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Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 13 May 2015

Session 4

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
14th Meeting 2015, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*Cameron Buchanan (Lothian) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Cara Hilton (Dunfermline) (Lab)

Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Matheson (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 13 May 2015

[The Convener opened the meeting at 10:00]

Air Weapons and Licensing (Scotland) Bill: Stage 2

The Convener (Kevin Stewart): Good morning and welcome to the 14th meeting in 2015 of the Local Government and Regeneration Committee.

If people wish to use tablet devices or mobile phones during the meeting, please switch them to flight mode, as they may otherwise affect the broadcasting system. Some committee members may consult tablet devices during the meeting; that is because we provide meeting papers in digital format.

We have apologies from Alex Rowley.

Agenda item 1 is the only item of business; it is our first day of stage 2 consideration of the Air Weapons and Licensing (Scotland) Bill. I welcome Michael Matheson MSP, Cabinet Secretary for Justice, who is joining us today as the member in charge of the bill.

Today we will consider sections 1 to 40 of the bill and all amendments to those sections. The sections form part 1 of the bill and establish an air weapon certificate system in Scotland. At our next meeting, which will be on Wednesday 20 May, we will consider sections 41 to 59, on alcohol licensing. Any member wishing to lodge amendments to those sections must do so by 12 noon this coming Friday, which is 15 May.

We will consider the remaining sections and schedules of the bill at our meeting on Wednesday 27 May. That will cover civil licensing provisions such as those on scrap metal dealers, sexual entertainment venues and taxi and private car hire licensing. I point out now that, owing to the late spring holiday, the deadline for lodging amendments to the civil licensing sections of the bill is 12 noon on Wednesday 20 May, which is Wednesday of next week. Members should lodge amendments with the legislation clerks in the usual way.

Before we move on to consideration of amendments, it would be helpful if I set out the procedure for stage 2 consideration. Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments, which was published on Monday, and the

groupings of amendments, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in each group to speak to and move their amendment, and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate by catching my attention in the usual way.

If the cabinet secretary has not already spoken on the group, I will invite him to contribute to the debate just before I move to the winding-up speech. As with a debate in the chamber, the member who is winding up on a group may take interventions from other members if they wish. The debate on each group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press their amendment to a vote or to withdraw it. If they wish to press ahead, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, the committee must immediately move to the vote on the amendment.

If any member does not want to move their amendment when I call it, they should say, "Not moved." Please remember that any other MSP may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote at stage 2. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed each section of the bill, and so I will put a question on each section at the appropriate point.

Today, we will go no further than part 1. Let us move on to the list of amendments.

Section 1—Meaning of "air weapon"

The Convener: Amendment 1, in the name of Cameron Buchanan, is grouped with amendments 2, 3, 5, 6, 36 and 37.

Cameron Buchanan (Lothian) (Con): Amendment 1 is a probing amendment, because I think that "air weapon" is a loaded term and that airguns are intended to be used for harm and to kill. I am aware that in the Firearms Act 1968 the

term used was “air weapon”, but I think that “weapon” is a misleading term and that “gun” is better. I just wanted to see what the committee and Government thought about that.

I move amendment 1.

The Convener: I call the cabinet secretary to speak to amendment 2 and the other amendments in the group.

The Cabinet Secretary for Justice (Michael Matheson): I am grateful for the opportunity to bring forward a number of Government amendments to part 1 of the Air Weapons and Licensing (Scotland) Bill this morning.

Since the bill was introduced, we have continued to listen carefully to the views of stakeholders and we have taken into account the evidence at committee sessions and the recommendations that were set out in the committee’s stage 1 report. As a result, we are bringing forward a small number of amendments that, as I hope the committee will agree, help to clarify and fine tune the bill’s provisions.

I also welcome the opportunity to respond to the issues that have been raised in the amendments that have been lodged by Cameron Buchanan, and I am grateful to him for his work.

I begin with what is probably the most complex group of amendments. Mr Buchanan’s amendment 1 would remove a key component of the definition of “air weapon” for the purposes of part 1 of the bill, without putting anything in its place. As such, the resulting position appears unworkable and confused.

In practical terms, the removal of section 1(2) without providing any alternative definition of the meaning of “air weapon” would introduce a risk that the bill might be read as attempting to capture air weapons that are either so high powered that they are controlled by the Firearms Act 1968, or so low powered that they are not considered lethal. In short, amendment 1, if agreed to, could significantly change the nature of the licensing regime that is set out in part 1 and remove the certainty over exactly what is covered, which is so important to a licensing regime.

Mr Buchanan’s amendments 5, 6 and 37 may be thought of together, as they address an issue around airsoft guns for approved clubs. In practice, the amendments attempt to exempt those using airsoft guns from the need to hold an air weapon certificate. I believe that the bill as drafted already provides a definition of air weapons that meets our principles of developing a proportionate, familiar and practicable licensing regime. We have consulted widely on the definition, and I believe that it is generally well understood.

However, I also believe that we can make the position even clearer for all users of the legislation, and achieve Mr Buchanan’s aims.

