

## SPICe Briefing

# Air Weapons and Licensing (Scotland) Bill: Air Weapons

13 November 2014

14/84

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The Air Weapons and Licensing (Scotland) Bill was introduced in the Scottish Parliament on 14 May 2014 by the Cabinet Secretary for Justice, Kenny MacAskill MSP. The Bill is to be considered by the Local Government and Regeneration Committee.

The Bill seeks to make provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; and to amend and extend the the licensing provisions of the Civic Government (Scotland) Act 1982. This briefing looks at the proposals for a licensing scheme for air weapons in Scotland, examining the main provisions of that part of the Bill and highlighting a number of key issues raised by stakeholders.

A further SPICe briefing [Air Weapons and Licensing \(Scotland\) Bill: Local Government Licensing](#) considers the other local government licensing provisions within the Bill.



# CONTENTS

<b>BACKGROUND</b> .....	<b>3</b>
<b>CONSULTATION</b> .....	<b>4</b>
<i>Definition of an air weapon</i> .....	4
<i>Power thresholds: consultation responses</i> .....	5
<i>Legitimate use</i> .....	6
<i>Good reason test</i> .....	6
<i>Additional conditions</i> .....	6
<i>Administration</i> .....	7
<i>Administration proposals: consultation responses</i> .....	7
<i>Fees</i> .....	8
<i>Fees: consultation responses</i> .....	8
<b>THE BILL</b> .....	<b>8</b>
<i>Overarching policy objective</i> .....	8
<i>Licensing regime: written submissions</i> .....	9
<i>Official statistics</i> .....	9
<i>Types of air weapon to be covered by the Bill</i> .....	10
<i>Impact on paintball/airsoft industry</i> .....	10
<i>Penetration of air weapon ammunition</i> .....	11
<i>The requirement for an air weapon certificate</i> .....	11
<i>Offence</i> .....	11
<i>Opposition to a licensing regime</i> .....	12
<i>Informal target shooting - ‘Plinking’</i> .....	12
<i>Support for a licensing regime</i> .....	12
<i>Disposal of surrendered weapons</i> .....	13
<i>Granting of an AWC</i> .....	14
<i>Background checks: police resources</i> .....	14
<i>Purchasing air weapon ammunition</i> .....	15
<i>AWC Conditions</i> .....	15
<i>Conditions offence</i> .....	15
<i>Air Weapons Certificates for 14-17 year olds</i> .....	15
<i>Variation and revocation of AWCs</i> .....	16
<i>Police permits</i> .....	17
<i>Visitor permits</i> .....	17
<i>Visitor permits: concerns</i> .....	17
<i>Event permits</i> .....	17
<i>Approval of air weapon clubs</i> .....	18
<i>Approved air weapons clubs: views</i> .....	18
<i>Restrictions on transactions involving air weapons</i> .....	18
<i>Fees</i> .....	19
<i>Police resources</i> .....	20
<b>SOURCES</b> .....	<b>21</b>
<b>RELATED BRIEFINGS</b> .....	<b>22</b>

## BACKGROUND

The Calman Commission recommended that powers on air weapons be devolved to Scotland. This recommendation was subsequently taken forward through provisions in the Scotland Act 2012 (“the 2012 Act”). The 2012 Act received Royal Assent on 1 May 2012, giving, amongst other things, the power to legislate on most air weapons to the Scottish Parliament.

The present Scottish Government has had a longstanding commitment to modernise the law in relation to air weapons and other firearms in the event that the relevant powers be devolved to Scotland. For example, the SNP Manifesto for the 2011 Scottish Parliament election stated:

“We welcome proposals in the Scotland Bill to devolve competence for air weapons to the Scottish Parliament which should be used to create a licensing regime for all airguns so that only those with legitimate reason, such as sport or pest control, will be able to own an airgun.

We hope that this is a first step leading to the devolution of responsibility for all firearms legislation. With complete powers we could replace the current confusing array of firearms laws with a single all-encompassing Act to provide clarity for the police and improve public safety”.

In advance of the devolution of powers in relation to air weapons, the Scottish Government established the Scottish Firearms Consultative Panel (“the Panel”) which examined the practicalities of licensing air weapons and provided advice on the development and implementation of a new licensing regime. The Panel was chaired by the Cabinet Secretary for Justice, and membership consisted of the Police, the Crown Office and Procurator Fiscal Service, the British Association for Shooting and Conservation, the Scottish Target Shooting Federation, the Gun Trade Association, the British Shooting Sports Council, the Scottish Air Rifle and Pistol Association, the Gun Control Network, the Scottish Community Safety Network, the Convention of Scottish Local Authorities and the Scottish Government.

The Panel was tasked with examining the practical aspects of licensing air weapons, taking into account wider developments such as policing structures post-reform; considering the value of a pilot scheme before roll-out of the new regime; and considering how the licensing of air weapons would fit into wider firearms controls. In addition to this, the Panel also considered the following issues:

- legitimate reasons for possessing an air weapon;
- competence or awareness of safety in handling air weapons;
- confirmation by a medical professional of the suitability of a licence holder;
- cross-border issues;
- timescales for the introduction of the new systems;
- a possible lead-in period to allow those who currently hold air weapons either to licence them free of charge or to hand them into the police; and

- a licence fee to cover administration and other costs.

In the course of its discussions the Panel highlighted the complexities involved in establishing a new licensing regime but reached broad agreement on a number of core principles. These included that responsibility for air weapon licensing administration and enforcement should rest with the chief officer of police for the area in which the applicant or certificate holder resides; that the processes and considerations around the suitability of air weapon owners and users should mirror, as far as practicable, the criteria currently applied to firearms/shotguns generally; that a single air weapons certificate should cover all such weapons held by an individual which again, broadly mirrors the approach taken on shotgun certification; and, as with firearms and shotguns, that powers to refuse or revoke certificates in individual cases are an essential sanction that must be open to the police, for example, in cases when persons are deemed unsuitable, or where insufficient good reason for holding an air weapon exists.

Based on the recommendations of the Panel, the Scottish Government published a consultation paper which set out proposals for air weapon licensing. The public consultation period ran from 14 December 2012 to 15 March 2013, during which time 1,101 responses were received.

