

AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 1 – Air Weapons

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

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

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.