

AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 3 – Civic Licensing

Miscellaneous and general

Section 77 – Deemed grant of applications

243. The section modernises and expands the requirement for licensing authorities to deal with matters expeditiously. Failure to do so has the result that the application will be deemed to have been authorised. The expanded requirement also includes applications for variations to a licence so that a failure to take a decision within the specified timescale would have the effect that the variation would be deemed to have been agreed.
244. Section 3 of the 1982 Act is amended to modernise the language to provide greater clarity of the requirement to consider an application within three months and then reach a final decision within a further six months.
245. **Section 3(4)** is amended to include variations and to clarify the language used to describe the effect of a failure of a licensing authority to reach a decision.
246. A new subsection (4A) is inserted in section 3 of the 1982 Act to specify the duration of a licence or temporary licence granted under the ‘deemed grant provisions’.
247. A new subsection (4C) is inserted in section 3 of the 1982 Act to clarify that a licence issued under these provisions is not immune to the separate powers of a licensing authority to vary, suspend or revoke licences or to consider renewal.
248. A new section 45D is added to the 1982 Act to replicate these provisions in relation to sex shops and sexual entertainment venues.

Section 78 – Revocation of Part 2 licences

249. This section gives a licensing authority the ability to revoke a Part 2 licence, in addition to the current ability to suspend such licences. This is achieved by a number of amendments to the provisions of the 1982 Act. While it will be for the local authority to determine what the most appropriate disposal is in the circumstances, it is now possible for the authority to revoke a licence in circumstances where previously its only option was to suspend it. Paragraph 11 of Schedule 1 to the 1982 Act sets out those circumstances in full.

Section 79 – Procedure for hearings

250. **Section 79** amends the 1982 Act by inserting paragraph 18A, in Schedule 1 and inserting paragraph 24A in Schedule 2. The new paragraphs create a regulation-making

power to allow the Scottish Ministers to make provision about hearings in relation to activities licensed under Parts 1 to 3 of the 1982 Act. The regulations may cover notice of hearings, rules of evidence, representation, timescales for steps in the procedure, and liability for expenses. The regulations may make different provision for different purposes, for example, customising the provisions for the particular needs of different types of licence.

Section 80 – Conditions for Part 3 licences

251. This section recreates powers that allow the Scottish Ministers to set mandatory conditions that would apply to all licences issued under Part 3 of the 1982 Act. The condition setting power is broad, would be specified by Order and could encompass different licences and particular purposes and sets of circumstances or cases.
252. The section also allows local licensing authorities to produce standard conditions to which licences issued by them under this Part would be subject. The conditions would have no effect until they are published and cannot be inconsistent with the mandatory conditions. Standard conditions can be varied or dis-applied for particular applications, although a variation could also not be inconsistent with a mandatory requirement.

Section 81 – Conditions for Part 3 licences: displays or advertising

253. **Section 81** amends paragraph 9(2)(b) of Schedule 2 of the 1982 Act to expand the definition of conditions that may be imposed to include displays or advertisements “in connection” with the premises. Currently a local authority can set reasonable licence conditions with regard to displays or advertising of a sex shop that are “on or in” the premises. As a result of these amendments, conditions can also be imposed on sex shops and sexual entertainment venues licensed by the authority in relation to displays and advertising that are in other locations but that are connected with the premises e.g. flyers handed out in the streets in the vicinity or left in other pubs, or posters erected nearby.

Section 82 – Civic licensing standards officers

254. **Section 82** inserts a new Part 3A into the 1982 Act. This introduces a statutory requirement for a local authority or licensing authority to appoint an individual or individuals in a new role, referred to as a ‘Civic Licensing Standards Officer’. These new Civic Licensing Standards Officers will have the same powers and duties as an ‘authorised officer’ within the 1982 Act but will also have specific functions in relation to providing information and guidance, checking compliance, providing mediation and taking appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act.

Section 83 – Electronic communications under the 1982 Act

255. This section amends Schedule 1 to the 1982 Act to permit a licensing authority to determine to receive electronic communications for a variety of matters. The matters are:
- (a) applications for the grant or renewal of a licence under paragraph 1,
 - (b) objections or representations under paragraph 3,
 - (c) notifications of a change to a licence under paragraph 9.
256. Where a licensing authority makes a determination to receive electronic communications they must specify the form of electronic communication, the address to be used and any means of authentication that may be used in addition to an electronic signature.

*These notes relate to the Air Weapons and Licensing (Scotland)
Act 2015 (asp 10) which received Royal Assent on 4 August 2015*

257. The section clarifies that an electronic communication meeting the requirements set out will meet any requirement under Schedule 1 for a communication to be in writing and signed.
258. A licensing authority may also determine to make communications in respect of the giving of notices or the giving of reasons electronically. The giving of reasons or notices electronically would only be acceptable if the intended recipient has agreed to receive communications in such a form and has specified an address. If the requirements are satisfied then any requirement for a notice or reasons to be given in writing will be met.
259. Determinations in relation to electronic communications may be made for different purposes and for different licences.
260. Similar amendments regarding electronic communications are made to Schedule 2 in respect of sex shops and sexual entertainment venues.