## CONSULTATION

The consultation paper [Proposals for Licensing Air Weapons in Scotland](#) stated the Government's intention to legislate on airgun ownership and use, and set out its thinking in relation to the proposed licensing regime. The consultation paper included 18 questions inviting views on a number of specific issues, including the definition of an air weapon; the age limits for the scheme; and the administration of the scheme.

As mentioned above, the consultation received 1,101 responses. An independent [Analysis of the Consultation Responses](#) showed that the majority of the respondents to the consultation (87%) were opposed to the principle of licensing air weapons. The remaining respondents either supported the principle of licensing and the Scottish Government's proposals; advocated greater restrictions (or a full ban) on air weapon use; or they expressed mixed or unclear views.

The Scottish Government has consistently stated that it has no intention of imposing a blanket ban on air weapons and recognises that there are legitimate reasons to possess an air weapon. As such, whilst its primary concern is for public safety, it does not wish to penalise those who use air weapons responsibly. The Government's stated aim is "to introduce a system of licensing and regulation which recognises the need to protect and reassure the public, but which is proportionate, transparent and practicable for regulators and users alike".

Under the Government's proposals, anyone who owns, or wishes to own an air weapon of the types specified, would be required to apply for an air weapon certificate.

The following paragraphs highlight some of the key issues raised by respondents to the consultation.

### Definition of an air weapon

The question of how to define an air weapon for the purposes of the licensing regime is a difficult one. Although the capability of a firearm to inflict a lethal injury is not strictly defined in law, the definition provided by *Moore v Gooderham (1960)* is generally accepted:

"If it is capable of causing more than trifling and trivial injury when misused then it is a weapon which is capable of causing injury from which death may occur".

For an air weapon (including CO<sub>2</sub> powered items) to be covered by the Scottish Government's proposed legislation it would need to fall within the definition of a firearm, i.e.:

“A lethal barrelled weapon of any description...” (Section 57, Firearms Act 1968) - but not be sufficiently powerful to be deemed “specially dangerous” under the Firearms (Dangerous Air Weapons) (Scotland) Rules 1969 (“the Rules”).

The Rules provide that any air weapon is “specially dangerous” if it is capable of discharging a missile so that the missile has, on being discharged from the muzzle of the weapon, kinetic energy in excess, in the case of an air pistol, of 6 foot pounds or, in the case of an air weapon other than an air pistol, 12 foot pounds. These are covered under Section 1 and, as the case may be, Section 5 of the Firearms Act 1968 and will continue to be so. The 2012 Act did not devolve responsibility for those weapons which are considered to be “specially dangerous”.

The Consultative Panel considered that the new legislation should as far as possible adopt the existing, widely recognised technical and legislative definitions for air weapons. In general terms this would mean adopting the industry recognised definition of an air weapon as one which is capable of producing a kinetic energy between 0.7 foot pounds and 6 foot pounds in the case of an air pistol, or 12 foot pounds in the case of an air weapon other than an air pistol.

### **Power thresholds: consultation responses**

Among those respondents who were opposed to licensing air weapons, the main reason given for disagreeing with the weapons proposed for inclusion related to weapon power. This group of respondents frequently argued that it was inappropriate or unnecessary for low powered air weapons to be regulated as they were unlikely to cause damage or injury. In addition, it was argued that the more powerful and dangerous airguns (over 6 ft/lbs for pistols and 12 ft/lbs for rifles) were already adequately regulated within existing legislation<sup>1</sup>.

Respondents put forward a number of suggestions for an alternative lower power threshold, ranging from 1 ft/lbs to 6 ft/lbs, with the aim of addressing ease of understanding; perceived measurement and variability issues; and reflecting evidence relating to “lethality”. Included amongst those offering alternative lower power thresholds was a significant group of respondents generally opposed to licensing, but who indicated broad acceptance of the type of air weapon to be covered by the scheme should it go ahead. These individuals, nevertheless, argued for an increase in the lower threshold as they believed the proposed level to be “artificially low” and to “not reflect known scientific data”.

Amongst those offering support for the proposed types of weapons to be included in the scheme, most indicated agreement but did not give reasons for their view. Those who did expand on their answer most commonly took the opportunity to state (or restate) their general support for the licensing of air weapons (or all weapons). A few respondents described the proposed definition as “reasonable” and “sensible”. A more general view put forward was that the definitions offered in the consultation paper avoided confusion by providing clarity on the highest and lowest levels of muzzle energy to be included in the scheme.

The meaning of an air weapon for the purposes of the Bill is set out below.

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<sup>1</sup> [Proposals for Licensing Air Weapons in Scotland: An Analysis of Consultation Responses](#). Scottish Government 2013.

## **Legitimate use**

As pointed out above, the Scottish Government has no intention of imposing a blanket ban on air weapons or to affect the rights of legitimate users but does favour a clear policy imperative to restrict the casual and unnecessary ownership and use of potentially lethal weapons.

## **Good reason test**

Given this, the Scottish Government explored with advisers and members of the Consultative Panel, the options for setting out a “good reason” test in the proposed legislation. Typically, “good reasons” to possess an air weapon might include uses such as pest control, target shooting or firearms collecting. This does not seek to be an exclusive list and the Scottish Government stated that the legislation could be supported by indicative or statutory guidance to chief officers of police as to the issues they should consider when deciding on an application for an air weapons certificate. The Government has also stated that much of this guidance will already be familiar to licensing officers and to legitimate shooters within the existing firearms regime.

Among those who were opposed to the licensing scheme, there was strong opposition to further restrictions being put on air weapon use, and general concern about the proposed approach to this issue. This group argued that the requirement to demonstrate “good reason” as part of the application process was disproportionate and would add to the burden on the police.

## **Additional conditions**

There was also opposition to the idea that the police might have the power to impose additional conditions on licences. The result, it was argued, would be a system which was more stringent than that currently in place for shotguns; this was frequently described by respondents as “risible”. There was also a view that a stringent system for air weapons would simply encourage people to “trade-up” to a more powerful firearm or shotgun, or to consider alternatives such as crossbows.

