

# **AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015**

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## **EXPLANATORY NOTES**

### **STRUCTURE AND SUMMARY OF THE ACT**

#### **Part 1 – Air Weapons**

##### **General**

##### ***Section 34 – Appeals***

117. This section allows persons to appeal against various decisions made by the Chief Constable in administering the air weapon licensing regime. Subsection (2) lists the decisions that can be appealed.
118. Subsections (1) and (3) set out that appeals must be made to the appropriate sheriff, as defined by subsection (8), within 21 days of the decision being appealed against. Subsections (4) and (5) state that the sheriff should undertake a full consideration of the merits of the Chief Constable’s decision of new, including considering any evidence that the Chief Constable may not have been aware of at the time.
119. Subsection (6) allows the sheriff hearing the appeal either to dismiss it or to direct the Chief Constable to take whatever action the sheriff sees fit to resolve the matter under appeal (for example, ordering the Chief Constable to grant a refused certificate, or not to revoke a certificate).
120. Subsection (7) states that the decision of the sheriff may only be appealed on a point of law. The effect of this is that appeals may be made on a point of law ultimately to the Inner House of the Court of Session. The “appropriate sheriff” is defined as being the sheriff of the sheriffdom where the appellant resides or, where the appellant resides outside Scotland, the sheriff of Lothian and Borders, sitting at Edinburgh. The latter is necessary because in certain circumstances an appellant may reside outside of Scotland, for example where a visitor permit has been refused.

##### ***Section 35 – Fees***

121. This section allows the Scottish Ministers to set out fees for various aspects of the air weapon licensing regime in secondary legislation. Regulations under this section will be subject to the negative procedure in the Scottish Parliament. Subsection (1) provides that a fee can be set in relation to any application for a certificate, permit etc. under this Part, or to any other service provided by the Chief Constable in relation to the Chief Constable’s performance of functions under the Part. Subsection (2) provides that the Scottish Ministers may set out a range of fees taking into account different circumstances – for example, lower fees for co-terminous certificates – as well as situations where a fee may be waived entirely. Subsection (2)(c) allows fees to be raised or reduced by reference to factors specified in the regulations, such as inflation.

122. Subsection (3) provides that until the appropriate fee is tendered with an application it is not valid and this means the Chief Constable cannot consider any application under the Act until the appropriate fee has been paid.

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

123. This section allows the Scottish Ministers to make regulations via secondary legislation setting out detailed provisions regarding the application and grant process for air weapon certificates, police permits, visitor permits, event permits, or club approvals. This would include, for example, setting out templates for application forms, granted certificates, and specifying the conditions referred to in section 6. Regulations under this section will be subject to the negative procedure in the Scottish Parliament.

### ***Section 37 – Crown application***

124. This section exempts the Crown from criminal liability for any contravention of a provision made by or under Part 1 of the Act. Enforcement against the Crown is restricted to one of the authorities named in subsection (2) seeking a declarator of unlawfulness in the Court of Session. Subsection (3) makes it clear, though, that this exemption does not extend to persons in the public service of the Crown. Instead, paragraph 17 of schedule 1 exempts certain public servants from the requirement to hold an air weapon certificate when dealing with air weapons in the course of their duties.

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

125. This section introduces a temporary exemption that applies to persons who are aged 14 years or over and already hold a firearm and/ or shotgun certificate issued under the 1968 Act at the point when the section 2 offence is brought into force. Under subsection (2) such persons can possess and use (but not purchase or acquire) air weapons without holding an air weapon certificate, until their existing firearm and/ or shotgun certificate expires or is renewed. When renewing the firearm or shotgun certificate the individual should apply to the Chief Constable for first grant of an air weapon certificate if it is desired to continue to possess or use an air weapon.
126. This section also applies to firearm and shotgun certificates issued in the rest of Great Britain, so someone from England or Wales who holds valid a firearm and/ or shotgun certificate could visit Scotland with an air weapon without requiring to apply for a visitor permit, subject to the restrictions set out below.
127. Subsection (3) requires that a person making use of this exemption must nonetheless comply with the mandatory conditions for air weapon certificates to be specified in regulations issued under section 36 – and, in the case of an individual aged below 18, can only use the air weapon for of the purposes mentioned in section 7(5). Subsections (4) to (6) set out the offence, exception and penalty related to non-compliance with the conditions mentioned in subsection (3). This offence attracts strict liability.
128. Subsection (7) sets out that this transitional exemption applies from the day that the offence at section 2 comes into effect, and ends on the day that the individual's firearm and/ or shotgun certificate is renewed or expires. Subsection (7)(b)(ii) provides that should the firearm and/ or shotgun certificate be surrendered, cancelled or revoked before its stated expiry date, the transitional exemption will also end.
129. Subsections (8) and (9) apply where the individual holds both a firearm and shotgun certificate, which are not co-terminous. Subsection (8) states that the transitional exemption ends on the later of the two certificate expiry dates. Subsection (9) states that should either certificate be surrendered the transition exemption continues in force until the remaining one expires or is surrendered, while if either certificate is cancelled or revoked then the transitional exemption ends immediately. Subsection (10) ensures that those making use of the exemption are also able to make use of the exemption in paragraph 16 of schedule 1.

***Section 39 – Guidance***

130. This section allows the Scottish Ministers to publish, revise and revoke guidance on any aspect of the air weapon licensing regime. Subsection (1) obliges the Chief Constable to take account of this guidance when carrying out his or her duties. Guidance will also be publicly available so that all stakeholders are aware of the Scottish Ministers' view on application of the regime.

***Section 40 – Interpretation of Part 1***

131. This section provides definitions for various terms used throughout the Part.
132. Subsections (4) and (5) provide that where terms used in the Part are the same as those used in existing UK firearms legislation then the jurisprudence of the courts on interpretation of those terms in the existing UK firearms legislation applies equally to those terms when used in the Act. The effect of this is to ensure that common terms are interpreted consistently across the Act and the wider body of firearms legislation.