

AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 3 – Civic Licensing

209. This Part of the Act makes a number of amendments to the licensing provisions in the Civic Government (Scotland) Act 1982 (“the 1982 Act”).

Taxis and private hire cars

Section 63 – Refusal to grant private hire car licences on grounds of overprovision

210. **Section 63** amends section 10 of the 1982 Act. This enables (but does not require) the licensing authority to refuse a private hire car licence application on the grounds of overprovision of private hire car services in a given locality or localities. It allows the licensing authority to determine the localities within their area, allowing them to either treat the whole licensing authority area as one locality or sub-divide it. The section also provides that when assessing overprovision the licensing authority must have regard to the number of private hire cars operating in the locality and the demand for private hire car services in the locality.

Section 64 – Testing of private hire car drivers

211. **Section 64** amends section 13 of the 1982 Act to allow a licensing authority to require testing of applicants for a private hire car driver licence, as per the current ability to do so for a taxi driver’s licence. Licensing authorities will be able to require the same testing of both taxi and private hire car drivers or different elements of testing (or no testing) of one set of drivers.

Section 65 – Exemptions from requirements of sections 10 to 21 of 1982 Act

212. **Section 65** amends section 22 of the 1982 Act to remove the exemption at subsection (c) which applies to ‘any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours’. This brings vehicles that are being used on contract in this manner into the licensing regime for taxis and private hire cars. Examples of the type of service that could potentially be brought within the licensing regime for taxi and private hire cars are: executive hire work – where a car is hired to transport an individual between meetings over the course of a day; airport transfers – where a car is hired to transport customers on longer journeys (meaning the car can only do one job in the 24 hour period) e.g. collecting from Glasgow Airport and taking a group to Iona.
213. Subsection (4) gives the Scottish Ministers the power to specify by order further exemptions from taxi and private hire car licensing. It is assumed the definition of a hire car within the 1982 Act makes clear the type of operation that should be covered:

‘...“hire car” means a motor vehicle with a driver...which is, with a view to profit, available for hire by the public for personal conveyance.’ However, if it becomes clear types of service not intended to be covered are being swept up in taxi and private hire car licensing, this power could be used e.g. where a service is providing some kind of transport as an ancillary part of the wider service, not the main focus. An example could be if child-minders are being expected to be licensed as private hire car drivers and their vehicles licensed for collecting children in their care from school by car. The power could be used to make explicit that this type of operation is not intended to be covered.

Metal dealers

Section 66 – Penalties for failure to have appropriate licence or comply with conditions

214. **Section 66** amends section 7 of the 1982 Act to increase the penalties for the offences of operating without a metal dealer’s licence or itinerant metal dealer’s licence (where a licence is required) to a maximum fine of £20,000 and or six months imprisonment on summary conviction. Section 66 also increases the maximum penalties for the offence of failing to comply with a condition of a metal dealer’s or itinerant metal dealer’s licence to the same level i.e. a fine of £20,000 or six months imprisonment, or both.

Section 67 – Removal of exemption warrants for certain metal dealers

215. This section amends section 28 of the 1982 Act and repeals section 29 of the 1982 Act to remove the current provisions that allow a metal dealer with an audited turnover in excess of a figure specified by Order (currently £1 million) to be exempted from licensing requirements. This will have the effect of ensuring that all dealers are subject to licensing requirements.

Section 68 – Abolition of requirement to retain metal for 48 hours

216. This section repeals section 31 of the 1982 Act to remove the mandatory requirement that metal dealers should not process metal for 48 hours after receiving it. This would allow a dealer to process metal quickly (which may be required for the safe operation of the site).

