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Parliament

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1 September 2014

Dear David,

**Air Weapons and Licensing (Scotland) Bill: Clarification and elaboration on detail in the Policy Memorandum**

I am writing in response to your request of 27 June for clarification and elaboration on the detail of the Policy Memorandum which accompanies the Air Weapons and Licensing (Scotland) Bill.

The Policy Memorandum is intended to provide a succinct and broad overview of the policy underlying the Bill as a whole and each Part individually, but it is, of course, only one of the suite of documents that accompany the Bill. Taken with the additional detail in the Explanatory Notes, the Delegated Powers Memorandum and the Financial Memorandum, we believe that stakeholders have access to information they need to help them understand the Bill's policy aims and detailed provisions. The Scottish Government Website also includes links to a series of consultations published between November 2012 and September 2013 on the topics that now make up the substance of the Bill, as well the responses to these.

In your letter you specifically ask about the details of guidance or regulations. Details of the purpose of secondary legislation are provided in the Delegated Powers Memorandum. We do not anticipate drafts of guidance or regulations being available during Stage 1. These will be developed with the participation of stakeholders following the passage of the Bill through Parliament. This will allow us to take account of comments made at Stage 1 and any amendments made to the Bill during Stages 2 and 3.

The Bill covers a number of topics and, as one might expect, your questions range over all of these. We have attempted to provide the information requested in as straightforward a format as possible, cross referencing where necessary. We would welcome further comment from the Committee and from stakeholders during the process of Stage 1.

Yours sincerely

**Quentin Fisher**

Air Weapons and Licensing (Scotland) Bill Team Leader

## **Part 1 Air Weapons**

**Q1. Paragraph 45 of the PM provides statistics relating to offences. Please confirm that the number of offences relating to air weapons dropped over the period referred to by 27 in number and around 14%.**

The *National Statistics Bulletin - Recorded Crimes and Offences Involving Firearms, Scotland, 2012-13* (which can be found at <http://www.scotland.gov.uk/Resource/0043/00438302.pdf> ) show that the number of offences relating to air weapons dropped by 26 (13%).

Air weapons accounted for 47% (171) of all offences involving the alleged involvement of a firearm in 2012-13, compared to 37% (197) in 2011-12. While the number of reported offences involving an air weapon are falling, they still represent almost half of all firearm offences in Scotland, and the official statistics cannot reflect the many low-level incidents that go unreported every year.

**Q2. Paragraph 46 of the PM stated that one of the policy objectives of the new licensing system is to “prevent those persons who are unfit, or who have no legitimate reason for holding an air weapon from obtaining a licence”. Can you provide clarity on the tests upon which the decision for fitness to hold an air weapons licence will be based? Will this be modelled on the tests for a firearms licence or a shotgun licence, we note each differs from the other?**

Detailed provisions around these processes will be subject to further discussions with stakeholders, including the Police Service of Scotland, and will be set out in secondary legislation and guidance. The intention is that tests for grant or renewal of an air weapon certificate will be in line with section 1 of the Firearms Act 1968. This is highlighted in paragraph 56 of the PM.

The test for a shotgun certificate is slightly less stringent, in that it does not require the applicant to provide a “good reason” for requiring a shotgun, but rather requires the police to demonstrate the absence of “good reason”. The Scottish Government believes that putting the onus on the police is inappropriate, and that it should be for the applicant to show good reason for holding an air weapon.

**Q3. Paragraph 52 on the PM suggests that “consistently” more than 45% of recorded crimes involving air weapons are committed by persons aged 20 and under. However the source provided refers to 2012/13. Please confirm the statistics also record historical information.**

Table 13 of *Recorded Crimes and Offences Involving Firearms, Scotland, 2012-13* sets out detailed information on offences by type of firearm and age of the main accused. There are equivalent tables in each previous year of the annually published statistics.

The table below summarises the percentage of air weapon offences committed by persons aged 20 or under from previous years, drawn from the annual bulletin.

| Year    | Percentage |
|---------|------------|
| 2012/13 | 45         |
| 2011/12 | 49         |
| 2010/11 | 48         |
| 2009/10 | 57         |
| 2008/09 | 50         |
| 2007/08 | 63         |

***Q4. In a number of places reference is made to regulations and guidance. Please indicate when the terms of that guidance will be available to the Committee to enhance their consideration of these measures.***

We are now re-engaging with stakeholders with a view to preparing draft regulations and guidance over the course of the coming months. This is likely to be a detailed and quite lengthy process, but will build on the experience and practical application of existing legislation – notably The Firearms Rules 1998 (as amended) (SI1998 No 1941) and the Home Office publication - *Guide on Firearms Licensing Law* – (which is available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/329845/GuideFirearmsLicensingLawJune14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329845/GuideFirearmsLicensingLawJune14.pdf)).

***Q5. The argument in paragraph 107 of the PM is noted, please indicate the reasons why the Government believes those who use air weapons illegally will apply for licenses.***

The Government recognises that those who knowingly misuse air weapons, or who would not be able to show that they had a legitimate reason for possessing and using such weapons, may be unlikely to apply for a certificate. In many cases it seems likely that such people might instead seek to keep their weapons illegally, that is, without having the appropriate certificate. In such a case, the person would be committing an offence under the terms of the new legislation and for the first time the legislation enables the police to remove those weapons.

***Q6. When will the EQIA (paragraph 111 of the PM) be published?***

The EQIA accompanying the Bill was published on 15 May 2014 and can be found here: <http://www.scotland.gov.uk/Publications/2014/05/3617>



***Q7. From the point the system comes into force (commencement), how will the initial system operate in relation to a first certificate linked to the commission of an offence. What transitional measures are intended and how will they operate.***

As set out in paragraph 49 of the Policy Memorandum certain offences in the Bill and in particular the primary offence of having an air weapon without a certificate (section 2(1)), will be commenced at a later date than the rest of the licensing regime. During the interim period air weapon users will be able to apply to the police for an air weapon certificate to be granted before the offence at section 2(1) comes into force.

Additionally we anticipate that a large number of unwanted air weapons will be disposed of during this interim period. The introduction of licensing will be accompanied by a public information campaign running prior to and throughout the interim period to make sure that everyone is aware of their responsibilities and options.

***Q8. Given that air weapons do not carry serial numbers, in what way will a certificate be linked to the specific weapon(s) held.***

One of the core principles of air weapon licensing has always been that certificates will relate to the individual or person involved, not their weapons. This is set out at paragraph 48 of the Policy Memorandum, where we recognise that the lack of serial numbers or other distinguishing marks on many air weapons would make requiring each certificate to list the individual weapons held onerous and impractical.

Air weapon certificates will therefore follow a similar approach to existing shotgun certificates, with a single document covering all applicable weapons held by the certified individual. The exact format of air weapon certificates and application forms will be specified in secondary legislation which is currently in development and will take on board the views of stakeholders.

***Q9. How will the public be able to make arrangements for weapons to be disposed of before the licensing regime comes into force.***

There will be a variety of options available to members of the public who wish to dispose of their air weapons prior to the introduction of licensing. We will be discussing the practicalities of the various options with stakeholders and, again, there will be a public information campaign at the time to inform people of their choices. These are likely to include:

- surrendering the weapon to Police Scotland, either by visiting a police station or making arrangements with their local police firearms licensing department;
- selling the weapon either privately or via a registered firearms dealer;

- transferring the weapon to an individual who intends to apply for an air weapon certificate;
- selling the weapon for destruction by a scrap metal dealer.

**Q10. Paragraph 64 of the PM states “shooting at properly operated and approved air weapon clubs will be encouraged as a matter of policy, and specific provision is made in the Bill to approve air weapons clubs in future.” Can you provide clarity on the number and location of shooting clubs which exist in Scotland, and what variations in regulations would apply to ‘air weapon only’ shooting clubs over and above existing firearms clubs?**

The following table shows the number of approved rifle clubs in Scotland at the end of July 2014, broken down into the former 8 police force areas.

| <b>Legacy Police Force Area</b> | <b>No. of Rifle Clubs</b> |
|---------------------------------|---------------------------|
| Central                         | 5                         |
| Dumfries & Galloway             | 2                         |
| Fife                            | 12                        |
| Grampian                        | 21                        |
| Lothian & Borders               | 26                        |
| Northern                        | 24                        |
| Strathclyde                     | 28                        |
| Tayside                         | 20                        |
| <b>Scotland total</b>           | <b>138</b>                |

Because clubs which use air weapons are not currently required to be authorised it is not possible to identify how many of the above clubs also offer air weapon shooting facilities. Some airgun clubs are affiliated with organisations such as the National Smallbore Rifle Association or the Scottish Air Rifle and Pistol Association but this is not a requirement. We are therefore currently unable to establish a national picture of airgun clubs in Scotland.

As the Policy Memorandum states, however, we believe that air weapon clubs provide the ideal safe and supportive environment for shooters and in particular new shooters to learn the sport. We will work with stakeholders to encourage the development of a network of air weapon clubs across Scotland.

The Bill outlines a licensing system for air weapon clubs, as well as an exemption to allow members to shoot at an approved club without requiring their own certificate, which is very similar to the position which currently exists for rifle clubs. As with other elements of the Bill, detailed regulations and guidance on how the police should process applications for club approval and the conditions under which club approvals will be granted will be developed in the coming months, taking into account discussions with and advice from stakeholders. We would expect

regulations that apply to 'air weapon only' shooting clubs to be very closely aligned with those which apply to existing rifle clubs.



**Q11. Can you provide clarity on what transitional provisions, if any, will be made to allow for the alignment of the current 5-year cycle of expiration of existing firearms and shotgun licenses with applications for air weapons licenses?**

Paragraph 50 of the Financial Memorandum sets out the Government's estimates of the number of air weapons which are likely to be subject to the new licensing regime. In particular, we expect that a significant proportion of air weapons in Scotland are in the hands of the approximately 60,000 established shooters who already hold a firearm or shotgun certificate, and are therefore already known to Police Scotland. In that memorandum, we set out a range of estimates for the number of new applications which may come forward (that is, where no firearm or shotgun certificate is in place), and base main cost estimates on an assumption of 20,000 in the first licensing round

In addition, section 38 of the Bill includes a transitional arrangement whereby an individual who owns air weapons and already holds a valid firearm or shotgun certificate when the air weapon licensing regime comes into force will be exempted from requiring a separate certificate for their air weapons until their firearm or shotgun certificate requires to be renewed. At the time of renewal they may apply to the police for an air weapon certificate, to be granted on the same date as their renewed firearm and/or shotgun certificate. We estimate that around 40,000 air weapon certificate applications might come from existing firearm or shotgun certificate holders.

