

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **MAIN PURPOSES OF THE ACT**

3. The Act introduces a system of licensing for air weapons in Scotland. The Act creates a number of new offences related to possession, use and acquisition of air weapons by persons who do not hold a licence or do not act in accordance with the licensing regime. The Act also sets out the framework through which the Police Service of Scotland may grant an air weapon licence to appropriate individuals.
4. The Act will give local authorities the power to regulate sexual entertainment venues in their areas. The Act also amends the licensing regimes in relation to alcohol licensing, taxis and private hire cars, metal dealers, as well as making systematic changes across the civic licensing regimes contained within the Civic Government (Scotland) Act 1982 (“the 1982 Act”).

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

5. The Act is in four parts:
  - **Part 1 Air weapons** sets out a new licensing system for air weapons administered by the Police Service of Scotland. Specific provisions include:
    - A definition of the air weapons that will be subject to licensing;
    - A requirement for air weapon certificates and the process for applications, grants (including conditions and duration), variations, renewal and revocation of these;
    - A system of police permits, visitor permits and event permits;
    - Restrictions on the commercial sale, sale for delivery outwith Scotland, manufacture, repair and testing of air weapons and the operation of recreational shooting facilities;
    - Enforcement powers and offences;
    - Power to set fees and provide guidance;

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

- Air gun clubs;
- Exemptions from the licensing regime.
- **Part 2 Alcohol licensing** amends the existing licensing regime for alcohol licensing included within the Licensing (Scotland) Act 2005 (“the 2005 Act.”) Specific provisions include:
  - Amendment of the licensing objective in relation to children to also include young persons;
  - Amendment of the duration of a licensing policy statement to align with the term of Local Government elections;
  - Inserting a fit and proper person test in relation to the issue or continued holding of a premises or a personal licence;
  - Amendment of the transfer provisions for a premises licence;
  - Providing Licensing Standards Officers with a new power to report conduct of a personal licence holder;
  - Removal of the automatic requirement for a hearing to be held where a Licensing Board is notified of a relevant or foreign offence in relation to a premises or personal licence;
  - Amendment of the definition of relevant offences and foreign offences to no longer disregard a matter that is spent for the purposes of the Rehabilitation of Offenders Act 1974;
  - Creation of new offences of giving, or making available, alcohol to a child or young person for consumption in a public place;
  - Inclusion of the flavouring angostura bitters in the definition of alcohol for the purposes of the Act;
  - Clarification that for an overprovision assessment, the whole Board area may be considered as an area of overprovision;
  - In respect of an overprovision assessment, making it clear that Boards may take account of, among other things, the licensed hours of licensed premises;
  - A duty on Boards to prepare and publish an annual report on the exercise of their functions, summary of decisions made and licences held;
  - A duty on Boards to prepare and publish an annual financial report in respect of their licensing activities;
  - Removal of the requirement for a premises licence holder to notify a change in interested parties and amendment of the definition of an “interested party” to remove premises managers;
  - Changes to the personal licence holder requirements including removal of the five year restriction on re-applying for a licence revoked on grounds of failing to undertake refresher training or notifying the board of such, and other changes to the personal licence holder requirements;
  - A requirement for a Licensing Board to issue an acknowledgement of complete applications, unless the Board does not consider that it would be appropriate to do so;
  - Providing for the automatic grant of a licence where a Licensing Board has failed to determine an application within the required period or the extended

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period as granted by a sheriff. This clarifies compliance with the EU Services Directive.

- **Part 3 Civic Licensing** amends the existing licensing regimes included within the 1982 Act:

*Taxis and private hire cars*

- Amendments to the taxis and private hire cars regime. Specific provisions include:
  - The power to refuse to grant private hire car licences on grounds of overprovision;
  - The extension of driver testing to include private hire car drivers;
  - Removal of the contract exemptions to the licensing and regulation of taxis and private hire cars, bringing hire cars used on contracts into the regime.

*Metal dealers*

- Amendments to the metal dealer regime. Specific provisions include:
  - Removal of the exemption warrants system that allowed a metal dealer with a larger turnover to be exempted;
  - Limiting payment for metal by metal dealers or itinerant metal dealers to prescribed methods i.e. bank transfer or cheque;
  - Amendment of the standards for identification of customers;
  - Amendment of the standards of record keeping;
  - Removal of mandatory requirement that metal dealers should not process metal for 48 hours after receiving it;
  - Conferring power on the Scottish Ministers to establish a register of metal dealers and itinerant metal dealers;
  - Amendment of the definitions of metal dealer and itinerant metal dealer.

*Public entertainment venues*

- Amendments to the public entertainment regime. Specific provisions include:
  - Abolishing ‘theatre licences’ as currently required under the Theatres Act 1968 and instead regulate theatres through the existing public entertainment licencing regime provided for in the 1982 Act;
  - Restricting the exemption concerning premises licensed under the Licensing (Scotland) Act 2005.

*Sexual entertainment venues*

- Sets out a new licensing system for sexual entertainment venues administered by local authorities. Specific provisions include:
  - The definition of sexual entertainment venues;
  - The power for local authorities to license sexual entertainment venues according to the existing structure set out in Schedule 2 of the 1982 Act;

- The power for local authorities to determine the number of sexual entertainment venues in their area.

*Miscellaneous and general*

- Amendments to the operation of civic government licensing regimes more generally. Specific provisions include:
  - Power for Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings;
  - Introduction of a new role: Civic Licensing Standards Officer;
  - Enabling a Local Authority to revoke a licence under Part 2 of the 1982 Act
  - Where it has not already been provided for, providing for the deemed grant of a licence where the Local Authority has failed to determine an application within the required period or the extended period granted by a sheriff.
- **Part 4 General** sets out general provisions, such as for the making of ancillary provision by regulations. It also contains definitions, the short title and provisions for commencement of the Act by Order.

## **Part 1 – Air Weapons**

6. The provisions in this Part establish a licensing regime in relation to air weapons. This regulates the use, possession, purchase, acquisition, manufacture, sale, transfer, repair and testing of such weapons. Accordingly, the provisions of Part 1 were notified<sup>1</sup> in draft to the European Commission in accordance with the Technical Standards Directive (Directive [98/34/EC](#), as amended)<sup>2</sup>.

### **Meaning of air weapon**

#### ***Section 1 – Meaning of “air weapon”***

7. **Section 1** defines the term “air weapon” for the purposes of the Part. Subsection (2) adopts the definition from section 1(3)(b) of the Firearms Act 1968 (“the 1968 Act”). Section 1(3)(b) of the 1968 Act provides that an air weapon is an air rifle, air gun or air pistol which does not fall within section 5(1) of the 1968 Act and which is not of a type declared by the Secretary of State by rules to be “specially dangerous”. The [Firearms \(Dangerous Air Weapons\) \(Scotland\) Rules 1969 \(S.I. 1969/270\)](#) as amended are the applicable rules made by the Secretary of State.
8. The effect of this is that the Part applies to air weapons capable of a muzzle energy equal to or lower than 12 foot pounds (ft/lb), or 6 ft/lb for an air pistol (approximately 16.27 joules and 8.13 joules respectively). Air weapons above these thresholds – or those that come within section 5(1) of the 1968 Act, for example by being disguised as another object, or designed or adapted to use a self-contained gas cartridge system – will continue to require to be held on a Firearms Certificate issued under the 1968 Act. Note that section 48 of the Firearms (Amendment) Act 1997 provides that any reference to an air rifle, air pistol or air gun in the Firearms Acts 1968 to 1997 includes a reference to any such rifle, pistol or gun which is powered by compressed carbon dioxide and therefore such weapons also fall to be licensed by the Part.

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<sup>1</sup> Notified on 18 March 2015 under Notification No. 2015/0130/UK.

<sup>2</sup> Directive [98/34/EC](#) of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ L 204, 21.7.1998, p. 37), as amended by Directives [98/48/EC](#) (OJ L 217, 5.8.1998, p. 18) and [2006/96/EC](#) (OJ L 363, 20.12.2006, p. 81), Regulation (EU) No 1025/2012 (OJ L 316, 14.11.2012, p. 12) and a 2003 Act concerning the conditions of accession of various other Member States (OJ L 236, 23.9.2003, p. 33).