Respondents argued in favour of a number of alternative approaches, including: (i) a system based on a simple background check, with licences refused to unsuitable people (e.g. those with criminal convictions or mental health problems) on a case by case basis; (ii) a competency based system; or (iii) a system similar to the current shotgun certificate process, where the burden is on the issuing officer to demonstrate the absence of “good reason”.

In general, those who were in favour of licensing or other air weapon regulation did not think there were any other forms of air weapon use which should be considered legitimate (many offering a simple “no” in response to the question). Alternatively, some within this group indicated a preference for a more restrictive interpretation of “legitimate” use than that set out in the proposals. This group often made comments suggesting variously that:

- legitimate uses should be kept to a minimum
- legitimate use should be decided by the police
- all legitimate use should be properly investigated and licensed
- the shooting of birds or animals should not be considered legitimate use

Others wished to see air weapon use confined solely to sporting use on authorised premises, or pest control where no other option was available.

However, while some in this group were willing to regard pest control as legitimate use in certain circumstances, others expressed reservations and concerns about this activity and argued that:

- the use of air weapons for pest control was neither effective nor humane
- the definition of a “pest” is subjective and there is a need to be clear about what constituted a pest, where they could be controlled and by whom
- pest control using air weapons should be carried out only by authorised professionals

## **Administration**

Responsibility for air weapon licensing administration and enforcement will rest with Police Scotland. As such, detailed processes and arrangements for dealing with applications for an air weapons certificate will be a matter for the Chief Constable of Police Scotland. However, applications are likely to be handled by local police in the area where the applicant resides.

The Scottish Government stated that the processes, arrangements and considerations around the suitability of air weapon owners and users should mirror, as far as practicable, the criteria currently applied to firearms/shotguns generally and proposed that:

- a single air weapons certificate should cover all such weapons held by an individual. The Government argues that this broadly mirrors the approach taken on shotgun certification, and seems practical given that most air weapons do not have serial numbers
- certificates would not include information or restrictions on ammunition held
- as with firearms and shotguns, powers to refuse or revoke certificates in individual cases are an essential sanction that must be open to the police, for example, in cases when persons are deemed unsuitable, or where good reason for holding an air weapon cannot be demonstrated
- the application process and the possession of a certificate, and the ownership and use of air weapons, should place legal responsibilities on the individual concerned, for which contravention constitutes a criminal offence attracting appropriate sanctions
- applicants for a certificate for air weapons would not be required to undergo the same checks if they already possess a firearm or shotgun certificate
- an application for an air weapons certificate should be accompanied by a fee, payable to the chief officer of police

## **Administration proposals: consultation responses**

The main reason given by respondents for disagreeing with the Government’s proposals on administration was that they represented “a waste of police time and resources”. Other reasons included the following:

- the proposals were seen to be disproportionate given the relatively small number of air weapon offences over the past few years
- they were felt to be too complicated, and there was concern that they would deter people from becoming licensed
- there was a perception that the police would not have the capacity to administer the licensing scheme. (Several respondents stated that there were already significant delays in the renewal of firearm certificates<sup>2</sup>.)
- it was seen to be inappropriate for procedures for licensing air weapons to be stricter than those for obtaining a shotgun certificate

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<sup>2</sup> It may be worth noting that a number of respondents were resident in England where this may be more of a problem.



Those who were broadly in favour of licensing air weapons felt that the proposals for administration were generally acceptable, although some wanted the proposals to go further. For example, it was suggested that animal welfare organisations should be consulted about individual applications to ensure that those with a history of animal cruelty were identified. That an air weapons certificate should include information about the number of air weapons along with a description of the air weapons held (i.e. make, model, barrel size, etc.). This was seen to be particularly important since most air weapons do not have a serial number. The lack of serial number was also raised by those opposed to licensing as it was argued that this made air weapons untraceable and the scheme unenforceable.

Respondents also stated that all sales should be notified to the police, and those purchasing or owning large numbers of guns should be required to undergo additional checks to ensure they had acceptable storage and security arrangements in place.

## **Fees**

The Scottish Government proposed that a fee should be charged to cover the cost of processing an air weapon licence application. Moreover, the proposal was that: (i) this fee would be payable regardless of the outcome of the application; (ii) the cost should be met by those applying for an air weapon certificate; and (iii) the level of the fee should attempt to strike a balance between recovering the cost of administering the scheme on the one hand, and other factors which might influence whether or not air weapon owners comply with the scheme.

### **Fees: consultation responses**

In general, those who were opposed to the licensing of air weapons were also opposed to the idea of: (i) a fee being charged for each application made; and (ii) the fee being charged for unsuccessful applications. In contrast, those who were in favour of licensing were (with few exceptions) supportive of both.

## **THE BILL**

The Policy Memorandum to the Bill states that the regime provided for in relation to air weapons:

“...recognises the need to protect and reassure the public in a way which is proportionate and practicable. The Bill will help ensure that only people with a legitimate reason for possessing and using an air weapon will have access to them in the future, as well as taking air weapons out of the hands of those who would use them illegally”.

It is fair to say that in terms of the responses to the consultation (see above) and the written evidence received by the Local Government and Regeneration Committee on the proposed licensing regime as set out in the Bill, opinions are very firmly divided into those who do not believe that such a regime is necessary and/or proportionate; and those who believe that such a regime is required to address misuse of such weapons. Those opinions will be discussed below in relation to the key issues raised by the Bill.

### **Overarching policy objective**

The Scottish Government has stated that the overarching policy objective of this part of the Bill is not to ban air weapons, but to ensure that only those people who have a legitimate reason for owning and using an air weapon should have access to them and that such persons are properly licensed. The principles underpinning the system are to:



- clearly define the air weapons to be subject to licensing;
- broadly follow the principles and practices of existing firearms legislation;
- set out the main principles of the Scottish regime in primary legislation, with detailed provisions – for example, on fees, procedures, forms, conditions, etc. – being provided for in future secondary legislation supported by detailed guidance;
- enable a fit person to obtain a licence to own, possess and shoot an air weapon in a regulated way, without compromising public safety;
- prevent those persons who are unfit, or who have no legitimate reason for holding an air weapon from obtaining a licence;
- have as its objective the removal of unwanted, unused or forgotten air weapons from circulation;
- ensure appropriate enforcement of the new regime with suitable offences and penalties available within our justice system to deal with any person who contravenes the new regime.

