

## SPICe Briefing

# Air Weapons and Licensing (Scotland) Bill – Stage 3

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This briefing looks at Stage 1 and Stage 2 consideration of the Air Weapons and Licensing (Scotland) Bill. The Bill would introduce a licensing regime for air weapons as well as reforming local government licensing functions in relation to alcohol, taxi and private hire cars, scrap metal dealers and theatres. The Bill would also introduce a licensing regime for sexual entertainment venues.

The key issues to emerge during consideration prior to Stage 3 have been:

- whether a licensing regime for air weapons is necessary, and the proportionality of the regime proposed
- how licensing boards use their powers in relation to “overprovision” of premises licensed to sell alcohol
- abuse of the current alcohol licensing regime
- whether the licensing systems in place for taxis and private hire cars are capable of dealing with new business models based on advances in technology
- how to ensure legitimate scrap metal dealers do not face unfair competition from those who would seek to ignore new requirements proposed in the Bill
- the impact of proposals to license sexual entertainment venues on society’s attitudes to women
- the impact of proposals to license sexual entertainment venues on existing lap-dancing businesses

# CONTENTS

<b>INTRODUCTION .....</b>	<b>3</b>
<b>SUMMARY OF PROPOSALS.....</b>	<b>3</b>
<i>Air weapons licensing regime .....</i>	<i>4</i>
<i>Sexual entertainment venue licensing regime .....</i>	<i>5</i>
<b>PARLIAMENTARY CONSIDERATION .....</b>	<b>5</b>
<i>Stage 1 .....</i>	<i>5</i>
<i>Stage 2.....</i>	<i>6</i>
<b>KEY ISSUES AT STAGE 1 AND 2 .....</b>	<b>6</b>
<i>General.....</i>	<i>7</i>
<i>Air weapons .....</i>	<i>8</i>
<i>Alcohol licensing .....</i>	<i>11</i>
<i>Taxi and private hire car licensing .....</i>	<i>14</i>
<i>Metal dealer licensing .....</i>	<i>16</i>
<i>Funfair licensing .....</i>	<i>18</i>
<i>Sexual entertainment venue licensing .....</i>	<i>19</i>
<b>SOURCES .....</b>	<b>22</b>
<b>RELATED BRIEFINGS .....</b>	<b>24</b>

# INTRODUCTION

The [Air Weapons and Licensing \(Scotland\) Bill](#) is a Scottish Government bill. It was introduced in the Scottish Parliament on 14 May 2014. Its provisions would create a new licensing regime for air weapons as well as reforming a number of local authority licensing functions. This briefing looks at parliamentary scrutiny of the Bill prior to Stage 3.

The Bill's proposals cut across several different licensing functions. Police Scotland is currently responsible for the firearms licensing regime and would, under the Bill's proposals, take on responsibility for air weapons licensing.

Licensing boards are responsible for alcohol licensing. They are made up of local councillors but have a separate legal identity (and exercise their powers separately from) local authorities.

Under the Civic Government (Scotland) Act 1982, licensing authorities are responsible for civic licensing matters, such as taxi licensing, public entertainment licensing and scrap metal dealer licensing. The term licensing authority is synonymous with local authority, and civic licensing functions are exercised directly by the local authority (usually through a particular committee of councillors).

## SUMMARY OF PROPOSALS

According to the [Policy Memorandum](#) (paragraph 2), the Bill would “protect public safety by creating a new licensing regime for air weapons”. It has additional policy objectives in relation to local government licensing. These are:

“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.”

The main aims of the Bill are as follows:

- to introduce a licensing system for air weapons which aligns in a number of respects with the existing regime in place for firearms;
- to make it a criminal offence to share alcohol with a child or young person in a public place;
- to introduce a “fit and proper person test” to the alcohol licensing regime, so that only those a licensing board is satisfied are suitable can hold licences to sell alcohol;
- to make changes to the definition of “overprovision” in alcohol licensing law so that:
  - a licensing board can (among other things) consider the capacity of licensed premises when assessing overprovision;
  - the whole of a licensing board’s area can be considered a “locality” for the purposes of the assessment;
- to empower<sup>1</sup> licensing authorities to refuse private hire car<sup>2</sup> vehicle licences on the basis of overprovision (i.e. that there are too many private hire cars operating in a particular area);

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<sup>1</sup> It would be up to individual licensing authorities to decide whether they wanted to use this power.

<sup>2</sup> Private hire cars must be pre-booked whereas taxis can also be hailed on the street.

