

Rùnaire a' Chaibineit airson Ceartais

Cabinet Secretary for Justice

Michael Matheson BPA

Michael Matheson MSP

F/T: 0300 244 4000

E: scottish.ministers@scotland.gsi.gov.uk



Kevin Stewart MSP

Convener

Local Government and Regeneration Committee

The Scottish Parliament

Edinburgh

EH11 1SP



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Dear Convener

**LOCAL GOVERNMENT AND REGENERATION COMMITTEE  
RESPONSE FROM THE SCOTTISH GOVERNMENT TO THE STAGE 1 REPORT OF THE  
AIR WEAPONS AND LICENSING (SCOTLAND) BILL**

I write in response to the Local Government and Regeneration Committee's Stage 1 Report on the Air Weapons and Licensing (Scotland) Bill.

I would like to take this opportunity to thank the Committee for its careful consideration of the Bill, and to all those who contributed to that consideration by providing evidence. I am pleased that the Committee supports the general principles of the Bill.

A number of important issues have been raised during Stage 1 proceedings, and a detailed response is attached in the Annex to this letter. The text in bold are the recommendations from the Committee's Report.

I hope the Committee finds this information helpful in its further consideration of the Bill.

**MICHAEL MATHESON**

## **LOCAL GOVERNMENT AND REGENERATION COMMITTEE RESPONSE FROM THE SCOTTISH GOVERNMENT TO THE STAGE 1 REPORT OF THE AIR WEAPONS AND LICENSING (SCOTLAND) BILL**

### **PART 1: AIR WEAPONS**

I am grateful to the Committee for the comments on the Part 1 provisions of the Bill, covering the licensing of air weapons. In particular, I note the Convener's comments welcoming the proposals and describing the air weapons measures as a timely and important piece of work. The responses below refer to the various recommendations or to the paragraph numbering of the report, as far as possible.

#### General comments

##### **Ownership**

Throughout the report the text refers to "ownership" of an air weapon for the purpose of licensing. This reflects the language used in the early consultation paper and to some extent in the Policy Memorandum and other documents accompanying the Bill.

In practice, however, the Bill sets out a regime to license those persons who wish to use, possess, purchase or acquire an air weapon. Ownership is addressed directly only in terms of restrictions placed on ownership by young people. In addition, it is worth emphasising that the principal offence in section 2 of the Bill relates to the unlicensed use, possession, etc of an air weapon, rather than to ownership as such – though a person in possession of a weapon may of course also be the owner of it. This approach is consistent with the Firearms Act 1968 (as amended).

##### **Types of air weapon covered**

Paragraph 54 - The Report states that the Bill seeks to license owners of "specially dangerous weapons". In fact, section 10 of the Scotland Act 2012 specifically excludes specially dangerous air weapons from the types of air weapon devolved to the Scottish Parliament. "Specially dangerous" weapons are designated as such by the Secretary of State by way of rules made under the Firearms Act 1968 and, if so designated, are reserved to Westminster.

Under section 2 of the Bill, as read with section 1 and paragraphs 8 to 10 of the Explanatory Notes to the Bill, the basic requirement for an air weapon certificate applies to a person who wishes to use, possess, purchase or acquire an air weapon which is capable of discharging a missile so that the missile has, on being discharged from the muzzle of the weapon, kinetic energy in excess of 1 joule but equal to or lower than, in the case of an air pistol, 6 foot pounds (approximately 8.13 joules) or, in the case of an air weapon other than an air pistol, 12 foot pounds (approximately 16.27 joules). Air weapons above these maximum thresholds will continue to be regulated by the Firearms Act 1968, as will air weapons which fall to be prohibited weapons under section 5 of that Act.

##### **The application process**

Paragraph 83 - The Report states that Police Scotland will be administering two different firearms certificate systems for the first time, and asks how those systems might interact. In

practice, the processes and considerations for licensing firearms under section 1 of the Firearms Act 1968, or shotguns under section 2 of that Act, already differ in a number of respects but are administered through the same system. Licensing of air weapons will largely follow the principles and processes of the current firearms regime so that it will be familiar to both the police and to those existing shooters who apply for an air weapon certificate. In line with this, air weapons licensing will be administered using same computer system (SHOGUN) as firearms and shotguns. Officials are continuing to work with Police Scotland and others to plan the implementation of the regime, and will aim to ensure that the new processes can be introduced as seamlessly as possible.

## **Fees**

Paragraph 95 - The Committee will be aware that the Home Secretary announced the outcome of the UK Government's review of fees on 12 March 2015 and has laid the required statutory instrument at Westminster to increase the fee tariff. The new fees took effect from 6 April 2015, with the cost of a five-year firearms certificate rising to £88, and that for a shotgun certificate to £79.50 (both from £50).

## **Age restrictions**

Paragraph 111 - The Bill provisions allow for any person of 14 years of age or over – rather than 18 or over - to apply for an air weapon certificate. It is correct, however, that special requirements and conditions apply to those aged 14 to 17 years. In particular, the conditions preclude young persons from purchasing or otherwise owning an air weapon (consistent with the Firearms Act 1968), and also restrict the purposes for which they may use and possess an air weapon.

Paragraph 114 - The Report notes comments from the British Association for Shooting and Conservation regarding the cost of a certificate to young persons. In this regard it might be worth drawing the Committee's attention to paragraph 20 of the Delegated Powers Memorandum which refers to "a reduced fee for a short-term air weapon certificate granted to an under-18 that expires on their 18th birthday". It is my intention to set this out in detail in the fees regulations which will be brought forward as secondary legislation following adoption of the Bill.

## **Delegated powers**

Paragraph 134 - The Report reflects the views of the Delegated Powers and Law Reform Committee (DPLRC) with regard to the delegated powers set out at sections 37 and 76 of the Bill.

**Section 37** sets out the power to make further provision in regard to the licensing of air weapons. The officials have written to the DPLRC in detail on this issue and consider that this broader power is needed to ensure that the Government can fully implement and fine-tune the new air weapons licensing regime and respond to changing circumstances. This will ensure that the Act will continue to have the intended effect in the face of future changes.

Such changes may, for example, allow for online electronic applications and certification and we would need to be able to set out appropriate processes, timescales, record-keeping arrangements, etc. That might be possible under the set specific powers, but the Government considers that a power such as that at section 37(1) ensures that appropriate provision can be made and therefore is a more suitable provision.