John Wilson (Central Scotland) (Ind): On the definition in the 1968 act, air weapons have changed dramatically with the use of, for example, airsoft and paintballing weapons. Those weapons are now powered up in the same way as many air rifles and guns are.

Is there not a need at some stage to tighten up the definition so that we are clear about the types of air weapon that are covered by the 1968 act and the types of weapon that the Scottish Government intends to cover in the bill? There have been major and significant advances in the use of weapons that could be termed air weapons but that may not be covered by the bill, such as paintballing and airsoft weapons.

Michael Matheson: If the member bears with me, I am coming to that very point in the explanation that I am providing.

Mr Buchanan wishes to clarify the position on the use of airsoft guns, and that will be achieved by amendments 2 and 3 in my name. We have been clear from the outset that it is not our intention to license very low-powered air weapons such as BB guns or those used for airsoft pursuits. In legal terms, such guns are not generally considered to be firearms within the meaning of the Firearms Act 1968. They are regulated elsewhere. For example, airsoft guns are regulated as realistic imitation firearms under existing Great Britain legislation: the Violent Crime Reduction Act 2006, which prohibits the manufacture, import and sale of realistic imitations, with a small number of exemptions. The exemptions include film and theatre production, historical re-enactments, and airsoft skirmishing in clubs that are affiliated with the United Kingdom Airsoft Retailers Association.

A number of stakeholders have written to ministers since the bill was introduced, seeking clarification over the types of guns that are to be included in the regime. Amendment 2 therefore aims to clarify the meaning of “air weapon” for the purposes of the licensing regime. It should help to put the position beyond doubt by excluding such guns if they are not firearms within the meaning of section 57(1) of the 1968 act. That excludes airguns such as airsoft and paintball guns.

Amendment 3 is simply a consequential change arising from amendment 2, to make it clear that the component parts of such guns would also fall outwith the licensing regime.

I believe that amendments 2 and 3 provide a clearer and simpler approach to addressing the matters that have been raised by Mr Buchanan’s amendments. I hope that the commentary that I

have offered also clarifies for Mr Wilson the present arrangements for the regulation of imitation firearms. Therefore, I ask Mr Buchanan not to press amendment 1 and not to move amendments 5, 6 and 37, and I invite members to support amendments 2 and 3 in my name.

The Convener: As no other member wishes to enter the debate, I call Cameron Buchanan to wind up and to say whether he wishes to press or withdraw amendment 1.

Cameron Buchanan: Does the cabinet secretary not think that we should specify paintball and softball, rather than just give a general definition of them? Paintball and softball probably did not exist at the time of the 1968 act—certainly paintball did not. I wonder whether we should specify that, which is the whole point of amendment 1. As long as paintball and softball activities take place in an approved club, they should be all right, but I think that we should be a bit more specific on the definition.

The Convener: I think that the cabinet secretary was pretty specific in what he said. Do you want to repeat what you said, cabinet secretary?

Michael Matheson: We have lodged amendments 2 and 3 to make the bill clearer concerning that matter. It is tied into the Firearms Act 1968, and that is why we are providing further clarification on that in relation to air weapons.

Cameron Buchanan: Fine, but will you not specify any more? You are not trying to ban those hobbies, are you? That is the point. I am concerned that the issue is not mentioned.

The Convener: This is an unusual way of dealing with the procedure, but the cabinet secretary can come back in if he wants to do so.

Michael Matheson: We are not trying to ban anything. We are trying to ensure that there is provision and to offer the clarification that some in the sector have asked for, so that the bill is clear about the regime that will operate and apply to the particular weapons that they use.

Cameron Buchanan: Thank you. I wish to withdraw my amendment.

Amendment 1, by agreement, withdrawn.

Amendments 2 and 3 moved—[Michael Matheson]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Requirement for air weapon certificate

The Convener: Amendment 4, in the name of Cameron Buchanan, is grouped with amendments 10 to 14 and 20. I point out that, if amendment 12

is agreed to, I cannot call amendments 13 or 14 respectively.

Cameron Buchanan: Amendment 4 would exempt holders of firearm or shotgun certificates from the requirement for an air weapon certificate. The point is that the possessor of a firearm or shotgun certificate can confidently be assumed to be fit to possess an air weapon, having already obtained a certificate. I think that forcing them and the police to go through administrative obstacles to obtain an air weapon licence is unnecessary and a bureaucratic burden on the applicants and the police, as we heard from the police.

I move amendment 4.

The Convener: Is that you finished with amendment 4 and all the amendments in the group?

Cameron Buchanan: Yes, I think so. The other amendments are consequential.

The Convener: As no other member wishes to speak, I call the cabinet secretary.

Michael Matheson: Can I just clarify that we are dealing with amendments 4 to 20?

The Convener: We are dealing with amendments 4, 10 to 14 and 20.

10:15

Michael Matheson: Mr Buchanan's amendments in the group would fundamentally change the way in which we and the police approach the licensing of air weapons under the new legislation. They reflect many of the objections that we have heard to the principle of air weapons licensing. Those objections were expressed by some of the shooting representatives on our expert consultative panel and by other organisations and individuals who responded to our public consultation in early 2013. The committee heard similar views during the first evidence session on the bill in November last year. However, we believe that part 1 achieves our aim of setting out a familiar, proportionate and practicable licensing regime for air weapons. The committee and the Parliament have approved the principle underpinning the bill at stage 1 of the process.