- to remove the exemption from the requirement to have a taxi or private hire car licence for vehicles hired for 24 hours or more so that all types of hire are brought into the licensing regime;
- to abolish the “exemption warrant” system so that all scrap metal dealers have to be licensed;
- to ban cash payments for scrap metal to remove the incentive of a quick and anonymous payment for those who steal metal;
- to remove the requirement on licensed scrap metal dealers to store metal for 48 hours in anticipation that large dealers (who currently do not require a licence under the exemption warrant system) would not be able to comply;
- to create additional record-keeping requirements on scrap metal dealers, including a requirement to keep a record of the identity of those who sell metal;
- to remove the requirement for theatres to be licensed under the Theatres Act 1968 and, instead, enable them to hold a public entertainment licence under the Civic Government (Scotland) Act 1982;
- to introduce a discretionary licensing regime for sexual entertainment venues; and
- to create a new role of Civic Licensing Standards Officer to offer advice and mediation in relation to – and ensure compliance with – the Civic Government (Scotland) Act 1982.

### **Air weapons licensing regime**

Part 1 of the Bill proposes a certificate system for the use, possession, purchase and acquisition of air weapons in Scotland. The Policy Memorandum (paragraph 7) states the Scottish Government’s overarching policy objective is not to ban air weapons, but to ensure only those people who have a legitimate reason for owning and using an air weapon should have access to them.

The principles underpinning the proposed certificate system, as set out by the Scottish Government, are:

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

## Sexual entertainment venue licensing regime

The Bill would also introduce a regime for the licensing of sexual entertainment venues, such as lap-dancing clubs.

Scottish Government policy had previously been to control sexual entertainment through the alcohol licensing regime. This was on the basis that no venue offering sexual entertainment was known to operate without a licence to sell alcohol. However, a court case<sup>3</sup> made it clear that placing conditions on sexual entertainment was outwith a licensing board's powers.

The key features of the licensing regime are:

- It is optional – local authorities can choose whether to apply it.
- It licenses “premises” rather than performances.
- Sexual entertainment must be for the financial gain of the “organiser”.
- There is an exemption for premises which host sexual entertainment on no more than four occasions in a 12 month period.
- Local authorities may set an “appropriate” number of sexual entertainment venues for an area, and that number can be zero.

In addition, the licensing regime includes: a “fit and proper” test for licencees; an ability for local authorities to consider objections to licences; an ability to consider whether the location of the venue is suitable; and an ability to attach conditions to a licence.

## PARLIAMENTARY CONSIDERATION

### Stage 1

The Local Government and Regeneration Committee (henceforth the “Local Government Committee”) undertook Stage 1 scrutiny of the Bill. Stage 1 requires the relevant committee to consider the general principles of the Bill. Information about the Call for Evidence, the written submissions received and correspondence in relation to the Bill is available from the [Local Government Committee's webpage](#).

The Local Government Committee heard Stage 1 oral evidence sessions on the following dates:

- [19 November 2014](#) (general and air weapons)
- [3 December 2014](#) (air weapons)
- [10 December 2014](#) (alcohol)
- [17 December 2014](#) (alcohol and scrap metal dealing)
- [14 January 2015](#) (sexual entertainment venues, theatre and scrap metal dealing)
- [21 January 2015](#) (taxi and private hire cars)

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<sup>3</sup> Brightcrew Ltd. v City of Glasgow Licensing Board [2011] CSIH 46.

- [28 January 2015](#) (police aspects of local government licensing)
- [18 February 2015](#) (general provisions in relation to local government licensing)
- [25 February 2015](#) (evidence from the Cabinet Secretary)

The Local Government Committee published its [Stage 1 Report](#) on 23 March 2015. The Scottish Government [responded](#) on 22 April 2015.

The Stage 1 debate took place on [23 April 2015](#). In relation to air weapons, many speakers highlighted the dangers such weapons posed. However, there was also a call from Tavish Scott MSP to consider the proportionality of the proposed approach. The Conservatives indicated they would abstain in the vote on the general principles of the Bill because they did not support the air weapons provisions.

The main issues highlighted in relation to other aspects of the Bill were: the wide-ranging nature of the Bill, with some contributors expressing concerns that this hindered effective scrutiny; whether a more fundamental review of the Civic Government (Scotland) Act 1982 was needed; the impact of metal theft on communities; the importance of public safety in relation to the licensing of taxis and private hire cars; and concerns about the licensing of sexual entertainment venues, particularly that they encouraged unhealthy attitudes to women and therefore damaged society as a whole.

The Cabinet Secretary for Justice agreed to consider the case for a review of the 1982 Act over the summer. He also indicated that he would be happy to work with Labour members to address concerns about some aspects of the proposed sexual entertainment venue licensing regime.

The Conservatives abstained in relation to the vote on the general principles of the Bill.

## **Stage 2**

The Local Government Committee was also responsible for dealing with the Bill at Stage 2. Amendments were debated at its meetings on: [13 May 2015](#); [20 May 2015](#); and [27 May 2015](#).

The [Bill as amended at Stage 2](#) was published on 28 May 2015.

## **KEY ISSUES AT STAGE 1 AND 2**

The table below (Table 1: key issues at Stage 1 and Stage 2) outlines the key issues raised during parliamentary scrutiny of the Bill so far. It includes consideration of the Local Government Committee's Stage 1 recommendations, the Scottish Government response and whether the matter was addressed at Stage 2. It is designed to provide a summary of the main issues associated with the Bill. It is not a comprehensive discussion of all the issues raised.