9. Subsection (4)(b)(i) adds a lower power threshold of one joule (approximately 0.74 ft/lb) to this definition, so that air weapons with a muzzle energy of one joule or below do not require to be held on an air weapon certificate. Subsection (4)(a) excludes air weapons that are not captured by the definition of “firearm” at section 57(1) of the 1968 Act, that is “a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged”. This means that, although certain air powered weapons may exceed 1 joule of muzzle energy, they do not fall to be regulated under this Part if they are not firearms for the purposes of the 1968 Act – for example, low powered airsoft weapons or paintball guns. Subsection (4)(b)(ii) also excludes air weapons designed for use only under water, for example spear guns, from requiring a certificate. Such weapons are excluded from existing UK firearms legislation by regulation 2 of the [Firearms \(Dangerous Air Weapons\) \(Scotland\) Amendment Rules 1993 \(S.I. 1993/1541\)](#).
10. Subsection (3) sets out that component parts and sound moderators for air weapons are included in the definition of “air weapon”, and require to be held on an air weapon certificate.

## **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



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.

## **Permits**

### ***Section 12 – Police permits***

43. This section makes provision for police permits, which are distinct from air weapon certificates and are intended for use in transient situations where an individual may find themselves in possession of an air weapon, but grant of an air weapon certificate would not be appropriate (for example, where the executor of an estate takes possession of an air weapon when ingathering the deceased's property). In this respect this section is intended to perform a similar function to that of section 7 of the 1968 Act, which allows the police to issue similar permits to allow the temporary possession of a firearm covered by section 1 or 2 of that Act. This section should be read in conjunction with the exemption at paragraph 8 of schedule 1 to the Act.
44. Subsection (1) sets out that the Chief Constable may issue a permit to allow an individual to possess or acquire an air weapon without holding an air weapon certificate, and/ or to sell an air weapon in the course of business (without being a Registered Firearms Dealer). These permissions may be applied or omitted from the permit at the Chief Constable's discretion. Subsection (2) states that a police permit must not be granted to anyone prohibited from possessing firearms under section 21 of the 1968 Act, which is explained in more detail at paragraph 17 of these Notes.
45. Subsection (3) allows police permits to have variable durations, set at the discretion of the Chief Constable in each case but, as reflects the transient situation for which a permit is to cater, the duration of a permit is not intended to be of the order of that for an air weapon certificate.
46. Subsection (4) provides that applications for a police permit must comply with the requirements set out in regulations made under section 36 or the application will not be treated as having been made. The effect is that an application for a permit cannot be considered by the Chief Constable if the application processes set out in the regulations are not followed. 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.

### ***Section 13 – Visitor permits***

47. This and the following related sections provide for a system whereby visitors to Scotland may apply to the Chief Constable for a permit to use, possess, purchase or acquire air weapons while in Scotland, without holding an air weapon certificate. This section should be read in conjunction with the exemption at paragraph 9 of schedule 1.
48. Subsection (4) sets out the criteria for grant of a visitor permit. For individual visitors, subsection (4)(a) requires the applicant to have a good reason, and subsection (4)(c) provides that the visitor must not be prohibited from possessing firearms, nor should

their possession of an air weapon present a danger to the public. These requirements match those for applicants for an air weapon certificate in section 5, with the omission of the 'fit person' test which would be difficult to apply effectively to visitors from abroad.

49. Subsections (2) and (3) allow for applications by groups of two to 20 people to be made on behalf of the group. The Chief Constable does not have to grant or refuse every member of the group a permit en bloc and can reject some while accepting others. Subsection (4)(b) provides that the Chief Constable must be satisfied that each member of the group individually is to use and possess an air weapon only for certain purposes. Each member of the group individually must also not be prohibited from possessing firearms, nor should their possession of an air weapon present a danger to the public. Subsection (5) permits the Chief Constable to require proof from the person applying on behalf of the group that the group has the permission of the owner or occupier of the land in question for the activities mentioned in subsection (4)(b)(i) and (ii).
50. Subsection (6) requires the Chief Constable to attach a condition to a visitor permit granted as part of a group application which restricts the permit holder to taking part in the activity or activities listed in subsection (4)(b) for which the permit has been granted. However, subsection (6) does not apply to a visitor who is part of a group but is aged 14-17, who will be subject to the separate restrictions under section 14.
51. Subsection (7) allows visitor permits to have variable durations, set at the discretion of the Chief Constable, although subsection (8) sets a maximum duration of 12 months.
52. Subsection (9) requires that an application for a visitor permit must comply with the requirements set out in regulations issued under section 36 or it will not be regarded as having been made. The effect is that an application for a permit cannot be considered by the Chief Constable if the application processes set out in the regulations are not followed. 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.
53. Subsection (10) provides definitions, including specifying that applicants for a visitor permit must be aged 14 or over, and must live outside Scotland but intend to visit (or, be visiting at the time of application).

#### ***Section 14 – Visitor permits: young persons***

54. This section makes provision where applications for visitor permits are from people under 18 years of age. When read with the definition of "qualifying visitor" in section 13(10) the effect is that this section applies to applicants aged 14 to 17 years.
55. Subsection (2) requires that applications for a visitor permit from an individual aged 14 to 17 years must contain a statement of consent from the applicant's parent or guardian, set out in a form to be specified in regulations made under section 36. The term "guardian" is defined at section 40(1) and should be construed in light of the relevant jurisdiction of the applicant.
56. Subsections (3) and (4) provide that certain mandatory conditions set out in section 7 must be applied to visitor permits granted to young people, either individually or as part of a group. This means that young people with a visitor permit are subject to equivalent conditions as a young person residing in Scotland who holds an air weapon certificate.
57. Subsection (5) makes equivalent provision to that in section 7(6) as a young person with a visitor permit will not be able to purchase, hire, accept a gift of or own an air weapon while in Scotland.

***Section 15 – Police and visitor permits: conditions***

58. This section relates to conditions that are applied to police and visitor permits which have been granted under section 12 or section 13 respectively. Conditions will have the same effect as described in section 6. Subsection (1) sets out that all such permits will be subject to any mandatory conditions, which will be specified in regulations issued under section 36. Subsection (2) allows the Chief Constable to attach additional conditions to police and visitor permits as required.
59. 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 required by subsection (1), or any other condition attached as a requirement of this Part (for example, by virtue of the visitor's age (under section 14) and/ or their being part of a group (under section 13)).
60. Subsections (4) and (5) make it an offence for the permit holder to contravene any condition attached to a permit under this section, and set out the penalty. This offence attracts strict liability.

***Section 16 – Police and visitor permits: variation and revocation***

61. This section relates to variation and revocation of police permits or visitor permits which have been granted under section 12 and section 13 respectively.
62. Subsection (1) allows the Chief Constable to vary any details on a police permit or a visitor permit after it has been granted, including adding, amending or removing conditions, except any mandatory condition required by section 15(1), or any conditions which must be attached to a visitor permit by virtue of the visitor's age (under section 14) and/ or their being part of a group (under section 13). Subsection (2) provides that a variation may occur either on the application of the permit holder, or at the Chief Constable's discretion although the Chief Constable is obliged to notify the permit holder of the changes made. Subsection (4) allows the Chief Constable to require a permit holder to relinquish their permit within 21 days, for the purpose of varying it in this way. Guidance is expected to set out that failure to surrender a permit in this way would be grounds for the permit to be revoked.
63. 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 required by section 15(1), or any other condition attached as a requirement of this Part (for example, by virtue of the visitor's age (under section 14) and/ or their being part of a group (under section 13)).
64. Subsection (1)(d) allows the Chief Constable to revoke a police or visitor permit at any time, at the Chief Constable's discretion. The Chief Constable must notify the permit holder of the revocation, and subsection (5) requires this notification to provide at least seven days' notice of revocation, within which time the permit holder must relinquish the revoked permit and any air weapons possessed.
65. Subsections (6) and (7) make it an offence for a permit holder to fail, without reasonable excuse, to relinquish a permit for the purpose of revocation within the timescale specified by the Chief Constable.
66. Subsection (8) provides that when a permit holder appeals against a decision to revoke a permit, the notice period for that revocation is put on hold until the outcome of the appeal is known. However, by virtue of subsection (8)(b) the holder must still surrender the permit and any weapons to the Chief Constable. This mirrors the provision at section 11(7).