Amendment 4 and consequential amendment 12 would provide an automatic exemption from the need for an air weapon certificate for anyone who holds a firearm certificate or shotgun certificate that is issued by the police under the Firearms Act 1968. I have heard what Mr Buchanan has said on the issue and I appreciate that providing such a blanket exemption could appear to ease the burden on the police and on those who shoot. In fact, we considered including that as a potential

exemption from the licensing requirement in the early stages of the development of the bill.

However, we rejected the idea for a number of reasons. Among other things, the granting of firearm and shotgun certificates is subject to different tests under the 1968 act. For instance, the test for granting shotgun certificates is less stringent. There is no fit and proper person test, and the onus is on the police to demonstrate the absence of a good reason. We have been clear throughout the development of the bill that we do not think that that is the right approach to the licensing of firearms in a modern Scotland. In addition, firearms, shotguns and air weapons are used for different purposes in different environments and circumstances, depending on their technical specifications and power levels. It does not necessarily follow that someone who has a legitimate reason for requiring a more powerful firearm will also have a good reason for requiring an air weapon.

For air weapons, we believe that it is right and proper that applicants should be able to demonstrate that they have a reasonable use for the guns and that they can be permitted to use, possess and otherwise interact with them in a reasonable, responsible and safe manner. However, in section 5(2), we make provision to allow the chief constable to take as satisfied the tests that a person is fit to be entrusted with an air weapon, and that they are not prohibited from possessing firearms under the 1968 act if they already hold a firearms or shotgun certificate. I believe that that goes a significant way towards Mr Buchanan's aims but maintains our overall intent in relation to the tests for granting or renewing an air weapon certificate. On that basis, I urge members to reject amendments 4 and 12.

The remaining amendments in the group seek to modify the requirements for the granting or renewal of an air weapon certificate in two ways. Amendments 13 and 14 appear to offer an alternative to amendments 4 and 12. They would require the chief constable to consider any applicant who holds a firearm or shotgun certificate to automatically meet the requirements to be granted an air weapon certificate without further inquiry.

Amendments 10, 11 and 20 seek to reduce the number of requirements for granting an air weapon certificate, to make the procedure more consistent with the less stringent test that applies to shotgun certificates. If agreed to, amendments 10 and 11 would remove the need for the chief constable to be satisfied of the fit person and good reason requirements.

Amendment 20 would consequentially amend section 7 to remove reference to the good reason test in relation to the granting of young persons

certificates. However, Mr Buchanan has not followed that through to visitor permits or revocation, and would leave a potentially complicated set of different tests for different circumstances, which I suspect is not his intention. As I have already said, we do not believe that that is the correct approach to firearms licensing, and I urge members to reject the amendments.

John Wilson: The cabinet secretary has referred to firearms. The bill is about air weapons, and firearms come under different UK legislation—the 1968 act. When he talks about firearms, does he mean air weapons or does he mean firearms? We need to be clear that firearms come under the 1968 act and air weapons are under the jurisdiction of the Scottish Government under the terms of the bill that is going through the Parliament. The use of language about firearms versus air weapons requires clarification, as we are dealing with air weapons, not firearms.

Michael Matheson: I am not entirely clear what John Wilson's point is.

John Wilson: Firearms are defined under the 1968 act, but the bill refers to air weapons, not firearms. Confusion may be caused among the general public if we talk about firearms and air weapons. As I said, firearms are defined under the 1968 act, and we are trying to define air weapons under the bill. I am trying to get that clear for everybody, so that if people apply for a licence for a firearm they know that they are applying for a licence under the 1968 act and that, in future, once the bill is passed, they will know that they are applying for an air weapon licence, not a firearms licence.

Michael Matheson: In short, that is correct. When I refer to an air weapon, it is to do with the licensing regime proposed in the bill. When I refer to firearms, I am referring to the licensing regime under the 1968 act.

The Convener: I call Cameron Buchanan to wind up and to say whether he wishes to press or withdraw amendment 4.

Cameron Buchanan: Cabinet secretary, I am not quite clear whether you meant—

The Convener: Mr Buchanan, you must press or withdraw and wind up now. This is no longer the time to question the cabinet secretary. If you wanted to question him, you should have done that by intervention while he was speaking.

Cameron Buchanan: I shall press my amendment.

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Hilton, Cara (Dunfermline) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 4 disagreed to.

Section 2 agreed to.

Schedule 1—Exemptions

Amendments 5 and 6 not moved.

The Convener: Amendment 7, in the name of the cabinet secretary, is grouped with amendments 31 to 33.