More generally, most firearms legislation remains reserved to Westminster and the powers set out in section 37(1) would allow the Scottish Government to respond to changes in the wider regime by way of secondary legislation. A number of changes were, for example, made as recently as last year, through the Anti-social Behaviour, Crime and Policing Act 2014. In addition, the Law Commission is now embarking on a 12 month scoping exercise to examine the need for changes to the Firearms Act 1968 and other legislation.

**Section 76(1)** confers power to make incidental, supplementary, consequential, transitional, transitory or saving provision, as Ministers consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to any provision of the Act or any provision made under it. The Scottish Government believes that it is appropriate for the words in question ‘...or any provision made under it.’ to remain in the Bill to ensure that the purposes of the Bill can be given full effect.

In this Bill, among other things, the Government would envisage using the section 76 power to provide for transitional and transitory measures in respect of the introduction of the air weapons regime (and indeed bringing into force the changes to the other regimes covered by the Bill).

The identified wording of the provision “or any provision made under it” gives helpful and appropriate latitude to make adjustments following the initial implementation of the various regimes to which the Bill is making changes. It ensures that the processes established by the regulations made under the Bill can be made to operate as efficiently and effectively as possible by integrating them with other parts of the statutory landscape that may not be directly connected to the regime in question. This kind of fine-tuning is best done once the main provisions of the regime are in place and starting to operate.

## Recommendations

### **The application process**

**135. In order to ensure all owners and users of air weapons are ready for the introduction of the system, a clear and comprehensive public information campaign will be vital. Many people may only own an air weapon, and no other form of firearm, and therefore be unaware of the conditions for applying for, and holding a firearms certificate. Therefore, we recommend the Scottish Government should work closely with the shooting community, Police Scotland, and other key stakeholders to design and implement a comprehensive public information campaign. This should begin well in advance of the commencement of any certificate system to allow enough time for those who wish to lawfully dispose of any air weapons to do so.**

**136. The Government and Police Scotland should develop a dedicated website for the air weapons certificate system. This should contain, amongst other things, clear information about what air weapons owners must do to obtain a certificate, information on how to dispose of an air weapon they no longer wish to retain, as well as the relevant timescales for applying for a certificate etc.**

I accept these recommendations and the Scottish Government has always been clear that full implementation of the new licensing regime would be preceded by a well-publicised campaign and a “hand in period” for unwanted weapons. This commitment was made in the original public consultation document *“Proposals for Licensing Air Weapons in Scotland”*

published by the Scottish Government in December 2012. Paragraph 58 of that document stated:

*“A campaign will be launched prior to the introduction of certification, encouraging people who do not need or want their air weapon to hand it in to the police. We will also need to remind everyone to check their cupboards, attics etc. for any forgotten weapons that they should pass to the police.”*

Elsewhere, the document made reference to the need for a long term, joint information campaign involving dealers, shooting organisations, clubs and the Scottish Government. Officials have already started planning for such a campaign and will engage with the police and shooting organisations regarding the form it could take. A dedicated web page will be set up to provide potential applicants, or those seeking to dispose of unwanted air weapons, with the information they need. Information will also be shared and distributed, for example, through printed and broadcast media, websites, social media, etc, to raise awareness of the introduction of licensing, and to direct members of the public to appropriate sources for further information.

**137. The Bill should be amended to give the Chief Constable of Police Scotland a degree of latitude in the rollout of the air weapons certificate system to address future application peaks and troughs.**

I note the issues discussed (eg at paragraphs 85 to 92 of the Report) with regard to resourcing Police Scotland and the need to “smooth” the application workload against a background of peaks and troughs in existing firearms licensing work. As I stated to the Committee on 25 February, officials are discussing this with Police Scotland and working very closely with them to ensure that the resourcing impact of the new regime is minimised as far as possible. As I pointed out there are a number of ways in which this might be achieved, including how we commence implementation of the Bill, and I would like to reassure Committee members that Ministers I am amenable to bringing forward appropriate amendments at Stage 2 of the Bill if this is a reasonable way to achieve a smoother transition.

**The fee for the application process**

**138. The Scottish Ministers should continue to make the case to the UK Government for a fee for shotguns and firearms which will ensure full cost recovery.**

I accept this recommendation. Scottish Ministers have written to the Home Office on several occasions in recent years urging the Westminster Government to increase the tariff of fees to a more realistic level, reflecting the costs to the police of providing the licensing service. I have therefore welcomed the recent decision to increase fees from 6 April 2015 – the first rise for almost 15 years. I wrote to the responsible UK Minister in December, welcoming the proposed rise but expressing disappointment that the new fees would still not cover the costs to the police of processing the applications. We will continue to engage with the Home Office and other stakeholders to press for a fee tariff which fully reflects the costs involved.

**Sale of air weapons to people who reside outside Scotland**

**139. The Scottish Government should ensure Part 1 of the Bill does not prevent remote sales outside Scotland to people who reside in all other parts of the UK.**

I accept this recommendation. The Report highlights (at paragraph 117) an issue raised by the Gun Trade Association and others with regard to sales of an air weapon to a person outwith Scotland but within Great Britain. I have listened to the concerns expressed about this and propose to bring forward an amendment at Stage 2. This will enable a person to purchase an air weapon in Scotland and have it delivered to a Registered Firearms Dealer in England or Wales for collection. This ensures that such sales and transfers are conducted on a face to face basis in accordance with existing legislation.

### **Unique weapons identification mark**

**140. The Scottish Government consider whether it might be feasible to include some form of identifier mark as part of the design of the air weapons certificate system. The Government should also take the opportunity to engage the UK Government and the European Commission, on the possibility of introducing suitable EU regulations in this area.**

The issue of whether and how to identify individual air weapons within the licensing regime has been considered in detail throughout the development of the policy and legislation. The Scottish Firearms Consultative Panel (SFCP), who helped to shape the policy behind the draft provisions, agreed at a very early stage that it would be appropriate to license a person to have one or more air weapons, rather than to license the gun itself. This allows for a light-touch, proportionate approach to the regulation of air weapons in a way which is affordable and practicable. Continuing discussions with stakeholders, including Police Scotland and the Gun Trade Association, confirm there is little or no support for a proposal to mark weapons individually.

