



The Scottish Parliament
Pàrlamaid na h-Alba

Local Government and Regeneration Committee

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Dear Quentin

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

The Local Government and Regeneration Committee agreed its approach to the Air Weapons and Licensing (Scotland) Bill at its meeting on 19 June, and will launch its call for evidence on the Bill on Tuesday 1 July.

As part of its approach, the Committee has agreed I write to you seeking clarification on a number of issues relating to the Policy Memorandum ("PM") which accompanies the Bill (see annex).

The questions are designed to seek elaboration on the information contains in the PM to inform the Committee scrutiny, and make it easier to meet the challenging parliamentary timetable for consideration. Full responses should significantly reduce the information the Committee will require to gather during the Stage 1 process.

Given the above the Committee have requested that a response to all questions together with any other information you consider relevant should be provided by **1 September 2014**. This will also assist those who will be wishing to provide written evidence to the Committee.

Yours sincerely

David Cullum

Clerk to the Committee

CC: Joe FitzPatrick MSP – Minister for Parliamentary Business
David McGill – Head of Chamber Office, Scottish Parliament
Susan Duffy – Head of Committees and Outreach, Scottish Parliament
Tracey White – Head of Legislation Team, Scottish Government
Jim Johnstone – Clerk to the Finance Committee, Scottish Parliament
Euan Donald – Clerk to the Delegated Powers and Law Reform Committee, Scottish Parliament.

In general, whenever there is reference to guidance and regulations it would be helpful if an indication can be given of what is to be contained in each. In addition, in each instance please indicate whether and when drafts of such guidance and regulations will be available for the Committee to consider in support of Stage 1 scrutiny.

Part 1 Air Weapons

In general terms the information provided in this section is detailed and helpful. The Committee have only a few questions under this section.

- 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%.
- 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?
- 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.
- 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.
- 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.
- Q6. When will the EQIA (paragraph 111 of the PM) be published?
- 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.
- Q8. Given that air weapons do not carry serial numbers, in what way will a certificate be linked to the specific weapon(s) held.
- Q9. How will the public be able to make arrangements for weapons to be disposed of before the licensing regime comes into force.

- 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?
- 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?

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 of the Bill and also for sections 56 and 59 of the Bill. While section 59 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.
- Q13. In relation to section 56 of the Bill please also include detail of the thinking behind the removal of “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)
- Q15. Is there a consolidated version of the current alcohol licensing legislation available for the use of the Committee?
- Q16. As indicated please provide the detail to support the statement in paragraph 124 of the PM about crime, disorder and danger.
- 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.
- Q18. Can you explain the reasons for the exclusion of a child as set out in paragraph 129 of the PM (section 52 refers).
- 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?

- 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.
- Q21. Please indicate which other licensing regimes are being referred to in paragraph 137 of the PM.
- Q22. Please give some examples of what might be restrictions as a consequence of using the “fit and proper” test.
- 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.
- Q24. What are the relevant offences covered by the repeal to section 129(4) of the Bill.
- 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.
- Q26. Please provide detail of any consultation on the above and also details of comments received in opposition.
- 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?
- 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?
- Q29. Can you provide links to the scientific evidence mentioned in paragraph 149 of the PM please.
- Q30. Paragraph 151 of the PM seems to directly contradict the suggestion in paragraph 150. Could you elaborate on the thinking here please.
- Q31. Please indicate whether an existing statement of licensing policy will subsist until replaced.
- Q32. In paragraph 161 of the PM please provide detail of the majority and also information from the minority views.

- 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.
- 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.
- 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.
- 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).
- Q37. Paragraph 175 of the PM refers to the “Civil Licensing regime”, could you indicate what that encompasses.
- Q38. Paragraph 182 of the PM is vague as to what the reference to “these provisions” is. Can you be specific here.
- Q39. Please indicate who was represented on the Board referred to in paragraph 183 of the PM and provide links to their findings.
- Q40. Is there any difference intended between the phrases in paragraphs 8 (unnecessary burdens) and 184 (burdens) in the PM?
- 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?
- 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.
- Q43. Is paragraph 186 of the PM suggesting that as revocation is undertaken by licensing boards ECHR considerations do not apply?
- 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.

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).

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.

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

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);
- current compliance checking measures.

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.

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?

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

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?

- 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?
- 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?

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

Public Entertainment Venues

- Q61. Please provide detail of what the Bill does and how, with the repeal, theatres will be licensed in future.
- 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?
- Q63. What is the effect of the repeal of the powers of entry provisions?
- Q64. Who was consulted by the Government, on what, and what was their reaction to these proposals. Why was no wider consultation held?

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.
- 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.
- Q67. Please explain the thinking behind the main definitions “sexual entertainment”, “organiser” or “audience”.
- Q68. Please explain how the new licensing scheme will dovetail with the alcohol licensing if the venues sell alcohol, or with any other relevant licensing scheme.
- 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?
- 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?
- 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)¹, in particular in relation to setting application fees, processing applications and granting licences operating the new regime – please explain how this is achieved.

¹ <http://www.legislation.gov.uk/ukxi/2009/2999/made>

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

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

- 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).
- 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.
- Q85. Please confirm that paragraph 268 of the PM refers to only those licenses covered by this Bill.
- 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.
- 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.
- 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?
- Q89. Please indicate which measures are introduced to satisfy the EU Services Directive.
- 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.