the Police Service of Scotland or a member or employee of the Scottish Police Authority. The Chief Constable must also be satisfied that verifiers are of good standing in the community. Further detail on who can verify an application will be provided in guidance published by the Scottish Ministers under section 39.

### ***Section 5 – Grant or renewal of air weapon certificate***

17. This section allows the Chief Constable to issue a new or renewed air weapon certificate provided that the applicant is fit to be entrusted with an air weapon; is not prohibited from possessing any firearms by section 21 of the 1968 Act (which makes provision to prohibit for life or 5 years possession of firearms, including air weapons, by persons who have been convicted and sentenced to specified terms of imprisonment); has a good reason to use, possess, purchase or acquire an air weapon (for example, pest control, sporting target shooting, or being a collector); and in all the circumstances can do so without danger to the public safety or the peace (this last test is intended to allow account to be taken of factors not only directly about the applicant but beyond, such as the applicant’s wider domestic situation or acquaintances). Further clarity on how the Chief Constable should test applicants against these criteria will be provided in guidance published by the Scottish Ministers under section 39.
18. Subsection (2) allows the Chief Constable to consider applicants who already hold a firearm or shotgun certificate issued under the 1968 Act to have met the “fit” and “not prohibited” criteria without further enquiry, on the grounds that these tests will already have been met for the grant of the firearm or shotgun certificate.
19. Subsection (3) allows the police to visit an applicant’s home, or any other place where air weapons are intended to be stored or used, and conduct enquiries relating to the criteria in subsection (1) before granting or renewing an air weapon certificate.

### ***Section 6 – Air weapon certificate: conditions***

20. This section relates to conditions which are applied to air weapon certificates. Conditions are defined in section 40(1) as including requirements and restrictions and may comprise positive or negative obligations. Conditions may therefore place restrictions on the way that the certificate holder stores or uses their weapons, or may require the holder to carry out certain administrative functions (for example, informing the Chief Constable if they change address).
21. Subsection (1) sets out that all air weapon certificates will carry certain mandatory conditions, which will be specified in regulations issued under section 36. Subsection (2) allows the Chief Constable to attach additional conditions to certificates as required, and to change a certificate’s conditions at the time of renewal.
22. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by subsection (1)), or any other condition attached as a requirement of this Part (for example, the conditions for 14-17 year olds required by section 7(3)).
23. Subsections (4) and (5) create the offence of non-compliance with any conditions attached to an air weapon certificate, and set out the maximum penalty available respectively. This offence attracts strict liability.

### ***Section 7 – Special requirements and conditions for young persons***

24. This section sets out additional requirements for applications and certificates granted where the applicant is aged under 18. When combined with the minimum age requirement for applicants at section 3(1), this section applies to applicants aged 14-17.
25. When read with section 3(2)(b), subsection (2) of this section requires that applications for an air weapon certificate from an individual aged 14-17 must contain a statement of

consent from the applicant's parent or guardian in the form and manner prescribed by regulations under section 36. The term "guardian" is defined at section 40(1).

26. Subsections (3) to (5) set out mandatory conditions for air weapon certificates granted to 14-17 year olds. The condition in subsection (4) prohibits a 14-17 year old with an air weapon certificate from purchasing, hiring, accepting a gift of or otherwise owning (for example by inheriting or finding) an air weapon, meaning that they may only use borrowed air weapons. This condition applies to all air weapon certificates granted to young persons. Subsection (5) lists the specific activities for which a 14-17 year old might be granted an air weapon certificate. The Chief Constable must apply one or more of the conditions listed at subsection (5) to the young person's air weapon certificate, as appropriate.
27. Subsection (6) disapplies the requirement that a young applicant need satisfy the Chief Constable that the applicant has a good reason for purchasing or acquiring an air weapon because an air weapon certificate granted to a young person will not permit them to purchase, hire, accept a gift of or own such a weapon and therefore that aspect of the test for grant or renewal is not relevant.
28. Subsection (7) defines "agriculture" for the purposes of this section, specifically subsection (5)(e). The definition used at section 85 of the Agricultural Holdings (Scotland) Act 1991 is adopted, which refers to "horticulture, fruit growing; seed growing; dairy farming; livestock breeding and keeping; the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds; and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes: and "agricultural" shall be construed accordingly".

### ***Section 8 – Duration of air weapon certificate***

29. Subsection (1) sets the normal duration of air weapon certificates at five years, except in the case of a certificate issued to a 14-17 year old, where the certificate expires on the holder's 18th birthday. At this point the young person's air weapon certificate can be renewed and the conditions required by section 7 may be removed (for example, the prohibition on purchasing a weapon).
30. Subsection (2) provides that an air weapon certificate will remain valid beyond its stated expiry date, provided that the holder has applied to the Chief Constable for a renewal before that expiry date and the Chief Constable has not yet approved or rejected that renewal. The renewal application must be valid, i.e. comply with the requirements in section 3 and section 35, for this subsection to apply. The effect of this section is that the holder neither has to surrender the holder's weapons nor commits the offence at section 2(1) when the original certificate expires, provided that renewal is being actively considered by the Chief Constable.
31. Subsection (3) provides the Scottish Ministers with the power to change the duration of air weapon certificates other than those in relation to young people. The regulations will be subject to the affirmative procedure in the Scottish Parliament.

