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: Evelyn Gillan
Organisation: Alcohol Focus Scotland
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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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
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?

Name/Organisation:

Alcohol Focus Scotland
We recognise the role that alcohol can play as an underlying cause of crime and disorder, and that this is an important priority for the Scottish Government. It should be noted however, that all five licensing objectives are given equal weight within the 2005 Act. While we welcome many of the provisions that have been brought forward within this Bill, in our view opportunities have been missed to bring forward provisions that would have benefits in relation to other licensing objectives, such as promoting and improving public health.

If alcohol availability is better managed, this should lead to reductions in harm, and improvements to all licensing objectives, many of which have overlapping benefits. In general, we support the provisions brought forward by the Bill. However, we are concerned about the effect the drafting of section 54(2)(b) of the Bill, amending the duty to assess overprovision, may have on the licensing objectives. Overprovision is one of the key mechanisms that can be used to prevent crime and disorder, and section 54(2)(b) widens the factors that a licensing board can consider when assessing overprovision. While we welcome this extension, we are concerned that the effect of the drafting is to change the requirement that licensing boards must have regard to the number and capacity of licensed premises in the locality to that they may have regard to (among other things) the number, capacity and licensed hours of licensed premises in a locality.

It is our view that by changing ‘must’ to ‘may’, rather than strengthening the existing legislation, this new provision unintentionally weakens it. It is difficult to see how boards can make a proper assessment of overprovision without a specific requirement to have regard to the number and capacity of licensed premises in a locality. We already know from the independent evaluation of the Scottish Government’s alcohol strategy (MESAS evaluation) that defining and measuring capacity and overprovision are areas of the Act that are working less well.1 AFS’ analysis of the 2013-16 licensing policy statements found a lack of transparency in how assessments of overprovision are made, with 8 licensing boards not providing any explanation of how they reached their decision that there is no overprovision in their area or the evidence they took into account in formulating their policy position. We have concerns that the change proposed in section 54(2)(b) may exacerbate these difficulties.

We recognise that taking account of licensed hours may in some circumstances be difficult in practice, given maximum opening hours may not always be utilised by licence holders. However, having regard to these challenges should not be at the expense of watering down the existing obligations. We believe that this can be rectified by retaining the requirement that regard must be had to the number and capacity of licensed premises, but adding that licensing boards may also have regard to (among other things) licensed hours. As discussed at question 34, we would also like numbers of members’ clubs and occasional licences granted to be included in an assessment of overprovision.

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

AFS believes that there is an urgent need to improve the quality and detail of published licensing data. There is a paucity of publicly available data on the operation of the licensing system in Scotland; difficulty accessing comprehensive local and national data was one of the challenges highlighted by the MESAS evaluation. Consideration, in our view, should be given to placing licensing boards under a statutory duty to record, collate and report on a comprehensive licensing data set, in a format that can be compared with other areas. We believe this would assist in the achievement of all licensing objectives, including preventing crime and disorder, securing public safety and preventing public nuisance.

Annual liquor licensing statistics are currently available from the Scottish Government by local authority area\(^2\) and local authority websites also publish decisions taken at licensing board meetings. This information is not easy to access, however, as it has to be extracted from multiple documents, nor is it presented in a standard format that enables comparison across different time periods or localities. The current statistics are also limited in scope. While information is available on the total number of on-sales and off-sales premises licences in force in each area, these are very broad categories. In reality, specialist off-sales, large-volume, low-priced supermarkets, restaurants and vertical drinking establishments operate very differently and can exert different pressures on the licensing objectives. In addition, despite the fact that the law defines overprovision in terms of the number and capacity of licensed premises, statistics on capacity are not routinely reported and there is no collection of volume sales data. There is a similar lack of reporting of other statistics that could be taken into account when assessing overprovision, such as operating hours or the number of occasional licences granted.

It is difficult to see how a licensing board can effectively undertake its duties, particularly to assess overprovision, or to be held to account for its licensing decisions on this basis, if there is a lack of data available to assist them in this decision making process. Collection of such data would enhance the information available to licensing boards to inform the development of their policy statements. It would also assist in understanding and reviewing how the licensing system is functioning, or assess whether it is achieving its purpose.

We acknowledge establishing a standardised, comprehensive licensing data set will have resource implications, and these costs would be recouped from licensing fees. However we believe these costs should be relatively modest and largely associated with set up costs.

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

\(^2\)http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/PubLiquor
We are broadly supportive of the Bill’s provisions, many of which take forward recommendations of our 2011 report *Rethinking Alcohol Licensing*. AFS supports section 41 of the Bill expanding the licensing objective of protecting children from harm to include young people. The definition of a child within the 2005 Act as a person under 16 resulted in a loophole whereby people between 16 and 17 were unprotected within the licensing objective.

We support the clarification provided by section 54(2)(a) that in assessing overprovision, a licensing board may determine that the whole of the board’s area is a locality. This change reflects the reality that different-sized localities are needed for assessing overprovision in relation to different alcohol problems. While alcohol-related public nuisance and social disorder issues are often localised to relatively small areas, other important indicators of relevant alcohol-related harm are only measured at a licensing board level.

However, we are disappointed that the opportunity has been missed within this Bill to further enhance the licensing objectives by strengthening their status within the legislation. It is AFS’ view that the licensing objectives should be clearly identified as the overriding principles underpinning the Act, with a general duty placed on licensing boards to promote the objectives when undertaking their work. Imposition of such a duty would give the objectives in Scotland similar weight to those in the equivalent English legislation.