**Table 1: key issues at Stage 1 and Stage 2**

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>General</b>		
<p>The Civic Government (Scotland) Act 1982 is more than 30 years old. It was argued by a number of practitioners that a fundamental review of its role in licensing was needed.</p>	<p>The Committee recommended that the Scottish Government should consider whether to review the 1982 Act and report back within this parliamentary session.</p> <p>The Scottish Government noted that a major review had been carried out in the recent past, as well as further consultations to develop the Bill. However, it agreed to give this matter further consideration.</p>	<p>No action at Stage 2.</p>
<p>The Committee heard evidence about a number of technical concerns in relation to the 1982 Act.</p>	<p>The Committee recommended that the Scottish Government brought forward Stage 2 amendments to deal with such concerns in the short-term. These included creating licensing objectives for the 1982 Act and improving the neighbour notification system.</p> <p>The Scottish Government considered that the proposals had practical difficulties which would, at least, require further consultation.</p>	<p>No action at Stage 2.</p>
<p>The Committee heard evidence about conflicts between different forms of licensing. It was also argued that members of the public were often confused about who they should approach with a particular licensing problem.</p>	<p>The Committee asked the Scottish Government to consider bringing all licensing under a single regime and to report back within this parliamentary session.</p> <p>The Scottish Government agreed to look at options for streamlining as part of its consideration of a review of the 1982 Act.</p>	<p>No action at Stage 2.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Air weapons</b>		
<p><b>Publicity</b></p> <p>Concerns were expressed that owners of air weapons may not be aware of their new legal obligations when the Bill came into force.</p>	<p>The Committee recommended that the Scottish Government and partners undertook a major public information campaign in advance of the introduction of the new licensing regime.</p> <p>The Scottish Government response noted that there was a long-standing commitment to an advance publicity campaign as well as long-term information provision.</p>	<p>No action at Stage 2.</p>
<p><b>“Smoothing” the application process</b></p> <p>The Committee heard evidence that Police Scotland’s current gun licensing work came in peaks and troughs, making efficient use of resources challenging.</p>	<p>The Committee recommended that the Chief Constable should be given sufficient discretion in relation to air weapons licensing to address peaks and troughs in demand.</p> <p>The Scottish Government committed to continued discussions with Police Scotland to “smooth” the applications process.</p>	<p>No action at Stage 2.</p>
<p><b>Young people</b></p> <p>Section 7 of the Bill would set out special requirements and conditions for applications and certificates granted where the applicant is aged 14 to17. Section 14 would broadly apply the same requirements and conditions in relation to young people visiting Scotland.</p>		<p>Scottish Government amendment 16 sought to ensure that a young person’s certificate would prevent 14 to 17 year olds from purchasing, hiring, accepting a gift of or owning an air weapon (in line with the Firearms Act 1968). Amendment 17 sought to add “sporting purposes” to the list of purposes for which they may possess and use an air weapon. These amendments were agreed to.</p> <p>An amendment by Cameron Buchanan MSP sought to allow 14 to 17 year olds to use air weapons for pest control outwith a business or employment situation. It was agreed to.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Air weapons cont.</b>		
<p><b>Revocation</b></p> <p>Section 11 of the Bill would set out the circumstances in which the chief constable can revoke an air weapon certificate. Most of the grounds for revocation are linked to the tests, or minimum requirements, for granting or renewing an air weapon certificate under section 5(1) of the Bill.</p>		<p>The Scottish Government brought forward minor amendments in this area. The amendments sought to clarify that the chief constable has the power to revoke an air weapon certificate where new evidence comes to light that the holder no longer meets the criteria laid down in the Bill.</p> <p>The Scottish Government amendments were agreed to.</p>
<p><b>Remote sales</b></p> <p>Section 24 of the Bill would allow air weapons to be sold to people who lived outside Great Britain who did not hold an air weapon certificate. However, the Gun Trade Association raised concerns that the Bill made no provision for the sale of air weapons to people resident outside Scotland but within Great Britain.</p>	<p>The Committee recommended that the Bill should not prevent sales of air weapons to customers in the rest of Great Britain.</p> <p>The Scottish Government committed to bringing forward amendments to address this at Stage 2.</p>	<p>Scottish Government amendment 32 (and consequential amendment 7) would enable air weapons to be sold to people in England and Wales, provided they are delivered to a registered firearms dealer for collection. This would ensure compliance with section 25 of the Bill and section 32 of the Violent Crime Reduction Act 2006.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Air weapons cont.</b>		
<p><b>Definitions</b></p> <p>Section 1 of the Bill would define the term “air weapon” by reference to section 1(3)(b) of the Firearms Act 1968. It is only the regulation of air weapons within this definition which is devolved under the Scotland Act 2012.</p>	<p>No recommendations in the Stage 1 report specifically addressed this issue.</p>	<p>Cameron Buchanan MSP brought forward a probing amendment at Stage 2 in relation to the definition of air weapons. The Cabinet Secretary stated that such a change could remove certainty over what was covered by the proposed licensing regime. Mr Buchanan also brought forward amendments which sought to exempt airsoft guns from the proposed licensing regime. The Cabinet Secretary sought to assure the Committee that Scottish Government amendments 2 and 3 would achieve the outcome which Mr Buchanan desired. The Scottish Government amendments would make it clear that certain low powered air guns fall outwith the proposed licensing regime. This is the case if they are not also firearms within the meaning of section 57(1) of the Firearms Act 1968 (that is to say, lethal barrelled weapons of any description from which any shot, bullet, or other missile can be discharged).</p> <p>Mr Buchanan withdrew his amendments. The Scottish Government amendments were agreed to.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Alcohol licensing</b>		
<p><b>Overprovision</b></p> <p>Overprovision is a concept in alcohol licensing which can be used by licensing boards to refuse new applications for premises licences to sell alcohol. The Bill would change the way boards can assess overprovision.</p> <p>Some stakeholders suggested that boards sometimes did not take a pro-active approach to using overprovision. It was thought that this was, at least in part, due to a fear of legal challenge.</p>	<p>The Committee welcomed the changes proposed in the Bill. It made a number of additional recommendations which would go further than the Bill's proposals. It also recommended that the Scottish Government updated its guidance on overprovision as a priority.</p> <p>The Scottish Government committed to updating guidance as soon as possible (but after work on the Bill was finished).</p>	<p>Amendment 82, in the name of Cameron Buchanan MSP, sought to prevent a licensing board from considering its whole area as one locality when considering overprovision. Mr Buchanan argued that the Bill's provisions would allow licensing boards to operate a blanket ban, which would be anti-competitive. Amendment 82 was disagreed to.</p> <p>Scottish Government amendment 50 was designed to address stakeholder concerns that changes in the Bill would water down what a licensing board must consider when assessing overprovision. It would re-instate the wording of the Licensing (Scotland) Act 2005. Amendment 50 was agreed to.</p>
<p><b>Licensing board accountability</b></p> <p>The Committee heard evidence from some stakeholders that it was difficult to assess how licensing boards applied the licensing objectives<sup>4</sup> to their decision-making.</p> <p>There were also concerns about a lack of statistical information in relation to licensing – eg. the number and types of licence granted.</p>	<p>The Committee recommended that licensing boards published annual reports outlining how they have contributed to the licensing objectives. The annual reports should also contain statistical information.</p> <p>The Scottish Government expressed sympathy with the desire to improve accountability. It noted that the Bill contained powers to specify additional information to be included in annual reports. It stated it would work with stakeholders to determine what could most usefully be included.</p>	<p>John Wilson MSP brought forward amendment 87 (and consequential amendments 88, 89 and 90). This sought to create a duty on licensing boards to publish annual reports summarising licensing decisions and explaining how the board had given effect to their licensing policy statements.</p> <p>Mr Wilson withdrew his amendment after the Cabinet Secretary agreed to work with him on a Stage 3 amendment after further consultation with licensing boards.</p>

