



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

AGENDA

6th Meeting, 2015 (Session 4)

Wednesday 18 February 2015

The Committee will meet at 10.00 am in the David Livingstone Room (CR6).

1. **Air Weapons and Licensing (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Andrew Mitchell, Community Safety Manager, City of Edinburgh Council;

Peter Smith, Senior Licensing Officer, Glasgow City Council.

2. **Air Weapons and Licensing (Scotland) Bill (in private):** The Committee will consider the evidence received.

David Cullum
Clerk to the Local Government and Regeneration Committee
Room T3.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5223
Email: david.cullum@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda Item 1

Written submissions

LGR/S4/15/6/1

PRIVATE PAPER

LGR/S4/15/6/2 (P)

Local Government and Regeneration Committee

Air Weapons and Licensing (Scotland) Bill

Written Submissions

Wednesday 18 February 2015

Purpose

This paper provides members with the written submissions received as part of the Committees call for evidence on the Air Weapons and Licensing (Scotland) Bill.

Included in this paper and the submissions sent by the witnesses who are attending the meeting on Wednesday 18 February 2015 to give oral evidence on Part 3 of the Bill (civil licensing). COSLA was also invited to attend but was unable to provide a witness. However, their written submission has been included for information.

Submissions

The paper includes the following submissions—

- City of Edinburgh Council (on civil licensing provisions) Pages 2-3;
- Glasgow City Council (on civil licensing provisions) Pages 3-4;
- COSLA (on civil licensing provisions) Pages 5– 7.

**Ross Fairbairn
Committee Assistant
13 February 2015**

Written submission from City of Edinburgh Licensing Board

General Licensing Issues

Q 23. Is the current Scottish licensing regime, as set out in the Civic Government (Scotland) Act 1982 and the Licensing (Scotland) Act 2005, fit for purpose?

The Civic Government (Scotland) Act 1982 is a useful tool which has served its purposes well. There are a number of features which are out of date and the Council's view is that continued amendment of the Act is not helpful.

There is a growing gap between the 1982 Act and the Licensing (Scotland) Act 2005 and the relevant Licensing Provisions of the Housing (Scotland) Act 2006. This variance makes it more difficult for the public to understand the licensing systems.

For example the difference in determination periods for each type of licence, different language for temporary or occasional licences.

The 1982 Act is deficient in that a Licensing Authority cannot revoke a licence and may only 'suspend' a licence for its duration.

The Licensing (Scotland) Act 2005 has broad support but it needs to be clear to what extent parliament intends a licence to issue under this Act to cover activity normally licensed under the 1982. For example a practice is common of using an occasional liquor licence, with much reduced fee, to licence what are major events which would otherwise be subject to the Public Entertainment Licence provisions of the 1982 Act. It could be argued that the 2005 is ill suited to regulating that type of activity.

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

The Council believes the licensing system should seek to address both. There are normally two concerns for a licensing authority to address themselves to:

- a) Is the Licence holder appropriate, usually referred to as fit and proper and
- b) Will the premises which is licensed have an adverse impact on the community and its environment.

The system needs to address both concerns.

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

There is a complex relationship between each of these aspects. Frequently concerns raised by a prospective applicant will be very similar to those raised

in objections to a planning application. Each system is independent of the other and the decisions can sometimes vary.

The licensing system struggles to deal with regeneration issues with applications often being many months or years from the original regeneration commencing.

Clarity in legislation about how these aspects should be considered in the licensing decision making process would be helpful.

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

The licensing system is ill suited to these aspects as economic impact is not a ground with which a licensing decision could be made.

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

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Written submission from Glasgow City Council

General Licensing Issues

Q 23. Is the current Scottish licensing regime, as set out in the Civic Government (Scotland) Act 1982 and the Licensing (Scotland) Act 2005, fit for purpose?

Glasgow City Council's Licensing Authority ("the Licensing Authority") respectfully suggests that the 1982 Act is not fit for purpose. The Authority notes that the Act is over 30 years old and while it has been updated by various provisions, the Authority is of the view that the underlying structure of the Act requires to be updated and refreshed. The most straightforward way of achieving this is through a new consolidated act.

The Authority would also suggest that consideration should be given to converting the 1982 Act into an objective based regime and allowing the Authority to have regard to these objectives when determining applications. Such objectives would allow the Authority to tackle issues that are fundamental to the licensing regime where those issues fall out with the scope of the fit and proper person test. Such objectives would also help guide the formation of the Authority's policies.

The Authority also has specific concerns relating to the 1982 Act's compatibility with the European Union Service Directive, enforcement and fees.

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

While the Licensing Authority believes that the priority of the licensing regime should be the regulation of the activity, it does see the merit in regulating communities of space however, the focus should be upon determining whether the activity is safe. Regard should also be had to the suitability of the individual / origination behind that activity, i.e. it is a fit and proper person.

The Authority would welcome the Scottish Government consulting on innovative proposals relating to the licensing of open spaces. However, any proposal should allow the licensing authority to retain the ability to regulate the type of activity that is taking place at the open space.

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

Both the Licensing Authority and the Licensing Board have a concern that a specific focus upon the above objectives may potentially detract from the primary purpose of the licensing regime, i.e. to uphold the licensing objectives whether they be the ones set down in the Licensing (Scotland) Act 2005 or implied, i.e. the 1982 Act. Ultimately, licensing regimes are concerned with determining whether the application is compatible with the aims of the licensing regime.

The Authority and Board would respectfully submit that in order to ensure public confidence in the licensing regime, that they should remain free from statutory obligations to consider the above matters.

Furthermore, both the Licensing Authority and the Board are aware of a body of case law that dictates that they cannot consider planning matters when considering licensing applications.

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

As above.

