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 City Council
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone 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”:

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
- 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
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'
Financial gain
The Licensing Authority is concerned that by linking the performance to financial gain this will provide an avenue for venues to argue that performances do not generate any such gain where such an activity is auxiliary to a primary activity, i.e. the sale of alcohol or that the event is free to enter. It is suggested that financial gain is expanded to include where such entertainment is provided auxiliary to another activity where there is a financial gain.

Further, the Authority is concerned that by connecting “financial gain” to the organiser then there may be an argument by the licence holder that the entertainment is done for the financial gain of a self employed performer.

Premises
It is suggested that for the avoidance of doubt, the definition should include reference to private member clubs.

Display of nudity and live performance
In the view of this Authority, the terms “display of nudity” and “live performance” require to be further defined. It is submitted that the aforementioned terms are interlinked and that without clear definition, the term “live performance” is subjective to the reader. It would appear to the Authority that as drafted the definition turns upon the performer’s state of dress. Clear definition is therefore required in order to avoid potential issues regarding interpretation from arising once introduced.

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?
In the view of the Licensing Authority, no such cap should be placed on premises that are used for sexual entertainment. The Authority is of the view that to do so would be contrary to the premise behind the introduction of the proposed licensing provisions and the overarching principles of the 1982 Act, i.e. the preservation of public order and safety and the prevention of crime. It is also the view of this Authority that the potential for criminality can exist during one performance or one hundred performances in a SEV and the number of performances does not reduce that risk. Likewise, the potential for public order and public safety to be compromised can exist during one performance in a SEV or many. SEVs should therefore always be subject to the requisite licensing regime. Further, in the view of this Licensing Authority, if a cap were to be introduced, it would be extremely difficult to monitor in practice which SEVs had fulfilled their quota of three performances and which had not.

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?

Whilst the Licensing Authority acknowledges Glasgow City Council’s policy on violence against women and is acutely aware of the risk of criminality and criminal activities such as exploitation, prostitution and trafficking that can be associated with SEVs, it recognises that these venues currently form part of Glasgow’s economy. This Authority is of the view that the ability to introduce a policy setting a cap at zero should be made available to Local Authorities. Transitional provisions for existing premises would need to be considered and the Authority requests that the Scottish Government explicitly states whether such premises benefit from “grandfather rights”. It is important that there is clarity as to whether these premises’ right to trade can be removed. The Authority would suggest that there is the possibility of extensive litigation taking place in the event that a licensing authority, if it decides to set the level of SEVs at zero, refuses to grant an existing SEV a licence. However, the Authority stands by its view that it is important that Local Authorities have this discretion.

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?

The Licensing Authority is of the view that the 1982 Act is in need of a refresh and that the inclusion of the licensing of SEVs further stretches the Act. However, the Authority is satisfied that the proposed amendments to establish the licensing regime, is a positive move.

The Authority notes that section 45B(5A)(a) of the Bill states that “from time to time” a local authority must determine the appropriate number of SEVs. The Authority suggests that clarification is required as to what factors the Authority can consider in arriving at the appropriate number of SEV and how often it should carry out a review or what should trigger a review of the number of SEVs.

The Authority suggests that detailed consideration requires to be given to the possible introduction of a national mandatory set of conditions for licence holders of a SEV. It is the view of this Authority that such a set of conditions would go some way to establishing a coherent position on the protection of performers in SEVs. This would be particularly useful when dealing with SEV operators running a chain of establishments in different Local Authority areas. Further conditions should include detailed provision regarding the use and operation of CCTV equipment within SEVs as well as the provision of CCTV tapes and equipment to authorised officers of Local Authorities and the police upon request. Conditions regarding advertising and the distribution of promotional materials should also be contained in such a set of conditions as should the impact of such venues upon children and young persons. A condition requiring each SEV to maintain a list of their performers should also be considered.

In the further view of this Licensing Authority, crucial to the operation of a successful SEV licensing regime are transitional provisions for existing premises as well as detailed enforcement provisions. In order to assist with the regulation of SEVs and to help ensure the protection of performers, members of the public in attendance at the SEV and to reduce the risk of criminality, detailed enforcement provisions akin to those provided in Part 3A of the Bill should be introduced, i.e. Civic Licensing Standards Officers. Transfer provisions for which there is no current provision contained within the 1982 Act should also be considered.
54. Are there any barriers to licensing authorities operating the new licensing regime?

The Licensing Authority welcomes the clarity offered by section 45B(6A) of the Bill namely, that a local authority may refuse an application for the grant or renewal of a licence even if the premises has a licence by virtue of a premises licence under the Licensing (Scotland) Act 2005.

However, the Licensing Authority would suggest that, for the avoidance of doubt, the above section should be amended to reflect the fact that the presence of any other licence does not prevent the Licensing Authority from refusing an application, i.e. a public entertainment licence.

The Licensing Authority would also welcome clarity from the Scottish Government as to whether sexual entertainment venues that are currently licensed under the Licensing (Scotland) Act 2005 should be subject to any quasi-grandfather rights in the determination of their applications for SEV Licences. Clear guidance from the Scottish Government would be helpful in ensuring that the Licensing Authority is not embroiled in expensive litigation.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
The Licensing Authority welcomes the creation of the Civic Licensing Standards Officer. However, the Licensing Authority does suggest that the enforcement triggers in the 1982 Act should be revisited with a process analogous to the review system in the Licensing (Scotland) Act 2005. Such a process would allow for the CLSOs to intervene and work with licence holders in an educational role.

In keeping with the above matter, the Authority would further suggest that it should have the power to revoke licences under the 1982 Act as opposed to merely suspending the licence for the unexpired portion of it. If a matter is serious enough for the Authority to suspend a licence for the unexpired portion, then it follows that the licence should simply be revoked. This would tie in with the above suggest that a review procedure is put in place.

As referred to in previous answers, the Licensing Authority is of the view that licensing objectives should be introduced in relation to civic licensing, e.g. public disorder and public safety. The introduction of such objectives, would allow the Licensing Authority to make decisions to uphold the licensing objectives that may fall out with the fit and proper person test. Furthermore, such licensing objectives would help inform the drafting of policies.

The Licensing Authority welcomes the introduction of provisions that will enable Local Authorities and Licensing Board to comply with certain aspects of the EU Services Directive that was transposed into UK law in early 2010. Whilst the Authority is supportive of these provisions it notes that further work is required before licensing legislation can be considered fully compliant with EU law – particularly in relation to application fees and licence durations.

By way of example Schedule 2 of the Civic Government (Scotland) Act 1982 requires applicants for Sex Shops (and future Sexual Entertainment Venues) to have been resident in the UK for at least 6 months. This is patently at odds with the Directive’s objective of furthering cross-board service provision.