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
Name/Organisation: Highland Licensing Board

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'

No adverse consequences are anticipated.

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?
It makes no sense that the licensing authority would have power to set a desired number of sexual entertainment venues for localities in their area as nil, but then have no means of stopping any number of premises in those localities from providing sexual entertainment provided they did so only once or twice a year. Separately, it removes the ability of licensing authorities to set conditions controlling the sexual entertainment provided at premises which provide sexual entertainment only once or twice a year. Conditions such as conditions for the protection of performers and conditions for the protection of children and young persons are surely as necessary at premises providing sexual entertainment once or twice a year as they are at premises providing such entertainment all year round.

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?
It would be useful for the legislation to set out the matters which a Council could take into account in reaching such a decision or for the Government to provide guidance on this issue. It is unclear, for example, what, if any, difference there will be between the factors which can be taken into account in assessing the appropriate number of venues for the purposes of paragraphs 9(5)(c), 9(6) and 9(6A) of Schedule 2 and the factors which authorities may take into account under paragraph 9(5)(d) (grant of licence inappropriate having regard to character of locality, etc). Any such guidance should be produced as early as possible after enactment of the Bill, since authorities wishing to introduce licensing requirements for sexual entertainment venues will wish to carry out assessment of the appropriate number of venues for their area in advance of their resolutions under section 45B(1) coming into effect.

Secondly, the wording of paragraph 9(5A)(a) needs to be reconsidered. Paragraph 9(5)(c) will be amended to allow Local Authorities to refuse an application on the ground that “the number of sex shops in the local authority area or the relevant locality” is equal to or exceeds the number which the authority “considers is appropriate for their area or that locality”. However, paragraph 9(5A)(a) will then require authorities to determine, from time to time “the appropriate number of sexual entertainment venues for their area and for each relevant locality”.

If authorities are entitled to set the number of venues in their whole area as the existing level or zero, why must the periodic determination of the appropriate number of venues be both for the whole area and for each relevant locality? This will place an unnecessary burden on authorities who wish only to assess the appropriate number on a whole area basis. It is suggested therefore that paragraph 9(5A)(a) be reworded to read “from time to time determine the appropriate number of sexual entertainment venues for their area or for any relevant locality.”

Thirdly, it should be recognised that local authorities will be unable to rely on paragraph 9(5)(c) as a ground to refuse an application until they have made a determination under paragraph 9(5A)(a) of the appropriate number of venues for their area or for relevant localities. Ideally, therefore, authorities would wish to have their initial determination of the appropriate number of venues in place prior to the day specified in their resolution as the day on which Schedule 2 will have effect in their area. However, if an authority makes a determination of the appropriate number before the day on which Schedule 2 will have effect, it could be argued that this was not a valid determination under paragraph 9(5A)(a) of Schedule 2 and cannot therefore be relied upon to refuse an application under paragraph 9(5)(c).

It would be prudent, therefore, if section 45B contained specific provision to the effect that, notwithstanding the terms of subsection (2), a determination of the appropriate number of sexual entertainment venues for a local authority’s area carried out after the date of passing a resolution under subsection (1) but before the day specified in the resolution as the day on which Schedule 2 shall have effect shall be deemed to be a determination made under paragraph 9(5A) of Schedule 2.
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?

Yes, subject to the comments at question 52 above.

However, in paragraph 25, it is perhaps unclear what the position will be for persons using premises as a sexual entertainment immediately prior to a s45B resolution being passed, and who apply for a venue licence before the appointed day, but whose licence application is then refused on either of the grounds specified in paragraph 9(5)(c) or (d). In terms of paragraph 24(2)(b), there is no right of appeal against refusal on either of these grounds. Such persons presumably therefore cannot rely on paragraph 25(1) as allowing them to continue using the premises as a sexual entertainment venue until expiry of the 28 day appeal period etc, and would be committing an offence under paragraph 19 if they continued to use the premises as a sexual entertainment venue beyond the date of refusal of the licence application by the licensing authority. This should perhaps be clarified in paragraph 25.

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

The Bill is silent on how premises with a Premises Licence under the Licensing (Scotland) Act 2005 which permits adult entertainment are to be treated.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?