

AIR WEAPONS AND LICENSING (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Air Weapons and Licensing (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of the Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by Parliament.

Outline of Bill provisions

3. The purpose of Part 1 of the Air Weapons and Licensing (Scotland) Bill is to protect public safety by creating a new licensing regime for air weapons. Parts 2 and 3 of the Bill aim to strengthen and improve aspects of locally led alcohol and civic government licensing in order to preserve public order and safety, reduce crime, and to advance public health. A number of the provisions in Parts 2 and 3 are directed at improving the efficiency of the operation of the licensing regimes contributing to the creation of a better regulatory environment for business.
4. Alongside the regulation of air weapons, the Bill amends the Licensing (Scotland) Act 2005 ('the 2005 Act', licensing alcohol) and the Civic Government (Scotland) Act 1982 ('the 1982 Act', covering other local licensing regimes). The key provisions include:
 - Giving local authorities the power to regulate sexual entertainment venues in their areas so that both performers and customers benefit from a safe, regulated environment;
 - Closing a loophole allowing adults to supply under-18s with alcohol for consumption in a public place;
 - Extending the breadth of information available to Licensing Boards to enable them to make better alcohol licensing decisions;

- Removing an exemption from licensing for metal dealers with a larger turnover; banning cash payments for metal by metal dealers or itinerant metal dealers; Removing the mandatory requirement that metal dealers should not process metal for 48 hours after receiving it;
- Allowing licensing authorities to refuse private hire car licences on the basis of overprovision and to require testing of private hire car drivers. The Bill will also remove an exemption from licensing for hire cars used on contract;
- The creation of a new role - the ‘Civic Licensing Standards Officer’ - with specific functions to provide information and guidance, check compliance, provide mediation and take appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act.

Rationale for subordinate legislation

5. In deciding whether provision should be set out in subordinate legislation rather than on the face of the Bill, the Scottish Government has considered the need to:

- Strike the right balance between the importance of the issue and providing sufficient flexibility to respond to changing circumstances without the need for primary legislation;
- Anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament;
- Make proper use of valuable parliamentary time;
- Allow detailed administrative arrangements to be kept up to date within the basic structures set out in the Bill; and
- Take account of the likely frequency of amendment.

6. The relevant provisions are described in detail below. For each provision, the memorandum sets out:

- The person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- Why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and
- The parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

DELEGATED POWERS

Part 1 – Air Weapons

Section 2(4) – Power to add or modify exemptions

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Provision

7. Section 2 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. 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.

8. Subsection (4) provides the Scottish Ministers with the power to add, remove or modify exemptions in schedule 1 by regulations.

Reason for Taking Power

9. The list of exemptions from the requirement to hold an air weapon certificate (as well as certain other offences) in schedule 1 is drawn from a number of sources, primarily existing UK firearms legislation, as well as views put forward by members of the Scottish Firearms Consultative Panel and consultation respondents regarding suitable air weapon use. The Scottish Government considers that the schedule currently captures all of the detailed situations where air weapon possession and use without a certificate should be permissible. However, it is possible that the list may require to be amended in the future, for example to reflect changing practices, new technologies or events in general. It is considered appropriate to have the flexibility to make any such changes – which are likely to be detailed in nature and could be needed quickly – by subordinate legislation, rather than requiring further primary legislation.

Reason for Choice of Procedure

10. Amending the schedule of exemptions would change the provisions of the Act as agreed by Parliament and, separately, might potentially have significant impacts on certain individuals or businesses (for example, by criminalising certain activities if an air weapon certificate is not held). The Scottish Government therefore considers it appropriate that changes be subject to the affirmative procedure, to ensure that full consideration can be given by Parliament to them and their potential impact.

Section 8(3) – Power to modify duration of air weapon certificate

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Provision

11. Section 8, subsection (1)(b) sets the normal duration of air weapon certificates at 5 years, except in the case of a certificate issued to a 14-17 year old, where subsection (1)(a) provides that the certificate expires on the holder's 18th birthday.

12. Subsection (3) provides Scottish Ministers with the power to change the 5 year duration of air weapon certificates in subsection (1)(b).

Reason for Taking Power

13. The 5 year duration for most air weapon certificates matches current arrangements for firearm and shotgun certificates issued under the 1968 Act, which remain reserved to Westminster. It is considered appropriate to have the flexibility to change this duration to mirror future changes to the arrangements for firearm or shotgun certificates by the Westminster Government or to reflect changing policy, for example following devolution of all firearms powers to the Scottish Parliament. This would ensure that all types of certificate can continue to be issued co-terminously.

