

Air Weapons and Licensing (Scotland) Bill: Introductory Questions



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:

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Board

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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

Name/Organisation:

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?

City of Edinburgh Licensing Board makes comment only in respect of the Licensing (Scotland) Act 2005.
The Act has generally allowed a flexible approach to Boards to deal with alcohol issues within their areas. However court decisions such as Brightcrew and Lidl have demonstrated that the current legislation does restrict the ability of Boards to deal with issues arising from licensed premises in their areas in the manner they would consider appropriate to address those issues.
The statutory guidance which was prepared in 2006 before the Act came into force and which Boards require to have regard to has not been revised since then and does not have regard to operational issues which have arisen with the Act or recent case law.
Further specific issues are detailed in the responses to alcohol licensing questions below.

24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. 'city space' etc.)?

Alcohol licensing requires to regulate both individual behaviour and communities of space as set out in the five licensing objectives which underpin all decisions made by Licensing Boards in terms of the 2005 Act.

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

There is no reference to regeneration in the 2005 legislation and in particular the licensing objectives .

All applicants for new premises licences must have obtained planning permission prior to submitting an application under the 2005 Act . There is no interaction with the planning regime beyond this in the Act which specifically limits the Boards powers to address issues where another regulatory regime exists to deal with such issues.

Statements of Licensing Policy allows an opportunity for consultation with local communities and also for Boards to take account of Community Planning when considering the terms of their Statements .

Interaction and support with community planning processes by Boards is however required to take place against the backdrop of the 2005 Act which sets out the statutory framework for administration of the liquor licensing system by Boards . The licensing system should afford sufficient flexibility to allow Boards' discretion to address local issues.

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

Given the comments above in respect of the statutory framework under which Boards operate there are limited opportunities to assist with sustainable development and economic balanced areas although the Board does seek to promote both where possible in terms of its Licensing Policy Statement .

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?

The 2005 Act includes the specific licensing objective of protecting and improving public health and Health Boards are now statutory consultees in respect of premise and variation applications made under the 2005 Act . Boards can have regard to information from Health Boards and other partners when framing their Policy Statements particularly in relation to overprovision . A representative from the local Health Board also has a statutory place on the local Licensing Forum. These are significant changes from the previous alcohol licensing legislation which took no specific account of health issues.

Name/Organisation: City of Edinburgh Licensing

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?

The reintroduction of the "fit and proper" test in the Bill is welcomed as allowing for a reduction in crime and the preservation of public order. However whilst the proposal is that this ground may be considered in relation to premises licences applications and reviews, transfers and personal licence applications there is no reference to occasional licence applications. It is suggested that both in the interests of consistency and overall effectiveness of the provision that occasional licence applications should be included.

The amendment of the legislation to allow spent convictions to be considered in respect of applicants is also welcomed.

The introduction of an offence in respect of supplying alcohol to children or young persons for consumption in a public place will also allow for a reduction in crime and the preservation of public order if enforced effectively.

The inclusion of young persons within the licensing objective which was previously limited to protecting children from harm rectifies an anomaly which has been present in the Act since its introduction and will allow Boards an opportunity to address matters of concern in relation to young persons and the sale of alcohol.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

See answer to No 29 above – extending the fit and proper test to occasional licences.

The removal of defined "relevant offences" would also assist as this would mean any offence could be capable of being taken into account when considering an application.

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

For the reasons outlined above the Bill does seek to enhance the licensing objectives particularly in relation to the objectives of preventing crime and disorder and protecting children and young persons.

However the opportunity has not been taken to place greater control on the operation of clubs which enjoy less restrictions than other premises as suggested in the previous alcohol licensing consultation which proposed incorporating the constitution of clubs into the premises licence and allowing the breach of a club constitution in relation to the sale of alcohol to become a breach of licence allowing the Board to review the licence. This Board also suggested that a mandatory condition could be introduced to tighten up the regulation of members clubs by requiring amendments to their constitutions to be notified and preventing amendments that breach the Licensing (Clubs) (Scotland) Regulations 2007/76 and thus ensuring clubs were not becoming primarily commercial operations.

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?

This will allow for a more in depth examination of all the relevant facts surrounding an applicant including whether the person making an application is “ fronting “ for another. There is a concern that linking the test to the licensing objectives rather than as a stand alone ground of refusal similar to that found in other regulatory regimes may restrict the use of the provision .

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

The Board is aware that the cost implications of obtaining and maintaining a premises licence have resulted in some cases in smaller outlets where alcohol sales were a low percentage of overall turnover giving up licences .

Separately economic considerations are not encompassed within the licensing objectives which the Board are required to have regard to when considering licence applications.

The provisions of the Act in relation to personal licences, particularly in relation to mandatory refresher training and the automatic revocation of licences if such training is not undertaken within five years of the date of the personal licence being issued , have resulted in widespread concern for Boards and licence holders alike . Boards should be given discretion to decide whether the ultimate sanction of revocation is necessary having regard to the licensing objectives as in other situations where licence holders have breached conditions of licence or acted inconsistently with the licensing objectives .

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?

See answer 29 above.

Councils as Licensing Authorities are already able to consider any spent convictions where they are satisfied it is in the interests of justice to do so and it is appropriate that Licensing Boards are in a similar position to have as full information available to them as possible when making decisions on applications.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

The issue of occasional licences with a fee of £10 being used as a substitute for making full premises licence applications has not yet been addressed . A more restricted definition of occasional licence should be provided to ensure that such licences are only available for specific “ occasions “. Whilst not specifically contained in the licensing aspects of the Bill it is suggested that the exemption from the requirement to obtain a Public Entertainment licence if an alcohol licence is in place should be removed as an occasional licence to sell alcohol should not be used to licence large events where the sale of alcohol is ancillary to the public entertainment taking place.

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'

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?

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?

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?

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

City of Edinburgh Licensing Board responded to the previous consultation on Sexual Entertainment licensing by offering the view that the licensing of such entertainment could be dealt with by Licensing Boards.

In light of the proposals within the Bill to create a new licensing regime to be administered by Councils , consideration will require to be given to ensuring that the new regulations will be aligned to the existing overlapping provisions of the Licensing (Scotland) Act 2005 e.g mandatory conditions for late night premises

55. Civic Licensing

Do you have any other comments to make on the civic licensing

aspects of the Bill?