This arrangement will mean that a large proportion of new air weapon certificates will fit into the existing 5-year renewal cycle for firearm and shotgun certificates. Section 5(2) of the Bill also allows the police to consider the 'fit person' and 'not prohibited' tests as satisfied when processing an air weapon certificate application from an existing firearm or shotgun holder as these tests will already have been met for the grant of their existing certificate. Finally, under section 9 of the Bill, air weapon certificates may be made coterminous with existing firearm and/or shotgun certificates, reducing the paperwork and processing costs involved for the police and shooter alike.

We believe that these arrangements, combined with the interim period between the commencement of the licensing regime and its related offences described at question 7, will help to smooth the introduction of air weapon licensing.

## Part 2 Alcohol Licensing

**Q12. The layout of the PM relation to Part 2 on alcohol licensing is interesting and challenging to follow, particularly given the restricted use of section numbers to describe provisions. No information is provided covering sections 44 to 48 [fit and proper] of the Bill and also for sections 56 [interested parties] and 59 [form of communication] of the Bill. While section 59 [form of communications] might be self-explanatory, the other sections are not. Equally the Explanatory notes for these sections are little more than a repeat of the text of the Bill itself. Please provide a clear policy detail which underpins these provisions.**

### *Sections 44 to 48 – fit and proper*

Paragraphs 132 to 143 of the Policy Memorandum reflect the policy underpinning these sections. The Bill provides that not being ‘fit and proper’ with regards to the licensing objectives constitutes a ground for refusal for:

- a premises licence application;
- an application to transfer a premises licence;
- a review of a premises licence;
- a personal licence application; and a
- a personal licence renewal.

The Bill also provides that a Licensing Board may apply a ‘fit and proper’ test to a personal licence holder if they receive a notice that they have had a conviction, or their conduct has been inconsistent with the licensing objectives.

It would not be sufficient to have this test only for initial premises licence applications as this would allow premises licences to be attained by a ‘fit and proper’ person and then transferred to someone who is not considered to be ‘fit and proper’ to hold a licence, thus undermining the purpose of the test. Restricting the ‘fit and proper’ test to premises licence holders would also allow people who are not considered to be ‘fit and proper’ to gain a personal licence and sell alcohol to vulnerable people as long as they did not apply to become a premises licence holder themselves.

This broad based approach allows Licensing Boards to consider whether premises or personal licence holders/applicants are ‘fit and proper’ at the appropriate stages. It is envisaged that this will provide Licensing Boards with greater powers to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information including police intelligence and any associations with those deemed to be unsuitable.

Section 56 – interested parties

See the response to question 13.

**Q13. In relation to section 56 of the Bill please also include detail of the thinking behind the removal of “interested parties”.**

This issue was consulted upon in the Further Options for Alcohol Licensing Consultation and the summary sets out the position and the responses and it may be useful to quote it in detail.

“The Criminal Justice and Licensing (Scotland) Act 2010, at section 184, proposed that a premises licence holder be under a duty to notify their licensing board if a person becomes or ceases to be a connected person or interested party. This was to respond to concerns that the holders of premises licences were failing to advise Boards of connections with, for example, organised crime. Criminal sanctions would apply for a failure to notify. However the Law Society raised concerns that this provision is too vague and too broad to be practical. If the premises licence is held by a tenant of large chain such as Punch Taverns and there is a change on the Board of Punch does that have to be notified? If, as happens in the current economic circumstances, the ownership passes from a defaulting company to the bank who then sell it on to a private equity firm who parcel it up in a property portfolio that is sold to a pension fund, is a tenant going to keep up and notify at every stage?”

“In order to respond to these concerns the Scottish Government have held off commencing this provision into law. Concerns have also been raised by ACPOS about a conflict with another provision within the Criminal Justice and Licensing (Scotland) Act 2010. These are not yet an issue, as the provision for interested parties has not yet been brought into law. However if it were commenced as currently drafted then it would have the unintended consequence that a premises manager would no longer have vicarious liability. Vicarious liability is where a person is deemed to be liable for the offences committed by employees. “

“Those who argued that the duty was currently unworkable, agreed with the arguments put forward in the consultation, and also cited the cumbersome nature of the proposals, the overly wide definition of interested parties, difficulties around enforcement, and concerns over whether anyone would actually notify the Board of inappropriate persons. Some also argued that as currently drafted it would be too complicated and onerous for many licence holders to understand.”

.....

“Finally a number of respondents suggested that this entire approach was flawed, and that it would be better to start again from scratch to achieve the desired policy goal, or that the reintroduction of the ‘fit and proper’ test would address the underlying concerns.”

<http://www.scotland.gov.uk/Publications/2013/10/9066/downloads>

Accordingly, in view of these responses and on further consideration, the Scottish Government have decided to revoke these provisions as far as they refer to ‘interested parties’.

***Q14. Paragraph 120 of the PM notes it is vital police and licensing boards have powers “to reduce crime and preserve public order”. That phrase is not used elsewhere in this part of the PM (although paragraph 188 does refer to public safety which does not appear to be an aim). Please explain which measures contribute to giving the police and licensing board these powers, and how. (see also paragraph 124 of the PM - see Q16 below)***

Paragraphs 124 to 131 of the Policy Memorandum deal with the theme of reducing crime and preserving public order and safety. Within this Bill there are a number of provisions that provide police and Licensing Boards with additional powers to assist them in their aim to “reduce crime and preserve public order” and thereby helping ensure that people live their lives safe from crime, disorder and danger. These measures are:

- The creation of new offences of supplying alcohol to children or young people for consumption in a public place.
- Providing Boards with powers to consider a broader range of information, namely the ‘fit and proper’ test and consideration of spent offences

*Creation of new offences of supplying alcohol to children or young people for consumption in a public place.*

Paragraph 125 to 131 of the Policy Memorandum sets out the policy underpinning the relevant sections in the Bill.

There are existing offences under the 2005 Act (section 105) that cover buying alcohol on behalf of a child or young person or for consumption on licensed premises. Local byelaws, set by local authorities, can also make it an offence to drink in public, however these do not apply across all of Scotland and they operate differently in different areas.

Consequently, under the current licensing regime, while they cannot buy alcohol on behalf of a child or young person, adults can legally supply alcohol to someone under the age of 18 out with licensed premises. This facilitates outdoor drinking dens

of young people where those in the group who are over 18 buy alcohol for younger members. The police are currently able to confiscate alcohol from children and young people drinking in public places, as well as from adults who are supplying alcohol to children and young people for consumption in public places. However the Police feel they are powerless to stop those over-18s repeating their behaviour. Consequently a continuing cycle of confiscation and purchasing can develop.

The measures within this Bill give the police the powers they need to disrupt drinking dens and thus reduce crime and preserve public order, by making it an offence for a person other than a child or young person, to buy or attempt to buy alcohol for or on behalf of a child or young person or to otherwise make available alcohol to a child or young person. It is not an offence under this provision, to buy alcohol for, or to give alcohol to, a child or young person, a) for consumption other than in a public place, or b) for the purpose of religious worship

### *Providing Boards with powers to consider a broader range of information*

Paragraphs 132 to 143 in the Policy Memorandum sets out the policy underpinning the relevant sections in the Bill.

The Bill provides Licensing Boards with powers to consider a broader range of information when making decisions regarding the alcohol licensing regime. These additional powers help Boards to protect the public by ensuring that only appropriate persons can gain and retain a personal or premises license. The Bill expands the remit of what Boards may consider by taking forward provisions to:

- introduce a 'fit and proper' test;
- allow Boards to consider spent convictions.

### *The 'fit and proper' test*

Many licensing regimes rely on a 'fit and proper' test to determine whether someone is suitable to hold a licence. However, the 2005 Act focused on the use of relevant offences and foreign offences to assess the suitability of candidates and licence holders, as well as providing the ability for people to object based on matters connected to the licensing objectives.

The introduction of the 'fit and proper' test in this Bill will provide greater scope to present information to Boards, and give them the ability to consider a greater breadth of relevant information when making decisions about applicants, licence holders and connected persons. Also see the response to question 12.

### *Spent convictions*

Under the Rehabilitation of Offenders Act 1974, spent convictions are defined as convictions where a specified period of time has elapsed which allows an individual not to have to tell people about their previous criminal activity. For example, someone receiving a fine from a court conviction will be required to advise potential employers about their court fine for 5 years (an unspent conviction). Once 5 years

have passed, this conviction becomes spent and it is no longer required to be disclosed.

The 2005 Act provides that spent convictions cannot be considered in any part of a Licensing Board's deliberations, such as considering whether to grant personal or premises licences, or in hearings once the licence has been granted.

Key stakeholders have argued that it is imperative that Boards have as much information as possible at their disposal to allow them to make a considered decision on an application. Limiting Boards to the consideration of a definitive and restricted list of convictions for relevant offences permits unsuitable persons to operate within licensed premises and may contradict the five licensing objectives upon which the Act is founded (particularly 'preventing crime and disorder'). Consequently, this Bill removes a restriction on Boards' ability to consider spent convictions.

By allowing Licensing Boards to use a 'fit and proper' test and consider spent convictions, the Bill gives police and Licensing Boards additional powers to assist them in the aim "to reduce crime and preserve public order".

***Q15. Is there a consolidated version of the current alcohol licensing legislation available for the use of the Committee?***

The Greens Annotated Licensing (Scotland) Act 2005 Third Edition by Jack Cummins was recently published. Commercial services such as Westlaw also provide access to a consolidated version of the Act.

***Q16. As indicated please provide the detail to support the statement in paragraph 124 of the PM about crime, disorder and danger.***

See response to question 14

***Q17. The Committee is interested in how powers requiring information on spent convictions (see comments in the memorandum paragraphs 132, and 138 to 141 regarding this) and connected persons will assist in delivering the above objectives.***

See response to question 14

***Q18. Can you explain the reasons for the exclusion of a child as set out in paragraph 129 of the PM (section 52 refers).***

The new offences in section 52 of the Bill, inserting section 104A and section 104B into the 2005 Act, should be read in conjunction with section 105 of the 2005 Act.

Under section 105 of the existing licensing legislation, it is already an offence for children and young people to buy alcohol whether for themselves or for others. A child or young person guilty of this offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale (currently £200).

**Q19. Paragraph 131 of the PM mentions alternative approaches were considered in relation to the offence of supplying children with alcohol in a public place. What were these alternatives and why were they rejected?**

A number of alternative approaches of the construction of this offence were considered. These primarily centred on the need to specify that the alcohol was supplied for consumption in a public place. Not doing so would make it an offence to supply (or make available) alcohol to children or young people at home. It was felt that this would be a disproportionate approach to the issue and going beyond the policy intention. There is also the question as to how it could be adequately and consistently policed.