Reason for Choice of Procedure

14. It is considered appropriate that such an amendment be subject to the affirmative procedure, to ensure that full consideration can be given to the potential impact and because any change would amend the text of the Act directly.

Section 20(3) – Power to modify duration of approval of an air weapon club

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Provision

15. Section 20, subsection (1) sets the duration of air weapon club approvals at 6 years. The Chief Constable may approve an air weapon club and in doing so impose conditions. Such approval allows members of these clubs to benefit from the exemption in paragraph 1 of schedule 1 and allow them to put forward approved club membership as evidence that they meet the good reason test in section 5(1)(c).

16. Subsection (3) provides Scottish Ministers with the power to amend subsection (1) to specify a different period.

Reason for Taking Power

17. As with certificate durations set out above, the 6 year duration for air weapon club approvals matches current arrangements for rifle club approvals under the Firearms (Amendment) Act 1988, which remain reserved to Westminster. Again, the Scottish Government considers it is appropriate to have the flexibility to mirror changes made by the Westminster Government, or to reflect changing policy, for example following devolution of all firearms powers to the Scottish Parliament. This would ensure that approvals for rifle clubs and air weapon clubs can continue to be issued co-terminously.

Reason for Choice of Procedure

18. It is considered appropriate that such an amendment be subject to the affirmative procedure, to ensure that full consideration can be given to the potential impact and because any change would amend the text of the Act directly.

Section 36(1) – Power to prescribe fees

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

19. Section 36 allows Scottish Ministers to set out fees for various aspects of the air weapon licensing regime in secondary legislation.

Reason for Taking Power

20. The Chief Constable will be able to charge a fee for a wide range of functions relating to the administration of the air weapon licensing regime, including considering an application for an air weapon certificate or permit, varying or renewing a certificate that has previously been granted, and replacing lost or damaged certificates. Fees will also be different depending on individual circumstances: for example, a reduced fee for an air weapon certificate that is co-terminous with a firearm or shotgun certificate; or a reduced fee for a short-term air weapon certificate granted to an under-18 that expires on their 18th birthday. In order to allow sufficient flexibility to take account of future changes in practice and cost, it is considered appropriate that the detailed tariff of fees be set out in secondary legislation, rather than on the face of the Bill.

21. Separately, it will be necessary from time to time to adjust this tariff of fees, for example in line with inflation, to maintain consistency with wider firearm and shotgun licensing fees (which are currently set by the Westminster Government), or to reflect other changes to the air weapon licensing regime such as the adoption of new licensing processes.

Reason for Choice of Procedure

22. The setting and adjustment of fees in relation to the air weapon licensing regime is likely to reflect, directly, practical factors such as inflation and police operational costs. The fees are also likely to be detailed and technical in subject-matter. Regulations setting fees are typically made by negative procedure, e.g. fees under section 25 of the Marine (Scotland) Act 2010, section 136 of the Licensing (Scotland) Act 2005, Schedule 10 to the Gambling Act 2005 and section 43 of the Firearms Act 1968. It is therefore considered appropriate that the negative procedure be used, to allow for speed and flexibility and to provide the balance required between scrutiny and the use of valuable parliamentary resources.

Section 37(1) – Power to make further provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

23. Section 37 allows Scottish Ministers to make regulations for the purposes of the Part and in particular for setting out detailed provisions regarding the application and grant process for air weapon certificates, police permits, visitor permits, event permits, or club approvals.

Reason for Taking Power

24. This is a broadly framed power to allow the administrative minutiae of the air weapons licensing regime to be set out in secondary legislation. This will include, for example, setting out application forms for air weapon certificates, permits, and air weapon club approvals, as well as setting out the standard format that these certificates, permits and approvals must take if granted. Regulations may also set out details such as mandatory conditions to be attached to all air weapon certificates, permits and club approvals, and information that must accompany applications (e.g. photographs).

25. Because these regulations will contain a considerable level of administrative detail, it is considered appropriate that they be dealt with through secondary legislation rather than on the face of the Bill. It may also be necessary to amend the administrative arrangements set out in the regulations from time to time, which is more efficiently achieved through secondary legislation.

Choice of Procedure

26. As with delegated powers for air weapon licensing fees, air weapon licensing regulations are likely to be detailed and administrative in nature, and may require to be amended periodically and potentially at short notice. It is therefore considered appropriate that the negative procedure be used so as to achieve the best balance between use of parliamentary time on the one hand and the nature of the content of the regulations on the other.