### **Section 17 – Event permits**

67. This section provides for air weapon event permits. These are distinct from other permits as they are to be required where an event is to take place at which people may borrow, hire, use or possess an air weapon for a short timescale, without holding individual air weapon certificates. Examples of situations where an event permit might be granted would be a Highland Games with an air weapon shooting component, or a variant of modern biathlon or pentathlon. This section should be read in conjunction with the exemption at paragraph 10 of schedule 1.
68. Subsection (1) sets out that applications for an event permit should be made to the Chief Constable, by a person responsible for the event. A “person” here includes non-natural (e.g. corporate bodies) as well as natural persons. Event permits are granted at the Chief Constable’s discretion, and permit the borrowing, hiring, possessing and/or using of air weapons at a specified time and place, for the purpose of participating in a planned event activity as defined at subsection (7). Subsection (2) adds that the Chief Constable may attach conditions to an event permit as required.
69. Subsection (3) requires that an event permit – or a copy thereof – be displayed at the event to which it pertains. This requirement allows a participant at the event to confirm that a permit is in place and the exemption therefore applies when handling air weapons.
70. Subsections (4) and (5) create the offence of failing to comply with any condition attached to an event permit, or failing to display the permit as required by subsection (3) without a reasonable excuse. In either case the offence is committed by the event organiser named on the permit and attracts strict liability.
71. Subsection (6) states that applications for an event permit cannot be considered unless they comply with the requirements set out in regulations to be made under section 36. 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.

### **Air weapon clubs and recreational shooting facilities**

#### **Section 18 – Approval of air weapon clubs**

72. This section sets out the process by which an air weapon club can be approved by the Chief Constable, to allow its members to benefit from the exemption at paragraph 1 of schedule 1, as well as allowing members to put forward their club membership as evidence that they meet the ‘good reason’ criteria required by section 5(1)(c) for the grant of an individual air weapon certificate.
73. Subsection (1) states that the Chief Constable may, at the Chief Constable’s discretion, approve an air weapon club on receipt of an application from a club. Subsection (2) states that an application for an air weapon club approval cannot be considered unless it complies with the requirements set out in regulations to be made under section 36. 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.
74. Subsection (3) allows the Chief Constable to withdraw a club approval at any time, by giving notice to the club to that effect.
75. Subsection (4) states that all club approvals will be subject to mandatory conditions, which will be specified in regulations issued under section 36. Subsection (5) provides for the Chief Constable to attach other conditions to air weapon club approvals, which may place positive or negative obligations on the club’s secretariat and membership. But, in accordance with subsection (6), the Chief Constable may not attach any conditions which are inconsistent with any mandatory conditions.

### ***Section 19 – Variation of approval***

76. This section allows the Chief Constable to vary any of the details on an air weapon club approval after it has been granted or renewed, including adding, amending or removing conditions on the approval (except the mandatory conditions required by section 18(4)). The Chief Constable may vary an approval at any time, but is obliged to notify the club of the changes made.
77. Subsection (2)(a) separately allows the club 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.
78. 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 18(4)).

### ***Section 20 – Duration of approval***

79. Subsection (1) sets the duration of air weapon club approvals at six years, which is consistent with approvals issued to rifle or muzzle-loading pistol clubs under section 15 of the Firearms (Amendment) Act 1988 (“the 1988 Act”).
80. Subsection (2) provides that an air weapon club approval will remain valid beyond its stated expiry date, provided that the club 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 effect of this subsection is that club members can continue to benefit from the exemption at paragraph 1 of schedule 1 when the original approval expires, provided that renewal is being actively considered by the Chief Constable.
81. Subsection (3) provides the Scottish Ministers with the power to change the duration of air weapon club approvals. The regulations will be subject to the affirmative procedure.

### ***Section 21 – Alignment of club approvals***

82. This section allows air weapon club approvals to be made co-terminous with a rifle club approval issued by the Scottish Ministers under section 15 of the 1988 Act. This allows for both approvals 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 club approvals are granted or renewed for significantly shorter duration. This section does not affect the duration of rifle club approvals.
83. Subsections (1) and (2) allow an air weapon club which already holds a valid rifle club approval to request that the expiry date on an air weapon club approval – if granted or renewed – matches the expiry date on their existing rifle club approval. Because the standard duration for rifle and air weapon club approvals are both set at six years, an air weapon club approval issued in this way will necessarily have a shorter than normal duration when it is first granted.
84. Subsections (3) and (4) allow a club that already holds a live air weapon club approval to request that that approval be renewed before it has run its full six year lifespan, and re-issued on the same date that a new or renewed rifle club approval is granted, so that the expiry dates on both approvals are aligned. This will necessarily mean that the air weapon club approval which was originally paid for on a six year basis will not have lasted for its full duration.
85. References in this section to “rifle club approvals” include clubs approved for the use of small-bore rifles, full-bore rifles and/ or muzzle-loading pistols, all of which are approved under section 15 of the 1988 Act.



### ***Section 22 – Power to enter and inspect club premises***

86. This section empowers the Chief Constable – or a delegated officer not below the rank of inspector – to authorise a police constable or member of police staff to enter and inspect any approved air weapon club premises, other than a private dwelling, to ensure that the requirements in this Part are being complied with. Subsection (3) provides that the inspection should, where possible, take place at a reasonable time, which may be any time that the club is operating including in the evenings or at weekends. Subsections (1)(b) and (2) set out that the police constable or member of police staff can inspect anything on the club premises, including requiring electronic information to be reproduced in a visible and legible form. However inspection should only be of those things for the purpose of ascertaining whether the provisions of the Part or any conditions attached to a club’s approval are being complied with.
87. Subsection (4) requires that the police constable or member of police staff must produce their authorisation if asked before entering a club premises to inspect it in accordance with this section.
88. Subsections (6) and (7) set out the offence of intentionally obstructing a police constable or member of police staff from carrying out their duties when authorised under this section – for example, by refusing them access to the club premises, or by concealing evidence from them.

### ***Section 23 – Requirements for recreational shooting facilities***

89. This section and the exemption in paragraph 12 of schedule 1 set out arrangements for commercial recreational shooting facilities where individuals who do not hold air weapon certificates will be able to borrow or hire air weapons for short durations, for a specific purpose – for example, a miniature rifle range at a funfair.
90. Subsection (1) sets out that the operator of such a facility must hold (or, where the operator is a non-natural person, must ensure that an individual responsible for the management and operation of the facility holds) a valid air weapon certificate granted for this purpose, and must display this certificate (or a copy) at the venue. This requirement allows users of the facility to confirm that a certificate is in place and the exemption in paragraph 12 of schedule 1 therefore applies to them.
91. Subsections (2) and (3) make it an offence for anyone to operate a recreational shooting facility without either holding a valid air weapon certificate or ensuring that an individual responsible for the management and operation of the facility holds one for that purpose, or to fail to display that certificate at the facility without a reasonable excuse. The offences attract strict liability.
92. Subsection (4) defines “recreational shooting facility” for the purposes of the section as a miniature rifle range or a shooting gallery, or a facility for combat games, where air weapons are used and which is run for the purpose of making a profit. Subsection (5) makes it clear that approved air weapon clubs are not subject to the requirements of this section.

## **Transactions involving air weapons and commercial matters**

### ***Section 24 – Restrictions on transactions involving air weapons***

93. Subsection (1) makes it an offence for any person except a Registered Firearms Dealer under section 33 of the 1968 Act to manufacture, sell, transfer, expose for sale or transfer, repair or test an air weapon by way of trade or business, or to possess an air weapon for one of these purposes. This subsection makes analogous provision to that in section 3(1) of the 1968 Act and adds manufacture, repair and test of air weapons to the activities limited to Registered Firearms Dealers. This offence only applies to sales, transfers etc. by way of trade or business, and does not prohibit private sales between



individuals. “Person” here includes non-natural persons (e.g. corporate bodies) as well as natural persons. The offences in this section attract strict liability.