I have noted the views of the British Association for Shooting and Conservation (BASC), who were members of the SFCP, and others that the inability to identify individual guns will mean that the licensing regime will be ineffectual in helping to reduce crime. I do not accept this contention, this view is supported by Police Scotland and others. All three police witnesses who gave evidence to the Committee on 25 February were clear on that point. In response to questioning Assistant Chief Constable Wayne Mawson said:

*“I can say that we expect that the benefit of legislation that prevents people who are not fit and proper, or who do not have a good reason to do so, from holding air weapons, will be that a huge number of air weapons will be handed in to the police for destruction. That means that there will be fewer air rifles and air pistols lying around in wardrobes, on bedside tables, in garages and in attics—where, to be frank, anybody could pick them up, including young people. That has to be a good thing.”*

As set out at the beginning of this reply, the Bill proposes to make it an offence to use, possess, purchase or acquire an air weapon without holding a certificate (subject to certain exemptions), rather than regulate “ownership” as such. When an offence occurs the police will need to establish who was in possession of or using the air weapon at the time, but not necessarily who owns the air weapon. In terms of detecting crime it is also worth stressing that there is already legislation in place to deal with the criminal misuse of air weapons and the police are experienced in its application. In practice, police officers will investigate such crime as they do for any other offence, through a mix of evidence gathering and intelligence. This might include identifying a specific gun, perhaps through witness evidence or any available ballistic information. Accordingly, having a unique identifying mark is not critical to proving that a person unlawfully used, possessed, purchased or acquired an air weapon.

Any change to this fundamental principle of licensing the person, not the gun, would represent a significant shift in the Bill's intent and effect and is likely to prove difficult to achieve. To be tamperproof, any unique identifier would have to be embedded or affixed under controlled circumstances, either on manufacture or at the point of sale. Each would then have to be recorded and, in order to be a meaningful control, tracked through subsequent transactions. In addition, any air weapon entering the country, with a visitor or on import for sale, would similarly have to be marked and tracked. This would represent an onerous additional burden on the police, dealers and air weapons users.

It should also be noted that there is no consistent approach to identifying weapons amongst countries where they are manufactured. Additionally, many low-cost imported weapons, in particular from China, have interchangeable parts and this could render identifiers ineffective.

On the Committee's final point, the UK Government has no plans to introduce licensing of air weapons and resisted the Calman Commission's 2009 recommendation that responsibility for air weapons should be devolved. Similarly, there is little apparent appetite in the European Commission for introducing any central regulation of air weapons. The overarching EU legislation on firearms - *Council Directive 91/477/EEC (as amended)* – does not include controls on air weapons and priorities for the Commission lie in areas such as the control of high powered firearms, including controls on trafficking, reactivation of decommissioned weapons and the use of guns in organised crime. While I would support any reasonable measures to better control potentially lethal air weapons, I do not see any prospect for such regulation in the foreseeable future.

## **PART 2: ALCOHOL LICENSING**

### **Duration of policy statement**

**261. We support the extension of the period to a maximum of five years although we consider, given its importance, the new statement should require to be in place within 12 months of a new Board being appointed.**

I note and welcome the views expressed by the Committee. The 18 month period is based upon the time currently taken by Licensing Boards to undertake this process. If a new Board is appointed in May, it may well be the Autumn before they are meeting on a regular basis, and able to acquaint themselves with the existing Licensing Policy Statement. The legislation does explicitly allow for a Board to introduce a Licensing Policy Statement early should they so wish. On balance I feel that the timings, as offered within the Bill would allow a Board a reasonable period of time in which to prepare, consult on and bring in a new Licensing Policy Statement.

### **Fit and Proper Person Test**

**262. We welcome the reintroduction of this test. We consider the test should also be applied to connected persons.**

I welcome the Committee's support for the reintroduction of the fit and proper person test. I also note the Committee's comments regarding connected persons, and will consider this matter further for Stage 2

### **Whole Board areas for overprovision determinations.**

**263. We welcome the additional flexibility this provision will give Licensing Boards although we have concerns about the inflexibility of Licensing Boards based in large measure upon a fear of challenge. We recommend the guidance be revised as a matter of priority and the guidance make clear Boards have the maximum flexibility to make different policy decisions relating to individual localities, types of license and types of premises.**

I note the comments of the Committee. The Scottish Government will update the guidance as soon as practicable, once the work on the Bill has been completed.

**264. We also recommend club licenses and occasional licenses require to be included by Boards when considering their overprovision statements.**

I note the comments of the Committee. It is important that overprovision assessments can operate in a clear and robust manner. The preparation of an overprovision assessment places a considerable burden on local authorities, and including additional information within this would increase this burden.

Occasional licences are, by their very nature, for covering events that could be infrequent and last for only a short space of time. An occasional licence is only granted for a short period, at most 14 days, and there is a limit on the number of occasional licences that a members club can apply for, and there are order making powers that would allow the Government to limit the number of occasional licences for other premises. We are not convinced that including occasional licences in the overprovision assessment would be particularly practical, and it might even serve to undermine an overprovision assessment, by creating areas for dispute.

Members clubs are not open to the public, the public may only enter when signed in and accompanied by a member. As such it is not clear that the inclusion of members clubs within an overprovision assessment would be a useful or meaningful addition to the assessment.

Therefore I am not persuaded that including members clubs and occasional licenses would have any significant measurable impact on improvements in determining levels of overprovision.

**265. We see a clear role for Health Boards and Alcohol and Drug Partnerships as well as the Police in providing evidence to Boards to assist them in reaching their determinations. We expect all Health Boards to be proactive in presenting and championing health inequalities to Boards. Our later recommendations around reporting should also assist in this regard.**

. The Licensing (Scotland) Act 2005 is underpinned by five licensing objectives, including “protecting and improving public health” these should, for example, inform licensing policy statements, licence refusals, the attachment of conditions and licence reviews. The Scottish Government would also encourage all Health Boards and Alcohol and Drug Partnerships to be proactive in sharing their experience of what works in their area with Boards to assist them in reaching their determinations.