Part 2 – Alcohol

Section 55 – Power to make provision about annual financial reports

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative procedure - where regulations contain provisions which amend section 9A(3). Negative procedure – where the regulations do not amend the primary legislation.

Provision

27. Section 55 inserts section 9A into the 2005 Act requiring Licensing Boards to produce an annual financial report on their alcohol licensing activities.

28. Section 9A(6) gives Scottish Ministers a regulation 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.

Reason for Taking Power

29. Rather than set out a definitive list of what can be included in the annual financial report on the face of the Bill, it is considered appropriate to provide such detail in subordinate legislation. This will allow Scottish Ministers the flexibility to modify the details of such financial reports without amending primary legislation. However, it is also recognised that there might be situations where it is appropriate to adjust the definitions in section 9A itself and accordingly the provision caters for that possibility.

Choice of Procedure

30. Where the regulations will amend the text of primary legislation it is considered appropriate to allow Parliament to have a greater level of scrutiny as afforded by affirmative procedure. However where the regulations are merely technical requiring publication of the report or specifying the format of such, then it is considered that such will be of limited effect and impact and therefore negative procedure would provide the appropriate balance between scrutiny and the use of valuable parliamentary resources.

Section 59 – Extension of powers to make provision about forms of applications etc.

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

31. Section 59 slightly expands the regulation making power already provided for at section 134 of the 2005 Act in relation to the form etc. of applications, proposals and notices to also

include other communications. For example, 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.

Reason for Taking Power

32. Section 134 of the 2005 Act allows the Scottish Ministers to make regulations in respect of applications, proposals and notices under the Act. This has been broadened slightly to also include ‘other communications required’ to enable the Scottish Ministers to make regulations to provide explicit compliance with the requirements of the EU Services Directive in relation to the EU Services Directive, Article 8, ‘Procedures by electronic means’, namely that all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means.

Choice of Procedure

33. This regulation making power is subject to negative procedure as per section 146(4) of the 2005 Act. The changes made to its breadth are not such that the procedure needs to be revisited. As these regulations relate to practical and administrative matters, the negative procedure continues to provide the appropriate balance of scrutiny and use of parliamentary resource.

Part 3 – Civic Licensing

Taxis and Private Hire Cars

Section 62 – Power to specify exemptions to the licensing regime for taxis and private hire cars

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

34. Section 62 amends section 22 of the 1982 Act to remove the exemption currently provided in paragraph (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 amendment brings vehicles that are being used on contract in this manner into the licensing regime for taxis and private hire cars.

35. Subsection (4) inserts section 22(2) into the 1982 Act to provide the Scottish Ministers with the power to specify by regulations further exemptions from taxi and private hire car licensing regime.

Reason for Taking Power

36. By removing the ‘contract exemption’ from taxi and private hire car licensing, the Bill is widening the scope of types of operation that could be covered by taxi and private hire car licensing. England and Wales repealed a similar exemption in 2008 and a review¹ of that process highlighted as one of the unintended consequences a degree of confusion in what should be covered by the licensing regime (following the repeal). The Scottish Government intends to address this prior to commencement with clear guidance. However, if it transpires that types of service not intended to be covered are routinely being swept up in taxi and private hire car licensing (with the removal of this exemption), this regulation making power will be used to specifically exempt them.

37. An example would be where a service is providing some kind of transport as an ancillary part of the wider service where the transport aspect is not the main focus. It is considered appropriate to have the flexibility to make any such additional exemptions by subordinate legislation, rather than requiring further primary legislation. Additional exemptions may require to be made quickly in order to provide that individuals or businesses not intended to be covered by the licensing regime are not inadvertently faced with the requirements of complying with the licensing regime.

Choice of Procedure

38. The regulations are subject to negative procedure which is considered appropriate. It is not intended that the regulations will change the provisions of the Act. Instead they will provide the flexibility to provide additional exemptions to the taxi and private hire car licensing regime as a need to do so is identified. It is anticipated that further exemptions from licensing which may be provided by this regulation making power are unlikely to be disputed and consequently it should not be necessary to require a debate on each occasion that it is used. As such, it is considered that the use of negative procedure would be appropriate here bearing in mind the balance required between scrutiny and the use of valuable parliamentary resources.

Metal Dealers

Section 65 – Power to make provision about acceptable forms of payment for metal

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Provision

39. Section 65 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.

¹ ‘Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption’, Judith Rogers and Sarah Ridley, 4 November 2009

40. Section 33A(7) provides Scottish Ministers the power by regulation to add, amend or remove forms of payment that are acceptable. It also enables the Scottish Ministers to make appropriate consequential modifications to the record keeping requirements specified in section 33B(3).

