

AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 1 – Air Weapons

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).