<sup>4</sup> The licensing objectives are: preventing crime and disorder; securing public safety; preventing public nuisance; protecting and improving public health; and protecting children from harm. The Bill proposes amending the last objective to also include young people.

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Alcohol licensing cont.</b>		
<p><b>Abuse of current law</b></p> <p>The Committee heard evidence that the current licensing regime was being abused. Key concerns were:</p> <ul style="list-style-type: none"> <li>• that major events were taking place under occasional licences, thus avoiding public entertainment licence requirements;</li> <li>• that some members' clubs operated like pubs without having to meet the same licensing criteria;</li> <li>• that overprovision considerations do not apply to occasional licences or members' clubs.</li> </ul>	<p>The Committee recommended various changes to address concerns of abuse. These included removing the exemption from the requirement to hold a public entertainment licence where an occasional licence is in place.</p> <p>The Scottish Government agreed to consider concerns around public entertainment licensing in more detail. However, it was not persuaded that action was needed in other areas (although it intended to investigate issues with members' clubs in more detail).</p>	<p>Scottish Government amendment 67 would require those holding an occasional licence to also apply for a public entertainment licence if they intended to put on any licensable forms of public entertainment. Holders of premises licences to sell alcohol would remain exempt from the requirement to hold a public entertainment licence.</p> <p>Amendment 67 was agreed to.</p>
<p><b>Personal licences</b></p> <p>The alcohol licensing regime enables people to hold a personal licence to sell alcohol. There is a requirement to undergo refresher training every five years.</p> <p>There is currently a five year ban on re-applying for a personal licence where a previous licence has been revoked. This is designed to target more serious behaviour. However, it also affects those who have failed to undergo refresher training (or failed to let the licensing board know that they have undergone refresher training).</p> <p>The Bill would remove the five year ban for those who fail to undergo refresher training (or fail to inform the licensing board).</p>	<p>The Committee recommended that the section of the Bill which deals with this be commenced as soon as possible.</p> <p>The Scottish Government committed to commencing the relevant provision as soon as possible after the Bill received Royal Assent.</p>	<p>Cameron Buchanan MSP brought forward amendments which sought to reduce the ban on reapplying for a personal licence from five to three years. The amendment was withdrawn.</p> <p>Scottish Government amendments 80 and 81 would ensure that the provisions in the Bill removing the five year ban for failing to undergo refresher training/failing to notify the licensing board would come into force the day after Royal Assent. They were agreed to.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Alcohol licensing cont.</b>		
<p><b>Other issues</b> Those involved in the licensed trade made a number of suggestions to the Committee about how the law could be improved. Their chief concerns were:</p> <ul style="list-style-type: none"> <li>• for an effective system for transferring premises licences to sell alcohol;</li> <li>• for a “site only” licence process to aid development; and</li> <li>• for legislative changes in relation to the surrender of a premises licence.</li> </ul>	<p>The Committee rejected calls for a “site only” premises licence, and changes to the arrangements in relation to surrender, believing that these might undermine the current licensing controls.</p> <p>The Scottish Government expressed agreement with the Committee’s position.</p>	<p>Scottish Government amendment 49 (and consequential amendments 43, 57, 75, 77 and 78) dealt with changes to the system for transferring premises licences so that these would operate more effectively in practice. All amendments were agreed to.</p>
<p><b>Community consultation</b> This specific issue was not raised at Stage 1. However, the Committee was aware of general concerns that communities were not able to participate adequately in the licensing process.</p>	<p>This was not raised as a significant issue at Stage 1.</p>	<p>Richard Simpson MSP brought forward amendment 85. This would change the consultation requirements for premises licence applications and major variations. It would require licensing boards to consult a wider range of local residents where there was no community council, or where a community council was inactive.</p> <p>The member withdrew the amendment after the Cabinet Secretary gave an undertaking to consult on updating regulations once the Bill had received Royal Assent.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Alcohol licensing cont.</b>		
<p><b>Alcohol advertising</b> This was not raised as a significant issue at Stage 1.</p>	<p>This was not raised as a significant issue at Stage 1.</p>	<p>Amendment 86, in the name of Richard Simpson MSP, would control alcohol advertising in places where children were likely to be, such as near schools or play parks. It also sought to control alcohol advertising at sporting and cultural events aimed at children, and in retail premises. The member withdrew the amendment after the Cabinet Secretary argued that more detailed consideration was needed, especially in relation to the impact of the criminal offences the amendment created.</p>
<b>Taxi and private hire car licensing</b>		