Reason for Taking Power

41. The purpose of section 33A is to specify the types of payment methods permitted for the purchase of metal in order to make metal transactions more traceable and provide an effective audit trail. The overall intention is to combat instances of metal theft. However, methods of payment are subject to change due to rapidly changing technology and consumer habits. It is considered appropriate to have the flexibility to add to, amend or remove the specified payment methods by subordinate legislation, rather than requiring further primary legislation. There may be a need to respond quickly if currently specified methods of payment no longer achieve the overall intention of section 33A and/or where new methods of payment provide the appropriate level of traceability and audit. This will ensure the legislation can keep pace with these types of change and ensures metal dealers and itinerant metal dealers can keep pace with appropriate new technology.

Choice of Procedure

42. Amending the new section 33A(2) would change the provisions of the Act as agreed by Parliament and, separately, might potentially have significant impacts on certain individuals or businesses. The Scottish Government therefore considers it appropriate that changes be subject to the affirmative procedure, to ensure that full consideration can be given by Parliament to them and their potential impact.

Section 66 – Power to make provision about metal dealers’ records

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

43. Section 66 amends the record keeping requirements for metal dealers and itinerant metal dealers. A new section 33B 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.

44. Subsection (6) of section 33B provides the Scottish Ministers with the power to amend the record keeping requirement by regulations.

Reason for Taking Power

45. The power allows for the requirement of additional information to be recorded by metal dealers or itinerant metal dealers. This could be used, for example, to specify particular forms of identification as being acceptable. It is considered appropriate to have the flexibility to make any such additional requirements by subordinate legislation, rather than requiring further primary legislation.

Choice of Procedure

46. The regulations are subject to negative procedure which is considered appropriate. It is not intended that the regulations will change the provisions of the Act. Instead they will provide the flexibility to require additional information to be recorded by metal dealers and itinerant metal dealers. It is not anticipated that this additional information, such as specification for acceptable forms of identification, will be controversial and consequently it should not be necessary to require a debate on each occasion that it is used. As such, it is considered that the use of negative procedure would be appropriate here bearing in mind the balance required between scrutiny and the use of valuable parliamentary resources.

Sexual Entertainment Venues

Section 68 – Power to specify premises that are not sexual entertainment venues

Power conferred on: Scottish Ministers

Power exercisable by: Order made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

47. Section 68 creates a new licensing regime for sexual entertainment venues by inserting section 45A into the 1982 Act. Section 45A establishes what is meant by a sexual entertainment venue and provides definitions of ‘audience’, ‘financial gain’, ‘organiser’, ‘premises’, ‘sexual entertainment’ itself and ‘display of nudity’.

48. Sex shops are specifically identified as not being sexual entertainment venues at section 45A(7)(a). A power is provided at section 45A(7)(b) to allow Scottish Ministers to prescribe other types of premises that are not sexual entertainment venues.

Reason for Taking Power

49. The inclusion of this power allows the Scottish Ministers to respond quickly and flexibly in circumstances where venues are inadvertently caught under the legislation and it was not intended that such venues would be subject to this licensing regime.

Choice of Procedure

50. It is considered that this power has a very narrow focus and will be used in very limited circumstances. Accordingly it is considered that negative procedure would be appropriate to provide the balance required between scrutiny and the use of valuable parliamentary resources, particularly given that the Scottish Government would like to be able to act swiftly to avoid inappropriate venues being required to apply for licences.

Section 68 – Power to provide for descriptions of performances or descriptions for displays of nudity which are not to be treated as sexual entertainment.

Power conferred on: Scottish Ministers

Power exercisable by: Order made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

51. A further power is provided for in section 45A(11) of the 1982 Act to allow 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.

Reason for Taking Power

52. This power allows the Scottish Ministers to respond quickly and flexibly if types of performance are being inadvertently included within the sexual entertainment venue licensing regime that were not intended to be covered.

Choice of Procedure

53. Again, as in paragraph 50, it is anticipated that the use of this power will have a very narrow focus and be utilised only in very limited circumstances. It is to be used swiftly to avoid the unnecessary licensing of certain performances which were not intended to be caught under the regime and therefore it is considered that negative procedure is appropriate here to provide the balance required between scrutiny and the use of valuable parliamentary resources.