### **Licensing regime: written submissions**

As mentioned above, opinion is divided as to the efficacy of such a regime. While the majority of written submissions on the Bill to the Local Government and Regeneration Committee (LGRC) mirrored those in the consultation in arguing against such a regime, others viewed the introduction of a licensing system for air weapons as a sensible and measured approach to ownership and use. The following paragraphs represent a small selection of the arguments for and against a licensing regime in general terms expressed in [written evidence](#) to the LGRC.

The [British Association for Shooting and Conservation](#) (BASC) argued that the proposed system would be unlikely to contribute to preserving public order and safety or to reducing crime. The Association believes that the only people who will submit themselves to such a licensing system would be those who are already law-abiding. They suggest that those who are not law-abiding will not apply for a licence and will either dispose of their weapons (which could further compromise public order and safety) or continue to keep them illegally.

The argument that the Bill would have little or no effect on those individuals who chose to abuse the use of air weapons was posited by a number of individuals and organisations who echoed the BASC's contention that such people would not submit to a licensing regime if the sole purpose of them having such a weapon was to indulge in criminal behaviour.

[Police Scotland](#) has stated that the criminal use of air weapons can have a devastating effect on those who are victims of such criminality. They anticipate that crime relating to the misuse of air weapons will fall if such weapons are removed from those who are unfit to be entrusted with such weapons (this is discussed further below).

The [Scottish Society for the Protection of Cruelty to Animals](#) (SSPCA) also expressed support for the introduction of a licensing system for air weapons. While acknowledging that there are lawful purposes for people to own and use an air weapon, the SSPCA argued that a licensing system should ensure that such persons have a legitimate reason for using an air weapon and a lawful place to use it such as a gun club or on land with the landowner's permission. The SSPCA submission also argued that currently, the police have no power over the ownership of air guns until a crime has been committed and a perpetrator identified.

### **Official statistics**

The Scottish Government statistical bulletin [Recorded Crimes and Offences Involving Firearms, Scotland, 2012-13](#) provides information on those crimes and offences recorded by the police in which a firearm was alleged to have been involved or where a firearm was stolen. The bulletin

states that air weapons accounted for 47% (171) of all offences where there was alleged involvement of a firearm in 2012-13, compared to 37% (197) in 2011-12.

## **Types of air weapon to be covered by the Bill**

The Explanatory Notes to the Bill set out the meaning of an air weapon for the purposes of the legislation.

Section 1 of the Bill defines the term “air weapon”. 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 as amended are the applicable rules.

The effect of this is that Part 1 of the Bill 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 Part 1 of the Bill).

Subsection (4)(a)(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)(ii) also excludes air weapons designed for use only underwater, 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.

## **Impact on paintball/airsoft industry**

In its original consultation, the Scottish Government did not propose to include paintball or airsoft weapons within the legislation on the understanding that such weapons were very low-powered. However, the Government now recognises that most paintball guns are well within the licensable power range, as are some airsoft guns. The Bill therefore provides that a person who operates a recreational shooting facility, such as a Paintball venue or miniature rifle range, where individuals who do not hold certificates to use air weapons, must hold an air weapons certificate and have it on display. This requirement allows users of the facility to confirm that an air weapon certificate is in place thus exempting them from the need to hold a certificate of their own. (A number of exemptions are included at Schedule 1 of the Bill and are discussed further below).

In his [written submission](#) to the Local Government and Regeneration Committee, Stephen Pringle, who is an Airsoft Technician, has expressed concerns that the Bill as introduced may have unintended consequences for the Airsoft industry.

He points out that Airsoft guns predominantly shoot 6mm plastic or biodegradable balls at muzzle energies of up to 2.3 joules, although the majority of Airsoft sites impose limits closer to 1.3 joules. He also states that the term “airsoft gun” is misleading as although they closely resemble firearms, airsoft guns are incapable of discharging live ammunition and are ballistically more closely related to muskets in that they project a ball along a smooth barrel.

He goes on to comment on the Home Office Firearms Consultative Committee Report from 2002 (see above) from which the Scottish Government has adopted the 1 joule level at which an air weapon will come under the ambit of the Bill.

He points out that the figure comes originally from an appendix to the Consultative Committee's report and was made without reference to any scientific investigation but "has assumed the nature of canon law within the realm of legislators since". He goes on to say that in 2011, the Association of Chief Police Officers (ACPO) commissioned a report into airsoft guns and lethality from the Forensic Science Service (FSS) in order to better define lethality. Based on the finding from the FSS, ACPO recommended to its members that muzzle energy of 1.3 joules in an airsoft gun capable of automatic fire, and 2.3 joules in a single shot airsoft gun were unlikely to cause more than a trivial injury. Since the publication of the ACPO report, the airsoft industry within the UK has broadly accepted these standards.

Mr Pringle is concerned that if the Bill is passed without appropriate amendment, there may be an argument that in order to fall outside the remit of air weapon licensing, airsoft guns must be restricted to 1 joule or less. He suggests the addition of an appropriate amendment which defines and excludes airsoft guns from the meaning of an air weapon as currently defined in the Bill.

### **Penetration of air weapon ammunition**

In his submission, [Dr Graham Wightman](#) refers to research undertaken at Abertay University which looked at the penetration of air weapon pellets into various materials. The research found that pellets can penetrate 10-15cm into ballistic gel models. Dr Wightman goes on to say that:

Turkish researchers have shown similar results with 8 cm penetration into skin stimulant-ballistic gel models with air weapons below 16 J. Pellets striking bone embedded in gel can deform and may fragment, causing multiple injury tracks. Whilst real life situations are complex due to clothing, skin, muscle, and bone, the evidence so far suggests that air weapon pellets have the potential to penetrate vital organs, and there are published accounts in the literature of accidental and deliberate shootings that confirm the injuries and fatalities that can occur.