### ***Section 9 – Alignment of different types of certificate***

32. This section allows air weapon certificates to be made co-terminous with firearm or shotgun certificates issued under the 1968 Act. This allows for all certificates to be due for renewal at the same time, minimising the workload for the applicant and the Chief Constable. Regulations under section 35 are expected to make provision for a proportionately lowered fee where such air weapon certificates are granted or renewed for significantly shorter duration. This section does not affect the duration of firearm or shotgun certificates.
33. Subsections (1) and (2) allow an applicant who already holds a valid firearm and/ or shotgun certificate to request that the expiry date on an air weapon certificate – if

granted or renewed – match the expiry date on their existing firearm and/ or shotgun certificate(s). Because the standard duration for firearm, shotgun and air weapon certificates are all set at five years, an air weapon certificate issued in this way will necessarily have a shorter than normal duration when it is first granted.

34. Subsections (3) and (4) allow an applicant who already holds a live air weapon certificate to request that that certificate be renewed before it has run its full five year lifespan, and re-issued on the same date that a new or renewed firearm and/ or shotgun certificate is granted, so that the expiry dates on all certificates are aligned. This will necessarily mean that the air weapon certificate which they originally paid for on a five year basis will not have lasted for its full duration.

### ***Section 10 – Variation of air weapon certificate***

35. This section allows the Chief Constable to vary any of the details on an air weapon certificate after it has been granted or renewed, including adding, amending or removing conditions on the certificate (except the mandatory conditions required by section 6, and, if applicable, section 7). The Chief Constable may vary a certificate at any time, but is obliged to notify the certificate holder of the changes made.
36. Subsection (2)(a) separately allows the holder of an air weapon certificate to request that the Chief Constable make such a variation, for example to provide an updated contact address, or to request the removal or amendment of an outdated condition. Decisions whether to grant such variations are made at the Chief Constable's discretion.
37. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by section 6(1)), or any other condition attached as a requirement of this Part (for example, the conditions for 14-17 year olds required by section 7(3)).
38. Subsection (4) allows the Chief Constable to require an air weapon certificate holder to relinquish their certificate within 21 days, for the purpose of varying it. Failure to do so may result in revocation of the certificate under section 11(2)(c).

### ***Section 11 – Revocation of air weapon certificate***

39. This section deals with revocation of an air weapon certificate. Subsection (1) requires the Chief Constable to revoke an air weapon certificate if satisfied that there is a danger to public safety or the peace if the certificate holder continues to possess an air weapon, or that the certificate holder is prohibited from possessing firearms under section 21 of the 1968 Act. These tests reflect those at sections 5(1)(d) and 5(1)(b) respectively.
40. Subsection (2) separately allows – but in contrast with subsection (1) does not require – the Chief Constable to revoke an air weapon certificate where the Chief Constable has reason to believe that the certificate holder is no longer a fit person to possess an air weapon (for example, if the holder was convicted of a crime of violence, or there is evidence of drug or alcohol abuse that meant that they could no longer be trusted with a firearm), or that they no longer have a good reason to have an air weapon (for example, if the holder had been a member of an airgun club but had not renewed membership of it). These tests reflect those at sections 5(1)(a) and 5(1)(c) respectively.
41. Subsections (2)(b) and (2)(c) provide the Chief Constable with discretion to revoke an air weapon certificate where the holder has failed to comply with a condition on that certificate, or has failed to surrender the certificate to the police for the purpose of a variation (as required by section 10(4)). As with subsection (2)(a), in these circumstances the Chief Constable has the power to revoke but is not required to do so.
42. Subsections (3) to (6) set out the process for the revocation of an air weapon certificate. The Chief Constable must provide at least seven days' advance notice of a revocation, within such time the certificate holder must relinquish the certificate and any air weapons or commit an offence (unless a reasonable excuse, for example illness,

prevents them from doing so). Subsection (7) provides that, should the certificate holder make an appeal against the decision of the Chief Constable to revoke under section 34, the notice period will be suspended until such time as the appeal is disposed of or abandoned. However, subsection (7)(b) requires that the certificate holder must still surrender their certificate and weapons. If an appeal is successful then the court will quash the notice. If the appeal is rejected then the notice continues to run its remaining period from the date it was suspended.