94. Subsection (2)(a), (b) and (d) makes it an offence for anyone to sell or transfer an air weapon (including private sales) without first confirming that the recipient is entitled to have the air weapon by: showing a valid air weapon certificate; demonstrating that the recipient does not need to have a certificate; or, by virtue of being a Registered Firearms Dealer.
95. Subsection (2)(c) specifically allows a Registered Firearms Dealer to sell an air weapon to someone without requiring to see an air weapon certificate or evidence that an exemption applies, provided that the air weapon in question will be sent out of Great Britain, or to a Registered Firearms Dealer in England or Wales where the buyer can collect it, without first coming into the possession of the purchaser. Where the purchaser is an individual (as opposed to, for example, a corporate body) the individual must also be aged 18 or over for this paragraph to apply. For example, an overseas visitor to Scotland who does not hold a visitor permit allowing purchase might have a Registered Firearms Dealer export an air weapon directly to their home country.
96. Subsection (3) broadly reflects subsection (2), and makes it an offence to manufacture, repair or test an air weapon for anyone without confirming that they hold a valid air weapon certificate or are a Registered Firearms Dealer or do not need to have a certificate.
97. Subsection (4) sets out the maximum penalty for an offence committed under this section.

### ***Section 25 – Requirement for commercial sales of air weapons to be in person***

98. This section requires that commercial sales of air weapons are done face-to-face, and is intended to make analogous provision to section 32 of the Violent Crime Reduction Act 2006. Subsection (1) sets out that this section applies to all sales by way of trade or business except those between two Registered Firearms Dealers, and to those where the sale is concluded outside Great Britain (for example mail order sales).
99. Subsection (2) requires that, at the point at which possession of the air weapon(s) is/are transferred to the purchaser, both the purchaser and the seller – or the seller’s representative – must be physically present, otherwise the seller commits an offence. Subsection (3) sets out different categories of person who may act as a representative of the seller for the purposes of this section. A “person” here means a non-natural (e.g. corporate bodies) as well as a natural person. This offence attracts strict liability.

## **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).

## **Offences**

### ***Section 30 – Failure to keep air weapons secure or to report loss to police***

111. This section makes it an offence for a person in possession of an air weapon to fail to take reasonable precautions for its safe custody, or to fail to report the loss or theft of the air weapon to the Chief Constable as soon as reasonably practicable (this allows for any reasonable delay as a result of, for example, a person being ill in hospital or temporarily unaware of the loss or theft due to being on holiday). These offences apply to any person who possesses an air weapon, including natural and non-natural persons. The offences attract strict liability.

### ***Section 31 – False statements, certificates and permits***

112. This section creates two offences around providing false information in order to obtain an air weapon certificate, permit, or approval, or producing a falsified or improperly altered certificate or other information in order to obtain the repair or testing of an air weapon.
113. Subsection (1) makes it an offence to knowingly or recklessly make a statement which contains false information in order to procure an air weapon certificate, police permit, visitor permit, event permit, or club approval. This could include, for example, providing a false name, or declining to disclose a criminal history when asked. This offence may also be committed by the person verifying the application, if the verifier knew that the information was incorrect or was reckless in verifying false information.
114. Subsection (2) makes it an offence to produce a false or improperly altered air weapon certificate, police permit or visitor permit, or to provide any other false information, in order to purchase or acquire an air weapon, or to have one repaired or tested. This could include, for example, impersonating an air weapon certificate holder, or amending the details on an expired certificate so that it appeared to still be live.

### ***Section 32 – Time limit for offences***

115. This section provides that anyone committing a summary-only air weapon offence could have proceedings brought against them up to three years after that offence has been committed. Section 136 of the Criminal Procedure (Scotland) Act 1995 normally sets a time limit of six months after the offence has been committed. This only applies to summary-only offences, which is all of the offences in this Part except the ones at section 2 and section 24.

### ***Section 33 – Offences by bodies corporate etc.***

116. This section provides for cases where there may be an offence committed by a non-natural person such as a body corporate, partnership or unincorporated association (e.g. an auctioneer, carrier firm, operator of a recreational shooting facility etc.). Subsection (2) states that both the individual who committed the specific offence, as well as the corporate entity on whose behalf the criminal act was done, can be proceeded against for the purpose of that offence.

## **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.

### ***Part 2 – Alcohol Licensing***

133. The provisions in this Part amend the licensing regime for alcohol licensing within the Licensing (Scotland) Act 2005 (“the 2005 Act”).



## **Licensing objectives**

### ***Section 41 – Licensing objectives: protecting young persons from harm***

134. **Section 41** amends the licensing objective at section 4(1)(e) of the 2005 Act to include young persons. The term young person is defined at section 147 of the 2005 Act and means a person aged 16 or 17. Under the legislation, Boards must ensure that their decision making is underpinned by the five licensing objectives, including the existing objective ‘to protect children from harm’. This amendment expands this requirement so that Boards must also consider protecting ‘young persons’ from harm.

## **Statements of licensing policy**

### ***Section 42 – Statements of licensing policy: licensing policy periods***

135. **Section 42** amends section 6 of the 2005 Act in relation to statements of licensing policy. A statement of licensing policy will generally have effect from 18 months after a local government election until 18 months after the next local government election. For example, the next local government elections are scheduled for May 2017 and May 2021 with the result that, in the usual case, the statements of licensing policy would last November 2018 until November 2022.
136. It is possible for the Licensing Board to decide that a statement of licensing policy should come into effect earlier than it otherwise would, and if they do so, then they must publish the licensing policy statement and publicise the date on which the licensing policy period is to begin.

## **Fit and proper person test**

137. The Act introduces a ‘fit and proper person test’ into the processes for obtaining, reviewing transferring and potentially revoking licences under the 2005 Act by virtue of sections 43 to 48. In each of these sections, the fit and proper test is considered with regard to the licensing objectives. It also makes some associated changes to the handling of information relating to relevant offences and foreign offences.

### ***Section 43 – Premises licence application: ground for refusal***

138. **Section 43** amends section 22 of the 2005 Act with regard to objections and representations in relation to premises licences applications. Section 43 clarifies that an objection to or representation concerning a premises licence application may include any information that the person submitting the objection or representation considers relevant to consideration of any of the grounds for refusal, including information in relation to the applicant, a connected person in relation to the applicant, or any person who would be an interested party in relation to the premises if the application were to be granted.
139. **Section 43** also amends section 23 of the 2005 Act in relation to the grounds of refusal for a premises licence application. Section 43 provides that it is a ground for refusal at a hearing when determining premises licence applications in section 23 of the 2005 Act, if the Licensing Board considers that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a premises licence. An amendment is also made to section 23(8) so that, where the Licensing Board refuses a licence on the fit and proper person ground, the Board must state the licensing objective that the ground relates to.
140. **Section 43** also amends section 23(6) of the 2005 Act in relation to determination of premises licence applications. Section 43 clarifies that any conviction notice supplied by the Chief Constable and any antisocial behaviour report by the chief constable supplied to the Board, is relevant to the specific consideration of the new fit and proper



test as well as to consideration of the existing ground for refusal that the granting of the application would be inconsistent with one or more of the licensing objectives.

***Section 44 – Application to transfer premises licence: ground for refusal***

141. **Section 44** amends section 33 of the 2005 Act in relation to grounds for refusal for an application to transfer a premises licence. Section 44 provides that it is a ground for refusal at a hearing when determining applications to transfer premises licences under section 33 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence.
142. This section also expands the information that can be provided to the Licensing Board by the Chief Constable upon receiving notice of a transfer of a premises licence. This includes information in relation to the transferee, a connected person in relation to the licence holder or an interested party in relation to the licensed premises, if the application for the transfer were to be granted. If information is provided, the Licensing Board must hold a hearing to determine the application.