Michael Matheson: Section 24, which governs commercial transactions involving air weapons, broadly matches existing arrangements for firearms in the Violent Crime Reduction Act 2006. The provision in section 24(2)(c) allows a registered firearms dealer to sell or transfer an air weapon to a person who does not have an air weapon certificate if the gun is not handed to them but is sent for delivery to a place outwith Great Britain. That has caused stakeholders concerns that the bill will prevent sales of firearms to people from England and Wales. The committee reflected those concerns in paragraph 139 of its stage 1 report and recommended that we take steps to ensure that remote sales to other parts of Great Britain are not prevented in that way. I was happy to accept that recommendation in my reply to the stage 1 report, and my amendments in the group will ensure that we achieve that.

Amendment 32 extends the existing provision for sales for delivery outwith Great Britain to ensure that it also applies to sales for delivery to England and Wales. They will be permitted where the gun is sent directly to a registered firearms dealer in England or Wales, where the buyer can collect it.

Amendment 7, which is consequential to amendment 32, amends the exemption at paragraph 15 of schedule 1 to allow a person to purchase an air weapon in those circumstances without holding an air weapon certificate. Again, the amendment extends the provision as drafted, which applies to people who wish to purchase an air weapon for delivery to a place outwith Great Britain.

It is important that we maintain the principle that a person must have an air weapon certificate or hold a permit or be otherwise exempt from the general requirement to hold an air weapon

certificate if they are to purchase an air weapon in Scotland. It is also an important principle of existing firearms legislation that commercial sales and transfers of firearms, including air weapons, should be completed face to face where the buyer is not also a registered firearms dealer. I believe that amendments 32 and 7 uphold those principles while ensuring that we do not prevent legitimate trade in air weapons to people in England and Wales. I therefore invite members to support my amendments.

I believe that Mr Buchanan's amendment 31 is intended to address the very concern that I have just spoken about. However, I do not believe that the approach that it takes is the right one. The wording that it proposes was considered when the bill was drafted but it was decided against for the following reasons. Section 32 of the Violent Crime Reduction Act 2006 requires commercial sales of air weapons to individuals in Great Britain to be concluded face to face. That prevents potentially lethal firearms from being delivered directly to people's homes. Instead, people must collect items from a registered firearms dealer. The bill repeals section 32 of the VCRA in Scotland but recreates it at section 25 to preserve the policy aim.

If Mr Buchanan's amendment 31 was agreed to, there would be a risk that companies could set themselves up as registered firearms dealers in Scotland for the purpose of selling air weapons by mail order to the rest of Great Britain. That would undermine the policy that underpins section 32 of the VCRA and section 25 of the bill and enable such dealers to bypass the face-to-face requirement. We have therefore agreed the wording that is proposed in amendment 32 with the Gun Trade Association and the Home Office. It achieves the same aim, but preserves the face-to-face policy of the VCRA and section 25 of the bill.

Given that amendments 7 and 32 meet the aims that I have outlined and fully address the committee's concerns in its stage 1 report, I ask Mr Buchanan not to move amendment 31.

Amendment 33 is slightly different. Section 26 of the bill was intended to replicate section 18 of the Firearms (Amendment) Act 1988. That provision allows the Government to notify fellow European Union countries when high-powered firearms or shotguns are sold for export to any such country. However, because air weapons are not covered by EU firearms law, there is no requirement to share such information. Police Scotland has therefore questioned what it would be expected to do with the information that was gathered under the provisions of section 26 notification.

We have examined the position again and concluded that such a notification requirement would place an unnecessary burden on both

registered firearms dealers and the police for no practical purpose. To be clear for members, details of any sales of air weapons will still have to be recorded in the dealer's register of transactions and could therefore be checked by the police if necessary.

I lodged amendment 33 to remove section 26 in its entirety, and I invite members to support it.

I move amendment 7.

10:30

Cameron Buchanan: I thought that registered firearms dealers in Scotland would be allowed to deliver air weapons to another place. In view of what the cabinet secretary has said, there would have to be face-to-face completion with a registered dealer. I accept that.

Amendment 7 agreed to.

The Convener: Amendment 8, in the name of the cabinet secretary, is grouped with amendment 9.

Michael Matheson: Schedule 1 to the bill sets out a range of exemptions from the general requirement for an air weapon certificate under section 2. It details the circumstances in which a person may use, possess, purchase or acquire an air weapon without the need for holding an air weapon certificate. Those circumstances cover a wide range of situations, including use at an approved club, use at a funfair or other authorised event, and possession by registered firearms dealers or auctioneers. Schedule 1 also sets out certain exemptions from the restrictions on transactions involving air weapons under section 24.

Amendments 8 and 9 are minor, technical amendments to the exemptions that are listed in schedule 1.

Amendment 8 will make it explicit in paragraph 16 of schedule 1 that it will not be an offence under section 24 for a person to lend or to let on hire an air weapon to non-certificate holders provided that it is for a purpose exempted elsewhere in the schedule. That might include, for example, people who hire air weapons at a miniature rifle range at a funfair or an actor who borrows an air weapon for use in a film production.

Amendment 8 is a technical amendment that brings the wording of the provision more closely into line with the language that is used in other firearms legislation and is therefore more familiar to the police, shooters and other stakeholders. It also makes it explicit that the exemption allows the commercial hiring out of air weapons for exempted purposes without the need to be a registered firearms dealer.

On that basis, I invite members to agree to amendment 8.

