

Air Weapons and Licensing (Scotland) Bill: Introductory Questions

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The Scottish Parliament
Pàrlamaid na h-Alba

Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name:

DOUGLAS CAMPBELL

Organisation:

RENFREWSHIRE COUNCIL

Address 1:

Address 2:

City/Town:

Postcode:

Country:

Email address (if no email leave blank):

Phone Number:

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SUBMISSION ID
NUMBER

101

Version ID number

* **2. Please confirm that you have read and understood the Scottish Parliaments [“Policy on the treatment of written evidence by subject and mandatory committees”](#):**

Yes

* **3 Please confirm whether you are content for your name to be published with your submission:**

Yes

No

* **4. Which of the three categories below best describes your interest in the Bill (please tick only one)?**

Personal

Professional

Commercial

* **5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:**

Yes

No

*** 6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.**

Yes

No

*** 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).**

All of the Bill

Equalities, climate change and other Scottish Government objectives

Air Weapons

General licensing issues

Alcohol licensing

Civic licensing – taxi/private hire car licensing

Civic licensing – scrap metal dealers

Civic licensing – theatre licensing

Civic licensing – sexual entertainment venues

RENFREWSHIRE COUNCIL

Name/Organisation:

6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

We comment on the highlighted definitions in the response form, which are copied below:-

- “Sexual Entertainment Venue”
- “Audience”
- “Financial Gain”
- “Organiser”
- “Premises”
- “Sexual Entertainment”, and
- “Display of nudity”.

At the initial consultation on the regulation of sexual entertainment venues, we did highlight some concerns in relation to the definitions. We broadly welcome the new provisions given that the liquor licensing system has been unable to effectively regulate these premises in light of the decision in *Brightcrew*. We are not entirely convinced that the definition of “sexual entertainment” is sufficiently clear. We note that “sexual entertainment” is provided only, in terms of the Bill, if it is provided “by or on behalf of the organiser”. We are not convinced that the words “by or on behalf of the organiser” are necessary in the definition. We take the view that it should be sufficient if the provision of the entertainment is for financial gain. It may be that the reference to an organiser will enable an owner of a venue to distance himself from the entertainment provided, on the basis he is simply providing a venue for entertainment which may be taking place. Having regard to enforcement, we therefore do not consider the addition of these words helpful.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

While we appreciate that this proposed exemption is designed to avoid the unnecessary regulation of premises where any entertainment performed is incidental, it may be that the provision will be open to abuse and may require repeated visits by the Police and licensing authorities to ascertain and gather evidence on whether the premises is actually operating as a licensed sexual entertainment venue or not. There may be insufficient resources to keep an overview of such premises at all times, which could make the enforcement of these provisions more challenging

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

While we welcome the discretion afforded to local licensing authorities to determine a suitable number of venues in their area, including 0, this may raise difficulties where a Board determines a figure less than the existing number of premises and there may also be challenges under Human Rights legislation, particularly in relation to the removal of the right of any person to operate their existing business. Alternatively, setting a number of venues equivalent to the number of existing trading venues may raise questions as to why the existing number should be the appropriate number of venues, thereby preventing new businesses being able to open and compete with existing ones.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

We have no issue to raise in terms of the proposed use of the legislative architecture around sex shops licensing for sexual entertainment venues.

54. Are there any barriers to licensing authorities operating the new licensing regime?

We refer to answer 52, above.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

We know that Clause 70 of the Bill would introduce a power to Scottish Ministers to make provision as to the procedure to be followed at the hearings of a licensing authority. We do not consider that this power is necessary. Local licensing committees have been able to conduct hearings for in excess of 30 years and case law is now quite settled as to what is appropriate procedurally under the 1982 Act in respect of hearings. We would suggest that there should be no interference with the discretion afforded to local licensing authorities in this regard. While reference is made in Clause 70 and the new proposed Paragraph 18A of Schedule 1 to the 1982 Act to “rules of evidence”, a licensing authority has no power to administer an oath and the current law enables local licensing authorities a discretion as to whether to allow questioning of parties or alternatively to rely on *ex parte* statements.

We welcome the introduction of the proposed new Paragraph 16A of Schedule 1 to the 1982 Act which would enable a licensing authority to determine and to accept certain applications electronically. However, the new provisions do not appear to apply to applications for variation or requests for consent to materially change premises (under Paragraphs 9 and 10 of Schedule 1 to the 1982 Act). We consider that these matters should also be included in those that a licensing authority could determine to accept electronically. We consider that the proposed Paragraph 16A(7) would be improved if e-mail communications were deemed to be received by the person to whom they were sent at the latest by close of business on the day on which they were sent. While we appreciate e-mail communications are not always instantaneous, the benefit of these provisions may not be fully realised if communications are only deemed to be received on the second working day after the date on which they were sent. Assuming that these communications were received on the same day as they were sent would be in line with existing provisions within the Ordinary Cause rules which regulate communications in cases at the sheriff court.