**266. We recognise the quasi-judicial status of Licensing Boards. In our opinion this should allow them to be more robust in setting out their policy on overprovision and less inclined thereafter to “hide” behind the prospect of review by the courts. A well**

**developed and rigorous policy should prevent Licensing Boards from the risk that decisions will be successfully reviewed.**

**267. We also expect Boards to involve their local communities and recommend in line with other empowerment initiatives Boards be required to consult local communities before and during their consideration of overprovision determinations.**

I welcome the views of the Committee on the role of Boards and agree that they have a key role to play in tackling alcohol misuse, reducing crime and preserving public order. In doing this it is important that Boards carefully consider the evidence presented to them by the public and professionals, such as Police Scotland and the NHS, and use the powers available to them when considering overprovision. The Licensing (Scotland) Act 2005 already imposes requirements on Boards to consult in relation to the preparation of their Licensing Policy Statement and Overprovision Assessment. I believe that this is an important element of the process, with some Boards demonstrating excellent practice. I would encourage all Boards to seek to engage fully and widely on the preparation of these documents.

### **Licensing Objectives**

**268. We welcome the amendment to the licensing objectives to include “young persons”.**

I welcome the Committee’s comments. I know that young people are particularly vulnerable to the effects of alcohol, and it is vital that the health interests of young persons are at the heart of the licensing regime.

The distinction between children and young persons can create difficulties for Licensing Boards when dealing with issues around young persons and can have the effect that issues around 16/17 year olds cannot be considered in relation to the ‘protecting children’ objective. I am therefore of the view that the amendment to the licensing objective will address this issue.

**269. We also recommend, given the overwhelming evidence we received of harm and links to disorder from overconsumption, an additional objective be added to include the reduction of consumption.**

I note your suggestion to create a sixth licensing objective. However I am not convinced that an additional objective such as this is required. The current objectives: ‘preventing crime and disorder’; ‘securing public safety’; ‘preventing public nuisance’; ‘protecting and improving public health’, and ‘protecting children from harm’ are already broadly framed. It is my opinion that the current licensing objectives already sufficiently cover issues connected to the harm and links to disorder from overconsumption.

I consider that such an objective would sit uneasily within an Act whose purpose is for regulating the sale of alcohol and it is difficult to see how it could operate in practice for Licensing Boards, the trade or the public. I therefore believe that Boards and Police Scotland should continue to use the powers available to them within the Act to address issues such as public nuisance and to improve public health.

### **Spent convictions and police intelligence**

**270. We accept the rationale for adding spent convictions as proposed.**

I welcome the Committee's comments.

**271. We also recommend, given the nature of crimes that can now result in alternatives to prosecution (ATP's), that Boards be advised of all ATP's.**

I note the Committee's suggestion.

It might be helpful to explain that presently no information about ATPs, subject to a period of 3 months for certain types of ATPs, are made available through the system of disclosure (e.g. a basic disclosure check, a standard disclosure check do not contain information on ATPs). This approach of limited disclosure period for certain ATPs and no disclosure for other ATPs was agreed by Parliament through section 109 of the Criminal Justice and Licensing (Scotland) Act 2010 ("the 2010 Act").

In addition, Parliament agreed in early 2013 that no ATPs should feature as part of the general exceptions and exclusions to the protections afforded individuals under the Rehabilitation of Offenders Act 1974. That is, protections afforded individuals under 1974 Act (by virtue of section 109 of the 2010 Act) not to have to disclose an ATP once it is spent are not disapplied by the Rehabilitation of Offenders (Exclusions and Exceptions) (Scotland) Order 2013. There is therefore no responsibility placed on individuals themselves to disclose spent ATPs or authority for spent ATPs to be included in disclosure certificates issued by Disclosure Scotland.

While we understand why it may have been suggested to allow for information about ATPs to be disclosed, I agree with the previously expressed view of Parliament that disclosure of information about ATPs is disproportionate given ATPs are used for low level offending. I consider such a change would require a wider look at the appropriateness of such disclosure across a range of areas and Stage 2 of this Bill would not seem an appropriate place to develop such significant new policy relating to a wider area than simply licensing.

**272. We do not consider that police intelligence in a raw form should be made available to Boards. It is a matter for the Police to make available relevant information to Boards in a manner consistent with ECHR considerations.**

I note the comments of the Committee. It is for the police to determine what information to place before Boards, in accordance with ECHR. The term police intelligence is broad. It can, for example, include incidents witnessed by a police officer or reports received in an area. I understand that the police are currently considering best practice in relation to the presentation of intelligence to Boards. This process will be informed by Board practice and case law. Finally, it is for the Board to consider the weight that it places upon the evidence placed before it, and their decision would be open to appeal

**Duty on Boards to prepare an annual financial report**

**273. We welcome this provision and also recommend Boards, in order to become more accountable to the public prepare annual reports. We draw to the attention of the Scottish Government the suggestions in this regard contained in the letter to us from Alcohol Focus dated 15 January 2015. As a minimum we expect to see the report containing information on how the board has delivered in relation to the licensing objectives and its policy statements including overprovision. We also expect a sufficient amount of data to be contained showing the number and type of each licensed premises within the Board area along with details of the number of**

**occasional licenses granted during the period. We would expect the Bill to set out as a minimum the above along with a requirement to report within 6 months of the end of each reporting year.**

I note the comments of the Committee; the provision in relation to a Board being required to produce an annual report was prepared following a review of Board fees where it proved difficult to establish an overall picture of income and expenditure. Boards will be required to provide the report within three months of the end of the financial year. I am sympathetic to the views expressed by Alcohol Focus Scotland, the current provision within the Bill already includes the ability to specify additional material for inclusion within these reports and we intend to work with appropriate stakeholders to determine what content should most usefully be included and then to use secondary legislation to make this absolutely clear. In addition the Scottish Government already gathers annual statistics from local Licensing Boards on a variety of issues, although occasional licences are not currently included, we would be happy to include this information in future statistics.

## **Occasional Licenses**

**274. We expect to see section 57 of the Bill commenced without delay.**

I note the comments of the Committee. The Scottish Government will look to commence the removal of the five year ban on reapplying for a personal licence as a result of failure to submit a certificate for refresher training as soon as practicably possible following Royal Assent.