<p><b>Technological advances</b> Some stakeholders expressed concerns that the current legislation was not capable of dealing with the technological challenges facing the industry. The main challenges were remote booking through mobile phone “apps” and new operators whose business models were not based on a traditional division between taxi and private hire cars.</p>	<p>The Committee emphasised the key role licensing plays in ensuring passenger safety. It called for the Scottish Government to review the current licensing regime and report back by the end of the parliamentary session. The Scottish Government did not agree that a wholesale review was necessary. However, it did commit to further work with stakeholders on technical aspects of the licensing regime. It also intended to undertake specific work on the impact of technology on the taxi and private hire car licensing regime.</p>	<p>Both Colin Keir MSP and Cara Hilton MSP brought forward amendments (93 and 99 respectively) which sought to require taxi and private hire car businesses to be licensed in any local authority area they operated in. The purpose of both amendments was to ensure that such businesses had to comply with local licensing requirements. Amendment 93 was withdrawn and amendment 99 not moved after the Cabinet Secretary outlined the work being undertaken by the Scottish Government to address this issue.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Taxi and private hire car licensing cont.</b>		
<p><b>Overprovision of private hire cars</b></p> <p>The Bill would empower licensing authorities to limit the number of private hire cars where there was “overprovision”. There is currently no limit on the number of private hire car vehicle licences a licensing authority can grant. Licensing authorities can choose to limit the number of taxi vehicle licences.</p> <p>Practitioners were concerned that the overprovision test was different from the current “unmet demand” test for taxis. There was also a fear of legal challenge as the new system bedded in.</p>	<p>The Committee recommended that the Scottish Government reassessed its approach and issued guidance (or brought forward amendments) to improve consistency between the taxi and private hire car regimes on oversupply.</p> <p>The Scottish Government highlighted practical difficulties in adopting the same methodology for assessing over-supply of both taxis and private hire cars. However, it recognised the need to develop best practice guidance in relation to the proposed new test.</p>	<p>Amendment 94, in the name of Colin Keir MSP, sought to require the Scottish Government to prescribe the methodology for calculating overprovision in secondary legislation. Mr Keir withdrew his amendment having received an assurance from the Cabinet Secretary that the Scottish Government would issue guidance on this matter.</p> <p>Cameron Buchanan MSP’s amendment 91 sought to remove the section creating overprovision powers from the Bill altogether on the basis that it was anti-competitive. Mr Buchanan’s amendment was disagreed to.</p>
<p><b>Contract hire exemption</b></p> <p>The Bill would remove an exemption from the licensing regime for vehicles hired for 24 hours or more. This could cover a wide range of services, such as transport to schools, transport to hospitals and chauffeur cars. The Scottish Government stated that voluntary services would remain outwith the licensing regime.</p> <p>Stakeholders generally welcomed the exemption’s removal. There were some concerns about the impact in rural areas. This was because rural local authorities relied more on this type of service yet there was often a lack of vehicles available to provide it.</p>	<p>The Committee welcomed the removal of the exemption and the Scottish Government’s approach to implementation.</p>	<p>No action at Stage 2.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Metal dealer licensing</b>		
<p><b>Avoidance</b></p> <p>The provisions in the Bill would result in a more comprehensive licensing regime, designed to crack down on metal theft. This was generally welcomed by the trade.</p> <p>However, representatives expressed concern that those who operated at the fringes of the trade may still be able to avoid the law. This would be to the detriment of those trying to abide by the law. They called for definitions to be tightened to tackle this.</p>	<p>The Committee called on the Scottish Government to update the definition of metal dealer. It also called for several other anti-avoidance provisions, such as a national register of metal dealers.</p> <p>The Scottish Government agreed to consider updating definitions for Stage 2. It accepted that there might be value in a national register but noted further work to develop this would be necessary.</p>	<p>Scottish Government amendment 64 would enable Scottish Ministers to establish a national register of metal dealers via secondary legislation.</p> <p>Scottish Government amendment 65 would update the definition of metal dealer to include those who buy <b>or</b> sell metal (while exempting those whose business does not substantially consist of such activities).</p> <p>Both amendments were agreed to.</p>
<p><b>Cash payments</b></p> <p>The Bill would prevent scrap metal dealers from making cash payments for metal. Instead payment would be by cheque or bank transfer.</p> <p>This was generally welcomed by the trade and the police as it was considered to remove some of the incentives to steal metal. However, concerns were expressed that unscrupulous operators would try to find ways of avoiding the ban.</p>	<p>The Committee asked the Scottish Government to consider whether the acceptable forms of payment needed to be better defined.</p> <p>The Scottish Government agreed to consider this for Stage 2.</p>	<p>Scottish Government amendments 59, 60 and 61 would have the effect of requiring payment to be made into a bank or building society account. These amendments were agreed to.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Metal dealer licensing cont.</b>		
<p><b>Retention of metal for 48 hours</b>  The Bill would remove the current requirement on scrap metal dealers to retain any metal they acquire for 48 hours. This is because large dealers (whose exemption from the current licensing system would be removed by the Bill) have argued that they do not have sufficient space to meet this requirement.</p> <p>The removal of the retention of metal requirement was generally welcomed by the trade. However, those involved in law enforcement argued that it was a useful tool in tackling metal theft.</p>	<p>The Committee accepted the Bill's proposals in this regard. It called only for the Scottish Government to respond to suggestions that local authorities would not be able to implement a metal retention requirement on a case by case basis.</p> <p>It was the Scottish Government's view that there was no bar in legislation to local authorities requiring retention of metal as a local condition.</p>	<p>No action at Stage 2.</p>
