

POLICY NOTE

THE AIR WEAPONS LICENSING (SCOTLAND) REGULATIONS 2016

SSI 2016/188

1. The above instrument is made in exercise of the powers conferred by sections 35(1), 36(1) and 86 of the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”). It is subject to the negative procedure.

Background

2. Part 1 of the 2015 Act introduces new controls on the use, possession, purchase and acquisition of air weapons. Under section 2, anyone wishing to use, possess, purchase or acquire an air weapon in Scotland will be required to hold a valid air weapon certificate (AWC) as from 31 December 2016. This requirement is subject to a number of exemptions which are set out in schedule 1 of the 2015 Act. These include exemptions for holders of police or visitor permits, authorised events and approved air weapon clubs. Applications for an AWC, a permit or a club approval will be made to, and determined by, the Chief Constable of the Police Service of Scotland (“Police Scotland”). Although the new air weapons licensing regime does not fully come into force until 31 December 2016¹, advance applications for AWCs, police permits, visitor permits and event permits can be made and determined as from 1 July 2016. However, any certificate or permit granted before 31 December 2016 will not take effect until that date. Air weapon clubs may also apply for, and be granted, an approval as from 1 July 2016.

Policy Objectives

3. The purpose of these Regulations is to set out the detailed provisions required to fully implement the new licensing regime for air weapons. This includes:

- making provision about the application processes under Part 1 of the 2015 Act, and also in relation to AWCs, police permits, visitor permits, event permits and approvals of air weapon clubs;
- making provision for the charging of fees by the Chief Constable in respect of applications under Part 1 of the 2015 Act, and also in respect of the Chief Constable’s performance of functions under that Part, as well as specifying circumstances in which no fee is payable; and
- setting out transitional arrangements in relation to applications for an AWC made in the initial period between 1 July and 31 December 2016. These are designed to ensure as smooth a transition as possible when the new air weapons licensing regime

¹ See the Air Weapons and Licensing (Scotland) Act 2015 (Commencement No. 3 and Transitional Provisions) Order 2016 (SSI 2016/130).

comes into operation alongside the existing firearms licensing regime, having regard to the impact on Police Scotland's firearms licensing function in the longer term.

Part 2 of the Regulations (including schedules 1 and 2) – Forms and procedure etc.

4. As with the licensing of firearms and shot guns under the Firearms Act 1968 (“the 1968 Act”), air weapons licensing will be carried out by Police Scotland, with all certificates, permits and approvals granted by the Chief Constable.

5. Part 2 prescribes the various application forms to be completed by those applying for the grant or renewal of an AWC, a permit or a club approval (as the case may be), and for those seeking a variation of an existing AWC, permit or approval. It also prescribes the form and content of AWCs, police permits, visitor permits, event permits and approvals of air weapon clubs, as well as the conditions which must be attached to them.

6. The various forms are set out in schedule 1. Their structure and appearance is based on the equivalent documents, where these exist, currently in use under the firearms licensing regime under the 1968 Act. Those forms and associated procedures are set out in the Firearms Rules 1998 (SI 1998/1941, as amended). Using the existing regime as a model ensures that there is a level of familiarity in the new regime both for existing shooters and for the police. The forms as set out in schedule 1 have been agreed following detailed discussion with Police Scotland.

7. The information required on each of the forms is that which is deemed necessary to enable Police Scotland to properly determine each application. The level of information required in some cases, for example for a short-term visitor permit, is less than that required to determine a full 5-year certificate. This seeks to ensure that a proportionate level of checking is undertaken in each case. It will be up to the police, however, to consider each case on its merits, and to seek further information from applicants if this appears necessary or advisable to arrive at a proper determination.

8. Schedule 2 prescribes the mandatory conditions which the Scottish Government considers should be attached to each air weapon certificate, police permit, visitor permit and club approval granted. These have been agreed with Police Scotland, and reflect those for existing firearm and shot gun certificates. Police Scotland may attach additional conditions to a certificate, permit or approval, depending on the particular circumstances of the case. However, they must be consistent with the prescribed mandatory conditions.