Section 69 – Acceptable forms of payment for metal

217. This section creates a new section 33A in the 1982 Act. This specifies acceptable forms of payment that may be accepted by a metal dealer or itinerant metal dealer. The acceptable forms of payment are a cheque or electronic transfer into a bank or building society account. Cash is not an acceptable form of payment. A dealer who makes payment in a method not specified commits an offence. The offence extends to a person with day to day management responsibilities and the person who makes the payment. The metal dealer and manager are provided with a defence that they have made arrangements to ensure that payment is made by the specified methods and have taken all reasonable steps to ensure compliance. Subsection (7) gives Scottish Ministers the power by regulation to add or remove forms of payment that are acceptable and to make any consequential changes to section 33B or 33C(3) in consequence of changes to the acceptable form of payment.
218. **Section 69** also inserts a new section 33B into the 1982 Act which provides a definition of what constitutes an acceptable bank or building society account for the purposes of the regime. Subsection (4) in particular stipulates types of account that are not acceptable, with reference to Part 4A of the Financial Services and Markets Act 2000.

Section 70 – Metal dealers and itinerant metal dealers: records

219. This section amends the record keeping requirements for metal dealers and itinerant metal dealers. A new section 33C is inserted into the 1982 Act and provides the details

that must be recorded by a dealer when metal is acquired or disposed of and supports the separate provisions stipulating acceptable forms of payment by requiring dealers to keep copies of documentation evidencing the form of payment used. Subsection (6) of section 33C provides the Scottish Ministers the power by regulation to amend the record keeping requirement and to stipulate particular means that can be used for the purpose of establishing a person's name and address.

220. The section also inserts a new section 33D into the 1982 Act to stipulate how records should be stored and a new section 33E to require records to be kept for each place of business a dealer operates from.
221. The section also creates an offence in relation to a failure to comply with the new requirements in relation to record keeping and amends the existing offence in relation to providing false or misleading information.

Section 71 – Register of dealers in metal

222. **Section 71** creates a new section 35A in the 1982 Act allowing the Scottish Ministers to make regulations establishing a register of metal dealers and itinerant metal dealers and make provision about its ongoing maintenance. The regulations may include details on such things as who is to keep and maintain the register, the duty to provide information, the information to be covered by the register, the form and publication of the register and any fees that may be relevant. Examples of information that may be included in the register might include the name (or trading names) of the person holding the licence, a contact address for the person and the person's place of business, which type (or types) of licence the person holds and the date on which the licence (or licences) will expire.

Section 72 – Interpretation of provisions relating to metal dealers etc.

223. **Section 72** amends section 37 of the 1982 Act to amend the definition of both metal dealers and itinerant metal dealers to encompass those who buy or sell metal as opposed to those who both buy and sell metal (which was the previous position). The 1982 Act is amended to provide the activities that are licensable and it is explicitly stated that a motor salvage operator, as defined in subsection (3), is carrying out the business of a metal dealer and will require a licence to do so.
224. The section provides that a licence is required for those who carry on a business that “wholly or substantially” consists of buying or selling scrap. This means that those who deal in scrap metal to a significant degree will require a licence but those whose involvement is peripheral or tangential will not. It will be a matter of fact or degree whether a licence is necessary in individual circumstances but, for example, it might well be the case that a plumber who acquires some metal piping in the course of domestic repairs would not require to be licensed. Conversely, a skip hirer who takes substantial amounts of metal from a building site, and that forms a substantial part of the hirer's business may require to be licensed.

Section 73 – Exemptions from requirements of sections 28 to 37 of 1982 Act

225. **Section 73** creates a new section 37A within the 1982 Act. The new section provides a regulation-making power that will allow the Scottish Ministers to set out circumstances where the metal dealer and itinerant metal dealer regime does not apply, thereby resulting in a licence not being required.

Public entertainment venues

Section 74 – Licensing of theatres etc.

226. This section repeals existing licensing requirements in the Theatres Act 1968 (“the 1968 Act) and supporting provisions in the 1968 Act that allow for powers of entry and inspection and prevent licensing being used to censor the content of plays.

