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: Michael McDougall
Organisation: Glasgow Licensing Board
Address 1: 
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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”:

x Yes

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

x Yes
□ No

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

□ Personal
x Professional
□ Commercial

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

x 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  x 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

x General licensing issues

x 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?

The Board agrees that the 2005 Act is, by large, fit for purpose however is of the view that a review of the mechanics contained with the Act is required. Such a review would hopefully resolve the practical difficulties that the Board and stakeholders face on a daily basis. The Board believes that the Act is generally successful in its strategic aims and allows the Board to successfully promote the licensing objectives, subject to the limitations discussed below. However, there are a number of technical problems with the Act’s provisions which places unnecessary strain upon both the Board and stakeholders.

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

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
Both the Licensing Authority and the Licensing Board have a concern that a specific focus upon the above objectives will detract from the primary purpose of the licensing regime, i.e. to uphold the licensing objectives whether they be the ones set down in the Licensing (Scotland) Act 2005 or implied, i.e. the 1982 Act. Ultimately, licensing regimes are concerned with determining whether the application is compatible with the aims of the specific licensing regime.

The Authority and Board would respectfully submit that in order to ensure public confidence in the licensing regime, that they should remain free from statutory obligations to consider the above matters.

Furthermore, both the Licensing Authority and the Board are aware of a body of case law that dictates that they cannot consider planning matters when considering licensing applications.

26. How does the licensing system in Scotland assist with the delivery of 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 Board recognises that one of the five licensing objectives is protecting and improving public health. Therefore, the Board considers matters of public health in relation to various applications and as part of its policy statement.

As the Scottish Government is aware, the NHS can make representations / objections to applications that come before the Board. For the Board to be able to take cognisance of the medical evidence it must be directly relevant and relatable to the premises. The Board does appreciate that this is a significant challenge and recognises the work carried out by the NHS to date. However, the Board is keen to see evidence that presents a direct correlation between alcohol consumption in an area and one or more specific premises.

As part of the Board’s consultation for its 2013-2016 policy statement, it held evidence sessions where various stakeholders were given an opportunity to address the Board on matters of import to them. The Board were delighted to have representatives from Alcohol Focus, Greater Glasgow and Clyde Health Board and the Community Area Partnership attend and address the Board on matters relating to public health. The Board took account of the evidence led by these stakeholders when formulating its policy statement.

The Board would submit that this is the appropriate level of interface between the licensing regime and health outcomes, i.e. stakeholders have an opportunity to submit evidence at a specific stage of the licensing process or through evidence gathering at a policy creation stage and then the licensing body gives this the weight it determines appropriate in the context of the licensing objectives.
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 Board is of the view that while the Scottish Government, through the Bill and its supporting
documentation sets out a clear desire to ensure that Boards can effectively combat crime and
disorder, it falls short in providing the necessary tools in order to enable it to do so.

While the Board welcome the inclusion of the “fit and proper person” test, it is concerned that it will
be unable to fully address issues relating to crime and disorder unless amendments are made to the
Act to address the limitations and constraints arising from the decision in *Brightcrew –v- City of
Glasgow Licensing Board* [2011] CSIH 46. Further, the Board is concerned, if the test is
implemented as currently drafted, there will be mismatch in expectation between the police and the
Board. The police will doubtless expect the Board to take a robust approach in cases where the
Board is still constrained by Brightcrew type considerations.

In short, if the Board is not explicitly given the ability to deal with issues it considers to be of
relevance to one or more of the licensing objectives but do not necessarily flow directly from the
sale of alcohol, the Board considers that it will be unable to fully tackle issues relating to crime and
public disorder, and therefore unable always able to act in the public interest.

Further in relation to the “fit and proper person” test, the Board would welcome the extension of the
test to anyone involved in the management of the business or otherwise derives a benefit from it.
This would assist in compensating for the removal of interested parties from the 2005 Act.

The Board welcomes the move to allow it to consider spent convictions and recognises that it may
be a valuable tool in protecting both the public and the trade. In doing so, the Board suggests that in
order to provide certainty, the applicant should be required to disclose all spent convictions for
relevant offences. This would allow the Board to come to an informed view as to what weight to
attribute to the spent convictions and allows patterns of behaviour to be seen. However, the Board
would suggest that clarification should be provided as to this provision’s interface with the approach
set out in *O’Doherty v Renfrewshire Council* (1998 S.L.T. 327) whereby a Committee had to be
satisfied that it was necessary to take account of the spent convictions in the interests of justice.

