EXPLANATORY MEMORANDUM TO

THE AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015 (CONSEQUENTIAL PROVISIONS) ORDER 2017

2017 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Air Weapons and Licensing (Scotland) Act 2015 ("the 2015 Act") introduces, amongst other things, a new licensing regime for air weapons in Scotland in order to maintain stronger controls over the ownership, use and movement of such weapons in Scotland. The purpose of this Order is to make a small number of consequential changes to the Firearms Act 1968 ("the 1968 Act") in order to strengthen the air weapons enforcement regime and ensure consistency between the air weapons and firearms regimes more generally.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 The territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 This Order is to be made in exercise of the powers conferred by sections 104, 112 and 113 of the Scotland Act 1998 ("the 1998 Act"). It is required in consequence of provision made by the 2015 Act, which received Royal Assent on 4th August 2015. The Order is subject to affirmative resolution procedure in the UK Parliament.

4.2 The Scottish Parliament does not have legislative competence to make provision in relation to the regulation of pawn-broking or the regulation of the manufacture, possession, handling, purchase or acquisition, sale, distribution and transfer of firearms other than air weapons as devolved under the Scotland Act 2012.

5. Extent and Territorial Application

5.1 The territorial application of this instrument is England and Wales and Scotland.

6. European Convention on Human Rights

6.1 The Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Air Weapons and Licensing (Scotland) Act 2015 (Consequential Provisions) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Scotland Act 2012 devolved certain powers relating to the regulation of air weapons in Scotland to the Scottish Parliament. The 2015 Act gives effect to those powers. Part 1 of the 2015 Act makes it an offence for a person to use, possess, purchase or acquire an air weapon without holding an air weapon certificate. It also makes it an offence to fail to comply with certain restrictions on the manufacture, sale, transfer, repair and testing of air weapons.

7.2 The 2015 Act also introduced a number of new criminal offences which will apply in Scotland relating to the licensing of air weapons, as a means of strengthening controls over air weapons in Scotland.

7.3 The changes made in article 2 of the Order make it an offence for a pawnbroker in Scotland to take an air weapon in pawn and impose maximum penalties for this offence, analogous to those which apply to taking in pawn a firearm or shot gun.

7.4 The changes made in article 3 of the Order reflect the Scottish Government's aim to complete the implementation of an enforcement regime for Part 1 of the 2015 Act, and ensure consistency between the firearms and air weapons licensing regimes. At present, section 52 of the 1968 Act allows a court in England and Wales or Scotland to order, in certain circumstances, the forfeiture or disposal of any firearm or ammunition found in the possession of a person appearing before it, and to cancel any firearm certificate or shot gun certificate that the person may hold. Sections 28 and 29 of the 2015 Act confer similar powers on the courts in Scotland in relation to the cancellation of air weapon certificates and the forfeiture or disposal of air weapons. Article 3 extends the power in section 52 to provide that -

- a court in England and Wales may also cancel any air weapon certificate granted to a person under Part 1 of the 2015 Act, and
- where a court in Scotland convicts a person of an air weapon offence under Part 1 of the 2015 Act, it may order the forfeiture or disposal of any other firearm or ammunition found in the person's possession.

8. Consultation outcome

8.1 No formal consultation has taken place on the Order; Orders taken forward under section 104 of the 1998 Act are not usually consulted on as they are made in consequence of Acts which have previously been the subject of separate consultation exercises. The terms of the Order have been agreed between the Scottish Government, Home Office, HM Treasury and the Scotland Office.

8.2 The Scottish Government ran a public consultation on its proposals for air weapon licensing from 14 December 2012 to 15 March 2013, during which time 1,101 responses were received. Responses to the consultation can be found online at:

http://www.gov.scot/Topics/Justice/crimes/Firearms/governmentaction/airweaponlicensing/consultationresponses

8.3 The Scottish Government have discussed the imposition of the new criminal offence of taking a weapon in pawn with the National Pawnbrokers Association (NPA) who confirmed that their members should not be taking in pawn any air weapon or other firearm.

9. Guidance

9.1 This Order stands alone, and guidance is not necessary.

10. Impact

10.1 There is no significant impact on business, charities or voluntary bodies.

10.2 There is no significant impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument but was prepared prior to the introduction of the Air Weapons and Licensing (Scotland) Bill.

11. Regulating small business

11.1 The legislation is not thought to have a significant impact on activities that are undertaken by small businesses. The impact of the Order on the pawnbroking sector in Scotland is not believed to be material.

12. Monitoring & review

12.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and, therefore, no monitoring or review of the effects of this Order are required.

13. Contact

13.1 Stuart Matheson at the Scotland Office (telephone: 0131 244 9029 or email: stuart.matheson@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.

13.2