A range of duties are undertaken by public servants that may require them to use, possess or otherwise deal with air weapons. Such activities are listed in paragraph 17(2) of schedule 1. Paragraph 17(3) lists public servants who may not require to hold an air weapon certificate for such purposes. It includes police officers, members of the armed forces and others, such as those who are involved in forensic examinations.

For those who are unfamiliar with the role, the Queen's and Lord Treasurer's Remembrancer, who is often referred to as the QLTR, is the Crown's representative in Scotland who deals with ownerless property—for example the assets of dissolved companies or the estates of individuals who have died with no will or traceable heir. Those may potentially include air weapons, so the exemption allows the QLTR to take possession without requiring a certificate.

Amendment 9 extends the exemption as originally drafted to ensure that others, properly authorised by the QLTR, may take possession of air weapons on the QLTR's behalf without requiring a certificate. That essentially provides the necessary legal cover for the QLTR's staff or other agents who act on their behalf. This approach has been discussed and agreed with the QLTR's office.

I move amendment 8.

Amendment 8 agreed to.

Amendment 9 moved—[Michael Matheson]—and agreed to.

Schedule 1, as amended, agreed to.

Sections 3 and 4 agreed to.

Section 5—Grant or renewal of air weapon certificate

Amendments 10 to 14 not moved.

Sections 5 and 6 agreed to.

Section 7—Special requirements and conditions for young persons

The Convener: Amendment 15, in the name of the cabinet secretary, is grouped with amendments 16 to 19, 26 and 27.

Michael Matheson: The Scottish Government is committed to ensuring that the use of air weapons by young people is properly and closely regulated. According to the most recently published statistics, more than 45 per cent of recorded crimes and offences involving air weapons are committed by persons aged 20 and under. Similarly, more than 50 per cent of the

victims injured in offences in which a firearm was allegedly used were aged 20 and under.

The bill therefore sets out particular requirements and conditions around—

John Wilson: Will the cabinet secretary take an intervention?

Michael Matheson: Yes.

John Wilson: Can you clarify that those injuries were caused by air weapons and not firearms?

Michael Matheson: They were caused by air weapons. *[Michael Matheson has corrected this contribution. See end of report.]*

John Wilson: You have again fallen into the trap of using the term “firearm” when it should be “air weapon”. Incidents involving a firearm are more serious than incidents involving an air weapon—although any such incident is serious. I am sorry to be picky, but I am trying to get the language right for the official record. The statistics that you are using refer to air weapons, not firearms.

Michael Matheson: An air weapon is a firearm. Under the 1968 act, it is classed as a firearm.

John Wilson: That is right, but we are dealing with air weapons. The incidents that you have reported to the committee involved firearms. It is just the definition—

Michael Matheson: They are recorded as firearm incidents.

John Wilson: So they are recorded as firearm incidents.

Michael Matheson: Yes. They are firearms, and the incidents are recorded under the legislation as firearm incidents. An air weapon is a firearm under the 1968 act.

The Convener: That is the confusing issue for some members. Let us face facts: it would be much easier if we had control over all firearms. There is a bit of confusion about the fact that we are allowed to deal with air weapons here, yet previously they were dealt with under the Firearms Act 1968.

Michael Matheson: The terminology is correct in relation to the current legislation, although I appreciate that some members find the distinction challenging.

John Wilson: The reason I ask is not for the benefit of members around the table. Members of the public who are listening to the debate should be clear what we are referring to when we talk about air weapons and firearms.

Michael Matheson: For the record, and to be clear for the public, an air weapon is legally

defined as a firearm under the 1968 act. That is the challenge. It would be a matter for the UK Government to reflect any changes by amending the 1968 act. It is important that the public are aware that that is the factual basis on which we operate.

The Convener: Thank you.

Michael Matheson: The bill sets out particular requirements and conditions around the purchase, acquisition, ownership and possession of air weapons by young people and the types of shooting that may be undertaken by certificate holders aged 14 to 17.

Amendment 15 is a minor drafting change that simply highlights the fact that any certificate granted to a young person must include a condition prohibiting the purchase and ownership of an air weapon, as well as one or more conditions restricting the possession and use of an air weapon to certain defined purposes.

On amendment 16, while we fully accept that there are a number of legitimate reasons—as described in section 7(5)—why a young person might possess and use an air weapon, we do not believe that it is appropriate for a young person to own such a gun in their own right. Section 7(4) therefore states that, while someone who is aged 14 to 17 may apply for a young person’s certificate to use and possess an air weapon, they will not be allowed to purchase or own such a weapon until they are 18.

Amendment 16 extends the conditions in section 7(4) to make it clear that 14 to 17-year-olds will not be permitted to hire an air weapon or accept one as a gift. They will, however, be allowed to borrow an air weapon, for example from an air weapon certificate holder or at an approved club. The amendment ensures that the conditions for young persons are brought more closely into line with the provisions of the Firearms Act 1968, which make it an offence for a person under 18 to purchase or hire an air weapon, or for anyone to sell, let on hire or make a gift of an air weapon to a person under 18. It will therefore provide greater consistency for shooters.