We also considered the need to specify that the alcohol be consumed in a public place rather than rely on the intention of the person making the alcohol available. However as the offence attaches to the person making the alcohol available rather than the person consuming it, this approach could see individuals commit an offence despite them not having the intention to do so.

After considering the advantages and disadvantages of these approaches it was felt that the offence as drafted in the Bill was the most effective way of addressing the main issues while striking an appropriate balance between concerns such as public health and parental freedom.

**Q20. Please elaborate the policy thinking set out in paragraph 136 of the PM which seems to suggest that police intelligence and associations are now to be considered as seriously as previous convictions. Given intelligence will not have led to conviction, please explain how that is consistent with ECHR and what recourse applicants have to challenge what may be unsubstantiated "intelligence". Can you also point to other pieces of legislation which adopt a similar approach.**

At present the existence of relevant offences or foreign offence is not an automatic bar to obtaining a personal licence. In addition police intelligence and associations can be considered by Licensing Boards under the current legislation. It is up to Licensing Boards to determine at hearing whether this information is relevant and what reliance should be placed upon it. The applicant/licence holder can appeal the Licensing Board's decisions to the sheriff or the sheriff principal as appropriate.

In future the Board will continue to reach its decision on the basis of the material before it. If the Board is presented with police intelligence or spent convictions then

they will have to determine whether they are relevant and what reliance should be placed upon them.

This approach is common in other licensing regimes, for example the Civic Government (Scotland) Act 1982 utilises a similar approach. Police may provide details of police intelligence and associations for Licensing Authorities' consideration and it is up to those Authorities to decide what to consider, and to justify their decision making.

**Q21. Please indicate which other licensing regimes are being referred to in paragraph 137 of the PM.**

There are a wide variety of regimes that make use of a 'fit and proper' test, we would expect that local authority clerks and those sitting on Licensing Boards would for example be familiar with the following:

The Civic Government (Scotland) Act 1982 includes a 'fit and proper' test at Schedule 1, paragraph 5 and this includes regimes for:

- Taxi and Private Hire Licence;
- Second Hand Dealers Licence;
- Metal Dealers Licence;
- Boat Hire Licence;
- Street Traders Licence;
- Market Operators Licence;
- Public Entertainment Licence;
- Indoor Sports Entertainment Licence;
- Late Hours Catering Licence and
- Window Cleaners Licence.

The previous alcohol licensing regime, the Licensing (Scotland) Act 1976 included a 'fit and proper' test at section 17.

Within housing the Landlord Registration scheme within the Antisocial Behaviour etc. (Scotland) Act 2004 includes a 'fit and proper' test at section 85 and the regime for Houses in Multiple Occupation within the Housing (Scotland) Act 2006 includes a 'fit and proper' test at section 130.

**Q22. Please give some examples of what might be restrictions as a consequence of using the "fit and proper" test.**

The lack of a 'fit and proper' test has been much criticised by the police, Licensing Boards and those within the alcohol trade. The Criminal Justice and Licensing (Scotland) Act 2010 went some way to address these concerns by removing the limit on the chief constable to only make comments / reports with regards to merely the



crime prevention objective, to allowing comments/ reports on all of the licensing objectives. This has sometimes not been sufficient to allow the Licensing Boards to consider a broader range of matters, in order to ensure that only those that are suitable are involved in the sale of alcohol in Scotland

In addition to the existing 'relevant offences and foreign offences' the introduction of 'fit and proper' makes it clear that Boards should be prepared to consider a range of material in reaching their decisions. It is appropriate that existing and future case law will help inform this. We would envisage that Boards may wish to consider issues such as:

- spent convictions;
- police intelligence;
- licensing history;
- financial details;
- criminal associations;
- other relevant issues.

This is not intended to be an exhaustive list. New issues will arise so it is important that the legislation is not unduly prescriptive.

***Q23. The second sentence of 140 has some text or explanation missed out which might help to explain how unsuitable persons are allowed to operate.***

There is no text missing from para 140. The legislation sets out the grounds for refusal of a licence, we are expanding these to include a consideration of whether a person is not a fit and proper person to be a holder of a premises or personal licence.

***Q24. What are the relevant offences covered by the repeal to section 129(4) of the Bill.***

The relevant offences referred to in the 2005 Act are provided in *the Licensing (Relevant Offences) (Scotland) Regulations 2007*  
<http://www.legislation.gov.uk/ssi/2007/513/introduction/made>

***Q25. Given the Rehabilitation of Offenders Act 1974 differentiates between types of conviction what is the policy justification for altering the approach of that Act as proposed? Please also provide other examples of legislation amending the original policy in this way.***

The proposed policy approach is consistent with the way the Rehabilitation of Offenders Act 1974 ("the 1974 Act") currently operates and does not alter any aspect of that legislation.

Currently Boards cannot consider spent convictions for two reasons:

1. They are specifically forbidden from doing so by section 129(4) of the 2005 Act.
2. Under the terms the 1974 Act, when a conviction or alternative to prosecution (AtP) becomes 'spent' an individual does not have to reveal it and cannot be prejudiced by it. This means that if an ex-offender whose convictions or AtPs are all spent is asked by a licensing board whether they have a criminal record, they do not have to reveal or admit its existence. Moreover, the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose the spent conviction or AtP.

#### *Exclusions and Exceptions to protection under the 1974 Act*

However, there are some categories of employment and proceedings to which the 1974 Act does not apply as it is considered appropriate that access to spent conviction information continues to be available for the purposes of public protection. The 1974 Act provides an order making power to specify the types of employment and proceedings that are excluded from the 1974 Act and therefore where disclosure of spent convictions is required.

There are already a wide range of occupations and proceedings excluded from the 1974 Act such as taxi and private hire car drivers, as well as any occupation which requires a licence from the Gambling Commission, or any occupation requiring a licence from the Security Industry Authority. The list of exclusions from the 1974 Act is updated from time to time and the most recent update was made in 2013 when proceedings under the Children's Hearings (Scotland) Act 2011 were included.

We consider it appropriate for an increased level of scrutiny of a persons' background to be undertaken where an individual is seeking an alcohol licence. We think this is appropriate given the likely responsibilities of a licence holder, for example in relation to potentially vulnerable people.

In due course, the Scottish Government intends adding premises and personal licence holders to the list of exclusions from the 1974 Act. This will mean that Boards will be able to consider certain relevant spent convictions that an individual applying for a liquor licence might have. This will ensure that liquor licences will be treated in the same way as gaming licenses, taxi licenses and Private Security Industry licenses etc. under the 1974 Act.

#### ***Q26. Please provide detail of any consultation on the above and also details of comments received in opposition.***

There was no specific question asked about spent convictions in the published public consultation on Further Options for Alcohol Licencing. However, for the question, 'Should the legislation be amended so that Boards are asked to consider whether an applicant is a 'fit and proper' person?' one of the most frequently received suggestions was that Licensing Boards should have greater powers to tackle crime,

particularly serious organised crime, by allowing the consideration of police intelligence and 'spent' offences.

Over two thirds of respondents felt that legislation should be amended so that Boards would be able to consider whether an applicant is a 'fit and proper' person. Key stakeholders such as Licensing Forums, Boards, and Alcohol and Drugs Partnerships argued that it is necessary for Licensing Boards to consider more than just convictions for relevant offences when deciding whether to grant a personal licence.

Police Scotland have also stated that it is imperative that Boards have as much information at their disposal as possible to allow them to make a considered decision on an application. They believe that limiting Boards to the consideration of a definitive and restricted list of relevant offences could permit unsuitable persons to operate within licensed premises and may contradict the five licensing objectives upon which the Act is founded (particularly 'preventing crime and disorder').

There were some concerns outlined by both those in favour of 'fit and proper' and those against it. The main one of these was that introducing a 'fit and proper' test might give Licensing Boards and police too much power and see licences refused based upon poor quality evidence.

On balance the Scottish Government took the view that the benefits of this outweighed this risk particularly in light of the existence of robust appeals processes.

***Q27. Are there any exemptions to the offence provision re supplying to children to take account of cultural and religious customs, differences and practices which might involve the consumption of alcohol?***

The drafting provides for two offences, one in relation to children (under 16) and another in relation to young persons (16 and 17 years olds).

In both offence provisions, the Bill provides an exemption, it is not an offence to buy alcohol for, or give alcohol to, a child or young person for the purposes of religious worship.

***Q28. Paragraph 147 of the PM uses the 5 objectives set out in the 2005 Act in an entirely negative way, is that symptomatic of the approach in this part of the Bill?***

The Scottish Government views the five licensing objectives as the engine of the 2005 Act, making clear to Boards, the trade and other stakeholders the intention of the licensing regime. The licensing regime reflects a general view that it would be inappropriate for alcohol to be sold in an entirely unrestricted manner. As such we view the licensing objectives as offering clarity and direction.

Every decision made about licensing must be made with reference to these objectives.

**Q29. Can you provide links to the scientific evidence mentioned in paragraph 149 of the PM please.**

The phrase 'alcohol-free childhood' was used by the Chief Medical Officer for England in his 2009 guidance:

[http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_110256.pdf](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_110256.pdf)

There is a wealth of research showing the harmful effects of alcohol on 18 and how early onset drinking can lead to problems in later life:

- Early drinking age linked to risk of alcoholism:  
[http://alcoholism.about.com/od/tipsforparents/a/early\\_age.htm](http://alcoholism.about.com/od/tipsforparents/a/early_age.htm)
- Predictors of risky alcohol consumption in schoolchildren and their implications for preventing alcohol-related harm:  
<http://www.substanceabusepolicy.com/content/2/1/15>
- Alcohol and adolescence briefing by SHAAP:  
[http://www.shaap.org.uk/images/UserFiles/File/alcohol\\_and\\_adolescence.pdf](http://www.shaap.org.uk/images/UserFiles/File/alcohol_and_adolescence.pdf)

**Q30. Paragraph 151 of the PM seems to directly contradict the suggestion in paragraph 150. Could you elaborate on the thinking here please.**

Section 147 of the 2005 Act defines a child as “a person under the age of 16” and a young person as “a person aged 16 or 17”. Thus the ‘protecting children’ objective does not apply to 16 and 17 year olds. These concerns were highlighted in the joint report ‘Re-thinking alcohol licensing’ by Alcohol Focus Scotland and Scottish Health Action on Alcohol Problems (SHAAP). The distinction between children and young persons creates difficulties for Licensing Boards when dealing with issues around young persons. For example it means that any action the Board take in relation to test purchase failures have to be considered in regards the crime prevention objection as opposed to the children objective. Equally when considering areas set aside for children and young persons within premises, it is difficult to relate to this to the objectives especially in respect of young persons. Looking at the Nicholson Report there is no obvious justification for the licensing objective excluding young persons and therefore it is presumed that this was inadvertent.