**275. When applying to club premises provision should be made that these do not have the effect of circumventing other requirements generally applying to the club, for example the requirement for the signing in of guests.**

I note the comments of the Committee. It might be helpful to point out that a member's club licence is distinct from a full premises licence. There are certain restrictions and certain benefits that relate to a member's club licence, for example any guests must be signed in and accompanied by a member but the fee charged is in the lowest category. Where a member's club wishes to be open to a public, then they must apply for a full premises licence, or apply for an occasional licence. For a member's club the total period covered by occasional licences is limited to a maximum of 56 days.

Any application for an occasional licence is notified to the Chief Constable and LSO and anyone can lodge an objection. The Board can refuse the application, for example where the granting of the application would be inconsistent with any of the licensing objectives.

**276. We recommend that a licence to sell alcohol should not automatically cover the provision of public entertainment. If no public entertainment licence exists one must be sought, if required, as part of the occasional licence application.**

I note the committee's views in respect of the interaction of occasional licences and public entertainment licences. We will consider the issue further for stage 2.

## **Members Clubs**

**277. The Scottish Government requires to satisfy us the existing legislation is adequate to prevent the abuses of club licences identified during our evidence**

**sessions. Failing which we recommend appropriate provision is made to incorporate the club's constitution into the main operating plan.**

I am aware of strong concerns about members clubs, this was a matter the Scottish Government has already consulted on. We were however unable to find any consensus whether an issue with members clubs actually existed, or how best to address it. Therefore this is an issue that we intend to investigate further.

**278. We recommend the fit and proper person test applies to all transfers.**

I note the views of the Committee and will consider this issue for Stage 2.

### **Surrender of Licenses**

**279. We do not support the suggestions made for change in this area. We have heard no evidence to convince us that businesses should be able to avoid current regulations designed for safety or other reasons through this method.**

### **Site Only Licenses**

**280. We do not support the suggestions made for change in this area. We consider greater clarity within overprovision statements and procedures thereunder should provide the necessary information required by developers. We note for example the effect of recent business decisions made by large retail groups not to develop sites. They could under these proposals hold these types of licenses for a considerable period before trading commences. This could impact on other businesses seeking licences during the interim period between a grant and sales commencing.**

### ***Combined answer to 279 and 280***

I note and agree with the Committee's comments.

### **Major v Minor variations**

**281. We recommend the Scottish Government urgently review the types of applications falling into each of these categories with a view to ensuring local residents have adequate opportunity to make representations about variations which might adversely affect them. We expect the revised guidance to enhance the rights of residents to make representation and remove existing anomalies as reported to us.**

I note the comments of the Committee. Under the alcohol licensing regime set out in the Licensing (Scotland) Act 2005, as amended, the premises licence includes a large volume of information. This includes the application form, as well as the operating plan and layout plan. It is an offence to trade not in accordance with the premises licence. Therefore, if the licence holder intends to operate in a manner which deviates from the details originally approved, then a variation is required. Such variations can be classed as either minor or major variations.

Variations which are considered minor are set out at section 29(6) of the 2005 Act, and further minor variations are provided for in The Licensing (Minor Variations) (Scotland) Regulations 2011. Minor variations must be granted by the Licensing Board for a small fee. If a variation is not a minor variation then it will be a major variation. Major variations are subject to section 21(1), 21(2) and section 22, that is the requirement to notify neighbours,

health board and police, with it being open to anyone to lodge an objection. All major variations must be considered by the Board at a hearing.

There are no existing plans for reform in this area, although we would particularly welcome any concerns from stakeholders about the current list of specified minor variations if there are concerns that issues that should be subject to a full hearing are being treated as minor variations.

## **Home Deliveries**

### **282. The Scottish Government should confirm existing legislation is adequate to deal with any issues arising around home deliveries, so called “Dial-a-booze” arrangements.**

I note the concerns of the Committee on issues around home delivery, such as ‘dial-a-booze’ arrangements. I am of the view that appropriate legislation is in place.

Any sale of alcohol outwith the terms of a premises licence will be an offence under section 1 of the Act with a fine not exceeding £20,000 and/or imprisonment for a term not exceeding 6 months. The police can always seek a review of a premises licence and the Licensing Board can apply appropriate conditions to it.

In terms of the delivery of alcohol, section 119 imposes a requirement for a delivery book or invoice to be held by anyone delivering alcohol. There are offences in relation to delivering without such records, and refusal to co-operate with a constable or Licensing Standards Officer if they want to inspect their vehicle or records.

Section 120 of the Act prohibits late night deliveries of alcohol to a premises (other than a licensed premise) between the hours of midnight and six am. Any person who delivers alcohol or who knowingly allows the alcohol to be delivered commits an offence. We believe that the current offences offer the police sufficient scope to address concerns in this area.

## **Additional enforcement powers - gambling premises**

### **283. We recommend the Scottish Government amend the Bill to close a loophole which prevents Licensing Standards Officers from undertaking an important public protection role in gambling which they currently fulfil in relation to alcohol.**

I note the concerns of the Committee on the effective enforcement of gambling by Licensing Standards Officers. I believe that this would require an amendment to, or use of the secondary legislation making powers in section 304 of the Gambling Act 2005 to designate an authorised person. This matter is ultimately reserved to the UK Government at Westminster under Heading B9 of Schedule 5 of the Scotland Act 1998.

I do not therefore believe that it is within the powers of the Scottish Parliament to legislate to resolve this issue. I will continue to encourage the UK Department for Culture, Media & Sport to bring in appropriate legislation to address this issue, and to encourage the UK Government to fully devolve powers in relation to gambling to the Scottish Parliament.