<p><b>Record keeping</b>  The Bill would introduce more stringent record-keeping requirements. These would include requirements to: record identification documents for those who sold metal; and record when any metal had been processed (eg. melted or crushed).</p> <p>The trade expressed particular concerns about the date of processing requirement. They argued that it was not possible to identify individual lots of metal after they were stored together.</p>	<p>The Committee welcomed the Scottish Government's commitment to consider removing the requirement to record the date of processing at Stage 2.</p> <p>The Scottish Government re-iterated its commitment to consider this for Stage 2.</p>	<p>Scottish Government amendment 63 would allow Scottish Ministers to specify acceptable forms of identification in secondary legislation.</p> <p>Scottish Government amendment 62 would remove the requirement on metal dealers to record the date of processing.</p> <p>Both amendments were agreed to.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Metal dealer licensing cont.</b>		
<p><b>Criminal penalties</b> Stakeholders also raised concerns that the current penalties for those who failed to comply with the licensing regime were too low. This meant that they were not sufficient to deter people from association with metal crime. It was also argued that the penalties did not reflect the significant disruption and damage that could be caused by metal theft.</p>	<p>The Committee recommended that the Scottish Government brought forward amendments at Stage 2 to increase the penalties available under the 1982 Act. The Scottish Government agreed to consider Stage 2 amendments.</p>	<p>Scottish Government amendment 58 would increase the maximum penalties available for unlicensed metal dealing and failing to comply with licence conditions. The penalties would be increased to a maximum £20,000 fine or six months in prison (or both). The amendment was agreed to.</p>
<b>Funfair licensing</b>		
<p>This was not raised as an issue at Stage 1.</p>	<p>This was not raised as an issue at Stage 1.</p>	<p>Amendment 68, in the name of Richard Lyle MSP, sought to exempt funfairs from the public entertainment licensing regime. This would prevent local authorities choosing to require funfairs to have a public entertainment licence. Mr Lyle noted that no licensing regime existed in England. He argued that the licensing regime in Scotland was burdensome and often prevented funfairs being held at local events such as gala days.</p> <p>The Cabinet Secretary expressed concern that the amendment might exempt a wide category of activity from any licensing oversight. However, he agreed that the Scottish Government would issue guidance on licensing funfairs. On this basis, Mr Lyle withdrew his amendment.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Sexual entertainment venue licensing</b>		
<p><b>Gender equality concerns</b>            Equality groups generally supported sexual entertainment venue licensing on the basis that it was better than unlicensed venues. However, concerns were expressed that the Bill's provisions did not do enough to align with other Scottish Government policies on supporting gender equality.</p>	<p>There were no recommendations in the Stage 1 Report which directly addressed this point.</p>	<p>Cara Hilton MSP's amendment 95 sought to require local authorities to publish a policy statement in relation to sexual entertainment venue licensing. Local authorities would be required to state how their approach would address violence against women.</p> <p>Amendment 97, also in the name of Ms Hilton, sought to require local authorities to consult with violence against women partnerships when dealing with applications.</p> <p>The Cabinet Secretary expressed support for the broad intentions of the amendments while outlining practical concerns. The amendments were withdrawn after the Cabinet Secretary agreed to bring forward amendments at Stage 3 which would require local authorities to consider the wider policy context.</p>
<p><b>Exemptions</b>            The Bill would provide an exemption from licensing for venues which host sexual entertainment on four or fewer occasions per year. Stakeholders across the board expressed concern that this would provide an unwanted loophole.</p>	<p>The Committee recommended that the exemption be removed on the basis that regulation was necessary to safeguard performers.</p> <p>The Scottish Government rejected this recommendation. It stated that its intention was to license venues with an impact on the communities in which they were situated. The Cabinet Secretary expressed concerns that removing the exemption could bring many more venues – some with fairly limited links to sexual entertainment – into the regime.</p>	<p>No action at Stage 2.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Sexual entertainment venue licensing cont.</b>		
<p><b>A discretionary regime</b>  The licensing regime proposed in the Bill would be optional. If local authorities do not pass a resolution to adopt a regime, then any sexual entertainment venues in their area would remain unlicensed.</p> <p>The majority of those responding to the Committee, including the police, expressed a preference for a mandatory regime. This was to ensure that sexual entertainment venues would have to be licensed where ever they were located.</p>	<p>The Committee called on the Scottish Government to make the sexual entertainment licensing regime mandatory.</p> <p>The Scottish Government remained of the view that it would not be proportionate to require all local authorities to introduce a licensing regime for sexual entertainment venues. It argued that demand for such activities was likely to be limited to large, urban areas.</p>	<p>No action at Stage 2.</p>
<p><b>An “appropriate” number of venues</b>  The proposals adopted in the Bill would allow local authorities to set an “appropriate” number of sexual entertainment venues for a particular area. It would be possible for that number to be zero.</p> <p>Many stakeholders, including equality groups, welcomed this power. However, those representing sexual entertainment venues felt it might allow local authorities to shut down legitimate businesses. They called for existing businesses to be protected.</p>	<p>The Committee welcomed the Scottish Government’s commitment to provide guidance on how this power should be applied in practice.</p> <p>The Scottish Government re-iterated its commitment to providing guidance.</p>	<p>No action at Stage 2.</p>