***Section 45 – Ground for review of premises licence***

143. **Section 45** makes amendments with regards to review of a premises licence (both on an application by a third party for a review and on a proposal for a review initiated by the Licensing Board itself). Section 45 provides that it is a ground for review of a premises licence, if having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence. If a review is based on this ground, the review application or proposal must include a summary of the information on which the applicant or the Board based its view that the alleged ground applies.
144. **Section 45** clarifies that any person who makes a premises licence review application may include in the application any information that the person considers relevant to the Licensing Board's consideration of the alleged ground of review, including information related to the licence holder, connected persons in relation to the licence holder or an interested party in relation to the licensed premises.
145. **Section 45** also amends section 37 of the 2005 Act in relation to a review of a premises licence on the Licensing Board's initiative. Section 45 clarifies that the Licensing Board's review proposal may include information that the Board considers relevant to its consideration of the alleged ground of review, in relation to the licence holder, connected persons in relation to the licence holder or interested parties in relation to the licensed premises.
146. If at the review hearing the Licensing Board is satisfied that the fit and proper person ground for review is established, the Board must revoke the licence. Thereafter the Board must provide notification of its determination to the licence holder and where the decision is taken in connection with a premises licence review application, the applicant.
147. **Section 45** also amends section 39 of the 2005 Act to provide that a revocation of a licence will take effect 28 days after the Board makes its decision. This provides a short period of grace in which action may be taken to render the premises licence acceptable to the Licensing Board, for example by varying the licence to remove a premises manager or by transferring the premises licence to a new licence holder.
148. **Section 45** also inserts a new section 39B into the 2005 Act, which provides that, where a Licensing Board has revoked a premises licence on the grounds that the licence holder is not a fit and proper person, then the Board must recall the revocation if a relevant application is made within the 28 day period, and the Board ultimately grants the relevant application. The period of 28 days may be extended by the Board pending determination of a relevant application. Such relevant applications would be

applications for transfer of the licence, or for a premises licence variation that the Board considers would remove the ground on which the licence had been revoked. A decision to revoke the licence is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff principal.

#### ***Section 46 - Personal licence applications and renewals: ground for refusal***

149. **Section 46** makes amendments to sections 73, 74 and 78 of the 2005 Act in relation to personal licence applications and renewals. Section 46 provides that it is a ground for refusal at a hearing when determining a personal licence application or personal licence renewal application under section 74 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence.
150. Subsection (2) provides that on giving a notice under subsection (3)(a) or (b) of section 73 of the 2005 Act, the Chief Constable may also provide to the Licensing Board any information in relation to the applicant that the Chief Constable considers may be relevant to consideration of the application by the Board.
151. **Section 46** also inserts a new section 73A into the 2005 Act to provide that where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board's area. A Licensing Standards Officer may, within 21 days of the date of receipt of this notice, respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration of the application by the Board. If information is supplied to the Board by the Chief Constable or by a Licensing Standards Officer, the Board may hold a hearing.

#### ***Section 47 – Personal licence holders: procedure on receipt of notice of conviction***

152. Section 83 of the 2005 Act provides the procedure that a Licensing Board must follow where they receive notice of a conviction (or otherwise become aware of a conviction) of a personal licence holder. The Board must notify the Chief Constable of the conviction and, where the existence of the conviction is confirmed by the Chief Constable, the Board must hold a hearing to review the licence.
153. **Section 47** of the Act amends section 83 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

#### ***Section 48 – Personal licence holders: conduct inconsistent with the licensing objectives***

154. Section 84 of the 2005 Act provides the procedure that a Licensing Board must follow when, in the course of reviewing a premises licence under section 38 of the 2005 Act, they find that a personal licence holder was acting on the premises in a manner not consistent with the licensing objectives. Where the Licensing Board makes such a finding a hearing must be held where the Board can revoke, suspend or endorse the licence if they believe it necessary to do so.
155. **Section 48** of the Act amends section 84 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

## **Transfer of premises licences**

### ***Section 49 – Transfer of premises licences***

156. **Section 49** amends the transfer provisions at section 33 of the 2005 Act to provide that it is the transferee that commences the transfer procedure in all circumstances. This also includes amendments to the procedures for the transfer of premises licences. Section 33A is inserted into the 2005 Act to make further provision in relation to the new transfer procedure. Section 34 (transfer on application of person other than the licence holder) of the 2005 Act is repealed as it is no longer necessary in light of the amendments to section 33. The appeal provisions at Part 1 of schedule 5 to the 2005 Act are also amended.
157. **Section 49** amends section 33 of the 2005 Act to allow for any person, other than an individual under 18, to apply to the appropriate Licensing Board for the transfer of a premises licence to that person.
158. Subsection (2) inserts a new section 33(1A) into the 2005 Act to provide that the application must specify the date on which the transfer is to take effect, be accompanied by the original premises licence, or a statement of reasons for failure to produce the licence, and a written statement signed by the current holder of the premises licence consenting to the transfer to the transferee, or if that is not practical a statement of the reasons for failure to provide the written consent of the current holder of the premises licence. It is envisaged that the statement of reasons for failure to provide written consent could cover instances where the current premises licence holder is not available, such as instances of death, insolvency, dissolution and incapacity.
159. Subsection (2) also provides that the current requirement to provide the Chief Constable with a copy of the application in section 33(4) of the 2005 Act is amended, such that no copy need be provided if the Board refuse the application under section 33(8A).
160. Subsection (2) also inserts section 33(8)(za) into the 2005 Act. The effect is that, if the written consent of the current licence holder is provided and the other requirements of section 38(8) of the 2005 Act are met (i.e. the transferee has no relevant conviction and there is no recommendation from the chief constable for refusal), then the transfer application must be granted. Thereafter, a new subsection 33(8A) is inserted providing that, where an application is not accompanied by a consent statement from the original licence holder, it must be refused unless the Board agrees to dispense with the requirement for a consent statement under the new section 33A(4).
161. Subsection (4) inserts a new section 33A into the 2005 Act, which make further provision for the procedures to be followed for applications to transfer a premises licence. Subsection (2) of the new section 33A requires the Board to take all reasonable steps to notify the original premises licence holder of the application. It is envisaged that this would allow the original premises licence holder to flag up where the holder's consent had been faked, or the holder would otherwise not be in agreement with the transfer.
162. Where a notice of consent by the original premises licence holder has not been provided, subsection (4) of the new section 33A provides that the Board may dispense with the requirement if it is satisfied that the transferee has taken all reasonable steps to contact the original premises licence holder to obtain written consent, but has received no response. Where the Board decides not to dispense with the requirement for a letter of consent, subsection (5) of the new section 33A provides that it must notify the transferee and provide its reasons for that decision.
163. Subsection (6) of the new section 33A provides that where it has been decided to dispense with the requirement for a letter of consent, the Board must hold a hearing to determine the transfer application.

164. Subsection (7) of the new section 33A provides that, where an application is granted, the transfer is to take place on the date specified by the transferee, or where this date has passed, such date as the Board may determine.
165. [Section 49\(6\)](#) of the Act amends Part 1 of schedule 5 to the 2005 Act, on appeals to the sheriff principal, to reflect the new transfer procedure. The right of appeal against a refusal to grant a premises transfer application is amended by subsection (6)(b) to extend to either the applicant (transferee) or the premises licence holder. Subsection (6)(c) provides that the right of appeal against the granting of a premises licence transfer application is provided to the original holder of the premises licence. Subsection (6)(c) also provides that the right of appeal against the Board's refusal to dispense with the requirement for a consent statement, as per the new section 33A(4), is provided to the applicant (transferee) for a premises licence transfer.

### **Relevant offences and foreign offences**

#### ***Section 50 – Premises licences: procedure in relation to relevant offences or foreign offences***

166. [Section 50](#) amends section 44 of the 2005 Act so that when a Licensing Board receives a notice of conviction in relation to a premises licence holder (or a person connected to the premises licence holder) they must initiate a review of the premises licence and hold a hearing only where the Chief Constable has made a recommendation under section 44(5), namely that having regard to the conviction specified in the notice, it is necessary for the purposes of any of the licensing objectives that the premises licence should be varied, suspended or revoked. Where the Chief Constable has not made such a recommendation then the Board may either make a premises licence review proposal, (and hold a hearing), or decide to take no further action in relation to the conviction.

#### ***Section 51 – Personal licences: procedure in relation to relevant offences or foreign offences***

167. [Section 51](#) amends section 83 of the 2005 Act so that when a Licensing Board receives notice of a conviction in relation to a personal licence they must hold a hearing only where the Chief Constable has made a recommendation under section 83(5), namely that having regard to the conviction specified in the notice it is necessary for the purposes of any of the licensing objectives that personal licence should be varied, suspended or revoked. Where the Chief Constable has not made such a recommendation then the Board may either hold a hearing, or decide to take no further action in relation to the conviction.

#### ***Section 52 – Relevant offences and foreign offences: spent convictions***

168. [Section 52](#) repeals section 129(4) of the 2005 Act which prohibits any consideration of a conviction for a relevant offence or foreign offence if it is spent for the purposes of the Rehabilitation of Offenders Act 1974. This amendment will make it possible for spent convictions to be brought to and considered by Boards as part of their decision-making.