This proposal has been rejected by the Scottish Government, despite the responses to the *Further Options for Alcohol Licensing* consultation being marginally in favour of such a duty being introduced. This proposal, together with the proposal for licensing boards to produce an annual report on how they have promoted the licensing objectives, has been rejected on the grounds that rather than leading to a change in attitude or practice, it would simply lead to additional reporting. AFS believes the imposition of such a statutory duty would help ensure licensing boards embed the licensing objectives in their day to day practice, by making explicit that the five licensing objectives should be the primary consideration when deciding licensing applications. As outlined within question 34, we also believe additional reporting, while extra work for licensing boards, would introduce much needed transparency and accountability in the licensing system.

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

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3 *Rethinking Alcohol Licensing, Alcohol Focus Scotland, 2011*

4 *Section 4(1) of the Licensing Act 2003 states that a licensing authority must carry out its functions under the Act with a view to promoting the licensing objectives. The Licensing (Scotland) Act 2005 requires only that a licensing board must ensure that its licensing policy seeks to promote the licensing objectives and that the licensing board must have regard to its policy statement in exercising its functions.*

5 *Further Options for Alcohol Licensing – Summary of Consultation Responses, Scottish Government, 2012*

6 *Scottish Government letter to Local Government and Regeneration Committee, 1 September 2014, qu. 33*
in the 2005 act?

We have some concerns that not specifying relevant factors that will considered when applying the ‘fit and proper person’ test may in practice make it more difficult for people to raise concerns about an applicant or licence holder. It could also make it problematic to assess whether the test is being applied consistently by a licensing board, impacting on a board’s accountability. A potential solution might be to require licensing boards’ policy statements to outline how the test would be applied, such as including as a non-exhaustive list of factors they would consider relevant.

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

As discussed at question 30, the objective to protect children from harm left a loophole leaving young people aged 16 and 17 unprotected by the 2005 Act. We support the closure of this loophole.

AFS is concerned that the current exclusion of members clubs from the assessment of overprovision has the effect of the overall availability of alcohol being underestimated during these assessments. In some areas, the contribution of members’ clubs to availability can be considerable; in the Scottish Borders for instance, 22% of all licensed premises are members’ clubs. We believe members’ clubs should be included within the assessment of overprovision, as should occasional licences, which are cheap, easy to obtain, and add to the overall provision of alcohol in an area.

As noted at question 30, we believe the lack of a general statutory obligation to promote the licensing objectives has created ambiguity about the extent to which these objectives should be the primary consideration in licensing boards’ decision making. We believe this unintended consequence could be addressed by using this Bill to amend the 2005 Act to include a general duty on licensing boards to promote 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?

7 Scottish Borders Alcohol Profile, Scottish Borders Local Licensing Forum, February 2013
34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

Licensing Policy Periods (section 42)
We support extending the period of time a statement of licensing policy is in force for up to five years. The process of developing a new statement of licensing policy, if done properly, is a substantial task for licensing boards and other stakeholders. Extending the licensing policy period will allow for more detailed monitoring and review of the policies implemented, thereby informing future licensing practice. It will be important for licensing boards to keep their policies under review within this period, issuing supplementary policies if necessary. It will also be important for safeguards to be put in place to strengthen the mechanisms of accountability of licensing boards in relation to this function.

Firstly, the robustness of accountability mechanisms must be improved. The current mechanism whereby boards should notify ministers if they deviate from guidance does not appear to be effective. There needs to be better oversight from Scottish Ministers of how licensing boards are undertaking their functions, and to ensure they are meeting their statutory obligations.

Secondly, to counteract the reduced opportunities for stakeholders to scrutinise and influence policy direction, licensing boards should be required to produce an annual report for Scottish Ministers, which should include a report on how their actions have promoted the licensing objectives, or at the very least how they have complied with their own licensing policy. We are disappointed that the Scottish Government has decided not to bring forward such a requirement on the grounds that this would impose additional work on licensing boards but would have little positive impact. We believe it would have an important positive impact by improving the transparency and accountability of the licensing process, which are key to building public trust in this process and encouraging public engagement. We can see no justifiable reason why a licensing board should not have to be publicly accountable for how it undertakes its public functions. A requirement to produce an annual report would bring licensing boards in line with other bodies undertaking public functions, such as regulators, judicial and quasi-judicial bodies, and with the local planning process. We note the Bill introduces a requirement for licensing boards to produce an annual financial report (section 55), brought forward on the basis of increasing transparency of licensing board income and expenditure for the trade. We believe this provision should be extended to impose a requirement to produce an annual report, which would increase transparency of licensing board functions for the public and all interested stakeholders.

Deemed grant of applications (section 58)
While we agree there should not be unnecessary delay in considering licence applications, it will be essential to ensure that sufficient protections are in place to guard against automatic grant of licences which have been delayed to allow more
information to be sought due to concerns or controversy about the application.

**Guidance**

As noted elsewhere in our evidence, the current guidance on the 2005 Act is out-of-date and in need of urgent updating. It has not kept abreast of developments in licensing policy, and opportunities to clarify areas of confusion through the guidance have not been taken. Indeed, in some instances the drafting of the guidance has contributed to some of the confusion, for example the reference to a requirement to have a causal link between evidence of overprovision and licensed premises.

Providing comprehensive, up-to-date guidance to licensing boards should help them undertake their functions effectively and consistently. It is essential that the guidance is updated as a matter of urgency and that a requirement be placed on the Scottish Government to regularly review the guidance and update as appropriate.

As recommended by the MESAS evaluation, it would be helpful if boards were given more guidance on:
- the public health objective;
- how to assess overprovision, including how to measure capacity;
- the role and function of Licensing Forums;
- any new, relevant legislation that is implemented.\(^{10}\)

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