## **Permits**

### ***Section 12 – Police permits***

43. This section makes provision for police permits, which are distinct from air weapon certificates and are intended for use in transient situations where an individual may find themselves in possession of an air weapon, but grant of an air weapon certificate would not be appropriate (for example, where the executor of an estate takes possession of an air weapon when ingathering the deceased's property). In this respect this section is intended to perform a similar function to that of section 7 of the 1968 Act, which allows the police to issue similar permits to allow the temporary possession of a firearm covered by section 1 or 2 of that Act. This section should be read in conjunction with the exemption at paragraph 8 of schedule 1 to the Act.
44. Subsection (1) sets out that the Chief Constable may issue a permit to allow an individual to possess or acquire an air weapon without holding an air weapon certificate, and/ or to sell an air weapon in the course of business (without being a Registered Firearms Dealer). These permissions may be applied or omitted from the permit at the Chief Constable's discretion. Subsection (2) states that a police permit must not be granted to anyone prohibited from possessing firearms under section 21 of the 1968 Act, which is explained in more detail at paragraph 17 of these Notes.
45. Subsection (3) allows police permits to have variable durations, set at the discretion of the Chief Constable in each case but, as reflects the transient situation for which a permit is to cater, the duration of a permit is not intended to be of the order of that for an air weapon certificate.
46. Subsection (4) provides that applications for a police permit must comply with the requirements set out in regulations made under section 36 or the application will not be treated as having been made. The effect is that an application for a permit cannot be considered by the Chief Constable if the application processes set out in the regulations are not followed. Separately, section 35(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

### ***Section 13 – Visitor permits***

47. This and the following related sections provide for a system whereby visitors to Scotland may apply to the Chief Constable for a permit to use, possess, purchase or acquire air weapons while in Scotland, without holding an air weapon certificate. This section should be read in conjunction with the exemption at paragraph 9 of schedule 1.
48. Subsection (4) sets out the criteria for grant of a visitor permit. For individual visitors, subsection (4)(a) requires the applicant to have a good reason, and subsection (4)(c) provides that the visitor must not be prohibited from possessing firearms, nor should their possession of an air weapon present a danger to the public. These requirements match those for applicants for an air weapon certificate in section 5, with the omission of the 'fit person' test which would be difficult to apply effectively to visitors from abroad.
49. Subsections (2) and (3) allow for applications by groups of two to 20 people to be made on behalf of the group. The Chief Constable does not have to grant or refuse every member of the group a permit en bloc and can reject some while accepting

others. Subsection (4)(b) provides that the Chief Constable must be satisfied that each member of the group individually is to use and possess an air weapon only for certain purposes. Each member of the group individually must also not be prohibited from possessing firearms, nor should their possession of an air weapon present a danger to the public. Subsection (5) permits the Chief Constable to require proof from the person applying on behalf of the group that the group has the permission of the owner or occupier of the land in question for the activities mentioned in subsection (4)(b)(i) and (ii).

50. Subsection (6) requires the Chief Constable to attach a condition to a visitor permit granted as part of a group application which restricts the permit holder to taking part in the activity or activities listed in subsection (4)(b) for which the permit has been granted. However, subsection (6) does not apply to a visitor who is part of a group but is aged 14-17, who will be subject to the separate restrictions under section 14.
51. Subsection (7) allows visitor permits to have variable durations, set at the discretion of the Chief Constable, although subsection (8) sets a maximum duration of 12 months.
52. Subsection (9) requires that an application for a visitor permit must comply with the requirements set out in regulations issued under section 36 or it will not be regarded as having been made. The effect is that an application for a permit cannot be considered by the Chief Constable if the application processes set out in the regulations are not followed. Separately, section 35(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.
53. Subsection (10) provides definitions, including specifying that applicants for a visitor permit must be aged 14 or over, and must live outside Scotland but intend to visit (or, be visiting at the time of application).

#### ***Section 14 – Visitor permits: young persons***

54. This section makes provision where applications for visitor permits are from people under 18 years of age. When read with the definition of “qualifying visitor” in section 13(10) the effect is that this section applies to applicants aged 14 to 17 years.
55. Subsection (2) requires that applications for a visitor permit from an individual aged 14 to 17 years must contain a statement of consent from the applicant’s parent or guardian, set out in a form to be specified in regulations made under section 36. The term “guardian” is defined at section 40(1) and should be construed in light of the relevant jurisdiction of the applicant.
56. Subsections (3) and (4) provide that certain mandatory conditions set out in section 7 must be applied to visitor permits granted to young people, either individually or as part of a group. This means that young people with a visitor permit are subject to equivalent conditions as a young person residing in Scotland who holds an air weapon certificate.
57. Subsection (5) makes equivalent provision to that in section 7(6) as a young person with a visitor permit will not be able to purchase, hire, accept a gift of or own an air weapon while in Scotland.

#### ***Section 15 – Police and visitor permits: conditions***

58. This section relates to conditions that are applied to police and visitor permits which have been granted under section 12 or section 13 respectively. Conditions will have the same effect as described in section 6. Subsection (1) sets out that all such permits will be subject to any mandatory conditions, which will be specified in regulations issued under section 36. Subsection (2) allows the Chief Constable to attach additional conditions to police and visitor permits as required.

59. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions required by subsection (1), or any other condition attached as a requirement of this Part (for example, by virtue of the visitor's age (under section 14) and/ or their being part of a group (under section 13)).
60. Subsections (4) and (5) make it an offence for the permit holder to contravene any condition attached to a permit under this section, and set out the penalty. This offence attracts strict liability.

### ***Section 16 – Police and visitor permits: variation and revocation***

61. This section relates to variation and revocation of police permits or visitor permits which have been granted under section 12 and section 13 respectively.
62. Subsection (1) allows the Chief Constable to vary any details on a police permit or a visitor permit after it has been granted, including adding, amending or removing conditions, except any mandatory condition required by section 15(1), or any conditions which must be attached to a visitor permit by virtue of the visitor's age (under section 14) and/ or their being part of a group (under section 13). Subsection (2) provides that a variation may occur either on the application of the permit holder, or at the Chief Constable's discretion although the Chief Constable is obliged to notify the permit holder of the changes made. Subsection (4) allows the Chief Constable to require a permit holder to relinquish their permit within 21 days, for the purpose of varying it in this way. Guidance is expected to set out that failure to surrender a permit in this way would be grounds for the permit to be revoked.
63. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions required by section 15(1), or any other condition attached as a requirement of this Part (for example, by virtue of the visitor's age (under section 14) and/ or their being part of a group (under section 13)).
64. Subsection (1)(d) allows the Chief Constable to revoke a police or visitor permit at any time, at the Chief Constable's discretion. The Chief Constable must notify the permit holder of the revocation, and subsection (5) requires this notification to provide at least seven days' notice of revocation, within which time the permit holder must relinquish the revoked permit and any air weapons possessed.
65. Subsections (6) and (7) make it an offence for a permit holder to fail, without reasonable excuse, to relinquish a permit for the purpose of revocation within the timescale specified by the Chief Constable.
66. Subsection (8) provides that when a permit holder appeals against a decision to revoke a permit, the notice period for that revocation is put on hold until the outcome of the appeal is known. However, by virtue of subsection (8)(b) the holder must still surrender the permit and any weapons to the Chief Constable. This mirrors the provision at section 11(7).

### ***Section 17 – Event permits***

67. This section provides for air weapon event permits. These are distinct from other permits as they are to be required where an event is to take place at which people may borrow, hire, use or possess an air weapon for a short timescale, without holding individual air weapon certificates. Examples of situations where an event permit might be granted would be a Highland Games with an air weapon shooting component, or a variant of modern biathlon or pentathlon. This section should be read in conjunction with the exemption at paragraph 10 of schedule 1.
68. Subsection (1) sets out that applications for an event permit should be made to the Chief Constable, by a person responsible for the event. A "person" here includes non-natural

(e.g. corporate bodies) as well as natural persons. Event permits are granted at the Chief Constable's discretion, and permit the borrowing, hiring, possessing and/or using of air weapons at a specified time and place, for the purpose of participating in a planned event activity as defined at subsection (7). Subsection (2) adds that the Chief Constable may attach conditions to an event permit as required.

69. Subsection (3) requires that an event permit – or a copy thereof – be displayed at the event to which it pertains. This requirement allows a participant at the event to confirm that a permit is in place and the exemption therefore applies when handling air weapons.
70. Subsections (4) and (5) create the offence of failing to comply with any condition attached to an event permit, or failing to display the permit as required by subsection (3) without a reasonable excuse. In either case the offence is committed by the event organiser named on the permit and attracts strict liability.
71. Subsection (6) states that applications for an event permit cannot be considered unless they comply with the requirements set out in regulations to be made under section 36. Separately, section 35(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

## **Air weapon clubs and recreational shooting facilities**

### ***Section 18 – Approval of air weapon clubs***

72. This section sets out the process by which an air weapon club can be approved by the Chief Constable, to allow its members to benefit from the exemption at paragraph 1 of schedule 1, as well as allowing members to put forward their club membership as evidence that they meet the 'good reason' criteria required by section 5(1)(c) for the grant of an individual air weapon certificate.
73. Subsection (1) states that the Chief Constable may, at the Chief Constable's discretion, approve an air weapon club on receipt of an application from a club. Subsection (2) states that an application for an air weapon club approval cannot be considered unless it complies with the requirements set out in regulations to be made under section 36. Separately, section 35(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.
74. Subsection (3) allows the Chief Constable to withdraw a club approval at any time, by giving notice to the club to that effect.
75. Subsection (4) states that all club approvals will be subject to mandatory conditions, which will be specified in regulations issued under section 36. Subsection (5) provides for the Chief Constable to attach other conditions to air weapon club approvals, which may place positive or negative obligations on the club's secretariat and membership. But, in accordance with subsection (6), the Chief Constable may not attach any conditions which are inconsistent with any mandatory conditions.