9. Part 2 further provides for any AWC, permit or approval which has been damaged, destroyed, lost or stolen to be replaced on payment of an administrative fee.

Part 3 of the Regulations (including schedule 3) – Fees

10. Firearms licensing comes at a cost to police resources. Throughout the passage of the Bill for the 2015 Act, the Scottish Government was clear that Police Scotland should charge a fee for processing and considering the various applications under Part 1 of the 2015 Act. Part 3 of the Regulations, therefore, specifies the fees that are to be charged by the Chief

Constable in respect of applications made, and licensing functions performed, under Part 1 of the 2015 Act. These are set out in a table of fees in schedule 3 of the Regulations.

11. Whereas firearm and shot gun licence fees are only charged following a successful application, AWC fees will be charged in full at the point of application. This reflects the fact that the work necessary to properly determine an application for grant or renewal must be undertaken, whether or not the application is successful. Accordingly, section 35(3) of the 2015 Act provides that an application is only valid when the required fee is paid. Police Scotland will only determine an application once the fee has been paid by the applicant.

12. Entry 1(a) of Part 1 of the table of fees specifies the fee for an application for a full 5-year AWC (section 8(1)(b) of the 2015 Act) where the applicant is 18 years of age, while entries 1(b) to (e) specify different fees for applicants under the age of 18. This is due to the fact that section 7 of the 2015 Act sets out special requirements and conditions for young persons aged 14 to 17. It provides that young persons may not purchase, hire, accept a gift of or own an air weapon in their own right (section 7(4)). Section 7(5) also places restrictions on the type of shooting which may be undertaken by young AWC holders. These restrictions will no longer apply when an AWC holder reaches the age of 18. Section 8(1)(a) of the 2015 Act therefore makes provision for a young person's AWC to expire at that time. Entry 1 of Part 1 of the table of fees reflects this shorter duration for young persons' AWCs, and sets out a reduced fee level to be charged according to the applicant's age at the time of application.

13. Overall, the table sets out a tariff of fees which seeks to strike a balance between the full cost of processing and determining each application, and a fee at a level which, while affordable, reflects the responsibility attaching to ownership and use of a firearm. In addition, the main fees for an AWC (£72.00) are set at a level somewhat lower than that for a more powerful firearm under section 1 of the 1968 Act (£88.00) or a shot gun under section 2 of that Act (£79.50). The fee levels have been set following detailed discussion with Police Scotland, to ensure that they make a reasonable contribution towards the cost of processing the applications.

14. Part 3 further specifies that no fee will be payable in respect of the variation of an approved air weapon club's approval. This is in line with the existing licensing system, and reflects the fact that the majority of such variations relate solely to minor administrative matters such as a change of Club Secretary or other responsible official. The Scottish Government does not consider a fee appropriate in such cases.

Part 4 of the Regulations (including schedule 4) – Transitional provisions

15. Police Scotland already manages some 60,000 firearm certificate (FAC) and shot gun certificate (SGC) renewals in a cycle of three year 'peaks' and two year 'troughs'. These peaks and troughs are a result of the provisions of the Firearms (Amendment) Act 1997, which extended the duration of a FAC/SGC from three to five years. As a result, only new applications were processed in 1998 and 1999, but no renewals. This has led to a significant, recurring cycle of three busier years and two quieter years of renewals. The current 'peak' period runs from 2015 to 2017, followed by a relatively quiet 2018 and 2019.

16. Throughout the development of the provisions of the 2015 Act and the details of the licensing regime, Police Scotland and others raised concerns with the Scottish Government about the impact of introducing air weapon users into the existing firearms licensing system. These concerns were raised with the Parliament's Local Government and Regeneration Committee during Bill evidence sessions in 2014-15. At paragraph 137 of its Stage 1 report, the Committee recommended that "*The Bill should be amended to give the Chief Constable of Police Scotland a degree of latitude in the rollout of the air weapons certificate system to address future application peaks and troughs*". In response, and in Parliamentary debate on the Bill, the Scottish Ministers assured Parliament that they would seek to ensure that the impact of the new regime was minimised as far as possible.