Further, the Board strongly agrees with the introduction of the “fit and proper person” test in relation
to the transfer of premises licences. However, the Board is concerned by the ability of the police to
provide “any information” that they consider relevant to a transfer application. The Board notes that
this is far wider than the matters that the Chief Constable is permitted to bring to the attention of the
Board in the case of a premises licence. Therefore, there this requirement is, in the Board’s view,
lacking in specification. This may present the Board with a difficulty in dealing with irrelevant
information while being under pressure to act in the public interest. The Board does not believe
there is a need to place transfer type applications under greater scrutiny than new applications and
suggests the provisions within section 23 of the 2005 Act are mirrored here in respect of transfer
applications.
29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

Yes, if the Scottish Government wishes the Board to take action on matters that relate to the reduction of crime and preservation of public order that do not relate just to the sale of alcohol, then the Scottish Government should legislate to allow the Board, in certain circumstances, to consider matters that are not solely connected to the sale of alcohol.

Such a change in the legislation would then allow the Board to deal with their concerns relating to crime and disorder without having to consider whether it relates to the sale of alcohol.

Further, the Board notes that the 2005 Act is concerned solely with the regulation of the sale of alcohol and does not extend to the supply of alcohol. The Board's evidence sessions held in preparation of its latest Policy Statement identified concerns relating to the supply of alcohol by “dial a booze” type businesses. The Board is powerless to regulate these types of activities and to deal with any concerns despite a common misperception that the Board has a locus. Therefore, the Board would suggest that the purpose of the Act be amended so to include certain activities relating to the supply of alcohol and provide either the police or the Board with powers to manage and regulate such operations.

In the Board's view, the occasional licence system should be reviewed. The Board notes that such licences can be applied for by personal and premises licence holders, and voluntary organisations. The Board is aware that personal and premises licence holders are subjected to the licensing regime to ensure that they are suitable holders of a licence however voluntary organisations are effectively unchecked. The Board has a concern in relation to voluntary organisations that are granted occasional licences without being subject to the Board's full scrutiny. Therefore, the Board would suggest that voluntary organisations are subject to a “fit and proper person” test. It may also be beneficial to introduce a definition of a voluntary organisation.

Further, the Board notes that the 2005 Act does not provide for mandatory late night conditions to be attached to occasional licences. Therefore, you can have a situation where a non nightclub premises can effectively trade as a nightclub by virtue of an occasional licence. Such premises would not have the benefit of the Board's mandatory conditions such as a drugs policy etc.
30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

The Board considers that the inclusion of young persons in the licensing objection of Protecting Children from Harm was a critical omission from the Act and welcomes the proposal to amend the objective.

The Board is also supportive of the creation of a new criminal offence in relation to supplying alcohol to a child or young person.

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?
The Board strongly supports the proposal to introduce a ground for refusal that the applicant is not, in the opinion of the Board, a fit and proper person to hold a licence, for premises licences, reviews, transfers and personal licences. Although legislative changes brought about by the Criminal Justice and Licensing (Scotland) Act 2010 were intended to address this issue through wider use of the licensing objectives, the courts have consistently refused to extend their application beyond matters directly relating to the sale of alcohol following on from the decision in Brightcrew – v City of Glasgow Licensing Board.

The Board is routinely faced with submissions that criminal conduct on the part of an applicant or a licence holder which is not connected with the sale of alcohol or does not take place in licensed premises, should not be a matter for the Board, no matter how abhorrent the nature of the conduct. It is of serious concern to the Board that these submissions have found favour in the courts.

While the Board acknowledge the approach which has been taken by the courts, it believes that as a body of elected members it has a greater duty to members of the public to ensure that their safety is not compromised by the granting of licences to individuals who have displayed violent, predatory or otherwise serious criminal behaviour. Decisions to refuse licences to such individuals are not taken with any moral judgement in mind, only an overriding desire to ensure that the safety of the public is protected, which in the Board’s view is the very purpose of any licensing system.

While the Board is supportive of the reintroduction of the “fit and proper person” test, it is of the view that the test, as currently drafted, will have limited impact. The Board believes that as the test is firstly qualified by the reference to the licensing objectives and secondly it must be contextualised within the Brightcrew framework, it will not allow the Board to consider matters that it cannot already deal with by way of the present licensing objectives related grounds for refusal.