The broadening out of the objective would give Licensing Boards greater scope when considering the wider implications of young persons’ access to alcohol. Despite the wide ranging role of the licensing objectives, it is not envisaged that

expanding this particular licensing objective will create unintended consequences, or adversely affect the considerations that Boards undertake

**Q31. Please indicate whether an existing statement of licensing policy will subsist until replaced.**

The provisions at section 42 of the Bill amend the existing regime. Under the existing regime a licensing policy statement is valid for a period of three years. The Bill provision amends this to better align with the tenure of Licensing Boards. They are to be given eighteen months in which to prepare a licensing policy statement. It is open to them to publish a policy statement more quickly. This would then come into effect when published. During that eighteen month period the previous licensing policy statement would remain valid. We could expect Boards to prepare their licensing policy statements within this period. If a Board fails to prepare a licensing policy statement within the laid down period, then it is appropriate for the courts to consider its validity.

**Q32. In paragraph 161 of the PM please provide detail of the majority and also information from the minority views.**

A summary of the responses to the Further Options for Alcohol Licensing is available on the Scottish Government website at <http://www.scotland.gov.uk/Publications/2013/10/9066>

**Q33. Paragraph 161 of the PM suggests various suggestions were considered unduly onerous. Please indicate in what way each of these undermines the economic interests of the alcohol trade as specified in paragraph 121.**

Paragraph 162 of the Policy Memorandum notes that certain policy proposals related to public health were considered to be unduly onerous. Looking at the proposals specifically listed in that paragraph:

- *Reducing off-sales hours*

This proposal from the joint Alcohol Focus Scotland (AFS) / Scottish Health Action on Alcohol Problems (SHAAP) report Re-Thinking Alcohol Licensing was not included within the Further Options for Alcohol licensing consultation. It was felt that the impact on the public and trade would be to create considerable inconvenience to the responsible trade and responsible drinkers, without strong evidence that it would reduce alcohol misuse.

- *Introduction of alcohol only checkouts*

This proposal from the joint AFS/SHAAP report was not included within the Further Options for Alcohol licensing consultation. Similarly it was felt that the impact on the public and trade would be to create considerable inconvenience to the responsible

trade and responsible drinkers, without strong evidence that it would reduce alcohol misuse.

- *Placing a statutory duty on Boards to promote the licensing objectives and to provide annual reports on how they had done so*

These proposals were consulted on. Consultation responses suggested that rather than leading to a change in attitude or practice, this proposal would simply lead to additional reporting. Further details are available in the summary of the Further Options for Alcohol Licensing consultation (<http://www.scotland.gov.uk/Publications/2013/10/9066>).

***Q34. It might also be useful in responding to the above to indicate why the economic interests of the trade are considered paramount, or at least more important than public health measures.***

The economic interests of the trade are not considered paramount, nor are public health measures. The Scottish Government fully recognises the social and economic benefits to production of wines, spirits and beers, as well as of the on and off -trade. However we are not complacent about the very real public health and public order issues associated with alcohol misuse.

In considering reform it is necessary to balance the likely negative cost and inconvenience to trade and public against the likely positive impact in improving public health and reducing crime and disorder.

***Q35. Given the size of this Bill, and indeed the complexity of parts, the suggestion of the test in paragraph 163 of the PM (relatively straightforward to implement) could benefit from specific detail in relation to the measures not being implemented.***

Further Options for Alcohol Licensing consultation responses raised concerns about the practicality and impact of some proposals. Proposals to place statutory duties on Licensing Boards to promote the licensing objectives, to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives and to gather and assess information on each of the five licensing objectives in the 2005 Act in the preparation of their statement of licensing policy, were considered by many to impose additional work on Licensing Boards but would have little positive impact.

Similarly the majority of consultation responses were opposed to the proposal that a national licensing policy statement be developed which local Licensing Boards would be required to have regard to when drawing up their own policies. This was considered likely to be too general to be of any great value to Boards.

**Q36. Can you confirm if the detail on fee income to be reported will require to be subdivided by category (paragraph 174 of the PM).**

Boards will be required to report on their income and expenditure with an explanation of how the amounts in the statement have been calculated. We would expect local Licensing Boards to work together, for example along with COSLA, to ensure that information was provided to a common and useful format. However, if necessary, the Bill provides an order making power for secondary legislation to require certain details to be provided.

**Q37. Paragraph 175 of the PM refers to the “Civil Licensing regime”, could you indicate what that encompasses.**

By the civic licensing regime we mean the licensing regimes within Part 2 and Part 3 of the Civic Government (Scotland) Act 1982, as amended elsewhere in this Bill. Section 3 of the 1982 Act sets out that every licensing authority shall consider each application within 3 months and reach a final decision within 6 months, along with providing for an extension on summary application to the sheriff and the automatic granting of an application. The provisions at Section 58 of the Bill are intended to broadly reflect the provisions at Section 3 of the 1982 Act.

**Q38. Paragraph 182 of the PM is vague as to what the reference to “these provisions” is. Can you be specific here.**

In the Policy Memorandum we grouped together provisions that particularly demonstrated an underlying theme. In relation to paragraph 164 onwards, and improvements to the existing regime and reducing burdens on trade and licensing boards, the specific provisions that are covered are:

- Personal licences Section 57;
- Duty on boards to produce annual financial report Section 55;
- Processing of applications and deemed grant Section 58;
- Relevant offences and foreign offences Section 49, Section 50.

**Q39. Please indicate who was represented on the Board referred to in paragraph 183 of the PM and provide links to their findings.**

The Review of Alcohol Licensing Fees - Steering Group: Recommendations to Scottish Ministers are available on the Scottish Government website at

<http://www.scotland.gov.uk/Publications/2014/02/6340/0>

The steering group consisted of

- William Boyack - Wine and Spirit Trade Association (WSTA)

- Patrick Browne - Scottish Beer and Pub Association (SBPA)
- John Drummond - Scottish Grocers' Federation (SGF)
- Morag Leck - Depute Clerk to Renfrewshire Licensing Board (attended the steering group as representatives of the SOLAR Licensing Group)
- Robert Millar - Depute Clerk to City of Edinburgh Licensing Board (attended the steering group as representatives of the SOLAR Licensing Group)
- Paul Waterson - Scottish Licensed Trade Association (SLTA)
- Chair - Quentin Fisher - Head of Licensing - Scottish Government

**Q40. Is there any difference intended between the phrases in paragraphs 8 (unnecessary burdens) and 184 (burdens) in the PM?**

No

**Q41. Can you confirm all the measures in Part 2 of the Bill fall into the category of improving the existing system or reducing burdens?**

The Scottish Government intends to improve the existing regime, and that is the intention of all the provisions in Part 2. A number of provisions will make a particular impact on reducing unnecessary burdens, for example

- Section 42 statements of licensing policy
- Section 49 premises licences: procedure in relation to relevant offences or foreign offences
- Section 53 personal licences: procedure in relation to relevant offences and foreign offences
- Section 56 interested parties
- Section 57 personal licences: grant, duration and renewal
- Section 58 processing and deemed grant of applications

Other provisions will improve the overall clarity, effectiveness and transparency of the regime, and are likely to reduce the burden on Boards which could be reflected in the fees charged to the trade.

For example section 55 *Duty of Licensing Boards to produce annual financial report* has been broadly welcomed by the trade as increasing the transparency of local Licensing Board income and expenditure, an issue that has concerned members of the licensed trade for some time.

**Q42. Given the changes made by section 41 of the Bill to youths, please explain the statement that nothing is discriminatory on the grounds of age.**

The provision at section 41, to add young persons to the licensing objective protecting children from harm, makes it clear that Boards should consider the interests of sixteen and seventeen year olds. While the word discrimination can relate to the act of making any distinction, we were using it in the other sense of



making a distinction that is contrary to a person's interest, such as racial or sexual discrimination.

***Q43. Is paragraph 186 of the PM suggesting that as revocation is undertaken by licensing boards ECHR considerations do not apply?***

No, the intended meaning is that Boards will need to ensure that their actions are ECHR compliant. Boards already take account of issues outwith the immediate licensing legislation, for example case law and equalities, and we would expect them to continue to draw upon the legal advice provided by their clerks.

***Q44. Paragraph 188 of the PM refers to balancing rights with public safety yet that is not mentioned elsewhere as being a consideration for this Part of the Bill. Please indicate which measures in this Part address public safety.***

We agree that the reference to public safety in this paragraph is potentially confusing, and a reference to the licensing objectives that underpin the Act might have been more appropriate.

## **Part 3 Civic Licensing**

### **Taxis and Private Hire Cars**

***Q45. To aid understanding of this Part of the Bill could you provide a summary of the primary legislation, secondary legislation and guidance that comprises the current regime under which taxis and private hire cars are licensed. The summary could helpfully show where the regimes for taxis and private hire cars differ and where the same or similar provisions apply. In addition, the summary should show where changes are proposed, whether in the Bill or through separate changes to secondary legislation or guidance. As much detail as possible should be provided of planned changes to secondary legislation or guidance (if little detail is currently available, please say when further information is expected to become available).***

#### *Current Regime*

The Civic Government (Scotland) Act 1982 (the 1982 Act), as amended, provides the legal framework from which local licensing authorities create and administer their local licensing regimes. Sections 10 to 23 and Schedule 1 refer. There is a series of secondary legislation which provide more details, including:-

- Licensing & Regulation of Taxis (Appeals in Respect of Taxi Fares) (Scotland) Order 1985 (SI 1985/2025) (as amended)
- Licensing & Regulation of Taxis and Private Hire Cars and their Drivers (Prohibited and Required Conditions) (Scotland) Regulations 1986 (SI 1986 / 1238).
- Local Services (Operation by Taxis) (Scotland) Regulations 1986 (SI 1986/1239)
- Taxi Drivers (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2003 (SSI 2003/73)
- Private Hire Car Drivers (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2004 (SSI 2004/88)
- Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 (SSI 2009/145)

There is also Best Practice Guidance which the Scottish Government provides for local licensing authorities - <http://www.scotland.gov.uk/Publications/2012/04/3534/0>.

This legislation provides for a range of licences, the taxis licence, the private hire car vehicle licence, the taxi driver licence and the private hire car licence, and the taxis and private hire car booking office licence brought in by the Civic Government (Scotland) Act 1982 (Licensing of Booking Officers) Order 2009.

#### *Similarities*

- If a licensing authority makes a resolution to introduce taxi licensing, then they must also licence private hire cars. Both taxis and private hire cars are required to have vehicle licences. Both types of vehicles must be suitable in

type, size and design for use as a taxi or private hire car. Both drivers of private hire cars and taxis have to be licensed, as do booking offices where there are four or more cars. Both taxis and private hire car drivers may have to undergo a medical examination. A taxi driver may use their taxi driver licence to operate a hire car however the reverse does not apply.