### ***Section 19 – Variation of approval***

76. This section allows the Chief Constable to vary any of the details on an air weapon club approval after it has been granted or renewed, including adding, amending or removing conditions on the approval (except the mandatory conditions required by section 18(4)). The Chief Constable may vary an approval at any time, but is obliged to notify the club of the changes made.
77. Subsection (2)(a) separately allows the club to request that the Chief Constable make such a variation, for example to provide an updated contact address, or to request the removal or amendment of an outdated condition. Decisions whether to grant such variations are made at the Chief Constable's discretion.

78. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by section 18(4)).

### ***Section 20 – Duration of approval***

79. Subsection (1) sets the duration of air weapon club approvals at six years, which is consistent with approvals issued to rifle or muzzle-loading pistol clubs under section 15 of the Firearms (Amendment) Act 1988 (“the 1988 Act”).
80. Subsection (2) provides that an air weapon club approval will remain valid beyond its stated expiry date, provided that the club has applied to the Chief Constable for a renewal before that expiry date and the Chief Constable has not yet approved or rejected that renewal. The effect of this subsection is that club members can continue to benefit from the exemption at paragraph 1 of schedule 1 when the original approval expires, provided that renewal is being actively considered by the Chief Constable.
81. Subsection (3) provides the Scottish Ministers with the power to change the duration of air weapon club approvals. The regulations will be subject to the affirmative procedure.

### ***Section 21 – Alignment of club approvals***

82. This section allows air weapon club approvals to be made co-terminous with a rifle club approval issued by the Scottish Ministers under section 15 of the 1988 Act. This allows for both approvals to be due for renewal at the same time, minimising the workload for the applicant and the Chief Constable. Regulations under section 35 are expected to make provision for a proportionately lowered fee where such air weapon club approvals are granted or renewed for significantly shorter duration. This section does not affect the duration of rifle club approvals.
83. Subsections (1) and (2) allow an air weapon club which already holds a valid rifle club approval to request that the expiry date on an air weapon club approval – if granted or renewed – matches the expiry date on their existing rifle club approval. Because the standard duration for rifle and air weapon club approvals are both set at six years, an air weapon club approval issued in this way will necessarily have a shorter than normal duration when it is first granted.
84. Subsections (3) and (4) allow a club that already holds a live air weapon club approval to request that that approval be renewed before it has run its full six year lifespan, and re-issued on the same date that a new or renewed rifle club approval is granted, so that the expiry dates on both approvals are aligned. This will necessarily mean that the air weapon club approval which was originally paid for on a six year basis will not have lasted for its full duration.
85. References in this section to “rifle club approvals” include clubs approved for the use of small-bore rifles, full-bore rifles and/ or muzzle-loading pistols, all of which are approved under section 15 of the 1988 Act.

### ***Section 22 – Power to enter and inspect club premises***

86. This section empowers the Chief Constable – or a delegated officer not below the rank of inspector – to authorise a police constable or member of police staff to enter and inspect any approved air weapon club premises, other than a private dwelling, to ensure that the requirements in this Part are being complied with. Subsection (3) provides that the inspection should, where possible, take place at a reasonable time, which may be any time that the club is operating including in the evenings or at weekends. Subsections (1)(b) and (2) set out that the police constable or member of police staff can inspect anything on the club premises, including requiring electronic information to be reproduced in a visible and legible form. However inspection should only be of

those things for the purpose of ascertaining whether the provisions of the Part or any conditions attached to a club's approval are being complied with.

87. Subsection (4) requires that the police constable or member of police staff must produce their authorisation if asked before entering a club premises to inspect it in accordance with this section.
88. Subsections (6) and (7) set out the offence of intentionally obstructing a police constable or member of police staff from carrying out their duties when authorised under this section – for example, by refusing them access to the club premises, or by concealing evidence from them.

### ***Section 23 – Requirements for recreational shooting facilities***

89. This section and the exemption in paragraph 12 of schedule 1 set out arrangements for commercial recreational shooting facilities where individuals who do not hold air weapon certificates will be able to borrow or hire air weapons for short durations, for a specific purpose – for example, a miniature rifle range at a funfair.
90. Subsection (1) sets out that the operator of such a facility must hold (or, where the operator is a non-natural person, must ensure that an individual responsible for the management and operation of the facility holds) a valid air weapon certificate granted for this purpose, and must display this certificate (or a copy) at the venue. This requirement allows users of the facility to confirm that a certificate is in place and the exemption in paragraph 12 of schedule 1 therefore applies to them.
91. Subsections (2) and (3) make it an offence for anyone to operate a recreational shooting facility without either holding a valid air weapon certificate or ensuring that an individual responsible for the management and operation of the facility holds one for that purpose, or to fail to display that certificate at the facility without a reasonable excuse. The offences attract strict liability.
92. Subsection (4) defines “recreational shooting facility” for the purposes of the section as a miniature rifle range or a shooting gallery, or a facility for combat games, where air weapons are used and which is run for the purpose of making a profit. Subsection (5) makes it clear that approved air weapon clubs are not subject to the requirements of this section.

