



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

AGENDA

7th Meeting, 2015 (Session 4)

Wednesday 25 February 2015

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Subordinate legislation:** The Committee will consider the following negative instrument—

Non-Domestic Rate (Scotland) Order 2015 (SSI 2015/47).

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

Michael Matheson, Cabinet Secretary for Justice, Quentin Fisher, Bill Team Leader, Peter Reid, Senior Policy Officer, Walter Drummond-Murray, Policy Officer, and Keith Main, Policy Manager, Scottish Government.

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

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The papers for this meeting are as follows—

Agenda item 1

Note by the Clerk

LGR/S4/15/7/1

[Non-Domestic Rate \(Scotland\) Order 2015 \(SSI 2015/47\)](#)

Agenda item 2

Note by the Clerk

LGR/S4/15/7/2

Note by the Clerk

LGR/S4/15/7/3

PRIVATE PAPER

LGR/S4/15/7/4 (P)

**Local Government and Regeneration Committee
SSI cover note**

Introduction

This paper seeks to inform Members' consideration of the following negative SSI:

- [Non-Domestic Rate \(Scotland\) Order 2015 \(SSI 2015/47\)](#)

Procedure in committee

Under negative procedure, an instrument comes into force on the date specified on it (the "coming into force date") unless a motion to annul it is agreed to by the Parliament (within the 40-day period). Any MSP (whether a member of the lead committee or not) may lodge a motion recommending annulment of an SSI at any time during the 40-day period, including after the lead committee has considered the instrument.

**Non-Domestic Rate (Scotland) Order 2015
(SSI 2015/47)**

Background

This instrument was laid on 5 February 2015, the Local Government and Regeneration Committee was designated as lead committee. The Committee must report on the instrument by 23 March 2015.

At its meeting on 17 February 2015, the Delegated Powers and Law Reform Committee considered the instrument and determined that it did not need to draw the attention of the Parliament.

The regulations are subject to negative procedure. No motion to annul has been lodged.

Purpose of the Instrument

This Order prescribes a rate of 48 pence in the pound as the non-domestic rate to be levied throughout Scotland in respect of the financial year 2015-2016. A rate of 47.1 pence in the pound was the figure prescribed by the Scottish Ministers as the non-domestic rate to be levied throughout Scotland for the financial year 2014-2015 (S.S.I. 2014/28).

Action

- No motions to annul any of these instruments have been lodged;
- Unless a motion to annul the instrument is lodged, the Committee need only consider the instruments, and indicate whether it is content not to make any recommendations on them;
- **Is the Committee content not to make any recommendations to the Parliament on these instruments?**

**Ross Fairbairn
Committee Assistant
20 February 2015**

Local Government and Regeneration Committee

**Delegated Powers and Law Reform Committee - 5th Report, 2015 (Session 4)
Air Weapons and Licensing (Scotland) Bill at stage 1**

The Committee reports to the Parliament as follows—

1. At its meetings on 25 November, 16 December 2014 and 20 January 2015 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Air Weapons and Licensing (Scotland) Bill at stage 1 (“the Bill”)¹. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”)².

OVERVIEW OF BILL

3. This Government Bill was introduced on 14 May 2014, by Kenny MacAskill MSP. The lead committee is the Local Government and Regeneration Committee. Stage 1 of the Bill is to be completed by 3 April 2015.
4. Broadly, Part 1 of the Bill aims to protect public safety by creating a new licensing regime for air weapons. Parts 2 and 3 aim to strengthen and improve aspects of locally led alcohol and civic government licensing, to preserve public order and safety, reduce crime, and to advance public health. A number of the provisions in Parts 2 and 3 are directed at improving the efficiency of the operation of the licensing regimes, aiming to contribute to creation of a better regulatory environment for business.
5. Alongside the regulation of air weapons, the Bill amends the Licensing (Scotland) Act 2005 (*‘the 2005 Act’*, licensing alcohol) and the Civic Government (Scotland) Act 1982 (*‘the 1982 Act’*, covering other local licensing regimes). The provisions include, in outline:
 - Giving local authorities the power to regulate sexual entertainment venues in their areas, with the aim that both performers and customers benefit from a safe, regulated environment;
 - Closing a loophole which allows adults to supply under-18s with alcohol for consumption in a public place;

¹ Air Weapons and Licensing (Scotland) Bill [as introduced] available here:
[http://www.scottish.parliament.uk/S4_Bills/Air%20Weapons%20and%20Licensing%20\(Scotland\)%20Bill/b49s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Air%20Weapons%20and%20Licensing%20(Scotland)%20Bill/b49s4-introd.pdf)

² Air Weapons and Licensing (Scotland) Bill Delegated Powers Memorandum available here:
http://www.scottish.parliament.uk/S4_Bills/Air_Weapons_DPM.pdf

- Extending the breadth of information available to Licensing Boards, with the aim of enabling them to make better alcohol licensing decisions;
- Removing an exemption from licensing for metal dealers with a larger turnover; banning cash payments for metal by metal dealers or itinerant metal dealers; Removing the mandatory requirement that metal dealers should not process metal for 48 hours after receiving it;
- Allowing licensing authorities to refuse private hire car licences on the basis of over-provision, and to require testing of private hire car drivers. The Bill will also remove an exemption from licensing for hire cars used on contract;
- The creation of a new role - the 'Civic Licensing Standards Officer' - with specific functions to provide information and guidance, check compliance, provide mediation and take appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act.

DELEGATED POWERS PROVISIONS

6. The Committee considered each of the delegated powers in the Bill. At its first consideration of the Bill, the Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following provisions:

- Section 2(4) – Requirement for air weapon certificate
- Section 8(3) – Duration of air weapon certificate
- Section 20(3) – Duration of approval of an air weapon club
- Section 39 – Guidance
- Section 55 (inserting section 9A(6) and (7) of the Licensing (Scotland) Act 2005) – Duty of Licensing Boards to produce annual financial report
- Section 59 – Form etc. of communications under the 2005 Act
- Section 62(4) – Power to specify further exemptions to the licensing regime for taxis and private hire cars
- Section 65 – Acceptable forms of payment for metal
- Section 66(3) (inserting section 33B(6) of the 1982 Act) – Power to make provision about metal dealers' records
- Section 70(2) and (3): Power to make provision about hearings of licensing authorities
- Section 78 – Commencement

7. At its meeting of 25 November, the Committee agreed to write to the Scottish Government to raise questions on the remaining delegated powers in the Bill. This correspondence is reproduced at the **Annex**.