Given the above issues, the Board calls upon the Scottish Government to put it beyond doubt that the Board is entitled to regulate other activities taking place on the premises, in addition to the regulation of the sale of alcohol as per the preamble of the Act, and that the application of the licensing objectives are also similarly extended. The Board believes that freeing the “fit and proper person” test from the jurisprudence of Brightcrew is essential in order to provide for the safety of members of the public and to protect the integrity of the licensed trade itself.
32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?
As noted in Q29, the Board sees the lack of control on occasional licences as an issue. The Board believes that the low cost of entry and ease of use has led to the proliferation of occasional licences. While the Board is aware that the Criminal Justice and Licensing (Scotland) Act 2010 amended the 2005 Act to allow ministers to introduce a limit on the number of occasional licences. To date no such limit has been introduced. The Board would therefore, suggest that the Scottish Government introduce such a limit.

Further, the Board is aware that an occasional licence being granted eliminates the need for a public entertainment licence. This can mean that large scale events such as pop concerts can be licensed under an occasional licence which in terms of the decision in Brightcrew can only be regulated in terms of the sale of alcohol. The Board notes that this may be best cured by an amendment to the Civic Government (Scotland) Act 1982 however it does have concerns with situations where a licence holder could hold events without being subject to the checks and balances contained within the 1982 regime. This issue is further exasperated by the fact that the Board cannot impose any conditions upon an occasional licence that are not connected to the sale of alcohol.

The Board has a concern with the applicability of the Act’s transfer provisions in the event of insolvency. The Board notes that the dissolution of a company does not trigger the cease to have effect provisions contained within section 28 of the 2005 Act. Therefore, the Board and applicants are placed in a position of having to deal with licences that are held by the Queens and Lord Treasurers Remembrancer. The Board would suggest that the dissolution of a company should be dealt with by way of the cease to have effect provisions and there allow a section 34 transfer to take place.

Generally there needs to be greater clarity around the meaning of cease to have effect as this appears to be left to the discretion of individual Boards.

Recent events connected to refresher training has highlighted to the Board that there is no expiry date placed upon the personal licence holder’s initial training as the time limit only applies to the date of the licence. Therefore, a personal licence holder could surrender their licence and apply for a new licence making reference to their initial training. This training could be five years old. The Board is of the view that the 2005 Act does not allow it to refuse a personal licence in these circumstances. Furthermore, there is no provision to prevent a personal licence holder from completing their refresher training within days/weeks of their initial training and then merely notifying the Board at the appropriate time. The Board would suggest that this undermines the purpose of the refresher training which is to ensure that staff have an up to date knowledge of the law. The Board would suggest that firstly an expiry date is placed upon the training and secondly that a requirement be put in place so that the refresher training must be carried out within a set period prior to the five year interval.
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?

The Board is of the view that if spent convictions are to be disclosed, then the applicant should be required to disclose all spent convictions for relevant offences. It is only through full disclosure that the Board could come to a view as to what weight it should attach to the convictions, i.e. do the spent convictions demonstrate that there is a pattern of behaviour that is of concern to the Board?

The principal benefit of such disclosure is that the Board would be able to determine whether the applicant has spent convictions which are of a serious nature in terms of the licensing objectives.

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

The Board is of the view that section 7 does not prevent a “locality” from being defined as the entire Board area, should a Board wish to do so. As such, no amendment is considered necessary.

If licensed hours are introduced into the equation then the pool of comparative premises that the Board can have regard to may be reduced. Following on from decisions in Tesco Stores Limited v City of Glasgow Licensing Board, the Board is of the view that the current ground for refusal on the basis of overprovision is working reasonably well.

Further, the Board believes that clarification is required in respect of the insertion of the words “among other things”. The Board considers that the Scottish Government would need to issues guidance as to the factors that the Board should consider in respect of these “other things”.

In relation to guidance, the Board notes that section 142 of the 2005 Act allows the Scottish Ministers to issue guidance to Boards as to the exercise of their statutory functions. The Board notes that the Scottish Ministers have not updated the Guidance since it was first published in 2007. The Board is routinely faced with submissions that refer to this statutory guidance. This statutory guidance, by virtue of the passage of time and subsequent amendments to the 2005 Act, is out of date. Therefore, the Board would suggest that the Scottish Ministers issue updated guidance or alternatively, repeal the 2007 guidance.

The Board considers that a comprehensive review of all procedural
aspects of the licensing system is required having regard to the principles of better regulation and the legal obligations placed on Licensing Boards under the EU Services Directive. For example, the processes relating to the processing of applications for transfer, major variation, occasional licences and extended hours should be streamlined and improved.

The Board would also wish consideration to be given to allowing greater flexibility for delegation of certain matters and for it to be able to determine which matters should be subject to a minor variation in order to reduce the volume of uncontentious major variations.

The Board also considers that with the plethora of legislation amending the 2005 Act, there is a need for a consolidated single piece of legislation to be produced in order to improve accessibility to the licensing process in relation to both members of the trade and members of the public.