Following representations that have been made to us by a number of the main shooting organisations and the evidence that was given to the committee in November, we have looked again at the list of purposes for which a 14 to 17-year-old may be granted a young person’s air weapon certificate.

On amendment 17, I am very conscious of the fact that, in their evidence to the committee, some organisations—including the League Against Cruel Sports—stated that they oppose all shooting of live quarry. I fully understand that view. The abuse and harm caused to domestic animals and wildlife

by the inappropriate and illegal use of air weapons is completely unacceptable. The committee heard from the Scottish SPCA and others about the problems and upset that that can create. The police will investigate any such crimes that are reported to them. It is one of the issues that the licensing regime is intended to address.

However, we have considered carefully all the representations that have been made and have come to the conclusion that the initial drafting of the bill was too restrictive and does not reflect the reality of shooting for many young people, especially those who live in rural areas or those who are engaged in sport shooting. Such shooting can be appropriate in properly controlled circumstances.

10:45

I have therefore lodged amendment 17 to allow 14 to 17-year-olds to take part in shooting for sporting purposes, including shooting live quarry, on private land. Suitable quarry might include, for example, pigeons and rabbits. That change will bring the licensing of air weapons in Scotland into line with the restrictions on use that apply to young persons under UK and EU firearms legislation in relation to more powerful firearms. It should therefore ensure that there is a more consistent approach for shooters.

It is worth emphasising that it remains the responsibility of the chief constable to consider each application on its merits. If the chief constable decides that such shooting is not appropriate for a particular applicant, the certificate would not allow for sports shooting. I reassure committee members that extensive guidance is already widely available from shooting organisations and others about the types of live quarry that might properly be shot with air weapons. We will work closely with those organisations and the police to ensure that Scottish guidance reflects such advice. Any shooting of animals must take into account the power of the gun involved.

On Mr Buchanan's amendment 19, we accept that restricting shooting for pest control to a young person who is a commercial pest controller or is employed by a pest controller is too restrictive and does not reflect the reality of shooting in many parts of Scotland. Such concerns were raised in evidence that was given to the committee by Police Scotland in particular, and I accept that the bill as introduced goes too far in that regard. The amendment will allow young people to volunteer to shoot rats at a church hall or rabbits at archaeological sites, for example. I am therefore happy to accept amendment 19. Given what I have said on these issues, I invite members to

support the amendments in my name, as well as amendment 19 in Mr Buchanan's name.

However, I am not so convinced by amendment 18, which is Mr Buchanan's other amendment in the group. Although shooting at competitions and events is already one of the potential purposes for which a young person may use and possess an air weapon, amendment 18 broadens the condition to add "any connected activities". That term is not defined in the amendment and, although I am interested to hear what Mr Buchanan says on the issue, I believe that "connected activities" is too broad a concept to stand on its own in this context. It might, for example, lead to a position in which a person believes that they can shoot in circumstances or at a location that would otherwise be deemed inappropriate.

The condition in section 7(5)(b) is already sufficiently broad to cover activities such as travelling to and from an event or competition. That would be considered possession for the purposes of participating in the event. Furthermore, the conditions in the menu of conditions at section 7(5) are not mutually exclusive and the police can attach any and all that they consider appropriate. For example, if a young person wanted to practise between events, and had a suitable place to do so, the target shooting condition in section 7(5)(a) could be added to their certificate. I therefore ask members to reject Mr Buchanan's amendment 18.

Amendments 26 and 27 in my name are consequential on amendment 17. They will allow young people visiting Scotland on a group permit to shoot for sporting purposes or at targets on private land, or to shoot in competitions or at other events, and to do so under the same terms as young people in Scotland with their own certificate. As with amendments 15 to 17, I invite members to support amendments 26 and 27.

I move amendment 15.

Cameron Buchanan: Amendment 18 seeks to clarify the activities that are connected to competitions, which I do not think has been done. Such activities include training. It is only sensible that young people should be clear that they can practise or train for events, as well as compete in them. That is what is meant by the amendment's suggested insertion of the phrase "and any connected activities" after "competitions" in section 7, at line 12 of page 4 of the bill. I thought that the word "competitions" was a bit narrow, and that it should be clear that practice should be allowed.

Michael Matheson: In response to Mr Buchanan's point, and as I outlined earlier, there is sufficient scope for the chief constable to make provision for a young person who may wish to practise at an identifiable location to have that

included on their certificate when required, if the chief constable deems it appropriate.

Amendment 15 agreed to.

Amendments 16 and 17 moved—[Michael Matheson]—and agreed to.

Amendment 18 not moved.

The Convener: I call amendment 19, in the name of Cameron Buchanan. Mr Buchanan to move or not move.

Cameron Buchanan: Not moved.

The Convener: Just to clarify, Mr Buchanan has said that he does not want to move amendment 19. Is that correct?

Cameron Buchanan: Sorry. I want to move it.

Amendment 19 moved—[Cameron Buchanan]—and agreed to.

Amendment 20 not moved.

Section 7, as amended, agreed to.

Section 8—Duration of air weapon certificate

The Convener: Amendment 21, in the name of Cameron Buchanan, is grouped with amendment 22.