8. In light of the written responses received, the Committee agreed that it was content with the following delegated powers and did not need to comment on them further:

- Section 36(1) – Power to prescribe fees
- Section 71 (inserting sections 45D and 45E of the 1982 Act) – Mandatory and standard licensing conditions

Recommendations

9. The Committee’s comments, and where appropriate, recommendations on the remaining delegated powers in the Bill are detailed below.

Section 37(1) – Power to make further provision

Power conferred on:	Scottish Ministers
Power exercisable by:	Regulations
Parliamentary procedure:	Negative Procedure

Provision

10. Section 37 enables the Scottish Ministers to make further provision for the purposes of Part 1. In particular, this enables further provision for the application and approvals process for air weapon certificates, police permits, visitor permits, event permits, or club approvals. This includes prescribing the mandatory conditions that will attach to certificates, permits, or air weapon club approvals.

11. Various other provisions state that such matters may be “prescribed”, which refers to prescription by regulations under this section. This applies at sections 4(1), 6(1), 7(2), 13(9), 14(2), 15(1), 17(6), and 18(2) and (4).

Comment

12. The Delegated Powers Memorandum explains that this power is broadly framed, to allow the “administrative minutiae” of the air weapons regime to be set out in secondary legislation. This will include, for example, setting out application forms for certificates, permits, and air weapon club approvals, setting out the standard format for these certificates, permits and approvals, and information that must accompany applications. Regulations may also set out details such as mandatory conditions to be attached to all air weapon certificates, permits and club approvals.

13. The Committee asked the Scottish Government for explanation of how this general power to make further provision for the purposes of Part 1 relates to the general ancillary powers contained in sections 75 and 76. The Committee asked what provision this power to make further provision could enable, that would not be enabled by those ancillary powers in section 75 and 76.

14. The Scottish Government responded that while this power to make further provision will enable specific matters to be prescribed as set out in sections 4(1) and 6(1) for example, section 37(2) indicates what further provision might be made using the power. For example, to prescribe the form and contents of certificates, permits and approvals under Part 1 of the bill, and the conditions that may be attached.

Again for example, further provision might be made in due course to enable on-line applications.

15. The Committee accepts that the Scottish Ministers may require a power to make further provision on the matters which are set out in section 37(2)(a) and (b). That is, about the application processes under Part 1, and in relation to the certificates, permits and approvals of air weapon clubs under Part 1.

16. However the Government's aim underlying section 37 appears (in the scheme of things) to be quite defined. It is to specify the application processes, and more provision for certificates, permits and approvals. The Committee considers that the proposal for a broad power to make any further provision for the purposes of Part 1 of the bill, combined with the ancillary powers to make provision that may be supplemental, incidental or consequential to that further provision, extends the powers to an uncertain scope. The Committee doubts whether such a broad power to make further provision is required to achieve the objective of setting out the application, certificate, permit and approval processes in regulations.

17. The Committee accepts therefore that the power may be required in principle to set out further provision for the application, certificate, permit and approval processes under Part 1 of the Bill. Such provision is set out in section 37(2)(a) and (b).

18. However, the aim of section 37 as explained in the Delegated Powers Memorandum is to enable the "administrative minutiae" of those processes to be set out in regulations. The Committee considers that it should be sufficient (to achieve that objective) to specify what types of provision are enabled - without a broad power to make any further provision for the purposes of Part 1. That specification appears to be achieved by sections 4(1), 6(1), 7(2), 13(9), 14(2), 15(1), 17(6), 18(2) and (4), and 37(2)(a) and (b) of the bill.

19. The Committee therefore invites the Scottish Government to amend the bill to remove the broad power to make any further provision, while keeping the specification of those types of provision which are enabled. If the Government considers that, as a result of removing the broad power, more types of provision would need to be specified beyond all those set out across sections 4(1) to 37(2), then these should be proposed by amendment.

Section 68(3) – Power to specify premises that are not sexual entertainment venues

Power conferred on:	Scottish Ministers
Power exercisable by:	Order
Parliamentary procedure:	Negative

Section 68(3) – Power to provide for descriptions of performances or descriptions of displays of nudity which are not to be treated as sexual entertainment

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative

Provisions

20. These powers are considered together, as raising a similar issue.
21. Section 68 creates a new licensing regime for sexual entertainment venues (by adding section 45A to the 1982 Act). Section 45A(2) to (7) define what is meant by a “sexual entertainment venue”. This is any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.
22. Definitions are also supplied of ‘audience’, ‘financial gain’, ‘organiser’, ‘premises’, ‘sexual entertainment’ itself, and ‘display of nudity’. (“Any live display of nudity” is used within the definition of sexual entertainment – new section 45A(3)).
23. “Premises” for these purposes includes any vehicle, vessel or stall, but not any private dwelling to which the public is not admitted.
24. “Sexual entertainment” means “(a) any live performance, or (b) any live display of nudity, which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).”
25. “Performance” for these purposes is not further defined. “Display of nudity” is defined in new section 45A(4).
26. Sex shops are specifically *not* “sexual entertainment venues” as they are separately licensable under the 1982 Act (new section 45A(7)(a)).
27. The power at new section 45A(7)(b) allows the Ministers to prescribe other types of premises that are *not* sexual entertainment venues. New section 45A(11) of the 1982 Act allows the Ministers to prescribe descriptions of performances or “displays of nudity” that are not to be treated as “sexual entertainment” for the purposes of the licensing regime.

Comment

28. The Committee asked for an explanation why it has been considered appropriate for those powers to be drawn broadly to enable the exemption of any premises, or descriptions of performance or display of nudity, as may be specified by order, and why the powers could not be drawn more narrowly to define the “very limited circumstances” (or range of performances or displays) that might potentially be exempted. The Committee also asked why it was not possible to avoid the need for this power by using more appropriate or clearer definitions in the new section 45A of the 1982 Act, to remove the possibility that certain types of performance or display could inadvertently be caught within the licensing regime.
29. The response to the Committee has explained that the number of premises that are expected to be subject to the new licensing regime is very limited – around

20 across Scotland. It is not expected that the power to exempt particular types of premises would either be extensively used or required beyond “very limited circumstances”. It has been considered that the exact circumstances where an exemption might arise in future are hard to define, in advance of the scheme becoming fully operational. It has also been explained to the Committee that the Scottish Government would be most concerned if theatrical and other forms of artistic performance were caught by the provisions.

30. The Committee notes that the proposed powers of exemption are drawn in a “blanket” form, which technically enables other types of premises or performance to be exempted in future from the new licensing regime – beyond the types of artistic/theatrical performance which the Scottish Government envisages might require exemption, and sex shops which are separately regulated.