### **Supply of alcohol to a child or young person**

#### ***Section 53 – Offences of supplying alcohol to a child or young person***

169. Subsection (1) of this provision inserts section 104A into the 2005 Act making it a criminal offence for a person, other than a child or young person, to buy or attempt to buy alcohol for or on behalf of a child or to give or otherwise make available alcohol to a child.
170. It also inserts a new section 104B which makes it a criminal offence for a person, other than a child or young person, to buy, attempt to buy, give or otherwise make alcohol

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

available, to a young person. “Young person” is defined in section 147 of the 2005 Act as a person who is 16 or 17 years of age.

171. It is not an offence under either section however to buy alcohol for, or give alcohol to, a child or young person, a) for consumption other than in a public place or b) for the purposes of religious worship.
172. In addition, it is not an offence under section 104B – if beer, wine, cider or perry is bought, given or made available to the young person along with a meal to be consumed in relevant premises.
173. These exceptions do not apply to the offences of buying alcohol on behalf of a child or young person.
174. There is also a defence to the section 104B offence if the person who bought or gave the alcohol did not know the young person was under 18 years.
175. A person convicted of either offence may receive a fine, not exceeding level 5 on the standard scale, imprisonment for up to three months, or both.
176. In both sections, “public place” is defined as relevant premises, any place to which public have access to at the relevant time (on payment or not), and any place to which the public do not have access but which the child or young person unlawfully gains access to. The term “relevant premises” is defined in section 122 of the 2005 Act.
177. Subsection (2) repeals subsections (4), (5) and (7) of section 105 of the 2005 Act (and consequentially renames that section), as the substance of those subsections is replicated in new sections 104A and 104B.

## **Miscellaneous**

### ***Section 54 – Meaning of “alcohol”: inclusion of angostura bitters***

178. This provision amends section 2 of the 2005 Act to include angostura bitters within the definition of “alcohol”. Angostura bitters were exempt from Excise and were excluded from the 2005 Act definition of alcohol. However, they are now liable for Excise duty and have been brought into the definition of alcohol.

### ***Section 55 – Overprovision***

179. **Section 55** amends section 7 of the 2005 Act which deals with the duty of Licensing Boards to assess overprovision, and provides that where a Board determines the “localities” for the purposes of the Act then it may determine that the whole of the Board’s area is a single locality.
180. **Section 7** is further amended so that the Licensing Board may have regard to such matters as the Board considers appropriate, including the licensed hours of licensed premises in the locality, when assessing if there is overprovision.
181. Amendments are also made to allow these wider factors to be taken into account at:
  - section 23(5)(e) of the 2005 Act (refusal of a premises licence on grounds of overprovision), and
  - section 30(5)(d) of the 2005 Act (refusal to vary premises licence on grounds of overprovision).
182. These amendments remove specific reference to numbers and capacity when considering whether there would be overprovision as a ground for refusal, when a Board is determining a premises licence application or an application for a premises licence variation.



183. Removing these references means that Licensing Boards can refuse an application if they consider that there would be overprovision if the application was granted. Their consideration of overprovision would not be confined to considering only numbers and capacity but could take account of other factors too.

***Section 56 – Duties of Licensing Boards to produce annual reports***

184. This provision inserts sections 9A and 9B into the 2005 Act, requiring Licensing Boards to produce an annual report on the exercise of their functions, summary of decisions made by the Board and information about the number of licences held under the Act.; and an annual financial report on their alcohol licensing activities.
185. Section 9A(1), (2) place a duty on Licensing Boards to prepare and publish an annual report on the exercise of their functions no later than three months after the end of the financial year. This report should contain a statement explaining how the Board has had regard to the licensing objectives, their licensing policy statement, and any supplementary licensing policy statement in the exercise of their functions under the 2005 Act during the financial year.
186. Section 9A(3) provides that a report under this section may include such other information about the exercise of the Licensing Board’s functions under the 2005 Act as the Board consider appropriate.
187. Section 9A(4) provides that at the request of the Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section.
188. Section 9A(5) provides that a Licensing Board may, if they consider it appropriate, prepare and publish a combined report containing the information required under section 9A and also section 9B (Annual financial report). A combined report must be published not later than 3 months after the end of the financial year in question.
189. Section 9A(6) gives the Scottish Ministers an order making power to make further provision about reports under this section, including provision about the form and content of reports; and the publication of reports.
190. Section 9B(1), (2) and (3) place a duty on Licensing Boards to prepare and publish an annual financial report no later than three months after the end of the financial year. It should contain details of relevant income received by the Licensing Board during the financial year; details of relevant expenditure incurred in respect of the Board’s area during the year; and an explanation of how the amounts in the report were calculated. The Board is required to break down its figures into the component sources of relevant income and expenditure. Relevant income for example would be premises licence application fees, personal licence fees or fees charged in respect of an application to vary a premises licence and relevant expenditure would for example be the salary cost of a Licensing Standards Officer in respect of his duties under the alcohol licensing regime or the costs for the Board in administering the alcohol licensing regime
191. Section 9B(4) provides that at the request of the Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section. Subsection (5) gives the Scottish Ministers an order making power to make further provision about reports under this section, including provision about the form and content of reports; further details on what constitutes relevant income and relevant expenditure; and the publication of reports.

***Section 57 – Licensing Standards Officers: general function in relation to personal licences***

192. **Section 57** amends section 14(1) of the 2005 Act which deals with general functions of Licensing Standards Officers. This provision makes it clear that Licensing Standards



Officers have a new general function of being able to provide information to Licensing Boards about the conduct of personal licence holders or applicants for a personal licence which is inconsistent with the licensing objectives.

### ***Section 58 – Powers of Licensing Standards Officers***

193. **Section 58** inserts section 84B into the 2005 Act to provide Licensing Standards Officers with a specific power to report conduct of a personal licence holder, who is or was working in licensed premises in their area, which is inconsistent with the licensing objectives, to the relevant Licensing Board.
194. Where a Licensing Board receives such a report from a Licensing Standards Officer the Board may hold a hearing, but is under no obligation to do so.

### ***Section 59 – Interested parties***

195. This provision amends section 40A of the 2005 Act (connected persons and interested parties: licence holder's duty to notify changes,) to remove the references to interested parties, including within the section title. It also removes a requirement to notify changes of interested parties. The licence holder now only requires to provide notification in respect of connected persons.
196. It also amends the definition of an interested party at section 147(5) of the 2005 Act by permitting that a premises manager can be an interested party. This has the effect of allowing the premises manager to be subject to vicarious liability for offences under s141B.

### ***Section 60 – Personal licences: grant, duration and renewal***

197. This provision amends section 74 of the 2005 Act regarding the determination of a personal licence application. Section 74(3) provides conditions which must be met before an application can be granted. This provision amends section 74(3)(c) which currently states a personal licence cannot be granted if one has been revoked in the last five years. This provision amends section 74(3)(c) to provide that the provision is not applicable to persons who have had a personal licence revoked under section 87(3) of the 2005 Act. Accordingly, if a personal licence is revoked under section 87(3) the person will no longer have to wait for five years to elapse before applying for a new personal licence.
198. This provision also amends section 77(8) of the 2005 Act to increase the length of time prior to the expiry date of a personal licence that the relevant Licensing Board must give notice to the licence holder that the licence will cease to have effect on the expiry date unless renewed. The period of time is increased to nine months before the expiry date of a personal licence.
199. The provision amends section 78 of the 2005 Act to increase the length of the time period in which a personal licence holder may apply to the relevant Licensing Board for renewal of the licence, as well as to increase the length of the period provided for the Licensing Board's consideration of this application. The period of time to submit an application under section 78(1) is now within the nine months period beginning 12 months before the expiry date of the licence.
200. The provision also amends Section 78(5) of the 2005 Act to remove the requirement that an applicant for renewal of a personal licence must not already hold a personal licence.
201. Finally section 84A of the 2005 Act is amended to provide that if a Chief Constable reports conduct inconsistent with the licensing objectives to the relevant Licensing Board, the whole of section 84(8) now applies in relation to an order made under subsection (2) of this section as opposed to only section 84(8)(a). This means that the Board making the order must now notify the order to the licence holder, the Board who

gave the original notice and the Board who issued the licence, if these are different Boards.