In this respect, Dr Wightman points out the upper limits which an air weapon certificate will cover under the Bill are 6 and 12 foot pounds (8.2 and 16.3 Joules respectively).

### **The requirement for an air weapon certificate**

Section 2 of the Bill sets out the fundamental requirement which will require a person aged 14 years or over to apply for and obtain an air weapons certificate (AWC) should they wish to possess or, purchase or acquire and/or to use an air weapon in Scotland. (A person under 18 years may not purchase or otherwise own an air weapon in their own right, under the terms of the Firearms Act 1968. A person under 14 years of age would not be permitted to hold an AWC in their own right but would be able to shoot air weapons in suitable circumstances if appropriately supervised).

### **Offence**

A person will commit an offence if they do not hold an appropriate certificate and are not subject to an exemption as set out in the legislation. A person who commits an offence of using, possessing, purchasing or acquiring an air weapon without holding a certificate is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both); and on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(There are a number of exemptions which apply to the offence provision and these are set out in Schedule 1 to the Bill. The exemptions include, amongst others, members of approved air weapons clubs as provided for at section 18 of the Bill (discussed further below); and firearms dealers registered under the 1968 Act and their employees).

The Policy Memorandum to the Bill states that the offence of using, possessing, purchasing or acquiring a weapon without a certificate is not expected to be commenced until sometime after the air weapons licensing provisions in Part 1 of the Bill to allow for a suitable hand-in period. During this period, unwanted weapons can be handed in to the police, or otherwise disposed of, for example by sale. The Scottish Government has stated that the interim period between commencement of the licensing provisions and the offence will be used to ensure as many people as possible are aware of and have the opportunity to comply with the new regime in relation to air weapons.

## **Opposition to a licensing regime**

As pointed out above, a significant number of stakeholders are opposed to any form of licensing regime for air weapons. The reasons for their opposition to such a regime are varied and some of these are set out below.

### **Informal target shooting - ‘Plinking’**

A number of stakeholders have pointed to the fact that many people use air weapons for personal and recreational use and choose to do so for the very reason that a licence is not required as it is for other firearms. They fear that the introduction of a licensing regime could lead to many people simply giving up air weapon shooting as a pastime which in the past has seen many people taking up the sport on a more professional basis. Something which could lead to such a scenario is the way in which ‘plinking’ may possibly fall outwith the “good reason” test for the granting of an AWC as set out in section 5 of the legislation. (The criteria for the granting of an AWC is discussed further below).

The Policy Memorandum to the Bill states that:

“The Scottish Government accepts that this (plinking) has been a common pastime for many, and is seen as an “entry level” for many young shooters who go on to take up the sport on a more regular, organised basis. However, the Scottish Government has a wider responsibility to the community to reduce alarm and protect public safety. Against this background, Ministers do not believe that target shooting in such an environment should generally be acceptable unless the applicant can satisfy the Chief Constable as to the safety and other arrangements in place to ensure that shooting can be carried out without risk to the public.”

While the legislation does not specifically exclude ‘plinking’ as a good reason for using and owning an air weapon, some stakeholders are concerned that a good number of applications may be rejected on this basis. The [British Association for Shooting and Conservation Scotland](#) has suggested that as many as 50 per cent of applications for an AWC may give plinking as their good reason for possessing and using an air weapon. The [British Shooting Sports Council](#) has suggested that further consultation with relevant stakeholders is required to establish safe practice in gardens and urban areas.

## **Support for a licensing regime**

Stakeholders who are supportive of the introduction of a licensing regime for air weapons, they point to incidents which can have an effect on communities even where animals have been shot by an air weapon. Where animals have been injured or killed by air weapons, it can prove

difficult for the police to identify a perpetrator as, in many cases, animals will go to ground and injuries may not be discovered for some time. In their submission to the Local Government and Regeneration Committee, the [League Against Cruel Sports](#) provide a number of case studies outlining the effects of airgun incidents involving animals and feelings of public safety. Following the shooting of a cat in a village setting, an owner reported that:

I never found out who shot my beloved cat. I don't think I could print what I would do to them if I ever did. I do know however, that after that day a mistrust crept its way through most of us in the village. In mine and my family's minds, everyone was potentially the culprit. Had we had the choice, we would have gladly kept Suki indoors for the rest of her life. Our village was a quiet, upper class residential neighbourhood, and we no longer felt safe there. The gun shot through the safety net we had held in each other and for me, changed how I saw the neighbours all around me.

## **Disposal of surrendered weapons**

The Scottish Government's consultation document (see above) suggested that there could be as many as 500,000 air weapons in Scotland. Some stakeholders have expressed concerns that the requirement for an air weapons certificate may encourage a large number of people to get rid of their weapons and that this could have consequences for both public order and safety and the police in terms of their responsibility under the Bill to arrange for the disposal of any weapons which come to them for destruction etc.

The [Scottish Police Federation](#) notes that many old or unwanted weapons will be handed in to the police for disposal and destruction and that Police Scotland will be responsible for storing these weapons securely and destroying them in line with existing arrangements. The Federation point to paragraph 81 of the Financial Memorandum to the Bill which suggests that the current arrangements for the disposal and destruction of firearms is cost neutral, with companies engaged to destroy weapons benefitting from any scrap value of the destroyed weapons. The Federation has concerns about the estimates within the Financial Memorandum with regard to the costs involved in disposals:

Again within this section rough estimates have been placed on costs associated with the disposal of weapons and a figure of £30,000 placed over the first two years of the scheme. There is no apparent supporting information to indicate that work has been done with the private companies, who currently dispose of the weapons, in the first instance that they wish to take on the additional work and then costs based on estimated figures of disposals in a year. With potentially many thousands of weapons to be destroyed this will be a significant increase in work for these companies who may no longer be able to deliver this on a cost neutral basis.

It is our understanding that the number of companies who carry out this work for Police Scotland is very limited and only a small number of weapons annually go for destruction as a percentage of the current weapons legitimately held. The lead-in phase to air weapon licensing would see an amnesty period where weapons could be handed into police for destruction. This will involve officers from all over the country having to physically take possession of weapons, securely store them, arrange for safe transportation to central storage areas and then for onward transportation to the approved disposal agents. All of this will involve many officer hours, transport costs, admin costs and none of the additional costs to the Police appear to be factored into the suggested figure.