31. The Committee also notes, however, that policy considerations underlie how these powers are drawn. The Scottish Government’s response to the Committee has indicated that the precise nature of the types of premises or performance which might be exempted in future has not yet been proposed or identified. They are expected only to be identified once the proposed new licensing scheme has become fully operational. The Committee therefore reports on these powers, as follows.

32. The power in the new section 45A(7)(b) enables the Ministers to prescribe other types of premises, that are not sexual entertainment venues (apart from sex shops which are separately regulated). The new section 45A(11) of the 1982 Act also allows the Ministers to prescribe descriptions of performances or “displays of nudity” that are not to be treated as “sexual entertainment” for the purposes of the licensing regime.

33. The Committee has a concern that these powers may be drawn more broadly than may be required. The powers enable the exemption from licensing of any other premises (apart from sex shops), or descriptions of performance or displays of nudity. The Scottish Government has explained however that the policy intention is to possibly exempt a very limited range and number of premises, performance or display, which might include some types of theatrical or artistic performance. The intention is only to exempt a very limited range and number of premises, etc., if it transpires that they are inadvertently included within the licensing regime. The Scottish Government has explained to the Committee however that policy considerations underlie the approach taken. In particular the precise exemptions that could be required may only become apparent once the new regime is fully operational.

34. The Committee therefore draws the Government’s response on these powers (reproduced in the Annex to this report) to the attention of the Local Government and Regeneration Committee.

Section 68(3) (inserting section 45B of the 1982 Act) – Licensing of sexual entertainment venues- local authority powers

Power conferred on:	a local authority
Power exercisable by:	Resolution/ determination
Parliamentary procedure:	None, but published

Power conferred on: Scottish Ministers
Power exercisable by: Guidance
Procedure: None

Provision

35. The new section 45B of the 1982 Act would require a resolution by a local authority for sexual entertainment venue licensing to have effect in their area. (That is, by applying schedule 2 of that Act as modified by section 45B to their area.) This confers power on the local authority, though not in a form of subordinate legislation. A resolution would not have effect until a specified date (which cannot be less than 1 year after the resolution is passed). It must be publicised either electronically or in a local newspaper.

36. The section also allows a local authority to determine an appropriate number of sexual entertainment venues for their area. The appropriate number so determined must be publicised then the determination must be publicised in a manner considered appropriate by the local authority.

37. Section 45B also provides that local authorities (in carrying out functions conferred by the section), must have regard to any guidance issued by the Ministers.

38. **In relation to the powers in the new section 45B of the 1982 Act (inserted by section 68(3) of the Bill), the Committee is content with the powers conferred on each local authority to issue resolutions and determinations in relation to sexual entertainment venues.**

39. **The Committee considers, in relation to the new section 45B(7), that the Bill should provide that any guidance issued by the Scottish Ministers to local authorities must be published, and a copy laid before the Parliament on issue.**

Section 76 – Ancillary provision

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative where regulations textually amend primary legislation, otherwise negative

40. Section 76 confers powers to make ancillary provisions in “stand alone” regulations. The Scottish Ministers may make incidental, supplementary, consequential, transitional, transitory or saving provision, as the 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*.

41. The Committee queried why those additional words (in italics above) are appropriate, and can be justified by the Scottish Government as properly being added within the ancillary provision.

42. The Scottish Government in its response has indicated that the wording is considered to reflect the fact that a number of enabling powers are proposed in the Bill, to enable the detail of the regulatory schemes to be set out in subordinate

legislation. The wording aims to “allow the flexibility of picking up any necessary ancillary provision that might be identified after the main set of regulations has been made”.

43. The Committee notes initially that those additional words are very unusual in bill ancillary powers. Certain recent bills which contain regulatory powers of potentially wider scope than this bill contain ancillary powers which do not have these words – for instance, the Public Services Reform (Scotland) Act 2010 and the Regulatory Reform (Scotland) Act 2014.

44. The precise effect of the additional words is not wholly clear to the Committee. It appears to the Committee that they could have the effect that ancillary provisions (including supplemental provisions) would be enabled on two levels. First, ancillary provision by regulation is enabled for the purposes of any provision in the Bill. Second, ancillary provision is enabled for the purposes of any provision made in secondary legislation under the Bill. As for example it is proposed in section 37 that regulations could make any further provision for the purposes of Part 1, it appears to the Committee that there may be doubt as to what is enabled by ancillary powers which are for the purposes of, or to give full effect to, such further provision made in regulations. The ancillary power seems to be of uncertain scope, and seems to be potentially very broad.

45. If, on the other hand, the additional words have no further effect on the ancillary powers, then in the Committee’s view it is undesirable that the wording should differ from the comparable ancillary provisions in other bills as mentioned above. The Committee considers that the Scottish Government has not justified why the additional wording in italics should be added for this particular bill.

46. **Section 76(1) confers power to make incidental, supplementary, consequential, transitional, transitory or saving provision, as the 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 Committee notes that those words in italics are unusual, in comparison with recent Acts containing a comparable number of regulatory powers, or powers of potentially wider scope than contained in this bill. (See for example, the ancillary powers in the Public Services Reform (Scotland) Act 2010, the Regulatory Reform (Scotland) Act 2014, and the Reservoirs (Scotland) Act 2011).

47. **The Committee considers that the Scottish Government has not sufficiently justified why those words in italics should be added within the ancillary powers in this particular bill. It therefore invites the Scottish Government to remove these words by amendment at Stage 2.**

ANNEX

Correspondence with the Scottish Government—

On 25 November 2014, the Delegated Powers and Law Reform Committee wrote to the Scottish Government as follows:

Section 36(1) – Power to prescribe fees

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative Procedure

1. Section 36(1) allows Ministers to make provision for the charging of fees by the chief constable in respect of applications under Part 1 of the Bill, and otherwise in respect of the performance of functions by the chief constable under Part 1.
2. The Committee notes that Sections 32 and 35 of the Firearms Act 1968 initially specified the fee levels payable for the grant, renewal, variation etc. of a firearm certificate or shot gun certificate, or for registration as a firearms dealer, though fees are variable by order.
3. **The Committee therefore asks the Scottish Government why a comparable approach is not taken, to specify on the face of the Bill the initial fee levels proposed for an application for air weapon certificate and other functions chargeable by the chief constable in connection with the air weapon licensing regime?**

Section 37(1) – Power to make further provision

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative Procedure

4. Section 37 enables the Scottish Ministers to make further provision for the purposes of Part 1. In particular, this enables further provision for the application and approvals process for air weapon certificates, police permits, visitor permits, event permits, or club approvals. This includes prescribing the mandatory conditions that will attach to certificates, permits, or air weapon club approvals.
5. Specific matters may be prescribed by regulations under section 37(1), as provided for in sections 4(1), 6(1), 7(2), 13(9), 14(2), 15(1), 17(6), 18(2) and (4). Beyond that, section 37(1) enables any further provision for the purposes of Part 1 of the Bill.
6. **The Committee asks the Scottish Government what is enabled by that power to make further provision, which would not (in the absence of such power) be enabled by the ancillary powers to make incidental, supplementary or consequential provisions in sections 75 and 76? How might this power be**

used, beyond prescribing those matters which are set out in those sections 4(1) to 18(4)?