- The Taxi Drivers (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2003 and the Private Hire Car Drivers (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2004 place a duty on taxi drivers and private hire car drivers to carry a disabled passenger's guide dog, hearing dog, or assistance dog. The drivers may apply for an exemption if they have a permissible reason to refuse.

### *Differences*

- A taxi can be hailed in public, or use a taxi rank, whereas a private hire car must be pre-booked.
- The 1982 Act allows that the grant of a taxi licence may be refused by a licensing authority for the purpose of limiting the number of taxis if they are satisfied that there is no significant unmet demand for the services of taxis in their area. This does not currently apply to private hire cars.
- A licensing authority can charge separate fees for taxi and private hire car licences and should ensure the fees are sufficient to cover their expenses.
- A licensing authority can require a taxi driver applicant to take a test of his or her knowledge of an area to which the licence relates, of the layout of roads and other matters relating to the operation of a taxi as the authority may consider desirable. This does not currently apply to private hire car drivers.
- A private hire car cannot display a word, sign, notice, mark, illumination or other feature which may suggest that the vehicle is available for hire as a taxi.
- Licensing authorities fix maximum fares in relation to taxis, but this does not apply to private hire cars.
- Licensing authorities can appoint taxi stances (or ranks) but there is no similar provision for private hire cars.
- Offences are similar in that to pick up a passenger where a licence is required, without either taxi or private hire licence, where the statutory exemptions do not apply, is an offence. Permitting an unlicensed driver to use a taxi or private hire car is an offence. However, there are also offences specific to a category, for example if a vehicle other than a taxi waits at a taxi stance it is an offence. It is an offence for a private hire car to pick up a passenger without a pre-booking.

### *The Bill*

There are 3 provisions in the Bill that relate specifically to taxi and private hire cars:

- *Refusal to grant private hire car licence on grounds of overprovision* – This will enable the licensing authority to refuse a private hire car licence application on the grounds of overprovision of private hire cars in a given locality or localities:
- *Testing of private hire car drivers* – Allows licensing authority to require testing of applicants for a private hire car driver licence, as per the current ability to do so for taxi driver licences:
- *Removal of contract hire exemption* – bringing hire cars used for contracts into the taxi and private hire car licensing regime.

*Secondary Legislation* - There are also options we intend to take forward via secondary legislation. See responses to questions 49, 52 and 53 for further details.

*Guidance* – We intend to work with our stakeholders to update the best practice guidance. See response to question 49 for further detail.

***Q46. Regarding paragraph 190, please provide examples of how different local authorities apply discretion under the current regime to produce local regimes that meet the specific requirements of different local areas.***

The taxi and private hire car trade operates very differently across the diverse geography and economy of Scotland. As might be envisaged the trade in a small rural authority is very different from a large urban authority. The legislation offers licensing authorities scope to tailor the regime to their area. We feel that this is an important facet of the regime and we are not seeking to change this.

The Civic Government (Scotland) Act 1982 provides the legislative framework for local authorities, functioning as the licensing authority, to create and manage an appropriate local licensing regime. Despite the fact they are discretionary, all local authorities have a regime for licensing drivers and vehicles.

Interpretation of the legislation is a matter for each local licensing authority and ultimately the courts, where any appeals against local licensing decisions are finally settled.

There are no national standards or statutory guidance for taxi and private hire car licensing (although, as above, the Scottish Government publishes best practice for local licensing authorities). Licence conditions have also been suggested to local authorities <http://www.scotland.gov.uk/Publications/2012/04/2261/0>.

However we understand that not all local authorities apply these conditions, and that there is variation in the licence conditions that they do apply. Much of the actual detail resides in the licence conditions that are applied to individual licences, rather

than in the legislation itself. This means local licensing authorities have a very wide discretion on the setting of licence conditions.

Whilst there may be similarities in the way that licensing authorities license taxis and private hire cars, there are also often substantial differences, including:

- The minimum requirements in application processes for driver and vehicle licences. Some authorities will request completed application form, fees and certificates of insurance, roadworthiness and registration in case of vehicle licences, whilst others will require vehicle inspection at their premises prior to issuing a licence. There are differences in how authorities choose to do initial checks. These can vary from underlying checks to both the driver and vehicle. All will have police check, criminal record check and a vehicle standard check but some authorities will also require an occupational health check as well.
- Duration of licences issued can vary, as per the provisions in Schedule 1 of the 1982 Act.
- Grounds for refusal – there are variations in the reasons for refusing a licence, e.g. failure to respond to requests for information, not presenting a vehicle for inspections, objections from medical report etc.
- Some authorities, particularly in the cities, will limit the number of taxi licences they award if they consider there to be an excess in that locality.
- Some local authorities have a policy that of their taxi vehicles, a certain number at the very least must be wheelchair accessible vehicles. Other local authorities do not have any requirements over set numbers of wheelchair accessible vehicles.
- The fees charged vary between local authorities. Some will charge different fees for a taxi driver licence compared to a private hire car licence, whilst others will charge a set fee for both.
- Some local authorities will require their drivers to undertake topographical knowledge tests before issuing a taxi driver licence, whilst others do not require this test.
- Standards and procedures for the testing of vehicles also vary greatly throughout the country.
- Some licensing authorities bring vehicles such as chauffeur driven businesses, vehicles used for airport transfers, stretch limousines and 'novelty' vehicles within the taxi and private hire regime using the discretion available to them to determine the size, type and design of such vehicles that can operate in their area.

**Q47. It is extremely difficult to understand the proposals in the Bill with reference to the existing regimes. To assist understanding please provide examples of—**

- ***variations in the way in which the current legislation is interpreted and implemented;***

See response to question 46.

- ***areas in which a more consistent approach would be beneficial and areas where local flexibility is still more appropriate;***

Responses to the public consultation Taxi and Private Hire car Licensing – Proposals for Change suggested the following aspects where a more consistent approach could be beneficial:-

- Rules on conduct of hearings – for example fair hearing procedure; criteria for adjournments etc
- Removal of contract exemption. This will ensure the same level of scrutiny for the public using these services as there is in place for taxi and private hire car drivers.

It is felt that the number of taxi licences is best decided at a local level, as there will be differences in requirement, for example, depending on whether it is a rural or urban authority. Specific grounds for refusal and length of licence are also best decided locally as local licensing authorities are best placed to decide what suits the local circumstances.

- ***the unfair challenges and abuse referred to in the first bullet-point of paragraph 193 (and also say what effects these have had on public safety).***

Issues raised by stakeholders include the fact that special events vehicles and contract hire vehicles generally fall outwith the current licensing regime for taxis and private hire cars, the lack of testing facilities and testing standards for custom built or imported vehicles and businesses run from mobile numbers with no clear evidence of where they are operating from. There have also been allegations of businesses getting round the requirement for booking office licences by claiming to be below the threshold for registration.

The overall impact of this is that individuals and businesses that are not properly regulated are transporting members of the public potentially in vehicles that are not properly checked. Some of these vehicles may be transporting vulnerable people, including children.

- ***In addition, please describe— the recent changes to the market for hire car service (including the significant distinctions that remain between taxis and private hire cars, as referred to in paragraph 198);***

When the original legislation was drafted the taxi and private hire car market was broadly categorised by two differing market operations; the taxi fleet which is able to 'ply for hire', pick up on street and at taxi stances, as well as responding to pre-booked trips; and the private hire car market which is able to pick up in response to pre-booked trips only. The latter was considered to have a greater degree of premeditated choice associated with it and consequently a lesser degree of regulation was required.

However since then mobile phones and the use of apps on smart phones to book a taxi or private hire car have blurred the lines prompting calls for greater consistency.

However, sufficient operational differences remain such that it is not appropriate to simply apply the same unmet demand test for private hire cars as there is for taxis. That is because all private hire cars require to be pre-booked, so demand cannot be measured in waiting times. Instead the test has been drafted in terms of overprovision. Similar provisions exist in relation to houses in multiple occupation, within the Housing (Scotland) Act 2006 and for alcohol premises licences, in the Licensing (Scotland) Act 2005.

- ***current compliance checking measures.***

Most authorities will make reference to a Scottish Criminal Records Office (SCRO) check prior to granting a licence (commonly known as disclosure checks).

The resources devoted by licensing authorities to enforcement will vary according to local circumstances and frequent liaison between licensing authorities and the police through information and intelligence sharing can help authorities gauge the level and type of enforcement activity required. Some authorities have successfully carried out joint operations with the police, for example targeting known problem spots where instances of breaches of licensing have been reported. Some local licensing authorities use enforcement staff to check a range of licensed activities (such as market traders) as well as the taxi and private hire trades, to make the best use of staff resources.

A range of compliance checking takes place including:

- roadside safety inspections
- licence status checks
- investigation of complaints
- scrutiny of licence applications and inspection records
- Inter-authority working group

**Q48. It would enable members to follow the proposed changes if you would state which of the changes listed in the summary provided in responses to the first question in this set of questions on taxis and private car hires contribute to each of the points mentioned in the bullet-points in paragraphs 192 and 193.**

*Addressing issues with the variability in how legislation is interpreted and implemented;*

- Removal of contract exemption

*Encouraging a consistent approach to local authority practice where this is beneficial, while maintaining appropriate local flexibility;*

- Removal of contract exemption
- Overprovision of private hire cars

*Amending legislation to take account of the changes to the current market for hire car services.*

- Overprovision of private hire cars
- Testing of private hire car drivers
- Removal of contract exemption
- 

*Addressing concerns that the legitimate trade is being unfairly challenged in some areas by businesses and individuals circumventing or abusing/ignoring the licensing regime. This then has an effect on public safety;*

- Removal of contract exemption

*Improving compliance checking within the regime.*

- Testing of private hire car drivers

**Q49. Paragraph 195 of the PM refers to the Bill being part of a wider body of work to address concerns relating to taxi/private hire car licensing. Later on, this work is described as relating to the regulation of booking offices and the consideration of mandatory licensing conditions. Please give us an indication of what action is proposed in these areas – or a timescale for when such information will be available?**

It is our intention to convene a working group to consider the creation of updated licensing conditions for taxi and private hire car drivers, vehicles and booking offices. Part of this work will explore whether booking office regulations should be extended to all booking offices, rather than just those with four cars or more. There will also be scope to see if the booking office licence would benefit from expanded mandatory conditions. This could cover for example more detailed record-keeping. As well as secondary legislation to tighten up the regulation of booking offices we will explore creation of further mandatory conditions, and updated guidance to share and encourage best practice.



