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: Carol Johnston, Clerk of the Board
Organisation: West Lothian Licensing Board
Address 1:  
Address 2:  
City/Town:  
Postcode:  
Country:  
Email address (if no email leave blank):  
Phone Number:  

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SUBMISSION ID NUMBER 83
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
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?

See the word document submitted with this response.

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

It is submitted that the system should be enforced more robustly by Police Scotland in conjunction with the Crown Office to regulate individual behaviour so as to protect the public and prevent disorder. At present very few licensing offences are prosecuted.

In relation to communities of space if there is to be an expectation that such areas will be regulated through licensing a power to do so should be made explicit in the legislation to prevent uncertainty.

There should be a restriction on the number of occasional licences which can be granted for any premises in any 12 month period. At present there is no restriction, although there is scope in the legislation for the Scottish Government to impose a limit. Premises which would otherwise not get a premises licence, as they would not be able to get the required Section 50 certificates, are operating with occasional licences almost on a weekly basis.

Some of these premises are utilising in excess of 70 occasional licences per year meaning that although alcohol is sold in these premises on a very regular basis they remain unlicensed premises. It is submitted that this situation is not what the act envisaged. Occasional licences should be for premises which are only licensed on a truly occasional basis.

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and
regeneration?

It is submitted that in order to prevent a variety of different layers of bureaucracy the licensing system should be amended to make it clear that such considerations can be considered before licences are granted. It is often unclear to customers that they may need a number of separate consents to operate, e.g. a street trader trading on council land may need planning permission, a street trader’s licence, permission from the Council to occupy the land and a food hygiene certificate.

26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

It is submitted that the licensing system is too prescriptive and narrow in its approach to be of any assistance in these respects.

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?

These are not currently licensing considerations and unless the law is changed to make these licensing issues any decisions made on these grounds would be open to challenge.
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?

It is submitted that it is not clear if the Bill’s provisions on alcohol licensing will allow for reductions in crime and the preservation of public order. This would require the police to act and utilise the powers they have to deal with liquor licensing offences. The act distinguishes between breaches of licensing conditions and offences and envisages a regime where offences are dealt with through the courts. However it is the case that very few offences are prosecuted. It is not clear if that is as a result of decisions taken not to prosecute by Procurator Fiscals or if the Police do not report offences. It is submitted that if the licensing legislation was utilised correctly, with the backing of the Crown Office that a lot of the crimes and offences committed by persons under the influence of alcohol would decrease for example if people were prosecuted for being drunk on licensed premises, if licence holders or "responsible persons" were prosecuted for allowing drunk persons on their premises or for selling alcohol to drunk persons. It is submitted that public drunkenness could become socially unacceptable if the law was enforced. Those frequenting late night premises could be made to think twice about 'preloading' if they were to be refused entry and / or reported to the courts. It would take time but attitudes could be changed to make licensing offences as socially unacceptable as drink driving. If people were not supplied alcohol to the extent where they were completely drunk there would be less instances of anti-social behaviour around premises, fewer fights and assaults and fewer associated domestic incidents when persons returned home. There has to be a concerted effort by all interested parties which is just not there at present. At present the Police are dealing with the late night economy problems with fewer resources and by making applications for review of premises licences where there is regular disorder at specific premises.

With regard to interested persons / connected persons. There is the position where a premises licence is held by a brewery for example and they lease the premises to a person or company who stipulate who the Designated Premises Manager is. The brewery and the premises manager are interested / connected but the "middleman" is not mentioned anywhere in any Board records or on the licence. Section 147 (5) is in place but is not in force. It opens the way for ‘organised crime’ to have a major stake in the running of licensed premises with no measures in place to ascertain who they are. Indeed were there to be any review of the premises licence for any matter they premises licence holder and the designated premises manager could be held accountable by the Board but the person / company actually operating the premises are not held accountable due to this part of the Act not being in force.

The Board has a concern that due to the way the legislation is structured often licence holders, particularly larger companies such breweries or restaurant chains, have little involvement in the day to day running of licensed premises.
29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

As stated in the answer to Q28 Police Scotland and the Crown Office and Procurator Fiscal Service could take a more active stance in the reporting and prosecution of licensing offences which have for some time been seen as ‘minor’ and ‘not worth pursuing’. Similarly to drink driving where once it was almost the norm it is now seen as an antisocial activity and shunned by most. If more people were reported and prosecuted for licensing offences e.g. being drunk in licensed premises and allowing persons to be drunk in licensed premises.

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

The change to include young persons in the “protecting children from harm” objective is welcomed.

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 agrees that the introduction of a “fit and proper” test would allow greater scope for Police Scotland to present relevant information to board members which they can take into account when determining applications.

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?

It is submitted that the list of relevant offences should be reviewed to ensure that all relevant statutory offences are included or change the legislation to Police Scotland to report all offences to allow boards to decide which offences are relevant.

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

LSOs have no access to criminal records and in the vast majority of cases the applicant will not be known to the LSOs so it is difficult to know what comments they could make on applications for personal licences.

Given the number of changes to the legislation since the 2005 Act was brought into effect and the provisions of section 142 which require boards to have regard to the guidance issued it is submitted that updated guidance to take cognisance of the changes in legislation should be issued after any legislative change.
ANSWER TO QUESTION 23

It is not considered that the current licensing regimes are fit for purpose. A response regarding the 1982 Act has been submitted by West Lothian Council. This response concentrates on liquor licensing.