Section 68(3) – Power to specify premises that are not sexual entertainment venues

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative

7. Section 68 creates a new licensing regime for sexual entertainment venues by adding section 45A to the Civic Government (Scotland) Act 1982 (“the 1982 Act”) Section 45A(2) to (7) define what is meant by a “sexual entertainment venue”.

8. The power in section 68(3) of the bill (which adds new section 45A(7)(b) of the 1982 Act) enables the Scottish Ministers to prescribe other types of premises which would not be “sexual entertainment venues.

9. The Delegated Powers Memorandum explains that this power is intended to have a very narrow focus and would be used in very limited circumstances, if sexual entertainment venues are inadvertently caught within the licensing regime in section 68.

10. The Committee therefore asks the Scottish Government:

- **Why it has been considered appropriate for this power to be drawn broadly to enable the exemption of any other premises as specified by order? Why could it not be drawn more narrowly to define the “very limited circumstances” (or range of premises) which might potentially be exempted, and**
- **Why is it not possible to avoid the need for this power by using more appropriate or clearer definitions in the new section 45A of the 1982 Act, to remove the possibility that certain types of venue or premises could inadvertently be caught within the licensing regime? In general terms, what might be inadvertently included?**

Section 68(3) – Power to provide for descriptions of performances or descriptions of displays of nudity which are not to be treated as sexual entertainment

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative

11. New section 45A(11) of the 1982 Act allows the Ministers to prescribe descriptions of performances or “displays of nudity” that are not to be treated as “sexual entertainment” for the purposes of the licensing regime.

12. The Delegated Powers Memorandum explains that this power is also intended to have a very narrow focus and would be used in very limited circumstances, if

certain types of performance are inadvertently caught within the licensing regime in section 68.

13. The Committee asks Scottish Government:

- **Why has it been considered appropriate for this power to be drawn broadly to enable the exemption of any descriptions of performances or descriptions of displays of nudity, as specified by order? Why could it not be drawn more narrowly to define the “very limited circumstances” (or range of performances or displays) which might potentially be exempted, and**
- **Why is it not possible to avoid the need for this power by using more appropriate or clearer definitions in the new section 45A of the 1982 Act, to remove the possibility that certain types of performance or display could inadvertently be caught within the licensing regime? In general terms, what might be inadvertently included?**

Section 68 (inserting section 45B of the 1982 Act) – Licensing of sexual entertainment venues- local authority powers

Power conferred on:	a local authority
Power exercisable by:	Resolution/ determination
Parliamentary procedure:	None, but published

Power conferred on:	Scottish Ministers
Power exercisable by:	Guidance
Procedure:	None

14. The new section 45B of the 1982 Act confers powers by resolution upon a local authority, for sexual entertainment venue licensing to have effect in their area. The authority may resolve that Schedule 2 of the 1982 Act (as modified by section 45B) is to have effect in their area. The section also confers power on a local authority to determine an appropriate number of sexual entertainment venues for their area, which determination must be publicised by the local authority.

15. Section 45B also provides that local authorities (in carrying out functions conferred by the section), must have regard to any guidance issued by the Ministers.

16. The Committee asks the Scottish Government:

- **Why those powers are appropriate, and why it is appropriate for them to be exercised by means of published resolution and determination,**
- **Why the power of Ministers to issue guidance is appropriate, and why there appears to be no provision for the guidance to be published but a resolution or determination by a local authority under the section would be published?**

Section 71 (inserting sections 45D and 45E of the 1982 Act) – Mandatory and standard licensing conditions

Power conferred on: Scottish Ministers (for mandatory conditions)
Power exercisable by: Order
Parliamentary procedure: Affirmative Procedure

Power conferred on: a local authority (for standard conditions)
Exercisable by: Determination
Procedure: None, but published

17. Section 71 (inserting section 45D of the 1982 Act) allows the Ministers to set mandatory conditions that would apply to all licences issued under Part 3 of the 1982 Act. This includes the regime for sexual entertainment venues (inserted by section 69), and sex shops.

18. By inserting section 45E of the 1982 Act, Section 71 also confers a power on a local authority to determine standard conditions to which such licences are to be subject. Any such conditions must be published, and they must be consistent with any mandatory conditions set by Ministers.

19. The Committee asks the Scottish Government:

- **Why has it been considered appropriate that any mandatory conditions set in regulations under section 37 in relation to an air weapons certificate or permit should be subject to Parliamentary scrutiny by the negative procedure, but any mandatory conditions set by regulations in relation to sex shops and sexual entertainment venues would be subject to scrutiny by the affirmative procedure?**
- **Why the powers conferred on a local authority in section 71 (inserting section 45E of the 1982 Act) are appropriate, and why it would be appropriately exercised by informal, published determination?**

Section 76 – Ancillary provision

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative where regulations textually amend primary legislation, otherwise negative

20. Section 76(1) confers power to make incidental, supplementary, consequential, transitional, transitory or saving provision, as the 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 words 'or any provision made under it' expand the scope of the ancillary powers and are unusual, in comparison with recent Acts containing a comparable number of delegated powers, or powers of potentially wider scope than contained in this bill.

21. The Committee therefore asks the Scottish Government why, for this particular bill, that proposed expansion of the ancillary powers has been considered to be necessary?

On 3 December 2014, the Scottish Government responded as follows:

Section 36(1) – Power to prescribe fees

1. “The Committee notes that Sections 32 and 35 of the Firearms Act 1968 initially specified the fee levels payable for the grant, renewal, variation etc. of a firearm certificate or shot gun certificate, or for registration as a firearms dealer, though fees are variable by order. The Committee therefore asks the Scottish Government why a comparable approach is not taken, to specify on the face of the Bill the initial fee levels proposed for an application for air weapon certificate and other functions chargeable by the chief constable in connection with the air weapon licensing regime.”