The use of mandatory conditions could be used to clarify expectations in the way private hire cars can operate. Issues that may be covered by mandatory conditions are standards for vulnerable people, duty to assess and respond to needs of those with disabilities (not just wheelchair users), accessibility requirements for vehicles, vehicle inspection, cross border hiring etc, training in equalities and diversity, customer care, passenger safety, road safety, awareness of licensing requirements, communication skills, health and safety, and driving skills.

It is also proposed to convene a working group to refresh guidance for licensing authorities, to potentially include: updated, improved guidance on how to assess overprovision and unmet demand; good practice case studies on testing & training, enforcement and compliance work; guidance on the licence application process to ensure licensing authorities are using their full powers to deter and weed out unsuitable applicants; widen guidance to cover other statutory duties related to taxi and private hire cars including the Climate Change Public Sector Duty and duties in relation to the Equality Act 2010; include an updated set of recommended conditions for each level of licence.

This work will be progressed within an appropriate timescale in accordance with overall priorities and the resources available.

***Q50. Please indicate which authorities are experiencing difficulties as referred to in paragraph 197 of the PM.***

In the consultation, a number of reasons were offered to support the creation of a power to restrict numbers of private hire car licences. The main ones were to provide consistency across the licensing regime between taxi and private hire cars and for licensing authorities to have flexibility in addressing concerns related to the number of vehicles on the road.

Views were expressed that a saturated market could lead to lower standards. It was thought that restriction will improve standards of entry to trade and maintain high standards within the trade. Increases in illegal pick-ups and cross border hirings were both cited as negative impacts of an oversupply of vehicles on the road. It was felt that quantity restriction would provide licensing authorities with tools to better manage local supply and demand. It was recognised that there may be circumstances in which it would be appropriate to have a quantity restriction; namely in the interests of public safety, and reducing congestion or pollution.

***Q51. Paragraph 199 of the PM refers to the Scottish Government expecting local authorities to use limits on licence numbers for private hire cars as a last resort. There does not appear to be any mechanism to enforce this position. Please clarify thinking in this area?***

The Scottish Government intends to provide updated guidance to local licensing authorities to share best practice in developing relevant policies. However, as the

power is discretionary it will allow authorities to decide when local circumstances best suit the cap on private hire cars being applied. The overprovision limit for taxis, already in the 1982 Act, is discretionary therefore the new provision is in line with this.

***Q52. Paragraphs 200 to 202 of the PM deal with removing the exemption to private hire car licensing for vehicles on contract for 24 hours or more. Concerns are noted about the impact of this on those currently exempt. Please clarify which types of business may face difficulties as a result, and what options are under consideration to change the way the exemption is introduced to address this?***

As noted in the policy memorandum, a similar exemption was removed from private hire licensing legislation in England and Wales. A review of the impact of the repeal of the private hire vehicle contract exemption highlighted a number of lessons learned, particularly around the difficulty in estimating numbers of those who would be affected and the level and quality of guidance provided in advance of the repeal coming into effect. There had also been concerns that a wide variety of activities would be significantly affected by the repeal although this was not generally found to have happened. Taking account of the experience in England and Wales, the removal of the contract exemption from the 1982 Act will not come into effect immediately.

The provision creates an order-making power which allows Scottish Ministers to make regulations specifying further exemptions from taxi and private hire car licensing. This will allow the Scottish Government to consider, identify and exempt types of vehicle or supply that it would be inappropriate to register. Commencement of this provision in the Bill will be delayed to ensure those affected by the removal of exemption (both trade and local authorities) have time to prepare for licensing. This is to help address any issues with the removal of the exemption if it becomes clear there are significant unintended consequences affecting some types of operation.

The Scottish Government will use the time before this provision comes into effect to ensure all individuals and businesses that will be affected have an opportunity to clarify their own position and local authorities have an opportunity to develop appropriate policies and conditions to incorporate the new licence holders successfully.

Where driving is an ancillary service (for example, child-minding) there may be an issue around how licensing authorities would treat vehicles and drivers. The Scottish Government recommends that at a detailed assessment of activity should be undertaken by the licensing authority to determine whether a licence is required.

Council contracts would also likely be affected, particularly in remote areas where there is a high demand for school transport services and demand for private hire car services is low. It can be difficult to attract competition for these tenders already and

requiring a licensed vehicle and driver would increase costs and reduce available operators.

The provision of community transport services was specifically mentioned in the consultation as being vulnerable to increases in costs if they are required to be licenced.

***Q53. Paragraph 204 of the PM refers to proposed secondary legislation, please indicate what the proposed provisions are designed to achieve. Please also indicate what are the difficulties that would be faced (and by what types of business) and in what ways would those difficulties vary depending on how the proposed change is introduced?***

#### *Booking Office*

Also see response to question 49.

The main concerns with extending the provisions of the booking office order were: over-burdening small businesses particularly sole traders, difficulty and cost of enforcement (particularly around extending to non-premises based booking systems), lack of need for this in rural areas where issues of criminality are not considered so relevant. The booking office regime is currently mandatory so it would be difficult to give discretion to local authorities over what booking offices they licence.

The benefits of extending the booking office regime are: providing a level playing field for all businesses, facilitating competition, adapting to realities of increasing use of new technologies, allowing greater scrutiny of businesses that are currently sitting out with the licensing regime – specifically businesses that appear to run fewer cars but in fact have a far larger pool of cars working for them, enhance enforcement (particularly if improved mandatory conditions are put in place related to record keeping and accessing financial records).

#### *Mandatory Conditions*

Also see response to question 49.

If the provisions for mandatory conditions are included in secondary legislation it will ensure they can be reviewed and refreshed as required.

#### *Contract Exemption*

See response to question 52.

Chauffeur services may be particularly affected by the proposed secondary legislation on removal of the contract exemption. If particular vehicles are used to suit particular clients, and sometimes have to be outsourced, this will pose difficulties if only licensed vehicles can be used. As noted previously, the Scottish Government will look into issues for all operators and businesses before bringing this provision in to force.

### *Hearings*

A power to issue secondary legislation on the conduct of hearings (to ensure good practice) will also be included.

## Metal dealers

**Q54. The Committee would appreciate some general background information here. You provide a value for the industry and the Financial memorandum provides numbers of licensed and exempt dealers. Any information you can provide on the geographical spread of where the dealers are based would assist the Committee.**

In December 2012 the British Transport Police conducted an assessment of dealerships. It broke down the figures by the then Police Force areas:

|                     |     |
|---------------------|-----|
| Central             | 28  |
| Dumfries & Galloway | 15  |
| Fife                | 18  |
| Grampian            | 34  |
| Lothian & Borders   | 50  |
| Northern            | 20  |
| Strathclyde         | 95  |
| Total               | 285 |

The figures should be caveated that subsequent work identified that some of the businesses were no longer operating. Nevertheless it still provides the best available estimate of the spread of dealers.

**Q55. What are the current arrangements for licensing and maintaining a record of metal dealers in Scotland and how, if at all, will this change under the proposed legislation?**

Metal Dealers are currently licensed under a regime provided for under the Civic Government (Scotland) Act 1982. This will continue to be the case. Each local licensing authority is responsible for licensing metal dealers in their area and keeping a record of all licences issued. That will also continue to be the case under the proposed legislation. The new arrangements will result in more dealers needing a licence given the proposed abolition of the exemption category.

Additionally SEPA keep a record of metal dealers as they also require a waste carrier's licence.

**Q56. In relation to the enforcement of licensing requirements, who is responsible for scrutinising dealers' records and are there any guidelines on how often this should be done, to whom are returns made and what is the role of local authorities once a licence has been granted?**

These arrangements are already set out in the Civic Government (Scotland) Act 1982. The Bill will not change these arrangements. Under section 5 of the 1982 Act an authorised officer of the licensing authority or a constable can enter and inspect

premises and records. There is no guidance on how often records should be inspected but licensing authorities and the Police have long experience of this type of activity. Intelligence or evidence of problems (either with a specific premises or in a locality generally) may give rise to a heightened level of inspection for certain premises. Other premises which are regarded as well run and operated to a high standard may not require the same level of scrutiny.

***Q57. What special arrangements are made in relation to licences for itinerant dealers and will such licensees continue to be able to operate across Scotland under a single licence?***

Itinerant licences will continue to be applicable throughout Scotland. Such licences will have to comply with the tougher conditions imposed on all dealers such as the proposed ban on dealing in cash and the changes in relation to identity checking and record keeping.

***Q58. Can you specify what you see as the benefits of removing the 48-hour retention period before dealers can process metal in terms of the objectives of the Bill?***

The Scottish Government sees the Bill as delivering an effective, proportionate system of licensing metal dealers. Whilst there is a need for greater rigour in licensing arrangements, we also accept that regulation needs to be practical.

Our engagement with the industry has convinced the Scottish Government that the 48 hour requirement is impractical for many operators. There are two reasons for this. Firstly, some operators turn round metal extremely quickly in order to respond to price changes on commodity markets. In addition, and perhaps more compellingly, there are physical constraints on many dealers' premises that would prevent them operating the 48 hour rule. A busy dealer taking over a hundred deliveries a day may simply lack the capacity to leave them all individually separated and unprocessed for 48 hours. SEPA also imposes requirements on metal dealers limiting the amount of metal that can be retained on site.

Having said this, it would be possible for a Sheriff or licensing authority to impose a period for which metal must be retained in individual cases where necessary.

***Q59. What forms of identification will be considered acceptable for the purposes of verifying the name and address of a customer?***

The proposed legislation does not specify the particular forms of identification that will be considered acceptable. It is likely that commonly held documents such as passports and driving licences will be used, supported by bank statements and utility bills as proofs of address. We have not prescribed this as we do not wish to limit the customer base of metal dealers by excluding those who do not hold passports or

driving licences. Any dealer accepting proofs of identification that are inadequate may find this reported to the licensing authority.

***Q60. What other proposals have been suggested during the consultation phase, which are not being taken forward (such as an accreditation scheme for metal dealers or enhanced licensing requirements like CCTV)?***

While proposals such as an accreditation scheme for dealers and tougher requirements such as CCTV have not been specifically included within the legislative proposals, it is not the case that they will not necessarily be taken forward. Tougher licensing requirements can be imposed as a licensing condition on a case by case basis. In dealing with each application (or at any subsequent review) a licensing authority can add conditions to a licence so it could, for example, add a CCTV requirement as a condition. An accreditation scheme could be taken forward without legislation. The trade or some other body could set up such a scheme and operate it with dealers joining on a voluntary basis.

There were no other metal dealer licensing proposals that enjoyed widespread support that have not been progressed.