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

As above.

Written submission from COSLA

COSLA would like to offer the following observations in response to the Local Government and Regeneration Committee's call for evidence on the Air Weapons and Licensing (Scotland) Bill.

The Bill was considered by the Community Well-Being Executive Group which generally welcomed the intent and content. Several aspects of the Bill are discussed in detail below.

COSLA Vision

The single focus of COSLA and local authorities is to improve outcomes for [communities](#). Local government is at the heart of the government's focus on prevention, service integration and "place", effective reform and strong local services are more important now than ever. National governance should enhance the ability of local government to achieve this as effectively as possible and deliver those benefits to communities thorough:

- Empowering local democracy
- Integration not centralisation led by community planning
- Focus on outcomes not inputs
- Local democracy needs to be at the heart of improvement and accountability

Air Weapons

COSLA have no concern over the proposal to require licenses for air weapons, provided that sufficient time is given to individuals to apply for licenses and the charge is proportionate. There is however a question as to whether licensing air weapons will deliver the outcome desired, as the main misuse of air weapons is generally from those under 18 this misuse may not be prevented as it is the parents who will hold the license and those under 18 may continue to have access.

Alcohol Licensing

COSLA welcomes the return of the "fit and proper person" test in relation to alcohol licensing along with the clarity provided by the changes to how Boards can consider potential overprovision in their areas as this will help in protecting and improving public health, addressing some of the concerns raised around the risk to Boards of legal challenge.

There are some concerns that the introduction of a duty for Boards to publish a financial report may be administratively difficult for local authorities depending on current accounting procedures. COSLA does recognise that this increases the transparency and would provide evidence for any future fee increases.

COSLA agrees that the requirement for Boards to publish a policy statement within 18 months of a local government election, lasting up to 5 years will

result in the policy statements better reflecting the current views of the Licensing Boards.

COSLA would also request that this Bill is used as an opportunity to make an amendment to the functions of a Licensing Standards Officer (LSO) as defined in the Licensing (Scotland) Act 2005 to explicitly make it clear that local authorities can give LSO's additional functions if they see fit. This would be used to facilitate LSO's enforcing the Gambling Act (2005), which due to drafting errors, has not been possible in Scotland as it would enable LSO's to be authorised officers for the purpose of gambling enforcement using the [Advice Note](#) which was published by the Gambling Commission. The issue of gambling in Scotland is of concern to both local and national government and we therefore hope that the Scottish Government will support an amendment of this nature to enable enforcement of the Gambling Act in Scotland.

Civic Licensing

Taxis and Private Hire Cars

COSLA welcomes the power to refuse to grant private hire car licenses on the grounds of overprovision where a local authority chooses to do so and the extension of taxi driver testing to include private hire car drivers.

The removal of the contract exemptions to the licensing and regulation of taxis and private hire cars has received a mixed response from local authorities. Those that support the felt that it was necessary to ensure the quality of the service and those who it is provide it. However, those opposed, generally rural councils, felt that bringing contracts into the regime would disincentivise or prevent current providers from continuing to operate, leaving a gap in market or driving up costs. It is therefore requested that the Committee consider giving local authorities the flexibility to decide whether they feel contracts should be exempt within their own areas.

Sexual Entertainment Venues

Licensing and regulation is an important work stream in COSLA's anti-human trafficking work and we welcome the creation of a separate licensing framework for sexual entertainment venues. This new framework gives local authorities proper powers to effectively regulate lap dancing clubs, tackle forced prostitution and minimise the potential for trafficking in human beings.

COSLA welcomes the ability of local authorities to determine the number of sexual entertainment venues permitted in their local area, including the power to set the number to zero. We view this as a major advantage in the regulation of such premises and for local decision-making and accountability in Scotland more widely.

By giving local licensing authorities capacity to consider local conditions and manage the total number of permitted venues, councils will be able to act on community preference and develop a position that reflects local attitudes. COSLA supports this flexibility which gives autonomy to local councils and supports local democracy.

Additionally having oversight of sexual entertainment venues will allow local authorities to regulate more effectively and promote standards that help protect the safety of those working in these establishments. It will also give strength to local authorities' response to human trafficking with better opportunity to identify exploitative practices.

However, COSLA is concerned that the exemption for venues that host sexual entertainment three occasions or less per year will create a loophole and allow organisers to evade licensing by using multiple venues. Trafficking is transitory in nature, often with victims moved from place to place for the purpose of sexual exploitation. This exemption would allow for this occur, unchallenged and is unhelpful in Scotland's strategic response to human trafficking. COSLA would therefore request that this concession be removed or that local authorities are able to set a lower number of occasions that trigger the requirement for a license if they chose.

Civic Licensing Standards Officer

Several Local Authorities have shown support for this proposal due to the success of the Licensing Standards Officer role, however there is the potential that this new role may require some restructuring of current posts with potential cost implications for local authorities. Moreover, although the Bill states these posts are to be funded through license fees this may be difficult to calculate and any increase in fees is likely to affect SME's more. This has resulted in several local authorities objecting the new role. Presently the enforcement of the Civic Government (Scotland) Act is managed across various regulatory services, including Trading Standards and Environmental Health where appropriate, it is suggested that this role should not be mandatory for local authorities.

In summary, although COSLA are broadly supportive of the main aims of the Bill we have some concerns around the proposal to remove contract exemptions for licensing of taxis and private hire cars and the introduction of a mandatory Civic Licensing Standards Officer, we feel that both of these should be optional for local authorities so they can best reflect local circumstances and structures.

COSLA also request than the opportunity be taken to amend the functions of Licensing Standards Officers to facilitate the enforcement of the Gambling Act in Scotland, this will assist local authority in addressing some of the concerns around problem gambling in communities.