2. When the Firearms Act 1968 was introduced it created a licensing regime with a limited range of fees, and it was common at that time to set fees on the face of primary legislation. In the intervening 46 years the legislation has been amended and expanded in various ways, and a number of new fees have been introduced. For example, rifle club approvals, visitor permits and museum authorities have all been introduced and all attract a fee. Opportunities to reduce fees in certain circumstances, such as the coterminous grant of firearm and shotgun certificates, have also been created.

3. The Air Weapons and Licensing (Scotland) Bill seeks to create a new tariff of fees which broadly matches the existing fees regime. In line with more modern practice, the Scottish Government considers it appropriate to set those fees in secondary legislation. This provides the flexibility to adjust the fees as required, while striking a balance between ensuring sufficient parliamentary scrutiny and making the most effective use of valuable parliamentary resources. As stated in the Delegated Powers Memorandum at paragraph 22, fees are typically set in secondary legislation subject to the negative procedure, for example fees set under section 25 of the Marine (Scotland) Act 2010 or section 136 of the Licensing (Scotland) Act 2005. In addition to this general approach, the Bill was drafted and introduced at a time of uncertainty with regard to possible changes to the existing firearms regime. On 27 November 2014 the Home Office published a consultation paper setting out a new tariff of proposed fees. This consultation, and consideration of the outcomes, will proceed in parallel with the progress of the Air Weapons and Licensing (Scotland) Bill and its outcome is likely to impact on decisions by Scottish Ministers as to the level of fees to be set for air weapons matters. This again means that it would be more appropriate to set the initial fee levels in secondary legislation.

4. A copy of the Home Office consultation may be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/379787/FirearmsFeesCon.pdf

Section 37(1) – Power to make further provision

- **“The Committee asks the Scottish Government what is enabled by that power to make further provision, which would not (in the absence of such power) be enabled by the ancillary powers to make incidental, supplementary or consequential provisions in sections 75 and 76? How might this power be used, beyond prescribing those matters which are set out in those sections 4(1) to 18(4)?”**

5. As paragraph 24 of the Delegated Powers Memorandum to the Bill notes, section 37(1) is a broadly framed power that allows the Scottish Ministers to make the provision required to flesh out the air weapons licensing regime. Beyond prescribing specific matters for the purposes of sections 4(1), 6(1), 7(2), 14(2), 15(1), and 18(4), section 37(2) indicates what further provision might be made using this power (for example prescribing the form and content of certificates, permits and approvals granted under Part 1 and the conditions which may be attached).

6. The intention is to use these powers to set out the detail of the processes and procedures which will underpin the licensing regime, and to update these as licensing practices evolve to become more efficient. For instance, it is envisaged that firearms licensing processes generally will, in due course, move to allow for applications to be made and processed on-line, along with the associated payments of fees etc. While development is at an early stage, the powers set out in section 37 would enable the Scottish Ministers to specify requirements without the need for new primary legislation.

7. The Scottish Government considers it appropriate to provide for this power within the context of Part 1 of the Bill as it is specific to air weapons regulation. This makes it clearer for users of the legislation, and those affected by it, that the licensing regime will be underpinned by further regulatory provision. This broadly mirrors the approach taken in the existing firearms legislation where such regulatory detail is set out in the Firearms Rules 1998 as amended (with which many of those affected by Part 1 will be familiar). Regulations made under section 37 are likely to follow the Firearms Rules closely. They will, however, be subject to the negative procedure, whereas the Firearms Rules are set by the Secretary of State without being subject to any formal parliamentary procedure.

8. By contrast, the powers provided in sections 75 and 76 apply for the purposes of the whole Bill. Although section 75(1) provides for the Scottish Ministers to make ancillary provision, it is not a stand-alone power. It allows incidental, supplementary and consequential etc. provision to be made in connection with the exercise of a particular regulation-making power under the Bill, like section 37. Given the breadth of the power in section 37(1), the incidental and supplementary aspects of section 75(1) may be less significant than for other delegated powers under Part 1 (for example, section 2(4)). However, it is envisaged that it will enable the Scottish Ministers to make ancillary provision to deal with, say, any missed consequential amendments. Where any ancillary provision for the purposes of (or in consequence of) Part 1 requires to modify an enactment, the Scottish Ministers may exercise the general stand-alone power in section 76.

Section 68(3) – Power to specify premises that are not sexual entertainment venues,

- **“Why it has been considered appropriate for this power to be drawn broadly to enable the exemption of any other premises as specified by order? Why could it not be drawn more narrowly to define the “very limited circumstances” (or range of premises) which might potentially be exempted, and**
- **Why is it not possible to avoid the need for this power by using more appropriate or clearer definitions in the new section 45A of the 1982 Act, to remove the possibility that certain types of venue or premises could inadvertently be caught within the licensing regime? In general terms, what might be inadvertently included? “**

Section 68(3) – Power to provide for descriptions of performances or descriptions of displays of nudity which are not to be treated as sexual entertainment

- **“Why has it been considered appropriate for this power to be drawn broadly to enable the exemption of any descriptions of performances or descriptions of displays of nudity, as specified by order? Why could it not be drawn more narrowly to define the “very limited circumstances” (or range of performances or displays) which might potentially be exempted, and**
- **Why is it not possible to avoid the need for this power by using more appropriate or clearer definitions in the new section 45A of the 1982 Act, to remove the possibility that certain types of performance or display could inadvertently be caught within the licensing regime? In general terms, what might be inadvertently included? “**

9. The Scottish Government anticipates that the number of premises that will be subject to licensing is very limited – approximately 20 across Scotland. We do not expect the power to exempt particular types of premises to be either extensively used or required beyond ‘very limited circumstances’. The exact circumstances where such an occurrence might arise are hard to define in advance of the scheme becoming fully operational with licensing authorities actually using the regime and making decisions and businesses responding to the new environment in terms of how they conduct business.

10. In general, we would be most concerned if theatrical and other forms of artistic performance were caught by the legislation. Whilst we feel the current definitions mean this is unlikely, a delegated power to create specific exemptions provides reassurance that emerging problems can be dealt with. To achieve this, a power is taken to exclude certain types of premises from licensing and similarly to exclude particular displays of nudity.

Section 68 – Licensing of sexual entertainment venues – local authority powers

- **“Why those powers are appropriate, and why it is appropriate for them to be exercised by means of published resolution and determination,**
- **Why the power of Ministers to issue guidance is appropriate, and why there appears to be no provision for the guidance to be published but a resolution or determination by a local authority under the section would be published?”**

11. The Committee also asked about the new section 45B of the 1982 Act which confers powers by resolution upon a local authority, for sexual entertainment venue licensing to have effect in their area. The authority may resolve that Schedule 2 of the 1982 Act (as modified by section 45B) is to have effect in their area. The section also confers power on a local authority to determine an appropriate number of sexual entertainment venues for their area, which determination must be publicised by the local authority.