### ***Section 61 – Processing and deemed grant of applications***

202. **Section 61** inserts a requirement for Licensing Boards to issue an acknowledgement for relevant applications, where the application meets the requirements. The requirements for an application form are those imposed under the 2005 Act or any other relevant enactment in respect of the type of application.
203. The acknowledgement must amongst other things inform the applicant of the timescale within which the application must be decided. The acknowledgement must be issued as soon as is practicable.
204. Where an application does not meet the requirements, the Licensing Board must give notice to the applicant that they are treating the application as incomplete and as not having been made, along with their reasons.
205. A Licensing Board must determine accepted applications within nine months of the date of receipt, as recorded in the letter of acknowledgement. This period of nine months can be extended, once, by applying to the sheriff. The sheriff may extend the period for determining the application only if it appears to the sheriff that there is a good reason for doing so. The applicant is entitled to be a party to proceedings to consider such an extension. It is not intended that Boards should needlessly delay consideration because of this time limit.
206. The Licensing Board is not required to issue an acknowledgement where it would clearly not be appropriate to do so, however this would not alter the requirement to determine an application within nine months unless an extension has been granted by the sheriff. A Board may for example decide to grant a minor variation under subsection 30(2) of the 2005 Act without first issuing an acknowledgement.
207. If the Licensing Board fails to determine the application in this period then the licence will be deemed to have been granted and the Licensing Board must issue the licence to the applicant as soon as practicable. The Licensing Board must apply the relevant mandatory conditions, under schedule 3, or 4, including, where applicable, the Late Opening Premises Conditions, as set out in The Licensing Conditions (Late Opening Premises)(Scotland) Regulations 2007, but at time of issue, may not apply pool conditions or local conditions to a licence granted in this way.

### ***Section 62 – Form etc. of communications under the 2005 Act***

208. **Section 62** expands the order making power provided at section 134 of the 2005 Act in relation to the form etc. of applications, proposals and notices to also include other communications. This means, for example, that the Scottish Ministers may make regulations expressly facilitating the use of email or other internet based systems for any type of application, notice, proposal or communication required under the 2005 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. **Sections 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.

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

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.
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.

## **Part 4 – General**

### ***Section 84 – Interpretation***

261. **Section 84** defines various expressions used in the Act.

### ***Section 85 – Regulations***

262. **Section 85** provides procedural requirements for regulations made under the Act.

### ***Section 86 – Ancillary provision***

263. **Section 86** allows the Scottish Ministers to make ancillary provision in statutory instruments in consequence of this Act. This power will, for example, be used to make transitional provision and any consequential modifications that may be required.

### ***Section 87 – Minor and consequential amendments and repeals***

264. **Section 87** introduces schedule 2 of the Act, which contains minor amendments and amendments and repeals consequential on the provisions of the Act.

### ***Section 88 – Commencement***

265. **Section 88** provides that the provisions of the Act (except those which come into force at the beginning of the day following the day on which the Act receives Royal Assent) will come into force on a date or dates determined by Order made by Ministers.

### ***Section 89 – Short title***

266. **Section 89** gives the short title of the Act.

### ***Schedule 1: Exemptions***

#### ***Paragraph 1 – Approved air weapon clubs***

267. This paragraph exempts members of an air weapon club approved by the Chief Constable under section 18 from the requirement to hold an air weapon certificate, for the purpose of possessing or using an air weapon for target shooting at that club. The air weapon in question may be owned by the club and held on an air weapon certificate issued to the club secretary, or borrowed from elsewhere (for example another club member who holds their own air weapon certificate).
268. Sub-paragraph (b)(i) sets out that this exemption applies while the member is target shooting at other approved air weapon clubs, or at an event or competition, provided that the shooting is in connection with their club membership. Sub-paragraph (b)(ii) also allows possession and use of an air weapon in connection with club target shooting, for example to allow a club member to transport an air weapon owned by the club between shooting venues.
269. Sub-paragraph (c) requires that, where an air weapon club member is aged below 14, they must be supervised by another club member aged 21 or over for this exemption to apply. There is no lower age limit to the application of this exemption.

#### ***Paragraph 2 – Registered firearms dealers and their employees***

270. This paragraph exempts firearms dealers who are registered with the Chief Constable under section 33 of the 1968 Act from requiring to hold an air weapon certificate when carrying out their business.
271. Sub-paragraph (1)(a) extends this exemption to the Registered Firearms Dealer's employees, and sub-paragraph (2) allows this exemption to apply anywhere (i.e. not just at the dealer's usual place of business).
272. Sub-paragraphs (3) and (4) allow for an individual to borrow an air weapon from a Registered Firearms Dealer and use it on land the dealer occupies provided the individual is supervised by the dealer or an employee of the dealer. Where the individual is under 14 then the supervisor must be aged 21 or over.

***Paragraph 3 – Auctioneers***

273. This paragraph exempts auctioneers and their employees from requiring to hold an air weapon certificate when carrying out their business. This exemption only allows the possession, acquisition and purchase of air weapons, not their use.
274. Sub-paragraph (2) extends this exemption to allow an auctioneer (who is not a Registered Firearms Dealer) to sell an air weapon by way of trade or business without committing the offence at section 24, provided that the auctioneer holds a police permit issued under section 12.

***Paragraph 4 - Carriers and warehouse keepers***

275. This paragraph exempts carriers and warehouse keepers, and their employees, from requiring to hold an air weapon certificate when carrying out their business. This exemption only allows the possession of air weapons, not their use, acquisition or purchase.

***Paragraph 5 – Artistic performers***

276. This paragraph allows an individual taking part in a theatrical performance, a rehearsal, or a film production – as defined by sub-paragraph (2) – to possess and use an air weapon without holding an air weapon certificate. This exemption only applies to the performer involved, and only for the duration of the performance. This exemption does not permit purchase or acquisition of an air weapon.

***Paragraph 6 – Cadet corps***

277. This paragraph exempts members of a cadet corps approved under section 54(5)(b) of the 1968 Act, and their instructors, from requiring to hold an air weapon certificate for the purposes of drilling and target shooting with air weapons.

***Paragraph 7 – Bodies corporate etc.***

278. This paragraph exempts corporate bodies from the requirement to hold an air weapon certificate for the purposes of possessing, purchasing or acquiring an air weapon provided that a natural person who is an officer of the body listed in sub-paragraph (2) holds an air weapon certificate (in their capacity as such an officer).

***Paragraph 8 – Holders of police permits***

279. This paragraph sets out the specific exemption that applies to a holder of a permit issued under section 12. Sub-paragraph (2) extends this exemption to allow a permit holder to sell an air weapon by way of trade or business without committing the offence at section 24.

***Paragraph 9 – Holders of visitor permits***

280. This paragraph sets out the specific exemption that applies to a holder of a permit issued under section 13.

***Paragraph 10 – Authorised events***

281. This paragraph sets out the specific exemption that applies to attendees at an event covered by a permit issued under section 17. Sub-paragraph (1)(b) specifies that the attendee must be using the air weapon to engage in an activity at the event for the exemption to apply. Use of an air weapon at an event when not engaging in event activities is therefore not exempted from the section 2(1) offence.

***Paragraph 11 – Supervised use of air weapons on private land***

282. This paragraph allows a person without an air weapon certificate to borrow an air weapon from an individual who holds a valid air weapon certificate, and to possess and use it while on private land and under the supervision of the certificate holder, or their employee. Any use must be in line with the conditions attached to the relevant air weapon certificate.
283. Sub-paragraph (2)(d) provides that if the borrower is younger than 14, then the supervisor must be aged 21 or over. There is no lower age limit to the application of this exemption.

***Paragraph 12 – Use of air weapons at recreational shooting facilities***

284. This paragraph sets out the specific exemption that applies to participants at a commercial recreational shooting facility which complies with the requirements at section 23. Sub-paragraph (1)(b) specifies that this exemption only applies while the user is on site – thus they cannot remove air weapons from the premises. Sub-paragraph (2) extends this exemption to apply to employees working at the recreational shooting facility.

