



# Air Weapons and Licensing (Scotland) Act 2015

2015 asp 10

## PART 1

### AIR WEAPONS

#### *General*

#### **34 Appeals**

- (1) A person aggrieved by a decision of the chief constable under a section listed in subsection (2) may appeal against the decision to the appropriate sheriff.
- (2) The sections are—
  - (a) section 5(1) (grant or renewal of air weapon certificate),
  - (b) section 6(2) (air weapon certificate: conditions),
  - (c) section 7(3)(b) (special requirements and conditions for young person's air weapon certificate),
  - (d) section 10(1) (variation of air weapon certificate),
  - (e) section 11(1)(a) or (2) (revocation of air weapon certificate),
  - (f) section 12(1) (police permits),
  - (g) section 13(1) or (6) (visitor permits),
  - (h) section 14(3)(b) or (4)(b) (visitor permits: young persons),
  - (i) section 15(2) (police and visitor permits: conditions),
  - (j) section 16(1) (police and visitor permits: variation and revocation),
  - (k) section 17(1) or (2) (event permits),
  - (l) section 18(1), (3) or (5) (approval of air weapon clubs),
  - (m) section 19(1) (variation of approval for air weapon clubs),
  - (n) section 29(9)(b) (forfeiture and disposal of air weapons).
- (3) An appeal must be made within the period of 21 days beginning with the date on which the decision appealed against was made.

- (4) An appeal under this section is to be determined on the merits (and not by way of review).
- (5) The sheriff hearing the appeal may consider any evidence or other matter, whether or not it was available at the time the chief constable made the decision appealed against.
- (6) On determining the appeal, the sheriff may—
  - (a) dismiss the appeal,
  - (b) give the chief constable such direction as the sheriff considers appropriate as respects the matter which is the subject of the appeal.
- (7) The decision of the sheriff may be appealed against only on a point of law.
- (8) In this section, “the appropriate sheriff” means—
  - (a) in a case where the appellant resides in Scotland, a sheriff of the sheriffdom in which the appellant resides, or
  - (b) in a case where the appellant resides outwith Scotland, a sheriff of the sheriffdom of Lothian and Borders, sitting at Edinburgh.

### **35 Fees**

- (1) The Scottish Ministers may by regulations make provision for the charging of fees by the chief constable—
  - (a) in respect of applications under this Part, and
  - (b) otherwise in respect of the performance of functions by the chief constable under this Part.
- (2) Regulations under subsection (1) may—
  - (a) specify different fees for different circumstances,
  - (b) specify circumstances in which no fee is payable,
  - (c) provide for fees to be determined by reference to such factors (including the value of money) as may be specified in the regulations.
- (3) Where regulations under subsection (1) provide for a fee to be charged in respect of an application under this Part, the application is valid only when the fee is paid.
- (4) Nothing in this section limits the generality of section 85.

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

- (1) The Scottish Ministers may by regulations make further provision for the purposes of this Part.
- (2) Without limiting that generality (or the generality of section 85), regulations under subsection (1) may—
  - (a) make provision about the application processes under this Part (for example, prescribing the form and content of applications, any required supporting documentation or making further provision about the verification of applications),
  - (b) make provision in relation to air weapon certificates, police permits, visitor permits, event permits and approvals of air weapon clubs (for example, prescribing their form and content or the conditions which may or must be attached to them).

### **37 Crown application**

- (1) No contravention of any provision made by or under this Part makes the Crown criminally liable.
- (2) But the Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (1), any provision made by or under this Part applies to a person in the public service of the Crown as it applies to other persons.

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

- (1) This section applies where, on the day on which section 2(1) comes into force, a person aged 14 years or more holds a firearm certificate or a shot gun certificate (“the existing certificate”).
- (2) It is not an offence under section 2(1) for the person to use and possess an air weapon without holding an air weapon certificate for the duration of the transitional period.
- (3) The person must, in relation to such use or possession, comply with—
  - (a) any prescribed mandatory conditions which apply to the use and possession of air weapons, and
  - (b) if the person is under the age of 18, the conditions mentioned in section 7(5).
- (4) A person who fails to comply with a condition mentioned in subsection (3) commits an offence.
- (5) But it is not an offence under subsection (4) for a person to fail to comply with a condition mentioned in subsection (3) if—
  - (a) the person is entitled to use or possess an air weapon by virtue of an exemption under schedule 1, and
  - (b) the failure relates to the use or possession of an air weapon in accordance with the exemption.
- (6) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (7) In this section, the “transitional period” means, in relation to an existing certificate, the period—
  - (a) beginning with the day on which section 2(1) comes into force, and
  - (b) ending with (the earlier of)—
    - (i) the day on which the existing certificate is, or falls to be, renewed, or
    - (ii) the day on which the existing certificate is surrendered, cancelled or revoked.
- (8) For the purposes of subsection (7)(b)(i), where a person holds both a firearm certificate and a shot gun certificate, the existing certificate is the certificate which is, or which falls to be, renewed later.
- (9) For the purposes of subsection (7)(b)(ii), where a person holds both a firearm certificate and a shot gun certificate—
  - (a) the surrender of one of the certificates does not end the transitional period, but

(b) the cancellation or revocation of either certificate ends the transitional period.