12. The overarching view of the Scottish Government is that licensing is best dealt with locally. Many of the civic licensing regimes from window cleaner licensing to second hand dealer licensing requires a positive decision by the local authority that licensing is appropriate for their area. Additionally, broad discretion is provided so that they can determine the conditions under which licensing takes place with reference to providing exclusions and exemptions. In that spirit, the new regime provides maximum discretion to local licensing authorities to make the decisions that are right for their area, including a broad power to control overall numbers of sexual entertainment venues by setting a ‘desirable number’ that would limit proliferation and over provision. In terms of consistency with other civic licensing regimes and in the interests of transparency it is required that these decisions are made by resolution of the council and that they are published. It is reasonable that steps are required to ensure that businesses affected by licensing should be made aware of licensing requirements.

13. The Scottish Government anticipates that guidance will be necessary to assist in the transition to the new licensing regime. In accordance with current practice, any guidance would be drawn to the attention of licensing clerks and to Parliament and would be published on the Scottish Government website.

Section 71 – mandatory and standard licensing conditions

- **“Why has it been considered appropriate that any mandatory conditions set in regulations under section 37 in relation to an air weapons certificate or permit should be subject to Parliamentary scrutiny by the negative procedure, but any mandatory conditions set by regulations in relation to sex shops and sexual entertainment venues would be subject to scrutiny by the affirmative procedure?”**

- **Why the powers conferred on a local authority in section 71 (inserting section 45E of the 1982 Act) are appropriate, and why it would be appropriately exercised by informal, published determination?”**

14. Mandatory conditions for air weapon certificates, which will be set out in regulations made under section 37, are likely to be purely administrative. By way of example, the mandatory conditions for a section 1 firearms certificate issued under the Firearms Act 1968 require the certificate holder to: sign the certificate in ink; inform the police of any theft, loss or destruction of firearms or ammunition; inform the police if they change address; and store and use the firearms and ammunition securely. Mandatory conditions on air weapon certificates are likely to follow this model. Changes to these mandatory conditions are likely to be similarly administrative and functional, and it would not be the best use of Parliament's time to consider such minor, detailed amendments.

15. Under section 71 mandatory conditions may be prescribed by order for Part 3 licences (sex shops and sexual entertainment venues) of the Civic Government (Scotland) Act 1982. Any such order would be subject to the affirmative procedure. This is primarily because there already exists in 1982 Act sections 3A and 3B. These sections are replicated by 45D and 45E inserted by section 71. The existing sections permit Scottish Ministers to by order prescribe mandatory conditions for Part 2 licences under the 1982 Act. Such an order is to be subject to affirmative procedure. Therefore section 71 has likewise adopted the requirement for affirmative procedure to ensure that there is consistency throughout the 1982 Act with regards to similar provisions related to Part 2 and Part 3 licences.

16. The power provided in 45E to allow local authorities to determine standard conditions for Part 3 licences (sex shops and sexual entertainment venues) is appropriate in that it offers local licensing authorities the means to conveniently impose a standard condition across all similar premises throughout its areas rather than having to individually vary the conditions on a case by case basis for each such premise. This power replicates that existing in section 3B of the 1982 Act, which is applicable in respect of Part 2 licences. It is considered that the local authority is best placed to determine how details of standard conditions applicable to particular licence types should be publicised and disseminated.

Section 76 – ancillary provision

- **“The Committee therefore asks the Scottish Government why, for this particular bill, that proposed expansion of the ancillary powers has been considered to be necessary?”**

17. The scope of this power is broad in reflection of the fact that the Bill confers a number of enabling powers to enable the detail of the regulatory schemes to be set out in subordinate legislation. Given this, it is considered necessary that we have sufficient flexibility to develop over time the detail of the various regulatory regimes. It is important to bear in mind that the section 76(1) power is a stand-alone power, unlike section 75(1) (b) which only allows ancillary provision to be included in substantive regulations under a particular power. Therefore section 76(1) allows the flexibility of picking up any necessary ancillary provision that might be identified after the main set of regulations has been made.

Local Government and Regeneration Committee

Report from the Finance Committee on the Air Weapons and Licensing (Scotland) Bill

The Committee reports to the lead committee as follows—

Introduction

1. The [Air Weapons and Licensing \(Scotland\) Bill](#) (“the Bill”) was introduced on 14 May 2014. Its Financial Memorandum (FM) can be found at page 41 of the accompanying [Explanatory Notes](#).
2. The Committee received [14 responses](#) to its call for evidence on the FM, around half of which were from local authorities and licensing boards. Responses were also received from organisations representing air weapons users and vendors and from the Scottish Taxi Federation.
3. At its meeting on 4 February the Committee took evidence from the Scottish Government Bill Team. The Official Report of the evidence session is available here: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29824.aspx>

The Financial Memorandum

4. The FM states that—

“The purpose of the Bill is to protect public safety by creating a new licensing regime for air weapons and to improve aspects of locally led alcohol and civic government licensing in order to preserve public order and safety, reduce crime, and to advance public health. It will give local communities the power to regulate sexual entertainment venues in their areas.”

5. In oral evidence the Bill Team suggested that—

“Any additional costs associated with the bill should be read against the wider cost to society of the activities that are regulated or, indeed, the risks associated with the regulated behaviour.”¹

6. The FM sets out the Bill’s estimated financial implications under the following headings—

- Part 1 – Air Weapons
- Part 2 – Alcohol
- Part 3 – Civic Licensing
 - Taxis and private hire cars
 - Metal dealers

¹ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 23](#)

- Public entertainment venues
- Sexual entertainment venues
- Miscellaneous and general.

Potential for Legal Challenges

7. Beyond providing comments on specific parts of the Bill, several respondents highlighted the potential for legal challenges and the FM's expectation that any additional costs would be recouped through the charging of fees in written evidence.

8. Dumfries and Galloway Licensing Boards (DGLB) for example, stated that—

“Licensing authorities should feel confident in their decisions; they should not be put in a position of feeling the need not to make a decision on the grounds that an appeal is likely and that defending the appeal would impact on operational budgets. This situation could arise with:-

- the introduction of overprovision of Private Hire Vehicles;
- withdrawal of the exemption for “contract” vehicles;
- the introduction of the giant Metal Dealers into the licensing system by withdrawal of Exemption Certificates;
- pressure to start Public Entertainment licensing to cover theatres and for amenity including other forms of entertainment.”

