

POLICY NOTE

THE AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015 (COMMENCEMENT No. 3 AND TRANSITIONAL PROVISIONS) ORDER 2016

SSI 2016/130 (C. 13)

1. The above instrument is made in exercise of the powers conferred by section 88(2) and (3) of the Air Weapons and Licensing (Scotland) Act 2015 (“the Act”). It is not subject to any parliamentary procedure.

Policy Objectives

2. The Bill for the Act received Royal Assent on 4 August 2015. Sections 60(1) and (2), 84, 85, 86, 88 and 89 of the Act came into force on the following day. The policy objectives relating to the Act are fully set out in the Policy Memorandum which accompanied the Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76383.aspx>

3. This Order brings into force the provisions in (and relating to) Part 1 of the Act, regarding air weapons licensing. It forms part of an implementation package for the Act, which is being commenced in several stages. This is the third commencement order. The first commencement order also brought into force, on 1 December 2015, provisions in Part 1 of the Act – namely, interpretation provisions, guidance-issuing powers and subordinate legislation-making powers. (The second commencement order brings into force provisions in Part 3 of the Act, regarding the licensing of metal dealers.)

4. The Order brings the new air weapons licensing regime into force in two main stages. It provides for a number of provisions, as detailed in the Schedule to the Order, to come into force on 1 July 2016. It then brings Part 1 of the Act fully into force on 31 December 2016. In addition, it makes a number of transitional provisions, relating to the licensing of air weapons during the period 1 July 2016 to 31 December 2016.

5. The staging of the commencement of the new licensing regime was discussed at length during the development and parliamentary consideration of the legislation. It meets commitments given to Parliament, the Police Service of Scotland and to other stakeholders and will:

5.1 allow a period during which prospective air weapon certificate applicants will be encouraged to make advance applications for a certificate before the requirement to have one comes into force. This will be supported by a public information campaign, ensuring that air weapons users are properly informed of the new legal requirements;

5.2 help to spread the load of processing and determining air weapon certificate applications, thereby allowing the Chief Constable of the Police Service of Scotland to manage the initial rise in licensing activity; and

5.3 enable the Chief Constable to set the duration of the initial air weapon certificate for new applicants. Such provision will mitigate the impact of the new licensing regime, so as to avoid exacerbating existing peaks and troughs in the current firearms licensing system when air weapon certificates come to be renewed. This process, referred to as “smoothing” during the legislation’s passage through Parliament, will be detailed in separate Regulations (due to come into force on 1 July 2016).

Commencement provisions

6. Articles 2 and 3 set out the days appointed for the Part 1 provisions to come into force. Under article 2, most of the licensing provisions will come into force on 1 July 2016, with the remaining provisions coming into force on 31 December 2016. This will enable applications for air weapon certificates, police permits, visitor permits and event permits to be made and determined, and for such certificates and permits to be granted, prior to 31 December. In addition, any such certificates, police or visitor permits may be varied or revoked (or, in the case of an air weapon certificate, cancelled), if required, before 31 December. The provisions concerning the approval of air weapon clubs will also come into force on 1 July 2016, along with certain offence-related and general provisions.

7. Article 3 brings the main offence provisions which underpin the new licensing regime into force on 31 December 2016, as well as the remainder of the licensing provisions not already in force. Accordingly, the air weapons licensing regime will come into force fully on 31 December 2016. From that date, it will be an offence under section 2 of the Act to use, possess, purchase or acquire an air weapon without holding an air weapon certificate (unless any of the exemptions in schedule 1 to the Act apply). It will also be an offence under section 24 of the Act to breach the new restrictions on transactions involving air weapons.

Transitional provisions

8. Article 4 recognises that there may be a significant number of applications to determine in the initial application period. It therefore makes transitional provision to protect from criminal liability those applicants who apply for a certificate or police permit in good time (i.e. before 1 November 2016), but the application is not determined before 31 December 2016. Pending determination, the applicant may continue to possess (but not use) their air weapon(s) on or after 31 December 2016 without committing an offence under section 2 of the Act.

9. Articles 5 and 6 make further specific provision in relation to the transitional period between 1 July 2016 and 31 December 2016. These provisions are designed to ensure that any person who chooses to act early and make an advance application for an air weapon certificate or a permit does not suffer any undue detriment as a result of this choice.

10. Under article 5, an air weapon certificate or permit granted before 31 December 2016 does not take effect until that date (except for the purpose of any earlier variation, revocation or cancellation). This ensures that conditions attached to the certificate, which would for

example restrict a person's possession and use (etc.) of an air weapon, do not apply until section 2 of the Act comes fully into force on 31 December 2016.

11. Article 6 provides that any notice to revoke a certificate or permit, issued by the Chief Constable prior to 31 December 2016, does not result in the holder of that certificate or permit being required to surrender it or any air weapons that the holder possesses in advance of section 2 of the Act coming fully into force on that date. This applies where the decision to revoke relates to a licensing matter under Part 1 of the Act. However, it does not affect the Chief Constable's powers (in relation to air weapons) under the Firearms Act 1968 (c.27). So, where the decision to revoke is taken because (say) the holder becomes prohibited from possessing an air weapon under section 21 of the Firearms Act 1968, or because the holder poses a danger to public safety due to misuse of an air weapon, the air weapon(s) may be separately seized and forfeited under that Act.

Consultation

12. No formal consultation was carried out in relation to this Order. However, formal consultation took place before the Bill for the Act was introduced. Informal consultation with stakeholders also took place during the Bill's parliamentary passage, and is continuing during the implementation process. The consultation documentation relating to air weapons licensing is at:

<http://www.scotland.gov.uk/Topics/Justice/crimes/Firearms/governmentaction/airweaponlicensing>

Impact Assessments and Financial Effects

13. Both an Equality Impact Assessment and a Business and Regulatory Impact Assessment were carried out in relation to the Bill for the Act. Below are links to the relevant documentation.

Equality Impact Assessment:

<http://www.gov.scot/Publications/2014/05/3617>

Business and Regulatory Impact Assessment:

<http://www.gov.scot/Publications/2014/05/7168>

Safer Communities Division
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