Cameron Buchanan: We should not restrict the length of time for which young people's certificates last. If someone is 15, 16 or 17, they should not have to apply for another certificate when they are 18. We want a certificate to last for five years, irrespective of the applicant's age.

It is only fair to allow the same length of time so that young people do not pay more than others for their certificates and are not therefore discouraged from applying. If someone is 16 or 17, they would be discouraged from applying because of the cost. Could we not make a young person's certificate last for five years no matter whether they had turned 18?

I move amendment 21.

Michael Matheson: It may be helpful if I set out the way in which the licensing regime will operate for young people. That should address the concern that was raised by Mr Buchanan.

We have developed the provisions in part 1 to allow a responsible 14 to 17-year-old to hold a certificate in their own right, allowing them to shoot for specific purposes, as set out in section 7. Once those shooters become 18, it is right that they should be able to apply for and, it is hoped, obtain a full air weapon certificate. In addition, they should be able to purchase, acquire and own an air weapon in their own right.

For that reason, we introduced section 8(1)(a) to make it clear that a young person's certificate

expires on their 18th birthday. That provision does not prevent the young person from applying in advance for a full certificate to come into effect from that birthday, and that will be made clear in the guidance that we will publish in due course.

In practice, we also envisage that the scale of fees that we will bring forward in secondary legislation will include a sliding scale for young people. That will mean that a smaller fee than normal will be charged in such cases, to reflect the shorter duration of the certificate.

Cameron Buchanan: You are saying that, realistically, from the age of 14 to 18, there will be a sliding scale. Will it reflect the fact that the certificate will last for only two or three years?

Michael Matheson: That is the intention of the sliding scale. For example, a 16-year-old would effectively pay for the two years' equivalent of their certificate at the time of application.

Section 36 relates to fees, and section 36(2) in particular allows different fees to be specified for different circumstances.

The bill achieves the objective that is sought by Mr Buchanan's amendments, so I ask members to reject the amendments in the group.

Cameron Buchanan: I understand what the minister has said, so I will withdraw amendment 21.

Amendment 21, by agreement, withdrawn.

Amendment 22 not moved.

Section 8 agreed to.

Sections 9 and 10 agreed to.

Section 11—Revocation of air weapon certificate

The Convener: Amendment 23, in the name of the cabinet secretary, is grouped with amendments 24 and 25.

Michael Matheson: Any decision to revoke an air weapon certificate is serious. The initial grant, or subsequent renewal, is a matter for the chief constable and the decision to award it must be taken in light of the evidence that is available at the time.

The matters to be taken into account by the chief constable when granting or renewing a certificate are clearly set out in section 5 and, in the majority of cases, we would not expect the position to change radically for most certificate holders during the five-year period of the certificate. However, a person's situation or circumstances might change, or new evidence might come to light that casts doubt on the person's suitability to hold a certificate. In such

circumstances, the chief constable may reconsider the position and decide to revoke a certificate if the person no longer meets the requirements for holding one.

Amendments 23, 24 and 25 make it clearer that any such revocation of an air weapon certificate should be as a result of new or further evidence coming to light about the suitability of a person to hold a certificate since it was granted or renewed. The amendments were suggested by the Law Society and I invite the committee to agree to all the amendments in my name.

I move amendment 23.

Amendment 23 agreed to.

Amendments 24 and 25 moved—[Michael Matheson]—and agreed to.

Section 11, as amended, agreed to.

Sections 12 and 13 agreed to.

Section 14—Visitor permits: young persons

Amendments 26 and 27 moved—[Michael Matheson]—and agreed to.

Section 14, as amended, agreed to.

Sections 15 to 23 agreed to.

Section 24—Restrictions on transactions involving air weapons

The Convener: Amendment 28, in the name of Cameron Buchanan, is grouped with amendments 29 and 30.

Cameron Buchanan: Amendment 28 seeks to clarify that instructors at an approved club can repair or test the weapons. They should be able to do so because it would be highly impractical to expect participants to go to a registered firearms dealer every time that they had to repair or test a gun, even if there was just a minor fault. I seek to clarify whether that is permitted, and if it is not, to ask whether we need amendments to correct the situation.

I move amendment 28.

11:00

Michael Matheson: I understand the intention behind Cameron Buchanan's amendments. We are clear that the sale and transfer of air weapons for trade or business purposes should be undertaken only—as it is at present—by firearms dealers who are registered under the provisions of the Firearms Act 1968. Mr Buchanan's amendments do not alter that principle.

However, the amendments recognise that repair and testing, particularly in clubs, may be carried out on an informal basis in many cases. I am

aware that a number of stakeholders have asked questions about how section 24 will come into effect. In principle, it appears to be sensible to allow club officials to undertake such repairs or tests, and that may be part of the service for which members pay an annual subscription fee or other fee. We have always been clear that we view air weapons clubs as the ideal environment for shooters to participate in their sport, and Mr Buchanan's amendments are consistent with that approach.

However, the way in which Mr Buchanan approaches the issue leaves some questions on the detail, with particular doubt remaining around who could undertake such work and under what circumstances. For example, it would not be appropriate for the amendments inadvertently to undermine the existing RFD structures and the protection that they provide.