The Federation suggests that further clarity will be required to ensure that the current disposal system will manage to deal with the addition of air weapons to the equation and that it should be



made clear what the actual costs to the police will be in terms of dealing with surrendered weapons, storage, transportation and administration.

## **Granting of an AWC**

Anyone aged 14 or over wishing to apply for an AWC must apply to the Chief Constable for a certificate to be granted or where a certificate is to be renewed. Section 5 of the Bill allows the Chief Constable to issue a new or renewed AWC where certain tests are satisfied. The tests in the Bill for the granting or renewal of an AWC are broadly in line with those for more powerful weapons under section 1 of the Firearms Act 1968. The Bill allows an AWC to be granted where the applicant:

- is fit to be trusted with an air weapon
- is not prohibited from possessing an air weapon or other firearm under 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 (the Explanatory Notes to the Bill provides examples of good reasons such as pest control, sporting target shooting, or being a collector)
- in all the circumstances, can be permitted to possess an air weapon without danger to the public safety or to the peace (this 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)

It should be noted that the Chief Constable is not required to grant an AWC even if all criteria are met, but the Scottish Government believes that the tests are sufficiently stringent and would expect the Chief Constable to exercise discretion to grant or renew the AWC if the criteria are met. A refusal to grant an AWC in such circumstances can be appealed to a Sheriff.

Where a certificate is granted (and unless it is revoked or cancelled) it will normally last for a period of five years - unless an applicant is between 14 and 17 when they apply, in which case it will last until that person becomes 18. The Bill provides that applicants who already hold a firearms or shotgun certificate can apply for a co-terminous AWC which would enable the police to conduct all assessments at the same time. Section 5(2) of the Bill 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.

## **Background checks: police resources**

The Bill allows the police to visit an applicant's home, or any other place where air weapons are to be stored or used, and conduct enquiries relating to the criteria outlined above before granting or renewing an AWC. Concerns have been raised as to the potential for extra pressure on police resources as a result of having to carry out background checks and home visits for potential applicants.

The [Scottish Police Federation](#) (SPF) refers to paragraph 66 of the Financial Memorandum which states that it has been agreed with Police Scotland that extensive, detailed background checks and home visits will only be necessary in a very small proportion of cases. The SPF is concerned that until relevant guidance has been published, it is currently unclear as to what criteria will be used to gauge when background checks and/or visits will be necessary. The SPF

contends that as such, it is impossible to estimate what volume of work will be generated with regard to checks and visits.

(The issue of police resources is discussed further below).

## **Purchasing air weapon ammunition**

With regard to the purchasing and acquiring of an air weapon, the [Law Society of Scotland](#) (“the Society”) makes an interesting point about the purchase of air weapon ammunition. The Society states that:

On the basis that pellets can only be fired from air weapons once (albeit darts may be capable of re-use), the Sub-Committee anticipates that air weapons in circulation which remain unlicensed will eventually run out of ammunition. Accordingly, the issue of the regulation of the purchase of air weapon ammunition should therefore be considered.

## **AWC Conditions**

Every air weapon certificate which is granted will be subject to prescribed mandatory conditions. Such conditions will be set out by Scottish Ministers by way of subordinate legislation (under section 37 of the Bill). The Scottish Government has stated that it does not intend to legislate for a long list of conditions but that the conditions would include standard requirements such as the need to keep air weapons securely when not in use, and the need to inform the Chief Constable of any change in circumstances (e.g. change of address).

In addition to mandatory conditions, the Chief Constable will be able to impose further conditions at the time of granting, renewing or varying an AWC. The intention is that the Scottish Government will prepare and publish guidance, in consultation with relevant stakeholders, about the imposition of conditions and the standard wording for common conditions, e.g. relating to target shooting or pest control or around the suitability of land on which to shoot.

## **Conditions offence**

The Bill provides that failure to comply with any of the conditions attached to an AWC is an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (£1,000).

## **Air Weapons Certificates for 14-17 year olds**

The Bill includes special requirements and conditions for 14-17 year olds who wish to acquire an AWC.

The Scottish Government has stated that the lower age limit of 14 was chosen as it is broadly consistent with existing firearms legislation. For example, 14 is the minimum age where a young person can shoot an air weapon on private land unsupervised under section 23 of the Firearms Act 1968. Fourteen is also the minimum age at which a young person can be granted a section 1 firearms certificate under the 1968 Act.

The Scottish Government has pointed out that there is currently no minimum age for the grant of a shotgun certificate in the UK, although a person must be aged 18 years or over to purchase a shotgun and anyone aged 14 or younger must be supervised by someone aged 21 or over to be in possession of an assembled shotgun in a public place. The Scottish Government believes that the lack of a minimum age limit for shotgun certificates “...is an anachronism of the existing UK firearms legislation which should not be replicated in the air weapon licensing regime”.



Under section 8 of the Bill, an AWC which was granted to a young person between the ages of 14 and 17 would expire when that person attains the age of 18. The British Association for Shooting and Conservation Scotland has stated that this may effectively make a certificate for a young person proportionately more expensive than one for an adult and may lead to delays in making applications. The BASC contends that this appears to contravene the principles of equality. (It should be pointed out that fees for applications for AWCs have not yet been set by the Scottish Government and paragraph 43 of the Financial Memorandum to the Bill states that there will be a tariff of fees for different circumstances. The issue of fees is discussed further below).

Section 7 of the Bill requires that any application made by a young person must be counter-signed by a parent or guardian, and that any AWC which is issued should specify the types of shooting which the young person may undertake. The types of shooting would include:

- target shooting on suitable private land or at an approved club
- pest control
- protection of crops or livestock
- participation in events and competitions

Police Scotland have pointed out that currently, a person aged 14 to 17 can borrow an air weapon and ammunition and use an air weapon, without supervision, on private premises where they have permission to use it. The conditions set out at section 7 of the Bill would require to be adhered to when an AWC is issued to a person under 18. Police Scotland go on to say that, assuming the Chief Constable attached all of the conditions within subsection 7(5) above to an AWC, this would hinder the use of air weapons by young people for legitimate reasons. Police Scotland provide an example of a 17 year old student shooting rats with an air weapon in a factory for a friend would be contravening the legislation. This concern is echoed by the British Association for Shooting and Conservation Scotland.

