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:**

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<th>Name:</th>
<th>Jenna Parker</th>
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<td>Organisation:</td>
<td>Institute of Licensing</td>
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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
☐ 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?

The Institute notes the Bills provisions at Clause 52 in relation to the creation of the new offence concerning the supply of alcohol to a child or young person and supports these proposals.

The Institute notes the provisions concerning the reintroduction of the so-called “fit and proper test” along with the proposal to allow to spent convictions to be considered. The Institute is concerned at the reference to use of police intelligence in relation to the fit and proper test and the reintroduction of spent convictions. The explanatory notes to the bill suggest that this has been inserted as a result of concerns raised by Police Scotland and that they have suggested that there should be an intelligence officer placed at licensing boards in order to report on applicants for licences. The proposal that the police may be able to produce “intelligence evidence” without specifying what that evidence is seems to the Institute to be at odds with principals of natural justice and convention rights such as the right to a fair trial.

The Institute notes that in terms of the current jurisprudence and statutory framework licensing boards in Scotland have a duty to make decisions which do not stray from natural justice or the convention principles concerning proportionality as well as general legal principles in relation to sufficiency of evidence and that evidence must be probative. Given these long standing general legal principals which underpin the licensing system the Institute remains concerned that the introduction of unknown and unseen police intelligence evidence strikes at the core of these principals, and would oppose that sort of “evidence” being allowed and presented at a licensing hearing.
29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

No comment

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

The Institute notes the amendment to the licensing objective concerning the introduction of young persons to the objective of the protection of children from harm and welcomes this approach. The Institute notes the proposal to vary the licensing board policy period from three years to, in effect, the council term, which would typically be five years. The Institute notes that this would not undermine the ability for licensing boards to issue supplementary statements. The Institute notes that 5 years is the term for statements under the Licensing Act 2003 and this has not fallen into disrepute.

The Institute notes the proposal for licensing boards to take account of licensed hours which does not currently exist in the Act. The Institute is concerned that this would create a “duty to trade” in relation to the analysis of hypothetical unused periods of licensed hours in respect of the over provision assessment. The Institute is firmly of view that there is no duty of trade under the Act with regard to the wording in Schedule 3 paragraphs 2 and 3 to the 2005 Act, and holds the view that a licence is designed to be permissive.

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?
See our answer above concerning the concerns over police intelligence and spent convictions with regard to the fit and proper person test.

The Institute notes that the fit and proper person test links to fitness of the applicant or licence holder to the licensing objectives. This would indicate that any unfitness must therefore be linked to the sale of alcohol with regard to the Brightcrew decision and the status of the licensing objectives as being alcohol licensing objectives and not general public interest objectives. This would mean that any unfitness presented to a licensing board which is not connected directly to the sale of alcohol will not be capable of consideration.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?
The Institute’s primary concerns in relation to unintended consequences of the 2005 Act relate to the absence of any “site only” provisional grant application, the inadequacy of the current transfer provisions and issues concerning the status of a licence following surrender.

The Institute remains of the view that there is a role to play in the licensing system for site only provisional licence applications where economic certainty is needed by the developers well in advance of the opening date of a prospective premises and that we are not aware of the equivalent 1976 Act provisions following into this repute. Having a site only option allows investment to be guaranteed much earlier in the process, thus helping regeneration plans especially for rural areas.

The Institute’s views in relation to the transfer provisions are that these are wholly inadequate and have the effect of creating barriers to business growth and unnecessarily creating regulatory burden for persons such as executors and insolvency practitioners. In addition to this the transfer provisions do not seem to adequately deal with the reality of commercial conveyancing practice in Scotland and we would suggest that the Scottish government should take guidance from the Law Society of Scotland in relation to amended drafting on this point.

In relation to wider issues concerning rural areas and economic regeneration the Institute notes that the numbers of licence premises has fallen from around 20,500 to around 16,400 between the period 2008 and 2014. The Institute is aware anecdotally that a significant number of these premises relate to small rural licensed business who were unable to fund conversion of their licences to a new system as the return on alcohol spend would not make the licence worth while. In many cases these premises are small rural bed and breakfasts who perhaps may offer a small alcohol facility to a customer staying over such as a bottle of beer or bottle of wine to consume in their room. It seems unfortunate that the Act is removed this function from a number of small businesses throughout the more rural areas in Scotland. The Institute is also aware that there remains controversy over the licensing fees under the Scottish system and in particular the requirement that fees are based on rateable value. This is particular the case in relation to public house style premises where the rateable values set with regards to turnover and not size of premises as the case with supermarkets and convenience stores. This has a double effect of requiring public house style premises to pay disproportionate rates but also that this has a knock on effect of licensing fees because the fees are set by the level of the rateable values as well.
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 Institute notes that the purpose of The Rehabilitation of Offenders Act 1974 is to allow a person who has had a criminal past to move on with their lives. The 2005 Act currently does not allow spent convictions to be considered under any circumstances and the Institute is not aware of this leading to any increased levels of criminality in the trade. The Institute tends to the view that the government should consider this carefully and seek evidence from Police Scotland that persons who have been granted licences with spent convictions have undermined the licensing objectives before the proposal is enacted.

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

Noting the Institute’s comments above, we would encourage the Scottish Government to revisit the transfer provisions under the 2005 Act and to introduce a site only provisional licence. We would also ask for consideration to be given to the status of licences which have been surrendered. The legal status of a licence following surrender appears to be that it has become null and void and this creates prejudice for landlords who may own licensed premises but have suffered the loss of the licence as a result of a fall out with the tenant. It seems appropriate to the Institute that there may be a route to reactivate a surrendered licence akin to the existing provisions under the 2005 Act which allows a suspension of a licence to be lifted as a result of a material change in circumstances. This may be an example: to allow a surrendered licence to be reactivated where this has been surrendered out of spite.