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 #awlbill.

**1. Please supply your name and contact details:**

Name: Alaisdair Mackenzie
Organisation: Highland Licensing Board
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”:

☐ 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?

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

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

Highland Licensing Board agree that returning to a “fit and proper” test would allow greater scope to present information to Boards and give Boards the ability to consider a greater breadth of relevant information when determining an application for all licences. The “fit and proper test” is still used without problem in the non-liquor licensing regime in relation to licences issued under the Civic Government (Scotland) Act 1982, Houses in Multiple Occupation etc. Although allowing greater scope, tying it to the licensing objectives should mean that it cannot be used without relevance being established.

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

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?

If spent convictions are to be disclosed, it should be all spent convictions for relevant offences. There would be no logic in requiring disclosure of spent convictions only in respect of certain types of relevant offences and it would create confusion for applicants. The benefit of full disclosure would be to show whether there was any long-term pattern of recurring convictions for relevant offences. It is assumed that the authors of the Bill are aware that in addition to repeal of section 129(4) of the 2005 Act, amendment to Schedule 1 to The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 will be required before spent convictions can lawfully be considered by Licensing Boards in proceedings before them.
34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

An opportunity has been missed to deal with a number of issues of concern to all involved in liquor licensing and which have been consistently made known to the Government before and since the 2005 Act came in to force.

Consolidated Act
To find the law, one has to look in the 2005 Act which has been amended several times eg the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol etc (Scotland) Act 2010 and now the proposed new Act. In addition there are some 37 Statutory Instruments. It is difficult enough for solicitors to find out the law; it is even more so for “lay” persons and those involved on the trade side.

Transfers
Sections 33 and 34 can lead to difficulties in the buying, selling and leasing of licensed premises. This is particularly so with regard to the following areas:

1. Tenant doing a “runner”;
2. Company dissolution;

1. Most leases will include clauses to ensure that on termination the out-going tenant will be obligated to co-operate with a transfer to the new tenant or Landlord. This would usually happen under Section 33 and is fine when the lease termination is civilised and professional. However it is well known that in business it does not always work out that way. Landlords and tenants do disagree and two things can happen – The tenant disappears with the licence and cannot be contacted or traced, or the aggrieved tenant surrenders the licence to the licensing board. In scenario 1, the landlord re-claims possession but they need to transfer the licence to themselves or a new tenant. They can’t transfer under Section 33, and none of the events in Section 34 have happened: the business carried on in the premises probably hasn’t technically transferred. The licence doesn’t cease to have effect so a new application can’t be made. This isn’t something theoretical, this happens fairly regularly and the Act provides no solution. The only way to get round it has been to work with the Board’s Clerk, who have to take a practical and pragmatic approach and allowed for transfers under Section 34 to be lodged. Now there may be technically no business transfer but to treat it as such is the only workable solution. This is clearly not acceptable and could lead the Clerk open to criticism or worse.

In scenario 2, if the licence is surrendered correctly, the Landlord is in a very difficult situation and has to lodge a new application. Clerks are under pressure to process the application quickly and to grant occasional licences in the intervening period, to allow the business to trade as soon as possible.

2. If a company is dissolved, a licence cannot be transferred under either section 33 or 34. Although the licence does not cease to have effect it means that the premises must stop selling alcohol. The assets of the
dissolved company fall to the Queens and Lord Treasurers Remembrancer who is unlikely to participate in a section 33 transfer. Administrative steps can be taken to have the company restored but if this is not an option then again there is pressure on Clerks to accept a section 34 transfer where strictly speaking there is no legislative authority to do so.

“Site only” Provisional Premises Licence
The 1976 Act allowed for two types of provisional premises licence: a site only without detailed drawings and the other akin to the position under the 2005 Act. This presented no great problems and would allow the principal of proposals to be tested without the need for detailed drawings etc.