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:**

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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
3. General Licensing Issues

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).

23. Is the current Scottish licensing regime, as set out in the Civic Government (Scotland) Act 1982 and the Licensing (Scotland) Act 2005, fit for purpose?
As a Licensing Board, our responses are focused upon the liquor licensing regime and the liquor licensing provisions of the new Bill. We have a number of concerns about the current liquor licensing regime. We are concerned that the provisions allowing refusal of an application or allowing steps to be taken in relation to a licence on review, with their reference to the licensing objectives, are difficult for local licensing Boards to apply in practice. This is particularly so given the key decisions of the Court of Session in *Brightcrew* and *Lidl*. The Bill would, in our view, have been an opportunity to address these issues. While we welcome the fit and proper person test being introduced to the 2005 Act, we consider the addition of the words “having regard to the licensing objectives” in this context unnecessary and likely to give rise to litigation where Boards seek to regulate in the public interest. We think the different formulations throughout the Licensing (Scotland) Act 2005 in relation to the licensing objectives, for example “necessary or appropriate for...”, “having regard to...” and “would be inconsistent with”, makes for complexity in interpretation.

We consider that revised statutory guidance is long overdue. The current guidance has already been shown to be deficient in relation particularly to excluded premises, specifically garage forecourts. Meantime, Boards require to formulate policy statements on issues such as overprovision in the absence of useful guidance. Given that Boards have a duty to have regard to the Guidance, it is important that the Guidance is useful and represents the current legal position.

We note that the new Bill does not address the difficulties around clubs’ licences despite these featuring prominently in a recent consultation. We consider there should be additional restrictions on the operation of members’ clubs and that breach of the provisions of a club constitution should in particular become a breach of licence allowing a Board to review the licence. The privileges allowed to clubs under licensing legislation are in place due to the nature of these organisations. In the absence of licensing controls to ensure that they are operating properly within their own constitution the provisions surrounding club licensing are open to abuse. It is suggested that the constitution itself should not physically form part of a licence, but that the same end could be achieved by introducing mandatory conditions for these organisations’ premises that (a) the club must comply with the terms of its Constitution as shall apply at any given time and (b) that a copy of the Constitution must be provided with applications for a licence and then within 14 days of any change being made to that Constitution, to both the Board and the police. This would ensure the provisions were incorporated in the licence without unduly increasing administration and unnecessarily requiring applications for minor variation upon changes being made. See Paper Apart for the remainder of this Answer.

We also consider that the legislation should be more explicit that only a registered club should be able to lodge an application for an occasional licence for its own premises, given the relaxation to allow their premises to be subject of an occasional licence under Regulation 3 of The Licensing (Clubs) (Scotland) Regulations 2007.
24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?

We consider that it is essential that licensing regulates individual behaviour to ensure that the licensing objectives are met, but also that it should regulate localities, as it already does with overprovision statements.

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?

It is recognised that alcohol problems present considerable challenges to all community planning partners and initiatives take place in relation to addiction and offending. We consider that the licensing system should allow local licensing boards discretion to decide what is best for the areas they serve and that the liquor licensing system should allow them to assist in delivering community planning objectives including the building of more prosperous and safer communities. We have no comment to make on the land use planning system, other than that existing legislation and case law recognise that licensing regimes are not in place to regulate matters covered under other legislation.

26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

With the exception of overprovision policies, which in any event require to seek to promote the licensing objectives, it is difficult in our view to see how existing liquor licensing legislation directly assists with sustainable development and economic balanced areas.
27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?

The liquor licensing system in our view seeks to achieve this through statements of licensing policy which must seek to promote the licensing objectives and the grounds for refusal of applications which include protecting and improving public health.
4. Alcohol Licensing

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).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

We welcome the re-introduction of the “fit and proper” test, although we think its formulation with reference to the licensing objectives is unnecessary and is likely to be the subject of litigation to clarify what it means. We think the move to a fit and proper test may allow Boards to refuse licences more easily where there are concerns over members of the licensed trade involved in criminality and we welcome the additional powers of police and Licensing Standards Officers to comment on these matters. However, we also have concerns that this test, as it relates to reviews, may only be used in relation to the more serious cases, given that revocation of a licence is the only option available to a Board where it is established.