## Public Entertainment Venues

**Q61. Please provide detail of what the Bill does and how, with the repeal, theatres will be licensed in future.**

The Bill removes the mandatory licensing requirement for theatres by repealing both the provision for this in the Theatres Act 1968 and the exemption from public entertainment licensing in the Civic Government (Scotland) Act 1982. This will allow local authorities to licence theatres alongside other forms of public entertainment.

**Q62. In what circumstances might less onerous licensing requirements be required? Is this intended to refer to venues with a limited capacity? How will that provision work in practice?**

Local licensing authorities enjoy considerable discretion in how they licence public entertainment. They already use this flexibility to remove the licencing requirement from venues with lower capacity. A good practical example is already provided by Glasgow City Council which provides that venues with capacity of under 500 do not need to be licensed provided other requirements are met. Their policy is copied below.

### *“Spectator Entertainment*

#### *Performances*

Performance of (i) Dance; (ii) Live Music (amplified or unamplified); (iii) Recorded Music; or (iv) a Play taking place to an audience and for the primary purpose of entertaining that audience.

#### *Exhibitions*

The public exhibition of an object such as a painting, sculpture, drawing, installation or historic artefact.

#### *Public Shows*

Public shows and similar events such as Festivals, Fairs, Sporting Events, Circuses and Firework Displays held primarily for the purpose of providing entertainment.

#### *Exemption for Spectator Based Entertainment*

A Public Entertainment Licence *shall not be required* for spectator based entertainment events that satisfy all of the following conditions:



a) the event is provided to an audience of less than 500 persons at any one time and the organiser of the event takes appropriate steps to monitor and control capacity during the event; and

b) in planning and delivering the event the organiser takes cognisance of HSG195 - the Health and Safety Executive Event Safety Guide (also known as the Purple Guide) or any further additional or replacement guidance specified by the Licensing Authority; and

c) the organiser carries out a risk assessment of the proposed event and determines that no aspect of the event presents a high risk to the safety of spectators.”

The changes proposed would allow theatres to benefit from the same flexibilities that already exist for other forms of public entertainment.

**Q63. What is the effect of the repeal of the powers of entry provisions?**

There is no practical effect. The powers of entry provisions in the 1968 Act are effectively redundant given the removal of the licensing requirement. Equivalent powers are contained within section 5 of the Civic Government (Scotland) Act 1982 and will be applicable when theatres are licensed under the public entertainment provisions of that Act.

**Q64. Who was consulted by the Government, on what, and what was their reaction to these proposals. Why was no wider consultation held?**

We have held discussions with Creative Scotland, the Federation of Scottish Theatre and others arts bodies on the proposals as well as some licensing specialists on the specific proposal to remove the mandatory licensing requirement under the 1968 Act and allow theatres to be licensed under the public entertainment regime set out in the 1982 Act.

Those representing arts bodies were generally supportive of the additional flexibility and discretion provided by the proposals and in particular the possibility of ‘lighter touch’ licensing for smaller theatres. There was some concern about what the changes might mean for fee levels, however the Scottish Government has no evidence that fee levels for theatres would in fact change significantly under the new arrangements.

A full public consultation was felt to be disproportionate to the scale of the changes. Theatres were licensed and will continue to be licensed – albeit in a more flexible way. The public at large is unlikely to see significant change as a result of this change.

## Sexual Entertainment Venues

**Q65. Paragraph 250 of the PM indicates around 20 sexual entertainment venues exist, please provide information about where these venues are i.e. cities, the central belt etc. or the sort of venues they are e.g. lap dancing, strip clubs etc.**

The 20 venues referred to are located in Edinburgh, Dundee, Glasgow and Aberdeen and are lap dancing clubs. The greatest concentrations can be found in Edinburgh and Glasgow.

**Q66. Please provide detail on how the licensing regime will work– i.e. local authority licensing statements, conditions, enforcement, consultation, objections, duration of a licence, transfer of a licence, refusal of a licence, appeal, offences etc. The Committee are concerned that respondents may not fully understand what the “architecture” of the 1982 Act is in relation to sex shops, and therefore whether the framework for sex shops is suitable for sexual entertainment venues.**

The scheme would operate in what might be regarded as a “typical” civic licensing procedure covering most of the matters raised above. A licensing authority can grant a licence unconditionally, refuse it, or grant it subject to conditions. Conditions must be reasonable and may include (non-exhaustively) matters such as hours of operating, window displays and visibility from the street. Enforcement is a matter for the licensing authority and the Police, both of whom have rights of entry and inspection. If a matter is brought to the attention of the Police then they would determine what action to take. Actions could include reporting the matter to the Fiscal for possible prosecution or referring the matter to the licensing authority for potential action such as revocation of the licence or the imposition of additional conditions. Public notice of any applications shall be made and objections and representations can be made by any member of the public prior to the licensing authority taking its final decision. There is no process for transferring a licence. A right of appeal to the Sheriff exists for applicants unhappy at a decision of a licensing authority. A licence will run for one year or for a shorter period determined by the licensing authority. There is no requirement for a licensing policy statement, however a local authority may choose to prepare one. Typical licensing offences exist e.g. operating without a licence or operating in breach of the conditions of a licence.

**Q67. Please explain the thinking behind the main definitions “sexual entertainment”, “organiser” or “audience”.**

Underpinning the definitions provided for in the Bill is the intent that we should licence what we intend to licence and avoid licensing that which we don't. The

definitions are therefore crafted to capture what would be understood to be sexual entertainment and to avoid inadvertently capturing any other activity.

Specifically, 'an audience' is defined as including an audience of one to ensure that private dances in a booth of some sort is captured by the licensing scheme.

The definition of sexual entertainment has been crafted to be clear that the entertainment must be *intended* to sexually stimulate. It is the intention that is important. The mere fact that an audience member may be sexually stimulated is irrelevant. Thus, a play involving nudity would not be covered by this if there was no intention to sexually stimulate the audience.

'Organiser' is defined broadly to include any person who is responsible for the organisation or management of the relevant entertainment or the premises and any person who gains at arm's length such as an owner. Thus, even if the financial gain is going to a 3<sup>rd</sup> party owner, not directly involved in the management of the premises, the licensing requirement is engaged.

The definitions are closely aligned to existing legislation from England and Wales (Policing and Crime Act 2009)

***Q68. Please explain how the new licensing scheme will dovetail with the alcohol licensing if the venues sells alcohol, or with any other relevant licensing scheme.***

Were a sexual entertainment venue to also sell alcohol, two licences would be necessary – a premises licence to sell alcohol under the Licensing (Scotland) Act 2005 and a licence under the proposed new regime for sexual entertainment venues. The licences would co-exist with conditions set by the Licensing Board relating to the sale of alcohol and the local authority in respect of it being a sexual entertainment venue.

The alcohol licensing system already regulates, to a limited extent, sexual entertainment through, for example, the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007. It is anticipated that some amendment will be required to secondary legislation to ensure consistency of definitions and to avoid overlap in regulation. These controls will continue to be necessary for premises which offer sexual entertainment on fewer than four occasions per year and therefore will not be licensed under the new sexual entertainment venue licensing arrangements. (Also see response to question 69.)

***Q69. In relation to enforcement explain how it will be possible to determine whether sexual entertainment has happened on 4 or more occasions – will a licence be needed under another regime for those occasions? Is there a penalty for breach of this condition?***

A licensing authority will use enforcement and sanctions proportionately. A premises that hosts sexual entertainment events on more than 4 occasions without a licence will be committing an offence under section 7 of the 1982 Act. Clearly the risk of detection rises with the frequency with which sexual entertainment is taking place.

As noted in the response to question 68, a premises such as a pub, offering sexual entertainment on less than four occasions would still have to comply with the requirements of the alcohol licensing regime.

***Q70. Are there any transitional provisions for existing venues or any other transitional arrangements needed for local authorities? What about existing licence conditions? Does the commencement period (coming into force of the Bill) take account of these issues?***

Following commencement of the legislation it will be open to a local licensing authority to introduce a sexual entertainment licensing regime for their area. They cannot specify a date for which the scheme to come into effect any less than one year from the date of the resolution. This will allow existing venues a full year's trading (which is also the proposed duration of the licence) and a year in which to submit an application to be licensed under the new scheme.

The new licensing scheme stands alone so any venue which currently holds an alcohol premises licence will become dual licensed if it wishes to continue serving alcohol and offering sexual entertainment. The venue operators would therefore have to comply with conditions under both licensing regimes. It is expected that Licensing Boards will focus on the sale of alcohol and Licensing Committees would licence sexual entertainment.

As mentioned in the response to question 68 the Scottish Government will consider if any amendment is needed to the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 to ensure that the two regimes do not conflict. It will be for the venue to ensure compliance with requirements with both regimes.

***Q71. Local authorities need to comply with Article 9 of the EU Services Directive 2006/123/EC as implemented by the Provision of Services Regulations 2009 (SI 2999/2009), in particular in relation to setting application fees, processing applications and granting licences operating the new regime – please explain how this is achieved.***

We believe that the proposed legislation will ensure that the 1982 Act is compliant with the Directive. It is therefore for local licensing authorities to ensure that their local practices are also compliant. In practice this means, for example, that local licensing authorities should ensure that the fee levels are appropriate and decisions are fully reasoned.

**Q72. Paragraphs 256 to 258 of the PM repeat paragraphs 25 to 27 but neither indicate who was consulted or details around the number of responses received. Please provide that information.**

A summary report of the consultation can be found at <http://www.scotland.gov.uk/Publications/2014/06/4470>

The responses themselves can be found at <http://www.scotland.gov.uk/Publications/2014/07/6607>

**Q73. Please provide a summary of the nature of the responses from local authorities, police or women's groups, or those that work in the industry.**

The proposals were generally supported by women's groups who welcomed the additional control on sexual entertainment, although some were clear that they would have preferred an outright ban. Local licensing authorities and the Police also welcomed the prospect of a dedicated, more effective licensing regime although a large number of practical concerns were raised. Those who work in the industry were opposed to the plans, generally believing that existing arrangements were adequate. Details can be found in the summary report referenced in the response to question 72 above.

**Q74. Please detail the concerns raised by arts organisation and whether/how the Bill addresses these.**

The principal concern held by arts organisations is that plays and other artistic performances could be held to be sexual entertainment thus inadvertently drawing theatres into the licensing regime. The Scottish Government believes these fears are unfounded since the definition of sexual entertainment would exclude activity that isn't intended for sexual stimulation.

**Q75. The PM does not say whether any alternative approaches were considered, other than the existing approach of using the alcohol licensing system. Were any other options considered and why were they not pursued.**

The Scottish Government believes that sexual entertainment venues need to be licensed. Given this, the only viable possibilities were to use the existing alcohol licensing regime, use an alternative existing regime specifically public entertainment or to create a new regime. The existing alcohol licensing regime would have required significant amendment and this would have been antithetical with the concept of the alcohol licensing being essentially about regulating the sale of alcohol. Ultimately it was felt that local authorities were likely to want to approach sexual entertainment

venues in a way that was sufficiently distinct from other forms of public entertainment to warrant a separate licensing regime as proposed in the Bill.