## **PART 3: CIVIC LICENSING**

### **PART 3: CIVIC LICENSING: TAXIS AND PRIVATE CAR HIRE**

**319. In our opinion the principal reason for licensing taxis and private hire cars must be to ensure the safety of passengers. The separate licensing of vehicles and drivers both contribute towards delivery of this objective. Changes in the market must therefore take place within a framework that does not allow this fundamental requirement to be evaded. Further reasons must include the delivery of an accessible, reliable and affordable service to customers whilst also preventing opportunities for criminal activity.**

**320. We are in no doubt that if a licensing system was being designed now it would be a single regime applying to both taxis and private hire vehicles and their respective drivers. We accept the majority view that change would be disruptive to operators and the licensing authorities nor do we consider change should be made without full consideration of all factors and detailed consultation. That said we are clear the licensing regime requires review and we recommend the Scottish Government consider a full review of all aspects of taxi and private car licensing and report back to this Committee within this Parliamentary term; see our recommendation at paragraph 42.**

I welcome the views of the Committee. The Scottish Government undertook a detailed consultation on taxis and private hire car licensing from 28 November 2012 to 15 March 2013. The response to the consultation and a summary have since been published.  
<http://www.gov.scot/Publications/2013/09/2230>

The consultation was issued following a wide ranging review of the taxis and private hire car regime, and asked a range of questions. The responses to the consultation informed the provisions within the Air Weapons and Licensing (Scotland) Bill. I agree that further work to review the taxi and private hire car regime would be appropriate, but believe that rather than a fundamental review, it would be better to focus on specific aspects of the regime. This can then inform updates to the relevant secondary legislation. The Scottish Government intends to take forward specific work to consider the impact of technology such as smartphone apps, as well as reviewing the guidance to allow the sharing of best practice at local authority level. The Scottish Government is in continuous contact with relevant stakeholders and will always seek to respond to emerging issues of interest.

I would be happy to provide the Committee with an update on progress with this work.

**321. We have discrimination concerns around two aspects of the existing regime. With the advent of the smartphone technology the difference between taxis and private hire cars, at least in the minds of the user, has been significantly eroded. Provided the service is safe, responses to our video suggested users saw little difference between the two types. However, for those who do not own, or those who cannot operate a smartphone the benefit could be limited. Equally, for reasons of infirmity or disability, some people may be more restricted in their use of modern technology and some private hire cars may not be accessible for their needs. Secondly on price, in the event demand sees price rise, as has been the case in other**

**countries, there will be an adverse impact on the less well off. We therefore ask the Scottish Government to address both of these concerns at stage 2.**

I welcome the views of the committee. Taxis and private hire cars provide a vital service to the Scottish public and we believe that the current Bill will continue to enable this. I would expect that taxi and private hire car provision will continue to be available to non-smartphone users. The existing ability of local authorities to impose conditions already offers them flexibility to address such concerns. I share your concern that taxis and private hire cars should not charge unreasonable fares. Fares are currently set by the local Licensing Authority. It is currently an offence, where a vehicle is fitted with a taximeter, for any person to charge in excess of the scales set by the licensing authority under s.17 and 18 of the Civic Government (Scotland) Act 1982. The Scottish Government are aware of concerns that vehicles without a taximeter are not constrained by this, and officials are currently investigating the most proportionate means to address this.

**322. On section 60 we are unclear why the overprovision test for private hire vehicles should be different or how that “creates greater consistency within the regime” to an extent which would be recognised by users. We ask the Scottish Government to reassess their approach here and unless this can be achieved through guidance amend accordingly at stage 2.**

I note the views of the Committee. The existing unmet demand test in relation to taxis, relies on examination of taxi ranks and an ability to hail a taxi. As private hire cars are not able to either use ranks or to be hailed, a separate test is required. That is why the Bill provides for a test of overprovision. There are already overprovision tests within the alcohol licensing regime and the houses in multiple occupation regime. I recognise that it will be necessary to develop a fresh methodology and officials will work with relevant stakeholders to arrive at best practice for any such test.

**323. We recommend the same knowledge test should apply to all drivers regardless of their vehicle. Again an appropriate amendment to avoid local authorities applying internally different tests for the two regimes should be made.**

I note the comments by the Committee. The Licensing Authority is at liberty to determine whether or not to apply a test, what to test, and whether to require such a test of either, or both taxis and private hire cars. The ability to test is not intended to create a barrier to entry, but to improve the service that is offered to the public. I believe that the local Licensing Authority is best placed to determine what tests would be appropriate. As a private hire is not able to use a taxi rank or to be hailed in the street, it could be argued that there is less requirement for a private hire car driver to demonstrate their knowledge of the area. I would envisage that training could cover such areas as customer care, disability awareness and first aid. Upon commencement it would be our intention to offer guidance to Local Authorities making this clear and encouraging them to make best use of this new ability.

**324. We have no recommendations on section 62, being content with the proposed course of action set out by the Cabinet Secretary.**

**325. We recommend greater sharing of information between licensing authorities. This should cover the operation of firms within areas as well as information about licence holders and their vehicles. We expect the Scottish Government to encourage and facilitate through appropriate legislation, if necessary, the sharing of information between authorities.**

I note the comments of the Committee. Under Schedule 1, para 4 of the Civic Government (Scotland) Act 1982 it is already possible for a Licensing Authority, when considering a new application or a renewal, to make such reasonable enquiries as they see fit and include the results of these inquiries in matters they take into account. I would therefore envisage that Licensing Authorities could already make inquiries to adjacent Authorities where they felt it was appropriate. In addition the police are a statutory consultee, and as a national police force would be in a position to provide relevant information from across Scotland and beyond to the Licensing Authority. We would be happy to further encourage such sharing of information when the best practice guidance is updated after the passage of the Bill.

### **PART 3: CIVIC LICENSING: METAL DEALERS**

#### **390. The Scottish Government should consider the merits of a national licensing scheme and report back to the Committee in this Parliamentary term.**

I note the views of the Committee, however I remain of the view that the local licensing authorities are best placed to regulate metal dealers, including itinerant metal dealers. The issuing authority can consider both the issues that it is directly aware of within its own area, and those from outwith its area that are reported to it by Police Scotland. I am not convinced that requiring an itinerant metal dealer to seek a specific licence for each local authority area in which they operate would be proportionate, or would necessarily lead to significantly better enforcement.

#### **Compliance and enforcement**

**406. Experience in England and Wales has shown that non-legislative interventions – Operation Tornado and the establishment of the National Metal Theft Taskforce – have had a significant impact in reducing metal crime and strengthened the impact of the legislation. We urge the Scottish Government to continue to work with the British Transport Police and Police Scotland to ensure the legislation is supported by a robust compliance and enforcement programme.**

I note and agree with the Committee's comments. The Scottish Government will continue to work with the Police and other enforcement bodies to ensure that the new regulatory regime is supported.

#### **Banning cash payments for metal**

**407. We ask the Scottish Government to respond to comments we heard that the payment methods are poorly defined in the Bill, and to consider whether further clarification is needed.**

I believe that the payment methods clearly state what are acceptable methods of payment (as opposed to alternative formulations which state what is unacceptable). However, I will consider for Stage 2 whether further clarification is required.