(10) For the purposes of paragraph 16 of schedule 1, this section is to be treated as if it were an exemption under that schedule.

### **39 Guidance**

(1) The chief constable must, in exercising any function under this Part, have regard to any guidance issued by the Scottish Ministers.

(2) The Scottish Ministers must publish any guidance they issue for the purposes of this Part.

(3) The Scottish Ministers may revise and revoke such guidance.

### **40 Interpretation of Part 1**

(1) In this Part, unless the context otherwise requires—

“the 1968 Act” means the Firearms Act 1968,

“acquire” means hire, accept as a gift or borrow and “acquisition” is to be construed accordingly,

“air weapon” is to be construed in accordance with section 1,

“air weapon certificate” means an air weapon certificate granted under section 5(1),

“air weapon club” means an association of individuals which has as a purpose the activity of target shooting with air weapons,

“air weapon offence” means any offence under this Part,

“approval”, in relation to an air weapon club, means an approval granted to the club under section 18(1),

“approved air weapon club” means an air weapon club which has been granted an approval by the chief constable under section 18(1),

“chief constable” means the chief constable of the Police Service of Scotland,

“condition” includes requirement and restriction,

“constable” has the meaning given in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“event permit” means a permit granted under section 17(1),

“firearm certificate” is to be construed in accordance with section 57(4) of the 1968 Act,

“guardian”, in relation to an individual, means a person appointed by deed or will or by a court of competent jurisdiction to be the guardian of the individual,

“member of police staff” means an individual appointed under section 26 of the Police and Fire Reform (Scotland) Act 2012,

“member of staff of the Scottish Police Authority” means an individual appointed under paragraph 6(1) of schedule 1 to the Police and Fire Reform (Scotland) Act 2012,

“miniature rifle range” is to be construed in accordance with section 11 of the 1968 Act,

“museum” means a museum or similar institution which has as its purpose, or one of its purposes, the preservation for the public benefit of a collection of historical, artistic or scientific interest which is maintained wholly or mainly out of money

provided by Parliament, a Minister of the Crown, the Scottish Ministers or a local authority,

“police permit” means a permit granted under section 12(1),

“premises” means any place and includes a vehicle, vessel or moveable structure,

“prescribed” means prescribed in regulations made under section 36,

“registered firearms dealer” means a person registered as a firearms dealer under section 33 of the 1968 Act,

“relative”, in relation to an individual, means—

(a) the spouse, civil partner, parent, stepparent, child, stepchild, grandparent or grandchild of the individual or of the individual’s spouse, former spouse, civil partner or former civil partner, or

(b) the sibling, uncle, aunt, nephew or niece (whether of the full blood or of the half blood or by affinity) of the individual or the individual’s spouse, former spouse, civil partner or former civil partner,

and includes, in relation to an individual who is living or has lived with another individual as if they were spouses or civil partners, any individual who would fall within paragraph (a) or (b) if the parties were married or civilly partnered to each other,

“shot gun certificate” is to be construed in accordance with section 57(4) of the 1968 Act,

“transfer” includes let on hire, give, lend and part with possession,

“visitor permit” means a permit granted under section 13(1).

- (2) In this Part, a reference to an individual holding an air weapon certificate, a police permit or a visitor permit is a reference to an individual holding an air weapon certificate, police permit or, as the case may be, visitor permit—
- (a) granted to the individual under section 5, 12 or, as the case may be, 13, and
- (b) which has not expired or been revoked or cancelled.
- (3) In this Part, a reference to a condition attached to an air weapon certificate, police permit, visitor permit, event permit or approval of an air weapon club includes a reference to any condition to which the certificate, permit or as the case may be, approval is subject by virtue of this Act.
- (4) Any expression used in this Part which is also used in an Act listed in subsection (5) is, unless the context otherwise requires, to be construed in accordance with any decisions or opinions of a court interpreting the expression for the purposes of the Act.
- (5) The Acts are—
- (a) the 1968 Act,
- (b) the Firearms (Amendment) Act 1988, and
- (c) the Firearms (Amendment) Act 1997.