### **Transactions involving air weapons and commercial matters**

#### ***Section 24 – Restrictions on transactions involving air weapons***

93. Subsection (1) makes it an offence for any person except a Registered Firearms Dealer under section 33 of the 1968 Act to manufacture, sell, transfer, expose for sale or transfer, repair or test an air weapon by way of trade or business, or to possess an air weapon for one of these purposes. This subsection makes analogous provision to that in section 3(1) of the 1968 Act and adds manufacture, repair and test of air weapons to the activities limited to Registered Firearms Dealers. This offence only applies to sales, transfers etc. by way of trade or business, and does not prohibit private sales between individuals. “Person” here includes non-natural persons (e.g. corporate bodies) as well as natural persons. The offences in this section attract strict liability.
94. Subsection (2)(a), (b) and (d) makes it an offence for anyone to sell or transfer an air weapon (including private sales) without first confirming that the recipient is entitled to have the air weapon by: showing a valid air weapon certificate; demonstrating that the recipient does not need to have a certificate; or, by virtue of being a Registered Firearms Dealer.
95. Subsection (2)(c) specifically allows a Registered Firearms Dealer to sell an air weapon to someone without requiring to see an air weapon certificate or evidence that an exemption applies, provided that the air weapon in question will be sent out of Great

Britain, or to a Registered Firearms Dealer in England or Wales where the buyer can collect it, without first coming into the possession of the purchaser. Where the purchaser is an individual (as opposed to, for example, a corporate body) the individual must also be aged 18 or over for this paragraph to apply. For example, an overseas visitor to Scotland who does not hold a visitor permit allowing purchase might have a Registered Firearms Dealer export an air weapon directly to their home country.

96. Subsection (3) broadly reflects subsection (2), and makes it an offence to manufacture, repair or test an air weapon for anyone without confirming that they hold a valid air weapon certificate or are a Registered Firearms Dealer or do not need to have a certificate.
97. Subsection (4) sets out the maximum penalty for an offence committed under this section.

### ***Section 25 – Requirement for commercial sales of air weapons to be in person***

98. This section requires that commercial sales of air weapons are done face-to-face, and is intended to make analogous provision to section 32 of the Violent Crime Reduction Act 2006. Subsection (1) sets out that this section applies to all sales by way of trade or business except those between two Registered Firearms Dealers, and to those where the sale is concluded outside Great Britain (for example mail order sales).
99. Subsection (2) requires that, at the point at which possession of the air weapon(s) is/are transferred to the purchaser, both the purchaser and the seller – or the seller’s representative – must be physically present, otherwise the seller commits an offence. Subsection (3) sets out different categories of person who may act as a representative of the seller for the purposes of this section. A “person” here means a non-natural (e.g. corporate bodies) as well as a natural person. This offence attracts strict liability.

## **Enforcement**

### ***Section 26 – Power of search with warrant***

100. This section relates to search warrants issued where there is a reasonable ground to suspect that an air weapon offence has been, is being or is about to be committed or there is a danger to the public safety or the peace involving an air weapon. Subsection (1) sets out that such a warrant may be granted by a sheriff on application by a constable or member of police staff. Subsections (2) and (3) set out what a constable or member of police staff may do under such a warrant – that is, enter and search premises and seize and detain anything found there in relation to the commission of an air weapon offence. This includes anything in the possession of a person on those premises, and includes the power to require that any electronic information to be reproduced in a way that can be removed from the premises.
101. Subsections (4) and (5) make it an offence for an individual to obstruct intentionally a police constable or member of police staff while carrying out a search under this section, and set out the attached penalty.

### ***Section 27 – Production of air weapon certificate***

102. Subsection (1) empowers a constable to require the production of an individual’s air weapon certificate, or proof that the person does not require to hold a certificate, if the constable believes that an air weapon is in that person’s possession. “Person” in this section includes both natural and non-natural persons. Subsection (2) allows the constable to seize any air weapons held and require the person’s name and address if a certificate or exemption is not provided.
103. Subsections (3) and (4) make it an offence to fail to provide a name and address, or to provide a false one, when required by this section. These offences attract strict liability.

### ***Section 28 – Cancellation of air weapon certificate***

104. This section allows a court to order the cancellation of an individual's air weapon certificate when that individual is convicted of one or more of the offences, or is subject to one of the other orders, set out in subsection (1). Orders may make provision about any type of firearm as well as air weapons.
105. Subsection (3) requires the court to notify the Chief Constable of a cancellation made under this section, at which point the Chief Constable must notify the certificate holder and allow 21 days for surrender of the certificate.
106. Subsections (4) and (5) make it an offence for an individual to fail to surrender the certificate within 21 days when required to do so by a notice under subsection (3) (b), unless the individual has a reasonable excuse (for example, if they were unable to comply because they were serving a prison sentence).