9. In response to suggestions from the Committee that “the cost of appeals had not been properly factored in,” the Bill Team stated that whilst the possibility of an appeal existed, the likelihood of it being successful was “a different matter” which could, like the costs of an appeal, “be ascertained only on a case-by-case basis.”²

10. The Committee acknowledges the difficulty in providing concrete estimates of costs resulting from potential appeals but emphasises that Standing Orders require FMs to provide best estimates of costs, their timescales and margins of uncertainty.

Part 1 – Air Weapons

11. The Bill introduces a licensing regime for air weapons which will be administered by Police Scotland. The FM states that “there will be a long lead in time for full commencement” to ensure maximum awareness of the legislative changes and to allow for unlicensed air weapons to be handed in before their possession becomes a criminal offence. Those who hand in unlicensed air weapons will not be entitled to compensation.

12. The FM states that this part of the Bill is broadly based on the licensing of more powerful weapons through the Firearms Act and emphasises that, as such, “much of the infrastructure, knowledge and experience required” is already in place. As the licensing authority, the majority of costs relating to setting-up and maintaining the licensing service are expected to fall on Police Scotland.

² [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 32](#)

13. The FM anticipates that certain central costs will fall on the Scottish administration in two broad areas. The first relates to the provision of funding to help meet initial set-up costs whilst the second relates to informing the public about the new regime.

Applications and fees

14. The Bill provides for Police Scotland to charge a fee when an application is made in order to help offset the costs. The fee will be charged regardless of whether the application is successful or not and the sums payable will be set out in secondary legislation.

15. The BASC noted that the Government supported the notion that “fees would be payable regardless of whether or not a certificate is granted.” The BASC did not support this approach, noting that it was not currently the case with regard to applications for firearms or shotgun certificates.

16. SARPA also disagreed with this proposal and recommended that “there should either be no fee or a very low fee to encourage maximum participation and it should be no more than £20.”

17. A table setting out possible fees for individual applications is provided after paragraph 104 of the FM. It contains examples of fees “set at or close to” current firearms fee levels as well as indicative fee levels based on the estimated costs of processing applications. The table indicates possible fees of £50 or £85 respectively in relation to the granting of airgun certificates.

18. The FM assumes a total of 500,000 air weapons in Scotland as the basis for its estimates but considers that the number of new applications in the first year will be significantly lower than this figure. The underlying reasons for this assumption include the likelihood that a considerable number of air weapons are likely to be inoperative or unused and that significant numbers of those who do use them will possess more than one air weapon and/or already hold certificates for more powerful firearms. The FM uses totals of ten, twenty and thirty thousand new applications as the basis for its estimates and describes the rationale behind its assumptions and estimates in paragraphs 46 to 54.

19. The Scottish Air Rifle and Pistol Association (SARPA) agreed that there could be around 500,000 air weapons in Scotland but suggested that in the first licensing round—

“given the number of farms and smallholdings who would own airguns as their primary pest control option, we would expect that a more realistic total licence number would be between 100,000 and 150,000 inclusive of the estimated 40,000 who also hold firearms certificates at the moment.”

20. When asked to expand upon the FM’s figures in oral evidence, the Bill Team explained that they related to “brand-new applicants to the system who do not have more powerful weapons.” The Bill Team also pointed out that certificates did not

relate to single air weapons but that “one, two or any number” could be held on a single certificate.³

21. The FM states that the Government proposes that the new system “will not be unduly burdensome.” As such, Police Scotland is not expected to require additional staff (over and above those already employed to service the current firearms licensing regime) in order to process new applications although the FM acknowledges that there are likely to be “peaks and troughs” in the cycle.

22. The FM expects that “extensive, detailed background checks and home visits will be necessary only in a very small proportion of cases” and assumes that only 2% of applications would require a more detailed process including a home visit whilst 98% would follow the standard process. On average, the FM suggests that the cost of processing a new air weapons application would be around £85.55.

23. On this basis the FM estimates the total processing costs for new applications to be £855,500, £1,711,000 and £2,566,500 respectively over the range of ten, twenty and thirty thousand new applications. However, it states that these costs “would be spread across the normal five-year licensing period” and provides a table which sets out the estimated annual profile of application costs over the five years from 2015-16 to 2020-21.

24. The FM also estimates that there would be 40,000 applications over the same period for coterminous certificates covering both air weapons and more powerful firearms. The additional costs are estimated at £10 per application which, it is anticipated, would be fully recovered.

25. The British Association for Shooting and Conservation (BASC) accepted that the cost of processing applications from existing certificate holders would be “greatly reduced” as the authorities would already hold much of the required information. However, it pointed out that this did not mean that the “good reason” would be known or that the applicant would automatically satisfy the criteria for an air weapons license, meaning the processing of such applications might not be as straightforward as suggested by the FM.

26. SARPA stated that it felt the FM “may have vastly underestimated the true full cost of processing applications and renewals for certificate applications.”

27. The BASC stated in its response to the Government’s original consultation that “the cost that will be associated with the introduction of an air weapon licensing scheme will be very high” and that it would be “hugely disruptive to the already over-stretched Firearms Licensing administrations in Scotland.”

28. The BASC went on to state that “the recommendations that we made relating to the financial costs have largely been ignored and the assumption that most applications for an air weapon certificate (98%) will be dealt with without the need for further inquiry is, we feel, misleading.”

³ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 28](#)

29. Expanding on this, the BASC stated—

“The assumption is made that 98% of applications will only require 1.2 hours of processing by administrative staff, with no enquiry officer involvement. Given that there is a “good reason” requirement for obtaining an air weapon certificate we find it hard to believe that 98% of those applying for a certificate will be able to provide a “good reason” that will be processed (and confirmed) within 1.2 hours and will not require enquiry officer investigation.”

30. The BASC pointed out that a large proportion (perhaps 50%) of applicants would give informal target shooting in their own gardens as their good reason. However, the Policy Memorandum stated that “Ministers do not believe that target shooting in such an environment (in gardens or other urban or highly populated settings) should generally be acceptable unless the applicant can satisfy the Chief Constable as to the safety and other arrangements in place to ensure that shooting can be carried out without risk to the public”.

31. On that basis, the BASC suggested that up to 50% of applications would require a “detailed process including home visit” as opposed to the 2% estimated in the FM. It went on to state that—

“This would result in the average cost of each application rising to £118.90, an increase of almost 40%. This would mean that the cost, spread over five years, for 10,000 applications would be £1,189,000 and for 30,000 applications £3,567,000.”