Issue	Stage 1 Report and Scottish Government response	Action at Stage 2
<b>Sexual entertainment venue licensing cont.</b>		
<p><b>Licensing law conflicts</b> Stakeholders expressed concern that there may be conflicts between the sexual entertainment venue licensing regime and other licensing requirements, particularly alcohol licensing.</p> <p>Some stakeholders called for sexual entertainment venue licensing to come within the remit of licensing boards (which deal with alcohol). Others expressed concern about control of advertising outside clubs.</p>	<p>The Committee recommended that all aspects of sexual entertainment licensing should be dealt with by one licensing body.</p> <p>The Scottish Government restated its belief that sexual entertainment licensing sat best in the civic licensing regime. It did agree to consider issues around advertising for Stage 2.</p>	<p>Scottish Government amendment 72 would enable licensing authorities to deal with advertising “connected with” sexual entertainment venues. This would address concerns about sexually explicit advertising linked to venues.</p> <p>Amendment 98, in the name of Cara Hilton, had a similar intention.</p> <p>Amendment 72 was agreed to and amendment 98 was not moved.</p>
<p><b>Under 18s working in venues</b> Equality and health organisations highlighted concerns about under-18s being able to work in sexual entertainment venues. It was argued that the atmosphere in such venues promoted the objectification of women and was therefore inappropriate for young people. The Bill would allow under-18s to work in sexual entertainment venues outside operating hours (eg. as cleaners).</p>	<p>There were no recommendations in the Stage 1 Report which directly addressed this point.</p>	<p>Cara Hilton’s amendment 96 sought to prevent young people working in sexual entertainment venues at all. The Cabinet Secretary argued that this could have disproportionate effects – eg. by preventing a plumber’s apprentice attending to fix the boiler. He offered to consider an amendment for Stage 3.</p> <p>The amendment was disagreed to. There was a division with three committee members voting for the amendment, three against and one abstention. The Convener used his casting vote to vote against the amendment.</p>