### ***Section 29 – Forfeiture and disposal of air weapons***

107. This section allows a court to order the forfeiture or disposal of any air weapon in the possession of someone who has been convicted of any offence introduced by this Part. Subsection (3) allows a police constable to seize the weapon(s) in question, and subsection (4) allows the Chief Constable to apply to a sheriff to dispose of the weapon(s) in any manner the Chief Constable sees fit, for example by sale at auction, destruction by scrap metal dealer, or transfer to a museum if the weapon is of historic or other significance.
108. Subsection (5) provides that a court may not order the forfeiture or disposal of an air weapon which is possessed by a museum following a conviction for an air weapon offence or where it was seized or detained by a constable. This provides for situations where, for example, a person is convicted of possession of an air weapon where he or she has stolen it from a museum, or a member of museum staff commits an offence with a museum weapon, so that the court does not inadvertently order forfeiture and thereby prevent the museum from getting return of an air weapon which may be of historic or other significance.
109. Subsections (6) and (7) set out what happens to air weapons where the Chief Constable has revoked an air weapon certificate, police permit or visitor permit on which they are held, but the holder appeals against that revocation. If the appeal is successful then the air weapons must be returned to their owner, and if it is not then the court may order their disposal as the Sheriff considers appropriate.
110. Subsections (8) and (9) set out what happens to air weapons where the air weapon certificate, police permit or visitor permit on which they are held has been revoked and the holder does not appeal, or withdraws their appeal. In such a case the Chief Constable and the owner of the weapon should seek to agree arrangements for disposal (for example, transfer to someone permitted to possess air weapons, or sale through a Registered Firearms Dealer). If an agreement cannot be reached then the Chief Constable may dispose of them as he or she sees fit, which may be by one of the methods outlined in paragraph 107 above. In such a circumstance subsection (10) requires the Chief Constable to notify the owner of the method of disposal, who may then appeal against the Chief Constable's decision under section 34(2)(n).

## **Offences**

### ***Section 30 – Failure to keep air weapons secure or to report loss to police***

111. This section makes it an offence for a person in possession of an air weapon to fail to take reasonable precautions for its safe custody, or to fail to report the loss or theft of the air weapon to the Chief Constable as soon as reasonably practicable (this allows for any reasonable delay as a result of, for example, a person being ill in hospital or

temporarily unaware of the loss or theft due to being on holiday). These offences apply to any person who possesses an air weapon, including natural and non-natural persons. The offences attract strict liability.

### ***Section 31 – False statements, certificates and permits***

112. This section creates two offences around providing false information in order to obtain an air weapon certificate, permit, or approval, or producing a falsified or improperly altered certificate or other information in order to obtain the repair or testing of an air weapon.
113. Subsection (1) makes it an offence to knowingly or recklessly make a statement which contains false information in order to procure an air weapon certificate, police permit, visitor permit, event permit, or club approval. This could include, for example, providing a false name, or declining to disclose a criminal history when asked. This offence may also be committed by the person verifying the application, if the verifier knew that the information was incorrect or was reckless in verifying false information.
114. Subsection (2) makes it an offence to produce a false or improperly altered air weapon certificate, police permit or visitor permit, or to provide any other false information, in order to purchase or acquire an air weapon, or to have one repaired or tested. This could include, for example, impersonating an air weapon certificate holder, or amending the details on an expired certificate so that it appeared to still be live.

### ***Section 32 – Time limit for offences***

115. This section provides that anyone committing a summary-only air weapon offence could have proceedings brought against them up to three years after that offence has been committed. Section 136 of the Criminal Procedure (Scotland) Act 1995 normally sets a time limit of six months after the offence has been committed. This only applies to summary-only offences, which is all of the offences in this Part except the ones at section 2 and section 24.

### ***Section 33 – Offences by bodies corporate etc.***

116. This section provides for cases where there may be an offence committed by a non-natural person such as a body corporate, partnership or unincorporated association (e.g. an auctioneer, carrier firm, operator of a recreational shooting facility etc.). Subsection (2) states that both the individual who committed the specific offence, as well as the corporate entity on whose behalf the criminal act was done, can be proceeded against for the purpose of that offence.

## **General**

### ***Section 34 – Appeals***

117. This section allows persons to appeal against various decisions made by the Chief Constable in administering the air weapon licensing regime. Subsection (2) lists the decisions that can be appealed.
118. Subsections (1) and (3) set out that appeals must be made to the appropriate sheriff, as defined by subsection (8), within 21 days of the decision being appealed against. Subsections (4) and (5) state that the sheriff should undertake a full consideration of the merits of the Chief Constable's decision of new, including considering any evidence that the Chief Constable may not have been aware of at the time.
119. Subsection (6) allows the sheriff hearing the appeal either to dismiss it or to direct the Chief Constable to take whatever action the sheriff sees fit to resolve the matter under appeal (for example, ordering the Chief Constable to grant a refused certificate, or not to revoke a certificate).