## **Variation and revocation of AWCs**

Section 10 of the Bill provides that the Chief Constable may vary any of the details on an AWC after it has been granted or renewed. This includes adding, amending or removing conditions on the certificate, other than the prescribed mandatory conditions for all AWCs and if applicable, the conditions attached to AWCs for young people. Variation of an AWC can occur at any time but the Chief Constable must notify the certificate holder of changes made. A holder of an AWC can also request that a certificate be varied. This could be to update an address or other personal details, or to request the removal or amendment of an outdated condition. The decision to grant such variations is at the discretion of the Chief Constable.

The Bill also provides for the revocation of AWCs. Section 11(1) of the Bill states that the Chief Constable must revoke an AWC if he is satisfied there is a danger to public safety or the peace if a certificate holder continued to possess an air weapon, or if the person becomes prohibited from possessing firearms under section 21 of the 1968 Act. Section 11(2) provides that the Chief Constable may revoke an AWC where he has reason to believe that the holder is not a fit person to be entrusted with an air weapon – examples could be where a person is convicted of a crime of violence or there is evidence of drug or alcohol abuse – or that they no longer have a good reason to use, possess, purchase or acquire an air weapon.

There is nothing in the Policy Memorandum to the Bill which explains the subtle difference between sections 11(1) and 11(2). It could be argued that a conviction for a crime of violence or

a serious drug/alcohol addiction coupled with ownership of an AWC should also invoke the requirement for revocation at subsection 11(1).

## **Police permits**

The Bill makes provision for the police to issue 'police permits'. These are distinct from AWCs in that they are intended to cover transient situations where an individual may find themselves in possession of an air weapon but the situation did not merit the granting of an AWC. For example, where an executor of an estate takes possession of an air weapon while gathering together a deceased's property. A police permit would not allow use of an air weapon and could not be issued to someone who is prohibited from possessing an air weapon. Permits issued to auctioneers would allow them to sell an air weapon without being a Registered Firearms Dealer.

## **Visitor permits**

Sections 13 and 14 of the Bill provide for temporary visitor permits to be issued to those individuals who wish to travel to Scotland to shoot air weapons. Such permits would be valid for no more than 12 months. As with AWCs, a visitor permit would only be issued to an applicant where the Chief Constable was satisfied that the visitor had a good reason, it would not present a danger to public safety or the peace and that the visitor is not prohibited from possessing one. As with AWCs, the Bill makes provision for both mandatory and discretionary conditions to be attached to the permit and for its variation or revocation where appropriate.

### **Visitor permits: concerns**

The issue of people travelling to Scotland with the intention of using air weapons having to apply for a permit in order to do so has caused considerable concern amongst stakeholders, particularly those who shoot air weapons in competition.

The British Association for Shooting and Conservation Scotland has stated that the requirement for a visitor permit may act as a disincentive to both individuals and groups, especially given the fact that an application for a visitor permit would have to be made every 12 months. The [Scottish Pistol Association](#) also has concerns about the possible detrimental effect that the requirement for a visitors permit will have on those who travel to Scotland to compete. The [Scottish Air Rifle and Pistol Association](#) has stated that:

This licence scheme will directly impact the ability of competitors to access the sport from across borders and from other nations. Currently we have a common licence scheme across the UK and our events are accessible to many nations, this legislation could make Scotland a shooting backwater unable to hold major international events, Competitors will travel to less officious countries with less red tape to be deal with.

The submission from [Elite Scottish/GB Athletes](#) also suggests that the requirement for visitor permits could have a detrimental effect on sports involving air weapons.

## **Event permits**

Section 17 of the Bill does provide for event permits to be issued. Section 17 provides that where the Chief Constable has approved the time and place of an event, an individual may borrow, hire, use and possess an air weapon at the event "without holding an air weapon certificate". Examples of situations where an event permit might be granted would be a Highland Games with an air shooting component, a fair or local gala, or a variant of modern biathlon or pentathlon.

It is intended that guidance will set out how and when the Chief Constable should exercise discretion in approving the granting of an event permit. As with AWCs and visitor permits, event

permits may have conditions attached to them and failure to comply with the conditions will be an offence.

## **Approval of air weapon clubs**

The Bill makes provision for air weapon clubs to be approved by the Chief Constable which would allow individuals who wish to become members and to possess or use air weapons at the club to do so without holding their own AWC. An application for an air weapon club approval will not be considered unless it complies with requirements which are, again, to be set out in subordinate legislation. Every approval of an air weapon club will also be subject to any prescribed mandatory conditions. The Bill also provides that the Chief Constable may withdraw a club approval at any time by giving notice to that effect. It is not clear from the Bill (or accompanying documents) under what specific circumstances the Chief Constable would seek to withdraw approval from a club.

## **Approved air weapons clubs: views**

The Bill provides that an air weapon club approval could be granted co-terminously with that of an existing approved rifle club. A number of stakeholders have expressed concern as to whether there is currently sufficient capacity to allow rifle clubs to absorb the numbers of people who may wish to join a club in order to shoot air weapons.

The [Scottish Air Rifle and Pistol Association](#) have stated that only a minority of airgun frequent clubs as most airguns are used in vermin control or private land target shooting. The Association has estimated that no more than 5 per cent of airgun owners operate within the current club structure. [The Scottish Pistol Association](#) has stated:

According to British Shooting and the National Small-bore rifle association in Dumfries & Galloway and the Borders there are only two airgun clubs – one in Dumfries and one in Hawick. In the same area there are roughly 10 pony clubs, each with their own team of tetrathletes who shoot air pistol. There are cadets, modern pentathletes and development pistol shooters who aren't members of any clubs and find their own safe place to shoot. If all of these athletes were bound by the law to train at an airgun club, it could result in hours of travelling for them and not to mention the overloading of the two airgun clubs who could not physically cope with the numbers of new members due to health and safety restrictions for numbers in the building and they would not be able to maintain a safe range officer to athlete ratio.