As such, I ask Mr Buchanan not to press amendment 28 at this stage. In doing so, I am happy to assure him and the committee that we will examine the issue in more detail, alongside stakeholders, and that we will consider lodging an appropriate amendment at stage 3 to address the issue.

Cameron Buchanan: I listened to what the cabinet secretary said; I just wonder why—I suppose that I cannot ask the question at this point—he cannot amend the legislation as we have suggested at stage 2, rather than adding it in later.

The Convener: It would be impossible for the cabinet secretary to amend the bill on the hoof. He has just given you an assurance that he is willing to look at the issue at stage 3, Mr Buchanan.

Cameron Buchanan: Okay.

The Convener: Do you wish to press or withdraw amendment 28?

Cameron Buchanan: In this case, I will withdraw the amendment.

Amendment 28, by agreement, withdrawn.

Amendments 29 to 31 not moved.

Amendment 32 moved—[Michael Matheson]—and agreed to.

Section 24, as amended, agreed to.

Section 25 agreed to.

Section 26—Requirement to notify chief constable of certain sales

Amendment 33 moved—[Michael Matheson]—and agreed to.

Sections 27 to 30 agreed to.

Section 31—Failure to keep air weapons secure or to report loss to police

The Convener: Amendment 34, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: One of the aims of the licensing regime that we are introducing is to identify who holds air weapons and where in Scotland they are. A person will need to make proper arrangements for keeping their air weapons securely, and we will work with Police Scotland and shooting interests to develop guidance on safekeeping and other arrangements.

We will not require people with air weapons to purchase and install full-scale gun cabinets in every case, but there are already secure systems available for keeping air weapons safe. Section 31 makes it an offence for a person to fail to take such security precautions. In addition, it will be an offence to fail to notify the police if an air weapon is lost or stolen. The loss or theft of a firearm could leave it open to unauthorised or criminal use and is therefore a serious matter.

However, following evidence to the committee by the Scottish Police Federation, and the further discussions that we have had with Police Scotland, we agreed that the original drafting of the provision was overly strict in stating that someone must inform the police “immediately” of any theft or loss. Amendment 34 changes that timeframe to allow for individuals to report such a loss

“as soon as reasonably practicable”.

That means that a person would not be penalised, for example, for not being able to report those details due to circumstances outwith their control, such as being on holiday or being unwell.

Ultimately, any judgment as to the reasonableness of any delay will be a case-by-case matter for the police, prosecutors and courts. I believe that that is a practical approach to address the need to ensure that proper care is taken over the security and handling of air weapons.

I move amendment 34.

The Convener: No one wishes to enter the debate, and I take it that the cabinet secretary does not wish to wind up.

Amendment 34 agreed to.

Section 31, as amended, agreed to.

Sections 32 to 37 agreed to.

After section 37

The Convener: Amendment 35, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: Amendment 35 inserts a new section to the bill on Crown application. Under the arrangements at Westminster, the existing firearms legislation does not automatically apply to the Crown, and the Firearms Act 1968 contains complicated provisions dealing with Crown servants and their use and possession of air weapons.

Members will be aware, however, that in Scotland legislation automatically applies to the Crown unless it expressly provides otherwise. It has been the Scottish Government’s policy that legislation should apply to the Crown as it applies to everyone else, unless specific exemption is made, and members of the Scottish Parliament have endorsed that view.

In line with that general policy, the air weapon licensing requirements will apply to the Crown, subject to the limited exemption that is set out in paragraph 17 of schedule 1 regarding public servants carrying out official duties. However, it is general policy to regulate the way in which the provisions will relate to the Crown in the text of the bill where there are potential questions over criminal responsibility.

The new provision will therefore exempt the Crown, excluding persons in the public service of the Crown, from being criminally liable for any contravention of a provision made by or under part 1. However, by way of enforcement, it will provide for

“the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing the provision”

to apply to the Court of Session for a declarator of unlawfulness in relation to

“any act or omission of the Crown which constitutes such a contravention.”

That is the standard approach to this type of situation.

I invite the committee to agree to the insertion of the new provision by way of amendment 35.

I move amendment 35.

The Convener: No one wishes to enter the debate, and I assume that the cabinet secretary forgoes his right to wind up.

Amendment 35 agreed to.

Sections 38 and 39 agreed to.

Section 40—Interpretation of Part 1

Amendment 36 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 36 disagreed to.

Amendment 37 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 37 disagreed to.

Section 40 agreed to.

The Convener: That ends consideration of amendments for today; I thank members for their participation. Our next meeting is on Wednesday 20 May, when we will consider part 2 of the bill, which is on alcohol licensing. I remind members that the deadline for lodging amendments to part 2 is this coming Friday, 15 March, at 12 noon.

Meeting closed at 11:11.

Correction

Michael Matheson has identified an error in his contribution and provided the following correction.

The Cabinet Secretary for Justice (Michael Matheson):

At col 13, paragraph 5—

Original text—

They were caused by air weapons.

Corrected text—

The quoted statistic referred to injuries caused by all categories of firearm, including but not limited to air weapons.

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