17. Part 4 gives effect to that assurance. The provisions give Police Scotland discretion to grant an AWC for a shorter duration period than the standard 5 years provided for in section 8(1)(b) of the 2015 Act, so that it falls to be renewed during the next quieter period of the licensing cycle. This is subject, however, to a minimum period of 12 months. It applies only in relation to advance applications made before 31 December 2016 for the grant of an AWC, and only to those applicants who are aged 18 years or more and who are not seeking to align their AWC with a FAC or SGC under section 9(2) of the 2015 Act. As mentioned above, an AWC granted to an individual under the age of 18 will expire when the individual attains the age of 18. Where an applicant seeks alignment of different certificates under section 9(2), the AWC will expire on the same day as the applicant's FAC or SGC (as the case may be).

18. Schedule 4 specifies that a reduced fee will be charged in respect of an advance application, based on the period for which an air weapon certificate would be granted if the application were successful. The fee to be charged is set at £1.20 per month, disregarding any period before 31 December 2016 (since any AWCs granted will not take effect until that date, when Part 1 of the 2015 Act comes fully into force). This amount is based on the full 5-year fee of £72.00.

19. In order to ensure that AWC renewals will fall within the quieter licensing period, any successful application would result in a certificate with an expiry date between 1 January 2018 and 30 September 2019. Accordingly, a certificate granted on an advance application would be valid for a period of between 12 and 33 months, and the relevant fee would be between £14.40 and £39.60.

20. Schedule 4 sets out the advance application process as it will operate in the transitional period: the police will, on receipt of an advance application, register the application on the SHOGUN IT system; calculate the duration and expiry date of the certificate, were it to be granted; calculate the appropriate fee and inform the applicant, who will remit this to the police; on receipt of the fee the police will proceed to determine the application as normal. On determination the police will, if granting, issue the certificate with the appropriate expiry date.

21. If Police Scotland determine that the advance application is to be refused, the Chief Constable will, exceptionally during the transitional period only, refund to the applicant any

difference between the fee amount paid and the minimum transitional fee of £14.40. This ensures that all persons seeking to make an advance application will be treated equally, with no financial penalty accruing to those whose application is refused.

22. The Scottish Government considers these transitional provisions to be both necessary and expedient for the purposes of, and in consequence of, Part 1 of the 2015 Act. They have been agreed with Police Scotland, and are believed to be the most appropriate and practicable means of “smoothing” the new licensing application and renewal process and helping to mitigate the impact of the new regime on Police Scotland’s existing firearms licensing functions. While the measures confer a discretionary power on the Chief Constable which is not generally reflected elsewhere in the regime, this is considered expedient for the limited purpose and time period specified in the Regulations. Police Scotland is confident that these arrangements will deliver the longer term benefit of ensuring that AWCs granted in accordance with these provisions fall to be renewed during the quieter period in the 5-year licensing cycle.

Consultation

23. No formal consultation was carried out in relation to these Regulations. However, full public consultation took place on the overall policy before the Bill for the 2015 Act was introduced. The relevant consultation documentation can be found at:

<http://www.scotland.gov.uk/Topics/Justice/crimes/Firearms/governmentaction/airweaponlicensing>

24. Informal consultation with stakeholders also took place throughout the Bill’s parliamentary passage, and this has continued during the implementation process. In particular, the Scottish Government has held regular and detailed discussions with the Police Service of Scotland.

Impact Assessments

25. Both an Equality Impact Assessment (EQIA) and a Business and Regulatory Impact Assessment (BRIA) were carried out in relation to the Bill for the 2015 Act. The links below show the relevant documentation:

EIA: <http://www.gov.scot/Publications/2014/05/3617>

BRIA: <http://www.gov.scot/Publications/2014/05/7168>

Safer Communities Division
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