#### **Improved standards of record keeping and customer identification**

**408. We welcome the commitment from the Scottish Government to consider amending the Bill to remove the need for metal dealers to record the date on which metal was processed.**

I note the Committee's comments and will consider this matter further for Stage 2

**409. We ask the Scottish Government to respond to the suggestions made to us about the need to clarify the types of ID that would be deemed suitable to verify customers' identity and in relation to keeping digital records.**

I believe that the ID requirements need to be seen in the context that all payments for metal will be made into bank accounts (for which rigorous ID checks are already required). However, I will look at possible amendments for Stage 2 that will allow for specification of particular types of ID.

### **Removing the requirement to retain metal**

**410. We ask the Scottish Government to respond to the suggestion that revoking the requirement to retain metal would make it difficult for licensing authorities to impose this locally.**

I would not agree with this assessment. Removing the requirement to retain metal as a mandatory requirement would not prevent a licensing authority imposing it on a discretionary basis. There is no bar in the legislation that would prevent this.

### **Definition of a metal dealer**

**411. We welcome the Scottish Government's commitment to consider expanding the definition of a metal dealer. The Bill represents a good opportunity to modernise the definitions in the 1982 Act and we urge the Government to work with the metal dealing industry and enforcement bodies to find a suitable form of words that captures the industry as a whole and has limited unintended consequences.**

I note the Committee's comments and will consider this matter further for Stage 2. As noted during the evidence sessions it is important to capture within the licensing requirement those, at the periphery of the trade, who profit from the sale of metal. Equally, I would wish to avoid licensing some of the incidental activities that to a very limited degree might involve the acquisition of metal e.g. a heating engineer replacing a boiler or a landscaper who pulls out an old metal gate.

### **National register of metal dealers**

**412. We recommend the Scottish Government considers options for establishing a national register of metal dealers in Scotland.**

I note and agree with the Committee's comments in respect of the value of such a register, although further work will have to be undertaken to establish how such would be organised and paid for. I will consider this matter further for Stage 2 .

### **Requirement to display a licence**

**413. We welcome the Scottish Government's commitment to consider how best to introduce the requirement that metal dealers must display their licence.**

I believe that this can be delivered via secondary legislation and am of the view that this is the more suitable means of delivery for such a condition.

## Penalties

**414. We believe the maximum penalty liable under the legislation for breaching any of the licensing conditions should be uprated to take account of the substantial impact metal theft can have in terms of disruption to services and risk to life. Such a move would emphasise the seriousness of metal theft and act as a deterrent to criminals. We recommend that the Scottish Government consider bringing forward amendments at Stage 2 to increase the scale of fines liable under the legislation.**

I note and agree with the Committee's comments and will consider this for Stage 2.

## **PART 3: CIVIC LICENSING: PUBLIC ENTERTAINMENT**

**435. We are of the view that the proposals in this section of the Bill are non-contentious and are in general agreement with them. We recognise the concerns around transitional timescales and recommend the Scottish Government allow suitable timescales and provide guidance to deal with this transition.**

**436. We recognise concerns around costs and, while we would not expect a need for current costs of Public Entertainment licences to increase, we understand this would be a matter for licensing authorities.**

I note the Committee's comments on this section of the Bill. I agree that there is no obvious reason for costs, and consequently fees, to increase.

## **PART 3: CIVIC LICENSING: SEXUAL ENTERTAINMENT VENUES**

**503. We support the view of the Delegated Powers and Law Reform Committee in relation to second provision.**

I note the Committee's comments and refer to my response below.

## Definitions

**504. We welcome the Scottish Government's commitment to provide guidance to assist licensing authorities in interpreting the definition and to utilise subordinate legislation to make specific provision to exclude an activity should it become necessary. Given the sustained concerns on this matter we recommend the Scottish Government amends the definition to exclude plays as defined in the Theatres Act 1968 from the licensing regime.**

I note the Committee's comments and the Scottish Government will provide guidance to Licensing Authorities to assist implementation of the new regime. I have noted the concerns of those representing Theatres that plays could fall within licensing.

I am confident that plays will not require a licence even if they are ground-breaking and pushing at boundaries. Unless a performance is intended to sexually stimulate then a licence will not be required. In addition the Scottish Government is proposing secondary legislation making powers that would allow any instances of "inadvertent licensing" to be dealt with via secondary legislation.

## **Exemption for venues holding no more than four performances a year**

**505. It is clear from the evidence we have received from all quarters a provision to exempt four occasions from the SEV licensing regime creates a loophole whereby those who wish to circumvent the licensing regime could move from venue to venue avoiding regulation. We believe all SEVs should be regulated to safeguard the performers and therefore we recommend the exemption provision should be removed from the Bill.**

I note the view of stakeholders and those of the Committee. I note however, that in England and Wales (which allows a far higher figure of 12 exemptions) that there has been little evidence of operators conducting sexual entertainment on an itinerant basis.

Part of the rationale for the new licensing regime is to deal with those premises that operate on a daily basis and have a potential impact on the localities in which they operate. That potential impact may be seen through, for example, nuisance, criminality, anti-social behaviour or simply by operating in an area that is inappropriate for a particular area. These issues are unlikely to arise to the same degree in the context of very occasional activity.

Whilst the licensing regime as drafted is believed to capture about 17-20 premises across Scotland, were no exemption to be in place for very occasional activity, we would be unable to accurately estimate how many premises might be affected. It may well be a considerable number given it would capture pubs and clubs that may occasionally hire out a hall or function room for some sort of performance. I would be concerned that the number of premises affected would be significantly beyond that currently envisaged or consulted upon

## **Power to set an “appropriate” number of sexual entertainment venues for an area**

**506. We acknowledge licensing authorities when implementing the provision will have to give consideration to all the factors in their area as the power is not unfettered. This will require careful determination otherwise there is potential for legal challenge from existing businesses. We therefore welcome the Scottish Government’s commitment to provide guidance which will assist licensing authorities with their interpretation of this provision.**

I note and agree with the Committee’s view that guidance will be required to assist local authorities and will ensure that such guidance is produced .