227. The section also removes the exemption for premises licensed under the 1968 Act from the 1982 Act thereby allowing plays to fall into the activities that may be licensed under public entertainment licensing arrangements. An equivalent of the anti-censorship provisions in the 1968 Act is inserted into the 1982 Act.

Section 75 – Restriction of exemption from requirements for public entertainment licence

228. **Section 75** restricts the exemption from public entertainment licensing requirements contained in section 41(2)(f) of the 1982 Act, to specify that the exemption is only applicable to premises in possession of a premises licence within the meaning of section 17 of the 2005 Act. This would result in those in possession of an occasional licence issued under section 56 of the 2005 Act no longer being exempt from public entertainment licensing requirements.

Sexual entertainment venues

Section 76 – Licensing of sexual entertainment venues

229. This section creates a new licensing regime for sexual entertainment venues.
230. This is achieved by amending the existing licensing scheme for sex shops found in Part 3 and Schedule 2 of the 1982 Act, such that it applies to sexual entertainment venues also, with modifications as necessary. The following paragraphs explain the key features of the new regime as modified.
231. The section amends section 41(2) of the 1982 Act to preclude a sexual entertainment venue from being licensed under public entertainment licences.
232. The section creates a new section 45A which establishes for the purposes of the legislation what is meant by a sexual entertainment venue and provides definitions of ‘audience’, ‘financial gain’, ‘organiser’, ‘premises’, ‘sexual entertainment’ itself and ‘display of nudity’.
233. A power is provided by the section to allow the Scottish Ministers to prescribe types of premises that are not sexual entertainment venues. Sex shops are specifically identified as not being sexual entertainment venues.
234. A further power is provided to allow the Scottish Ministers to prescribe descriptions of performances or displays of nudity that are not to be treated as sexual entertainment for the purposes of the legislation.
235. The section specifies that a venue hosting sexual entertainment very occasionally (defined as four occasions or less in a 12 month period) would not be treated as a sexual entertainment venue.
236. A new section 45B is created which requires a resolution by a local authority in order for sexual entertainment venue licensing to have effect in their area. The section requires that a resolution under the section would not have effect until a specified date (which cannot be less than one year after the resolution is passed). A resolution must be publicised either electronically or in a local newspaper.
237. The section also allows a local authority to determine an appropriate number of sexual entertainment venues for their area. The appropriate number so determined must be publicised then the determination must be publicised in a manner considered appropriate by the local authority.
238. Section 45B also clarifies that a licence for a sexual entertainment venue does not have to be granted even when that venue has a premises licence under Part 3 of 2005 Act (an alcohol premises licence).

239. Any application for a sexual entertainment licence must be notified by the applicant, within 7 days, to any bodies specified by the local authority. These bodies might be violence against women partnerships, community councils etc.
240. It will not be permissible for a person under 18 to be employed by a sexual entertainment venue. It is also not permissible for an under 18 to enter a sexual entertainment venue when sexual entertainment is taking place. When sexual entertainment is not taking place, an under 18 can enter the premises only if there is a reasonable excuse for such e.g. an apprentice to a plumber being allowed access to assist the plumber in repairing a leak.
241. Section 45B also provides that local authorities must have regard to any guidance issued by the Scottish Ministers in relation to the licensing of sexual entertainment venues.
242. A new section 45C is created which requires each local authority, which passes a resolution to licence sexual entertainment, to prepare a sexual entertainment venue policy statement in respect of the exercise of their functions in relation to such licensing (referred to in the Act as an SEV policy statement). The statement should detail the impact the authority considers the licensing will have, particularly in relation to the objectives of preventing public nuisance and disorder, securing public safety, protecting young people from harm and reducing violence against women. The local authority, when preparing the SEV policy statement, must also consult such persons and bodies as they consider appropriate. The SEV policy statement must be published at the same time as their resolution to licence sexual entertainment venues. The statement must also be reviewed from time to time. In exercising functions in relation to sexual entertainment venue licensing, the authority must have regard to their SEV policy statement.

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.

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

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.
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.