The rules around supply of alcohol for consumption in public by children and young persons are also likely to assist in reducing crime and preserving public order.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?
Reference is made to Answer 23. We consider that the grounds of refusal and review should be more robust, with the issues raised by Brightcrew and LidL being addressed in legislation to ensure Boards have more effective powers to deal with and impose a sanction upon those premises where poor practices are evident. The new fit and proper person test, with revocation the only available step, may only be used only in the more serious cases. We consider that the issues identified in relation to clubs, if rectified as suggested at Answer 23, may be of some assistance in relation to maintaining public order.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

We welcome the extension of the fifth licensing objective to cover young persons as well as children. This should enable this licensing objective to be engaged in relation to reviews based on test purchases.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?
It is to be hoped that this will be effective in ensuring that only those who ought to have a licence obtain one or remain licensed. However, we have some concerns by the addition of the words “having regard to the licensing objectives” throughout these provisions. We think this will be open to interpretation, particularly in light of Brightcrew, and that the effect and extent of the provisions may not be clear until there has been litigation on this point. We do have concerns that the provisions may not be fully utilised given that the only penalty available in the event of the new test being established is that of revocation. In cases of moderate seriousness particularly, the difficulties created by the LidL decision remain and leave Boards to identify suitable steps to achieve some “forward-looking” purpose.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

We are not aware of any specific unintended consequences in our area.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

Given that the relevant legislation sets out at length the offences considered “relevant” under the Act, we think this matter should be left to the discretion of local Licensing Boards. While the Bill seeks to delete the current provision excluding spent convictions, it is probable, unless further exclusions are made from the scope of the Rehabilitation of Offenders Act 1974, that a Board will in any event have to consider whether the interests of justice require disclosure of spent convictions, having regard to the age, nature and seriousness of these matters.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
We do think that the provisions around transfers in section 33 and, particularly, 34 of the 2005 Act, could also be simplified by adding some new provisions to the Bill. The provisions of section 28 of the 2005 Act around licences ceasing to have effect 28 days from an “event”, particularly insolvency, mean that on a strict reading a licence may come to an end and be unable to be transferred prior to an insolvency practitioner being appointed by the Accountant in Bankruptcy, causing unintended consequences. It is unclear why the dissolution ground can only apply to a person other than an “individual, partnership or company” and this can lead to situations where a premises licence may cease to have effect, simply as no-one will realistically be able to trade under the previous licence again, so that a new licence has to be sought.
Renfrewshire Licensing Board
Paper Apart for Response in relation to Air Weapons and Licensing (Scotland) Bill

Continuation of Response to Question 23... We also consider that the legislation should be more explicit that only a registered club should be able to lodge an application for an occasional licence for its own premises, given the relaxation to allow their premises to be subject of an occasional licence under Regulation 3 of The Licensing (Clubs) (Scotland) Regulations 2007, which does not apply to other licensed premises.

We would also identify further areas for reform in liquor licensing-

(a) We consider the provisions in relation to insolvency to be confused. Insolvency is presently a ground under section 28 upon which a licence ceases to have effect unless a transfer application is made timeously by a prescribed person. However, it is not a ground for refusal of either a premises or occasional licence, which means that a person who has lost a licence under section 28 could possibly apply for a new licence for the same premises. It is unclear why this should be the case.

(b) We are aware that Boards and practitioners alike have had to improvise as to the meaning of the words “ceased to be used for the sale of alcohol” in section 28. The Act does not specify what happens when there is a temporary cessation in trading from any premises. Similarly, there is no provision as to what happens when premises are destroyed and rebuilt. We think there could be more clarity around these provisions.