## **Restrictions on transactions involving air weapons**

Sections 24 to 26 of the Bill govern commercial transactions in air weapons. The Bill makes it an offence for any person except a Registered Firearms Dealer (RFD) 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 is broadly in line with present provisions around commercial transactions but adds manufacture, test and repair of air weapons to the list of commercial activities restricted to RFDs.

The Bill also provides that it will be an offence for anyone to sell or transfer an air weapon to someone without first confirming that the recipient is entitled to have an air weapon by: showing a valid AWC; demonstrating that an AWC is not required by the recipient; or by virtue of being a RFD.

Section 24(2)(c) of the Bill specifically allows a RFD 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 without first coming into the possession of the purchaser
- and where the purchaser is an individual, the individual must be aged 18 or over (an example would be an overseas visitor to Scotland who does not hold a visitor permit purchasing an air weapon from a RFD and the weapon being exported directly to their home country)

In its submission, the [Gun Trade Association](#) pointed out that there will be some countries that do not limit the purchase of air weapons to individuals over 18 years of age and ask whether it is correct to limit the age of purchase to a young person to under 18 where they may legitimately make such a purchase in their country of residence. The Association feels this may be restrictive especially as under the Bill, the purchaser cannot take possession of the air weapon in Scotland.

## **Fees**

The licensing regime proposed for air weapons will be administered in the main by Police Scotland and, amongst other things, the processing of applications, carrying out background checks and home visits will incur costs. The Scottish Government believes therefore that it is right that the process for obtaining an AWC should involve the payment of a fee. Under the current firearms regime, fees are generally only charged on the issue of a firearms or shotgun certificate. With regard to the proposed scheme for air weapons, the Scottish Government has decided that it would be more appropriate to charge all applicants regardless of the outcome of their application. The rationale for this position is that costs are always incurred when considering unsuccessful applications as well as successful ones. This rationale is also accepted by Police Scotland who have stated that the 1968 Act, which allows for the full refund of fees should an application be refused, is an anomaly:

In the vast majority of current circumstances, when there are no fit to be entrusted queries or medial matters to be considered, the processing work is straightforward. It appears counterintuitive, when considerable investigative resources are deployed to obtain information which allows the Chief Constable to make an informed decision in respect of refusing an application that the fee should be returned given the vastly increased costs to the public purse.

It may be considered that an applicant applying for an AWC is paying for the process to take place rather than the actual certificate itself. Conversely, it is not equitable, from the perspective of public funds for a person not to pay for the increased public work when anomalies, which the applicant will likely be aware of, are discovered.

However, a number of stakeholders believe that charging a fee for an unsuccessful application is inequitable, particularly as each applicant is seeking to remain within the law and it appears to be wrong to financially penalise a person for trying to do the right thing.

The Scottish Government also considers that existing fees for firearms and shotgun certificates are very low and has previously pressed the Home Office to raise these on a regular basis. The Government points out that the existing tariff has been in place since 2001 and does not reflect the cost of providing the service. (Under the present tariff it costs £50 for a five-year firearms licence). However, the Government acknowledges that it would be inequitable to set an initial air weapons tariff at a higher level than those for more powerful weapons. The scale of fees for an air weapon certificate will be set out in subordinate legislation and will be set to reflect different circumstances and in relation to visitor permits and any other licensing activity under the Bill. The Financial Memorandum to the Bill sets out a number of illustrative fee levels. An indicative fee level of £85 for the grant of an AWC is suggested based on estimates of the full cost of processing each type of air weapons application.

## Police resources

As pointed out above, the administration and operation of the scheme will rest mainly with Police Scotland. Given that there are an estimated 500,000 air weapons in circulation in Scotland, it is reasonable to assume that this will result in a large number of applications for AWCs following the transitional hand-in period. In the Financial Memorandum to the Bill, the Scottish Government points out that the current licensing service in Scotland employs 66 administrative staff and 25 police officers in order to service 60,000 holders of firearms and shotgun certificates. The Government has proposed that the new system will not be “unduly burdensome in terms of the application process, background checks on the applicant, home visits, etc.” With regard to training any additional staff who may be required to assist with the AWC applications, the Government states that following discussions with Police Scotland, it is anticipated that it will be possible to absorb any additional training requirements within existing resources.

In its submission, Police Scotland states:

It is vitally important, from a processing perspective to balance the monthly demand of applications on the police. Section 8 of the Bill states that an AWC shall last for five years. There are a number of Sections thereafter, Section 9 (2) by way of example where the proposed legislation allows for a certificate holder to align their AWC to conclude with their Firearm or Shot Gun Certificate, which may be of a period of less than five years.

In order to smooth the demand, Police Scotland would wish that for the first AWC only, that the Chief Constable can decide the length of the Certificate. Accepting that there will be a wave of new applications when the legislation is enacted, the current proposals would mean that the same wave is replicated at five year intervals thereafter, causing undue pressure on the police to manage the resources to satisfy the demand. Alternatively, should the Chief Constable have the ability to vary the length of the first certificate, this brings with it the ability to thereafter smooth the demand, allowing for a more efficient and effective service. At the renewal of the first certificates they would revert to five years. This has the effect of stabilising the numbers of AWCs which require to be processed each month thereafter and allows for the effective planning of resources to meet the monthly demand.

It is also to be noted that there is no budgetary provision within Police Scotland to deal with this legislation. Costs will be incurred in the handing in of air weapons, the bureaucratic processes involved in dealing with AWCs and the subsequent management of them. Costs will also be incurred in the provisions of prosecution evidence such as ballistics reports and the criminal justice impact upon reporting individuals for contraventions of the legislation.

In its submission, the Scottish Police Federation expressed concern about the possibility of a significantly increased workload for staff and officers working in the licensing service and that without additional resources the service will struggle to deal with the additional demand.

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Published by the Scottish Parliament Information Centre (SPICe), The Scottish Parliament, Edinburgh, EH99 1SP

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