***Paragraph 13 - Museums***

285. This exemption relates to museums which hold air weapons as part of their collection. Sub-paragraph (1)(b) sets out that, for this exemption to apply, the museum must either hold a museum firearms licence granted under the Schedule to the 1988 Act (which will be the case if it already holds section 1 or 2 firearms), or, if the only firearms held by the museum are air weapons to which section 1 of the 1968 Act does not apply, a responsible person as defined by sub-paragraph (2) must hold an air weapon certificate.
286. Provided that either of these requirements is met the employees of the museum are exempted from requiring individual air weapon certificates to possess, purchase or acquire air weapons in the course of their duties at the museum.

***Paragraph 14 - Air weapons on ships***

287. This exemption applies to the possession and use of air weapons while on board a ship, provided that the air weapons are part of the ship's equipment. This might cover, for example, air weapons for pest control, or an air weapon range on a cruise liner. An air weapon certificate or police permit would be required to remove an air weapon from the ship, or to purchase or acquire new air weapons for it.

***Paragraph 15 – Purchase of air weapons for delivery outwith Scotland***

288. This paragraph sets out the specific exemption that allows someone who does not hold an air weapon certificate to purchase an air weapon in the manner set out in section 24(2)(c), without committing the offence under section 2(1) of purchasing an air weapon without a valid air weapon certificate.

***Paragraph 16 – Loaning of air weapons for exempted purposes***

289. This exemption allows the holder of an air weapon certificate (or a person who does not hold a certificate but is entitled to possess or use an air weapon without committing an offence by virtue of another exemption) to lend or let on hire an air weapon to another individual who does not hold an air weapon certificate, without committing an offence under section 24(1) or (2). Section 24 otherwise limits the lending or letting on hire of air weapons by way of trade or business (or the possession of air weapons for such purposes) to Registered Firearms Dealers. This exemption only applies provided that the recipient of the loaned or hired air weapon will possess or use the air weapon in accordance with one of the exemptions in schedule 1. For example, this would allow



an operator of a recreational shooting facility to lend or let on hire air weapons for the purposes of the exemption at paragraph 12, or a theatrical armourer to lend or let on hire air weapons for purposes of the exemption at paragraph 5.

***Paragraph 17 – Public servants carrying out official duties***

290. This paragraph exempts various categories of public servants listed at sub-paragraph (3) from requiring an air weapon certificate. This exemption relates to members of the police or armed forces who may be required to use or take possession of air weapons in connection with their duties (for example, a police constable seizing an air weapon, or a police forensic examiner testing its muzzle energy). This exemption only applies while the individual is carrying out their role as a public servant, and only when they are required to handle an air weapon in the fulfilment of their duties.

***Paragraph 18 – Holders of certificates or permits with conditions***

291. This paragraph allows an air weapon certificate, visitor or police permit holder to make use of the exemptions in the schedule notwithstanding any condition which may be attached to the certificate or permit. This means that a person who holds, for example, a visitor permit that permits use and possession, can take advantage of the exemption in paragraph 15 to purchase an air weapon for delivery to that person's home country. Or, an air weapon certificate holder whose certificate has a condition limiting them to shooting for pest control purposes could separately be a member of an approved air weapon club, and shoot at the club under the exemption in paragraph 1.

***Schedule 2: Minor and Consequential Amendments and Repeals***

**Part 1 – Amendments and Repeals Relating to Part 1**

***Paragraph 1 – Firearms Act 1968 (c.27)***

292. This paragraph amends various provisions of the Firearms Act 1968 as it applies in Scotland. Sub-paragraph (2) repeals the offence limiting sales of air weapons to Registered Firearms Dealers, as this requirement is recreated by section 24 of the Act. Sub-paragraph (8)(b) also extends the definition of Firearms Dealer to include anyone who manufactures, repairs or tests air weapons by way of trade or business. This brings the definition of Firearms Dealers in Scotland in line with the commercial offences being introduced at section 24 of the Act. Sub-paragraph (9) amends Schedule 4 to the 1968 Act so that Registered Firearms Dealers in Scotland are required to record the full range of air weapon transactions (sale, transfer, manufacture, repair or test) in their register of transactions, in the same way as for more powerful firearms.
293. Sub-paragraphs (3) to (8) amend and repeal various provisions relating to use of air weapons by young people, as these provisions are superseded by the creation of an air weapons licensing regime. Sub-paragraph (10) amends the table of offences and penalties in Schedule 6 to the 1968 Act accordingly.

***Paragraph 2 – Criminal Procedure (Scotland) Act 1995 (c.46)***

294. This paragraph inserts a new provision in Schedule 9 to the Criminal Procedure (Scotland) Act 1995, which lists a number of statutory offences in relation to which certain routine matters may be proved by certificate (rather than by oral evidence at trial). It allows a constable or a person employed by the Scottish Police Authority to certify that an accused individual held, or (as the case may be) did not hold, an air weapon certificate at the time of an alleged offence under Part 1, and for this to be used as sufficient evidence of that fact in criminal proceedings relating to the offence.

**Paragraph 3 – Violent Crime Reduction Act 2006 (c.38)**

295. This paragraph repeals section 32 of the Violent Crime Reduction Act 2006 in Scotland, which is restated by section 25 of the Act.

**Part 2 – Amendments Relating to Part 2**

**Paragraph 4 – Licensing (Scotland) Act 2005**

296. Paragraph 4 deals with minor amendments to the 2005 Act. For example, it inserts reference to section 24A of the 2005 Act (power to request antisocial behaviour report) into section 29(4) of the 2005 Act (application to vary premises licence). A Licensing Board, when determining an application for a ‘major’ variation to a premises licence, will now be able to request that a chief constable provides it with a report on all cases, complaints or representations made regarding antisocial behaviour on or in the vicinity of the premises in question.
297. This paragraph also removes a spent reference in section 57(5) of the 2005 Act (notification of application to chief constable and Licensing Standards officer) to the previously repealed section 57(2) of that Act.

**PARLIAMENTARY HISTORY**

298. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and the references to the official report of those proceedings. It also shows the dates on which Committee Reports and other papers to the Act were published, and references to those reports and papers.

<i>Proceedings and reports</i>	<i>Reference</i>
Bill as introduced – 14 May 2014	Session 4, SP Bill 49
SPICe Briefing: Local Government Licensing	Sb, 14-81
SPICe Briefing: Air Weapons	Sb, 14-84
<b>Stage 1</b>	
<b>(a) Local Government and Regeneration Committee</b>	
18 June 2014	Minutes - LGR/S4/14/19/M
19 November 2014 (evidence)	Official Report
10 December 2014 (evidence)	Official Report
17 December 2014 (evidence)	Official Report
14 January 2015 (evidence)	Official Report
21 January 2015 (evidence)	Official Report
28 January 2015 (evidence)	Official Report
4 February 2015	Minutes - LGR/S4/15/5/M
18 February 2015 (evidence)	Official Report
25 February 2015 (evidence)	Official Report
11 March 2015	Minutes - LGR/S4/15/9/M
18 March 2015	Minutes - LGR/S4/15/10/M
3 <sup>rd</sup> Report, Session 4 (2015) Stage 1 report on the Air Weapons and Licensing (Scotland) Bill	Stage 1 Report

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

<i>Proceedings and reports</i>	<i>Reference</i>
<b>(b) Delegated Powers and Law Reform Committee</b>	
25 November 2014	Official Report
20 January 2015	Minutes - DPLR/S4/15/3/M
10 March 2015	Official Report
<b>(c) Finance Committee</b>	
25 June 2014	Minutes - FI/S4/14/21/M
4 February 2015	Official Report
18 February 2015	Minutes - FI/S4/15/6/M
<b>(d) Consideration by the Parliament</b>	
Stage 1 Debate – 23 April 2015	Columns 37-92
<b>Stage 2</b>	
<b>(a) Local Government and Regeneration Committee</b>	
13 May 2015	Official Report
20 May 2015	Official Report
27 May 2015	Official Report
Bill as amended at Stage 2	Session 4, SP Bill 49A (as amended)
<b>Stage 3</b>	
SPICe Briefing: Air Weapons & Licensing (Scotland) Bill	Sb, 15-36
<b>Consideration by the Parliament</b>	
Stage 3 Debate – 25 June 2015	Columns 38-110, 112-113
Bill as passed	Session 4 SP Bill 49B (as passed)
<b>Royal Assent</b> – 4 August 2015	Air Weapons and Licensing (Scotland) Act 2015