## SOURCES

*Air Weapons and Licensing (Scotland) Bill [as introduced] Session 4.* (2014) SP Bill 49. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Air%20Weapons%20and%20Licensing%20\(Scotland\)%20Bill/b49s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Air%20Weapons%20and%20Licensing%20(Scotland)%20Bill/b49s4-introd.pdf) [Accessed 9 June 2015]

*Air Weapons and Licensing (Scotland) Bill Explanatory Notes (and other accompanying documents) Session 4.* (2014) SP Bill 49-EN. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Air%20Weapons%20and%20Licensing%20\(Scotland\)%20Bill/b49s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Air%20Weapons%20and%20Licensing%20(Scotland)%20Bill/b49s4-introd-en.pdf) [Accessed 9 June 2015]

*Air Weapons and Licensing (Scotland) Bill: Policy Memorandum Session 4.* (2014) SP Bill 49-PM. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Air%20Weapons%20and%20Licensing%20\(Scotland\)%20Bill/b49s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Air%20Weapons%20and%20Licensing%20(Scotland)%20Bill/b49s4-introd-pm.pdf) [Accessed 9 June 2015]

*Air Weapons and Licensing (Scotland) Bill [as amended at Stage 2] Session 4.* (2015) SP Bill 49A. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Air%20Weapons%20and%20Licensing%20\(Scotland\)%20Bill/b49as4-stage2-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Air%20Weapons%20and%20Licensing%20(Scotland)%20Bill/b49as4-stage2-amend.pdf) [Accessed 15 June 2015]

Scottish Government. (Online) *Letter from Michael Matheson MSP, Cabinet Secretary for Justice, to Kevin Stewart MSP, Convener of the Local Government and Regeneration Committee.* 22 April 2015. Available at:

[http://www.scottish.parliament.uk/S4\\_LocalGovernmentandRegenerationCommittee/Inquiries/Response\\_from\\_Scottish\\_Government\\_20150422.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Response_from_Scottish_Government_20150422.pdf) [Accessed 10 June 2015]

Scottish Parliament. (Online) *Air Weapons and Licensing (Scotland) Bill.* Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76383.aspx> [Accessed 9 June 2015]

Scottish Parliament. (Online) *Air Weapons and Licensing (Scotland) Bill* (Local Government and Regeneration Committee). Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78273.aspx> [Accessed 10 June 2015]

Scottish Parliament. *Official Report 23 April 2015.* Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9911> [Accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 19 November 2014.* Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9644> [Accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 3 December 4* Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9673> [Accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 10 December 2014.* Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9687> [Accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 17 December 2014*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9700> [Accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 14 January 2015*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9723> [Accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 21 January 2015*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9740> [accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 28 January 2015*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9754> [Accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 18 February 2015*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9785> [Accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 25 February 2015*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9800> [Accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. (2015) *3<sup>rd</sup> Report, 2015 (Session 4): Stage 1 Report on the Air Weapons and Licensing (Scotland) Bill*. SP Paper 299. Available at: [http://www.scottish.parliament.uk/S4\\_LocalGovernmentandRegenerationCommittee/Reports/LGR\\_Cttee\\_Stage\\_1\\_Report\\_on\\_the\\_Air\\_Weapons\\_and\\_Licensing\\_\(Scotland\)\\_Bill.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/LGR_Cttee_Stage_1_Report_on_the_Air_Weapons_and_Licensing_(Scotland)_Bill.pdf) [Accessed 10 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 13 May 2015 2015*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9948> [Accessed 15 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 20 May 2015 2015*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9961> [Accessed 15 June 2015]

Scottish Parliament Local Government and Regeneration Committee. *Official Report 27 May 2015 2015*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9978> [Accessed 15 June 2015]

## RELATED BRIEFINGS

SB 14-84 [Air Weapons and Licensing \(Scotland\) Bill: Air Weapons](#) (711KB pdf)

SB 14-81 [Air Weapons and Licensing \(Scotland\) Bill: Local Government Licensing](#) (869KB pdf)

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