It is submitted that there have been a number of key changes to the Licensing (Scotland) Act 2005 since it was brought into full effect in 2009. These incremental changes have meant that all parties involved in liquor licensing find it extremely difficult to keep track. A fully consolidated act would assist greatly as everyone would be able to look at the legislation as one act and not have to ascertain if a section had been amended by a subsequent act or SSI. The fact that the act has been amended several times and that one needs to have access to the 40 plus statutory instruments to understand the full effect of its provisions means that it is almost impossible for someone without access to legal advice to understand their responsibilities under this legislation.

Premises licence holders, personal licence holders and staff working within licensed premises have little or no legal training or access to legal advice and, on the whole, find the act completely confusing despite the personal licence qualification. It is incredulous that following receipt of the training certificate a significant number of those who have undertaken the training still remain confused and are under the misapprehension that by undertaking the training they have been issued with a personal licence. This has become even more of a problem over the last few months since personal licence holders have sending in their refresher training certificates. A number of persons have contacted the Board attempting to update their personal licences and it is has only then been identified that despite undertaking the initial training course in 2009 they never applied for personal licences. In all these circumstances it is submitted that the standard of this qualification and the content of the training be reviewed.

Experience also shows that the personal licence document issued to personal licence holders is not in a form which is practical for its purpose. Personal licence holders do necessarily have an office or filing facilities in the same way as is likely to be available to a business or employer. They may understandably be reluctant to put their licence into the hands of another person such as their employer. It is submitted that a more practical form of licence for persons working in the licensed trade would be preferable e.g. a laminated ID containing key licence details.

As a Board we see the practical effect of lack of understanding of the legal requirements by those working in the trade on a very regular basis. Examples of this are –

- Confusion about the role of premises manager and licence holder – many applications are submitted by the wrong persons and worryingly often by persons not named on the licence who are in de facto control of the management of the premises
- A lack of understanding amongst the former registered clubs about their legal responsibilities under this legislation, many are trying to increase their income by running functions/events open to the public or advertising that they are open to the public for meals etc.
- A lack of understanding amongst voluntary organisations and other applicants for occasional licences about how alcohol, should be sold under an occasional licence
• Confusion over price variations and what can be done on on-sales and off-sales premises. There are regular complaints about these and where there is both on and off-sales there are two different timescales for the varying of prices for the same premises. It is difficult for licence holders to comply with the legislation because it is so detailed and complex.

With regard to on sales and price variations, our experience is that premises have found a way round the mandatory conditions are still having ‘happy hours’ and ‘vary’ their prices on a daily basis as they claim that a certain brand of alcohol is only available for a specific period of time and is priced extremely cheaply. Some premises have different ‘offers’ each and every day of the week. The answer when questioned is that the price of the brand remains the same but it only available until 9 pm or it is only available on a Thursday for example. It would be a lot less confusing for all concerned if the same rules applied to all premises. The legislation should also stipulate that if a brand of alcohol is a certain price then, if it is on the premises it must be available for sale. This would go some way to stop premises merely removing a brand from behind the bar and placing it in a store room and telling customers that it is not available.

There is a lot of confusion relating to the varying of premises licences and what constitutes a “major” or minor variation. An off-sales premises for example with the maximum trading hours of 10 am until 10 pm and store opening hours of 8 am until 10 pm have to make a major variation application to open from 7 am until 10 pm. They cannot sell alcohol for any more hours in the day but the store is open an hour earlier. This is a change to information contained in the operating plan and is considered to be major. In contrast an on-sales premises with outside drinking which builds an extension to the premises and increases the size of their outside area but stipulates that there will be no increase in capacity can apply for a minor variation, which must be granted, as they are operating in the same manner as the information contained in their operating plan but the premises can be considerably larger. There is also no neighbour notification for a minor variation, which means that a neighbour can have a licensed premises increase in size and not be given the opportunity to make comment or objection to the Board. These are practical examples of the effect of the rules on what amounts to a minor variation.

Section 91 the approved qualification for obtaining a personal licence has never been prescribed by the Scottish Government and accordingly Boards are having difficulties as the qualification has changed and the ‘older’ certificates have qualifications which are ‘lapsed’. There was never any advice or information forthcoming from the Scottish Government regarding this which has resulted in a fragmented approach across the country and a great deal of confusion for both applicants and Boards.

It is submitted that the Government should take urgent steps to introduce the Personal Licence Database and give all Boards access to it. Without this facility it is impossible for Boards to know if designated premises managers are also working in that capacity in other areas or after 1 December 2014 have had their personal licences revoked.

The Board continues to have serious concerns regarding the operation of the Scottish Government’s Guidance as to how overprovision policy should be formed in practice, and the knock-on effect of this with regard to the application by boards of the ground for refusal based on overprovision contained in different sections of the 2005 Act. In particular the Board is concerned by lack of engagement by advisors at the evidential level suggested in the Guidance, and a growing trend for advisors, or parties purporting to
represent their interests, to later criticise boards unfairly for their failure to introduce substantive overprovision policy.