Miscellaneous and general

Section 70 – Power to make provision about hearings of licensing authorities

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

54. Section 70 amends the 1982 Act by inserting paragraph 18A, in Schedule 1 and inserting paragraph 24A in Schedule 2. The new paragraphs create regulation making powers 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 differentiate between different purposes, for example, different types of licence.

Reason for Taking Power

55. These powers will provide Ministers with the ability, if considered necessary and appropriate, to bring a level of consistency in the way hearings are conducted. There is a similar power in the 2005 Act to cover alcohol licensing. There are some similarities in the needs of participants in hearing processes under alcohol and civic regimes. If any issues are being resolved in relation to hearings under alcohol licensing, using the similar power, it would be helpful to be able to transfer any useful practice across to the civic regimes.

Choice of Procedure

56. It is anticipated that the making of regulations in relation to hearings is unlikely to be controversial. They will primarily be used for regulating and standardising procedure. The detailed preparation of the regulations will be done in consultation with relevant bodies, including local authorities and consequently it is considered that the use of negative procedure would be appropriate here bearing in mind the balance between scrutiny and the use of valuable parliamentary resources.

Section 71 – Power to prescribe mandatory conditions

Power conferred on: Scottish Ministers

Power exercisable by: Order made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Provision

57. This section allows Ministers to set mandatory conditions that would apply to all licences issued under Part 3 of the 1982 Act, including the regime for sexual entertainment venues (inserted by section 69). 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.

Reason for Taking Power

58. This recreates powers that already exist in respect of other activities licensed under Part 2 of the 1982 Act. The ability to set conditions is a core element of most licensing regimes. This will allow Scottish Ministers to set mandatory conditions to ensure that licensing is able to achieve objectives such as ensuring public safety.

Choice of Procedure

59. A similar power in respect of Part 2 licences is subject to affirmative procedure. It is considered that such procedure would also be appropriate here as the power may have a fairly

significant impact on licence holders and as such full consideration of it should be available to Parliament.

Part 4 – General Provision

Section 76 – Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative procedure - where regulations amend primary legislation. Negative procedure - where the regulations do not amend primary legislation.

Provision

60. Section 76 confers on the Scottish Ministers a power to make incidental, supplementary, consequential, transitional, transitory or saving provision for the purposes of, or in consequence of, or for giving full effect to, any provision of this Act or any provision made under it.

Reason for Taking Power

61. Any body of new law or regulatory regime may give rise to a need for a range of ancillary provisions. Without the power to make incidental, supplementary and consequential provision it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with minor matters which require to be dealt with to give full effect to the original Bill. That would not be an effective use of either the Parliament's or the Government's resources. The power itself is circumscribed by being entirely ancillary to the provisions of the Bill and any such provision must be for the purposes of the Bill or in consequence of it or for giving full effect to it. In addition, with the introduction of new regulatory regimes and the adjustment of several existing licensing regimes, it is considered possible that significant transitional, transitory or savings provision may be required to ensure that the regimes are introduced (or continue to function) smoothly with the minimum of disruption to both the licensing authorities and the licensees. It is appropriate for significant transitional, transitory or saving provision (as opposed to routine provision connected to commencement) to be subject to parliamentary procedure.

Choice of Procedure

62. Section 75(3) of the Bill provides that any regulations made under section 76 will be subject to affirmative procedure if it contains provisions which make textual changes to an Act. Otherwise, it will be subject to negative procedure. This provides the appropriate level of parliamentary scrutiny for the textual amendment of primary legislation while ensuring that other ancillary provision is still subject to appropriate scrutiny by Parliament.

Section 78 – Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Order made by Scottish Statutory Instrument

Parliamentary procedure: No parliamentary procedure

Provision

63. This section provides that all of the provisions of the Bill, except certain provisions in Part 4 containing definitions and subordinate legislation making powers, shall come into force on a day specified by the Scottish Ministers by order.

Reason for Taking Power

64. In a Bill of this nature which makes a number of reforms, the decision on when and to what extent the Bill is commenced is best determined by the Scottish Ministers, particularly as Ministers may wish (or find it appropriate) to commence provisions at different times. Transitional, transitory and saving provision may be made by a commencement order and the Scottish Government considers that those ancillary powers are required to ensure that, for example, pre-existing situations may be dealt with appropriately when Bill provisions are commenced.

Choice of Procedure

65. Section 78 has the effect that any such commencement order will not be subject to parliamentary procedure. This is typical of commencement powers and is justified having regard to the administrative nature of commencement of the Bill provisions which have been agreed to by the Scottish Parliament.

This document relates to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

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