## **Appropriateness of a discretionary regime**

**507. The Committee acknowledges the Scottish Government’s reasoning for adopting a discretionary approach to licensing of SEVs, however the overwhelming opinion of those who submitted evidence, including importantly enforcement authorities, was the licensing regime should be mandatory. We recommend the SEV regime should be mandatory not least to avoid the potential for “regime shopping”.**

I remain of the view that it would be disproportionate to require all 32 local Licensing Authorities to establish a licensing regime for an activity that currently only takes place in 4 or 5 authorities. Whilst it may be possible for an individual to seek a more permissive regime before opening a sexual entertainment venue, it might be thought that an operator would be constrained by the fact that demand is likely to be limited to a fairly small number of urban locations.

## **Responsibility for licensing sexual entertainment venues**

**[un numbered] It was clear from the evidence we took from those who are pro-sexual entertainment, and those who are anti-sexual entertainment, it would be more appropriate to bring all the elements of licensing SEVs (including advertising and alcohol) under the control of a single body. This would allow dual licensing issues to be dealt with more easily and simplify the complaints route for the public. We recommend The Scottish Government should identify the most appropriate body to carry out this role in light of the experience of the previous regime and, taking into account the need to have oversight to deal with any dual licensing issues,, bring forward amendments at Stage 2.**

My view is that the licensing of sexual entertainment falls naturally into the civic licensing responsibilities of local authorities. Indeed the proposed licensing regime is predicated on the architecture of the 1982 Act. We do not believe that either local accountability or the effectiveness of the scheme would be enhanced by such a move.

I believe that the new scheme can co-exist successfully alongside other licensing regimes (especially the alcohol licensing regime).

I do see some scope to expand the regime to deal more effectively with advertising of premises and will consider possible amendments at Stage 2.

Beyond this, I consider that this recommendation sits, in part, alongside the recommendations at 42 and 44 for major licensing reform about which I committed to respond to the committee within this Parliamentary term.

### **PART 3: CIVIC LICENSING: CIVIC LICENSING GENERAL**

**42. We believe the time is right for a review of the 1982 Act as it is not designed for the modern age and, some witnesses suggested it struggled to be fit for purpose. We recommend the Scottish Government consider and report back to us within this Parliamentary term on undertaking a review of the 1982 Act, with a particular focus on where it can be modernised as well as considering harmonisation and streamlining across the various licensing regimes.**

I note the views of the Committee. The Civic Government (Scotland) Act 1982 was subject to a detailed review and appropriate amendments were made, for example through the Criminal Justice and Licensing (Scotland) Act 2010. We have also carried out a number of specific consultations and carefully considered the evidence and views of the Committee, in order to inform the current Bill and amendments to it. The overall architecture of the 1982 Act allows considerable ability to determine and amend regimes via secondary legislation and I am content that this will continue to allow appropriate amendment to the regime to address changes.

I consider that further review would be a very major piece of work but we will consider the matter further and return to the committee in due course.

**43. In the short term we recommend the Scottish Government considers the submissions we received on the Bill which suggest changes to the Bill to improve the operation of the 1982 Act and bring forward appropriate amendments at Stage 2.**

I note the comments of the Committee, the Scottish Government is carefully reviewing the views expressed by the Committee and witnesses and is considering appropriate amendments.

**44. Given the dual licensing issues and our recommendation at paragraph 42 we also recommend the Scottish Government consider and report back to us within this Parliamentary term on bringing all licensing in Scotland under a single regime.**

I note the views of the Committee. It is inevitable that a large business or premises might undertake a wide variety of activities. It is not necessarily practical that these are all regulated under the same licensing regime. Similarly it would be difficult to draft legislation that could effectively regulate such a wide variety of activities, without it being subject to constant amendment.

I am therefore of the view that there will therefore inevitably exist circumstances where dual licensing might be required. That said, where opportunities exist to streamline regulatory structures I am happy to take them. For example, the Bill provides for a simplification in licensing of Theatres.

As indicated in the answer to recommendation 42 we will consider the matter further and write to the committee within the Parliamentary term.

### **Effectiveness of the 1982 Act**

**530. We recommend the Scottish Government amends the Bill to create licensing objectives for the Civic Government (Scotland) Act 1982 in order to assist licensing authorities to deal with, for example, public nuisance. Allied to this recommendation, we recommend the bill should be further amended to provide for a system to review and revoke licences having regard to these licensing objectives.**

I believe that the current system works successfully with the objectives implied, and supported by case law, as opposed to being set out in legislation. For example, I do not believe that a Licensing Authority would be unable to deal with a public nuisance simply because tackling nuisance is not an objective under the Act.

I do see possible merit in a civic licensing regime underpinned by objectives. Were the 1982 Act to be reviewed entire, with a view to possible replacement, then it may well be that such a system would be desirable. I am concerned however that to make such a significant change, without full consultation, could lead to unintended consequences.

The Scottish Government did consult in 2013 upon a proposal to include objectives into civic licensing. The responses were mixed. While many would welcome such a move, others cautioned that it would be wrong to expect too much from the creation of objectives.

**531. From our earlier work on community empowerment, we are only too well aware local authorities can be risk averse, however they are also fearful without legislation notifying communities might lead to legal challenge; we therefore recommend a framework to enable neighbour notification with regard to licence applications, in a similar manner as the Licensing (Scotland) Act 2005, is added to the Bill to increase community participation in the licensing process.**

I do not believe that there is anything to prevent a Licensing Authority attempting to notify neighbours of relevant applications. It would be logical extension of existing duties under the 1982 Act to publish details of applications.

It would be hard to find a straightforward, consistent approach to neighbour notification for the matters licensed under the Act. The cost of any national requirement to notify could well be considerable and would have to be borne by the trade, or the public. It is therefore essential that any amendments to the legislation be considered carefully. Clearly, some itinerant licences would be wholly unsuitable e.g. itinerant metal dealers, street traders. Whilst some premises licences could be subject to neighbourhood notification, what would be appropriate could vary dramatically. A public entertainment licence for a major rock concert would impact neighbours for a far greater distance than events of lesser scale. Certainly, the prescriptive approach of the Licensing (Scotland) Act 2005 does not seem entirely suitable.

It would also be our view that substantial consultation with local Licensing Authorities would be required before introducing such a mandatory requirement for neighbour notification.