120. Subsection (7) states that the decision of the sheriff may only be appealed on a point of law. The effect of this is that appeals may be made on a point of law ultimately to the Inner House of the Court of Session. The “appropriate sheriff” is defined as being the sheriff of the sheriffdom where the appellant resides or, where the appellant resides outside Scotland, the sheriff of Lothian and Borders, sitting at Edinburgh. The latter is necessary because in certain circumstances an appellant may reside outside of Scotland, for example where a visitor permit has been refused.

### ***Section 35 – Fees***

121. This section allows the Scottish Ministers to set out fees for various aspects of the air weapon licensing regime in secondary legislation. Regulations under this section will be subject to the negative procedure in the Scottish Parliament. Subsection (1) provides that a fee can be set in relation to any application for a certificate, permit etc. under this Part, or to any other service provided by the Chief Constable in relation to the Chief Constable’s performance of functions under the Part. Subsection (2) provides that the Scottish Ministers may set out a range of fees taking into account different circumstances – for example, lower fees for co-terminous certificates – as well as situations where a fee may be waived entirely. Subsection (2)(c) allows fees to be raised or reduced by reference to factors specified in the regulations, such as inflation.
122. Subsection (3) provides that until the appropriate fee is tendered with an application it is not valid and this means the Chief Constable cannot consider any application under the Act until the appropriate fee has been paid.

### ***Section 36 – Power to make further provision***

123. This section allows the Scottish Ministers to make regulations via secondary legislation setting out detailed provisions regarding the application and grant process for air weapon certificates, police permits, visitor permits, event permits, or club approvals. This would include, for example, setting out templates for application forms, granted certificates, and specifying the conditions referred to in section 6. Regulations under this section will be subject to the negative procedure in the Scottish Parliament.

### ***Section 37 – Crown application***

124. This section exempts the Crown from criminal liability for any contravention of a provision made by or under Part 1 of the Act. Enforcement against the Crown is restricted to one of the authorities named in subsection (2) seeking a declarator of unlawfulness in the Court of Session. Subsection (3) makes it clear, though, that this exemption does not extend to persons in the public service of the Crown. Instead, paragraph 17 of schedule 1 exempts certain public servants from the requirement to hold an air weapon certificate when dealing with air weapons in the course of their duties.

### ***Section 38 – Transitional arrangements for existing certificate holders***

125. This section introduces a temporary exemption that applies to persons who are aged 14 years or over and already hold a firearm and/ or shotgun certificate issued under the 1968 Act at the point when the section 2 offence is brought into force. Under subsection (2) such persons can possess and use (but not purchase or acquire) air weapons without holding an air weapon certificate, until their existing firearm and/ or shotgun certificate expires or is renewed. When renewing the firearm or shotgun certificate the individual should apply to the Chief Constable for first grant of an air weapon certificate if it is desired to continue to possess or use an air weapon.
126. This section also applies to firearm and shotgun certificates issued in the rest of Great Britain, so someone from England or Wales who holds valid a firearm and/ or shotgun certificate could visit Scotland with an air weapon without requiring to apply for a visitor permit, subject to the restrictions set out below.

127. Subsection (3) requires that a person making use of this exemption must nonetheless comply with the mandatory conditions for air weapon certificates to be specified in regulations issued under section 36 – and, in the case of an individual aged below 18, can only use the air weapon for of the purposes mentioned in section 7(5). Subsections (4) to (6) set out the offence, exception and penalty related to non-compliance with the conditions mentioned in subsection (3). This offence attracts strict liability.
128. Subsection (7) sets out that this transitional exemption applies from the day that the offence at section 2 comes into effect, and ends on the day that the individual’s firearm and/ or shotgun certificate is renewed or expires. Subsection (7)(b)(ii) provides that should the firearm and/ or shotgun certificate be surrendered, cancelled or revoked before its stated expiry date, the transitional exemption will also end.
129. Subsections (8) and (9) apply where the individual holds both a firearm and shotgun certificate, which are not co-terminous. Subsection (8) states that the transitional exemption ends on the later of the two certificate expiry dates. Subsection (9) states that should either certificate be surrendered the transition exemption continues in force until the remaining one expires or is surrendered, while if either certificate is cancelled or revoked then the transitional exemption ends immediately. Subsection (10) ensures that those making use of the exemption are also able to make use of the exemption in paragraph 16 of schedule 1.

### ***Section 39 – Guidance***

130. This section allows the Scottish Ministers to publish, revise and revoke guidance on any aspect of the air weapon licensing regime. Subsection (1) obliges the Chief Constable to take account of this guidance when carrying out his or her duties. Guidance will also be publicly available so that all stakeholders are aware of the Scottish Ministers’ view on application of the regime.

### ***Section 40 – Interpretation of Part 1***

131. This section provides definitions for various terms used throughout the Part.
132. Subsections (4) and (5) provide that where terms used in the Part are the same as those used in existing UK firearms legislation then the jurisprudence of the courts on interpretation of those terms in the existing UK firearms legislation applies equally to those terms when used in the Act. The effect of this is to ensure that common terms are interpreted consistently across the Act and the wider body of firearms legislation.