***Q76. Please provide detail to substantiate the comment in paragraph 264 of the PM where it states “there is a clear gender impact given the overwhelming majority of those in the industry are female”.***

While we recognise that sexual entertainment venues employ people of all genders, the performers are predominately female. We therefore acknowledge that the measures regulating sexual entertainment in the Bill could bear disproportionately upon females.

***Q77. One of the main areas of contention may be setting the number of venues at zero within a licensing board area, which also raises potential human rights issues, please provide the policy thinking behind this approach, together with detail in support of the option.***

It is at the heart of the proposals that local communities, through their elected representatives serving on the licensing committees, should have greater influence over sexual entertainment activities conducted in their areas. We have seen that where local licensing authorities are circumscribed in their ability to reject licences, such as is the case in betting shops, communities can feel disempowered and overwhelmed by the presence of those premises. For that reason, the Bill gives local licensing authorities a very broad power to limit the number of sexual entertainment venue licences. Any decision to refuse an application, for whatever reason could be subject to appeal. Such an appeal could be founded upon the exercise of the discretion in an unreasonable manner or it being contrary to ECHR. The Scottish Government considers that the Bill provisions *per se* are ECHR compliant. It is expected that the licensing authorities will implement them in a likewise compliant manner.

## **Miscellaneous and General**

***Q78. The provisions covered by this part are extremely difficult to follow given the absence of reference to the Bill. It would be helpful if this could be provided for each part covered by this portion of the notes.***

The initial paragraphs refer to specific provisions and the policy memorandum then goes on to make more general points.

Para 266 – refers to section 70 on procedure for hearings.

Para 267 – refers to section 72 on civic licensing standards officers.

Para 268 – refers to section 69 on deemed grant of applications.

Para 269 – refers to section 73 on electronic communications under the 1982 Act.

***Q79. Paragraph 266 of the PM suggests the Bill (at section 70?) provides Ministers with powers to direct procedure and mandatory conditions. This is a broad power and it would be helpful to have examples of how it might be used, referring to each licensing regime.***

Mandatory conditions can be applied to an individual licence and impose requirements or restrictions on the licence holder. Section 172 of the Criminal Justice and Licensing (Scotland) Act 2010 provides an order making power to impose conditions in relation to licences granted under Part 1 and Part 2 of the 1982 Act. Section 71 of the Bill provides a similar order making power in relation to Part 3 of the 1982 Act. This would apply to sex shops and the proposed new regime for sexual entertainment venues.

Section 70 of the Bill provides an order making power in relation to hearings under the civic licensing regimes. This would allow Scottish Minister to introduce secondary legislation to make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a licensing authority under Schedule 1 or Schedule 2.

Schedule 1, covers such licensing regimes as taxis and private cars, second-hand dealers, knife dealers, metal dealers, and miscellaneous licences including boat hire, street traders, market operators, public entertainment, indoor sports entertainment, late hours catering and window cleaners. Schedule 2 covers sex shops and the proposed regime for sexual entertainment venues.

The regulations may make provision for:

- notice of the hearings to be given to such persons as may be prescribed by the regulations;
- the rules of evidence which are to apply for the purposes of the hearing;

- the representation of any party at the hearing;
- the times by which any step in the procedure must be taken;
- liability for expenses.

The regulations may make different provision for different purposes, including, in particular, different types of licence.

***Q80. Given the above power can you indicate how this part of the Bill will avoid impinging on local democracy.***

In relation to both powers, hearings and mandatory conditions, we would work closely with local licensing authorities prior to any legislation to ensure that what we proposed did not unduly impinge on local democracy. The setting of mandatory conditions in regulations would not prevent local licensing authorities from setting additional conditions of their own.

***Q81. Section 70 of the Bill also provides powers to local licensing authorities to produce standard conditions. Some detail underpinning this power should be provided covering what might be included, who currently adopts such an approach and the derivation of the policy thinking. Please also confirm this has been consulted upon and provide relevant details.***

The power for licensing authorities to specify standard conditions already exists in relation to licences granted under Part 1 and Part 2 of the 1982 Act (section 172 of the Criminal Justice and Licensing (Scotland) Act 2010). Section 71 of the Bill will also create a similar power in respect of Part 3 licences (sex shops and the new sexual entertainment regime). The power is useful where an authority wants to impose a blanket requirement such as setting a uniform closing time, setting a no-touching rule, or requiring the presence of door stewards.

***Q82. Please also indicate with relevant examples the thinking behind the final sentence which seems to suggest that “practices” will be covered by the order making powers.***

See response to question 81 in relation to standard conditions.

In relation to hearings, we understand that there is considerable variation in local authority practice. There was majority support for further Scottish Government regulation or guidance in relation to hearings. Concerns were expressed about practices such as the treatment of some witnesses, notice periods for hearings, and standards of evidence. However concern was also expressed that the regime should not become unduly formal.



**Q83. Paragraph 267 of the PM relates to section 72 of the Bill. Please provide detailed background information covering the powers and duties of the Civil Licensing Standards Officers (“CLSO”). The information should also indicate what reviews have been taken of current practices of the authorised officer and LSO both of whom appear to be the model. Please also indicate the extent etc. of consultation and views received etc. on this provision (para 270).**

The powers and duties of a civic licensing standards officer (CLSO) are set out in section 72 of the Bill. The CLSO will have the same powers and duties as an ‘authorised officer’ within the 1982 Act but will also have specific functions in relation to providing information and guidance, checking compliance, providing mediation and taking appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act.

This proposal was consulted on within the consultation on Taxis and Private Hire Car Licensing – Proposals for Change and attracted broad support.

The role of the Licensing Standards Officer (LSO) in the alcohol licensing regime was looked at as part of the Evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005  
<http://www.healthscotland.com/documents/21321.aspx>

This study reported favourably on the role of the LSO, reporting it to be one of the most positive impacts of the Licensing (Scotland) Act 2005. LSOs were reported as providing excellent support and assistance to Boards, having developed good working links with the trade and were said to be dealing with issues of non-compliance at source.

**Q84. Can you elaborate how existing good practice will not be disrupted by the imposition of a new regime, with its statutory powers and duties.**

Section 72 has been drafted to give the CLSO the same powers and duties as an authorised officer and to add specific functions. It also makes clear that an officer of the local authority other than a CLSO may be an authorised officer. We therefore do not believe that the creation of CLSOs will disrupt existing good practice.

**Q85. Please confirm that paragraph 268 of the PM refers to only those licenses covered by this Bill.**

There is already a ‘deemed grant’ procedure for most licences covered by the Civic Government (Scotland) Act 1982. Paragraph 268 refers to the small number of licences that do not already have such a procedure. These are the new licensing regime for sexual entertainment venues introduced by this Bill and the existing regime for sex shops.

**Q86. Paragraph 271 of the PM suggests other proposals were not “sufficiently significant” to warrant action. Please explain this further, providing detail of the main proposals rejected and the areas within your paragraph 2 of the PM which they did not meet.**

Although mainly focussed on the taxis and private hire car regimes, Taxis and Private Hire Car Licensing – Proposals for Change consultation posed a number of questions that could have led to changes across the various civic regimes. It was decided not to proceed with the following proposals at this time:

- *Refocus the role of the police within the 1982 Act* – The Act already provides that the police have 28 days to respond to an application. The general view amongst those responding was that the existing arrangements seemed to be working well; that they offered the police reasonable flexibility and the licensing authorities generally reported that their relationship with the police was effective. Therefore it was not apparent that such changes would strengthen or improve the existing regime.
- *Introduce licensing objectives to the 1982 Act* – the consultation attracted mixed views on the proposal to introduce licensing objectives to the 1982 Act. It was argued that this was unnecessary as the purpose of the Act was already clearly stated in the preamble to the Act. On balance it was not clear that such changes, in themselves, would strengthen or improve the existing regime.
- *Require the applicant to prove they are fit and proper* – this proposal is covered in more detail below.

**Q87. Please also explain what is meant by the phrase “a change to the structure of the consideration of “fit and proper” in a licence application” What changes were considered, what were the alternative approaches considered and why were they not considered appropriate.**

One of the proposals that was consulted on as part of the Taxis and Private Hire Car Licensing – Proposals for Change consultation was to require applicants to prove that they are ‘fit and proper’. This attracted mixed views. Those who disagreed with the proposal argued that it would fundamentally change the nature of the system – which is that a licence is granted unless there are grounds for refusal – and that it would mean that a hearing would be required for every application. There were concerns that relying too heavily on hearings could lead to applicants being overwhelmed by the process and not being able to defend their application. There were also concerns expressed that this system could encourage applicants to provide false documentation and that licensing authorities would have difficulty verifying documentation.

On balance it was decided not to proceed with this proposal.

***Q88. Please provide the policy thinking behind the lack of a time limit for police information, particularly given the time-limits being introduced and the effect of section 69 of the Bill. Perhaps this is an example of grounds for extension of overall time to consider?***

The Police are subject to the same time limits as any other person objecting or making a representation. The limit is set at 21 days for Part 2 licences (see paragraph 3 of Schedule 1) and at 28 days for Part 3 licences (see paragraph 8 of Schedule 2).

***Q89. Please indicate which measures are introduced to satisfy the EU Services Directive.***

In relation to the civic licensing regimes, there are a number of measures that are introduced to clarify that the 1982 Act is fully compliant with the EU Services Directive and ensure that compliance is consistent. For example there is already a requirement for timely disposal of applications in the 1982 Act for Part 2 licences. The current Bill (at section 69) extends that requirement to Part 3 licences as well as extending the requirement throughout the Act to matters beyond a new application i.e. temporary licence applications and variation applications.

The Bill also takes the opportunity to put beyond doubt that electronic submissions are acceptable i.e. applications, notifications and renewals.

***Q90. Given the subject matter of the Bill and the recent report “Empowering Scotland’s Island Communities” please indicate the extent to which the Bill has been “island proofed” as set out on page 24 of that report***

Under the alcohol and civic licensing regimes day to day responsibility for decisions rest with the licensing authority made up of local authority councillors. This approach is fundamental to these licensing regimes and this Bill seeks to maintain this.

In preparing the provisions within the Bill and in any subsequent secondary legislation we will take care to engage widely and to ensure that sufficient flexibility is maintained within the regime to cater for all of Scotland’s communities, from urban to rural, mainland to island.

August 2014  
**Air Weapons and Licensing Bill Team**