32. SARPA agreed with the BASC that the assumption that most applications would be dealt with without the need for further inquiry was “unrealistic” as it expected that site visits would be required in a significant proportion of cases. It also suggested that—

“Until the requirements for good reason and level of checks are clearly explained we doubt the estimated costs are truly reflective of the full financial burden.”

33. The Gun Trade Association (GTA) drew attention to what it saw as “unanswered questions concerning the definition of ‘fit person’, ‘good reason’, ‘conditions’ and further legislative queries”, stating that “until these are answered, the GTA feels that the estimated costs and savings set out in the Financial Memorandum are unable to be verified.”

34. When asked to expand on the basis for its figures the Bill Team stated that there were an estimated 60,000 to 65,000 existing certificate holders for other types of firearms and it was expected that many of them would also have air weapons. As “many of the security issues” would already have been looked at in licensing those holders...a large number of people would already be taken out of the system.”

35. The Bill Team further stated that there would be “a relatively light touch” for new applicants and Police Scotland had told the Government that a “disclosure-style

arrangement, under which they will check an applicant's basic criminal history should suffice for the majority of applicants."⁴

36. On that basis, the Bill Team confirmed that, whilst there may be some variance as the legislation took effect, Police Scotland was of the view that "2 per cent is the right level for a full home visit and security check."⁵

37. The lead committee may wish to seek further detail of how the FM's expected number of home visits corresponds to the BASC's suggestion that a large proportion of applicants' "good reason" will be informal target shooting in their gardens.

38. The Bill Team also explained that the figure of £85.55 for processing a new air weapons licence application had been based on figures used by the Home Office and the Association of Chief Police Officers. The Bill Team further noted that the BASC had been part of the working group that agreed those figures and suggested that there was "a generally accepted basis for the background workings behind the figures." However, the Bill Team did confirm that the figures would be reviewed "later in the year as we start to look at fee levels."⁶

Enforcement

39. The FM states that "it is not the intention that Police Scotland should pursue unlicensed air weapons as a significant new priority". As such, it states that "prosecutions for licensing offences are therefore likely, in the majority of cases, to be pursued in parallel with other offences."

40. The FM states that "the estimated maximum additional enforcement, testing and reporting costs" to be incurred by Police Scotland would amount to £90,000 per annum (an estimated 500 cases per year at £180 per case).

41. The BASC questioned whether this figure implied that the Police expected to seize 500 weapons as a result of non-compliance and asked how this figure corresponded to FM's suggestion that the courts might have to deal with between 50 and 100 new summary cases per year and between two and five solemn proceedings.

42. In response to this query, the Bill Team explained that it was likely that the police may find air weapons in the course of investigating other crimes or complaints. Under the new legislation, the police would be able to seize and test air weapons "as part and parcel of another investigation." Therefore—

"The figure of 500 tests relates to the number of air weapons that could be taken in such investigations but there might be only 50 to 100 brand-new prosecutions simply for an air weapons licensing offence."⁷

43. The BASC noted that the FM did not appear to identify any possible costs arising from appeals against refusals to grant a certificate or revocation of one. The

⁴ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 26](#)

⁵ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 26](#)

⁶ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 26](#)

⁷ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 28](#)

Bill Team acknowledged this omission in oral evidence and undertook to look at the issue “and, perhaps, revisit it”.⁸ However, the Bill Team did confirm that whilst it was difficult to estimate the number of appeals, the proposed “light-touch system” along with the “very small” number of refusals under the existing firearms regime led it to expect there would not be many.

44. The lead committee may wish to invite the Cabinet Secretary to confirm whether the Government intends to revisit the issue of possible costs arising from appeals.

Shooting clubs

45. The Bill sets out a framework for the inspection and approval of shooting clubs’ premises which will be supplemented by detailed guidance. The FM states that a fee to help meet the costs of the approval process will be payable by the club but expects the overall impact of this to be “very small”.

46. The GTA stated that—

“There will certainly be extra costs associated with the Bill, in particular with requirements from secondary legislation on issues such as security, storage, club memberships, the setting up of clubs, events and recreational facilities. Until the Bill, is finalised, no costs for these issues can be estimated.”

47. SARPA highlighted the potential increase in costs for airgun clubs and suggested that many would have to move from small, low cost sites to larger commercial sites in order to fulfil the necessary criteria and accommodate the expected increase in membership.

48. SARPA highlighted its “genuine concern” that additional costs might result in some clubs being forced to close if they could not afford to upscale and improve their facilities to cope with demand from “private shooters forced to join clubs to maintain their right to shoot.”

49. When asked whether it was likely to be the case that law-abiding citizens might grudgingly pay the licence fee, whilst those at whom the Bill was mainly targeted would not bother to do so, with the result that the Bill would only impact adversely on shooting clubs and their members, the Bill Team agreed that there would be an impact on such clubs. However, whilst the fee had yet to be set, it was expected to be “a relatively small price compared with the cost of a club or with the amount that somebody pays for some other interest.”⁹

Compensation

50. SARPA also noted that some enthusiasts whose license applications were refused may be forced to surrender what is currently legally held (and sometimes expensive) equipment but may not receive any compensation for doing so.

51. When asked whether the absence of compensation might make it less likely that air weapons would be handed in, the Bill Team explained that its expectation

⁸ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 29](#)

⁹ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 27](#)

was that there would be a high number of low-value weapons in lofts or “at the back of people’s garages.” As the legislation did not amount to a ban on air weapons and people would be free to sell them on privately the policy position was that compensation would not be provided.

Part 2 – Alcohol Licensing

52. The Bill contains nineteen separate provisions in relation to alcohol licensing and the FM states that “their overall financial impact is likely to be close to neutral.”

53. The FM states that the Bill will “provide Licensing Boards with powers to consider a broader range of information when making licensing decisions” including the reintroduction of a “fit and proper” test in relation to the issue or continued holding of a premises or a personal licence. The FM also states that the Government’s intention is to make the system self-funding and the Bill will require Licensing Boards to be transparent about their costs “to demonstrate that the fees they set are based upon cost recovery.”

54. The FM states that “local authorities will continue to bear the costs of administering the licensing process, and they recoup their costs through the licensing fees.” The FM notes that “Licensing Boards are empowered to set their own fees as long as they do not exceed the maximum limits.”

55. However, West Dunbartonshire Council (WDC) stated that its calculations showed that it was—

“unable to recoup its costs. The legislation sets a maximum fee which licensing boards can charge and, even though ours is charging the maximum fee, we incur an annual deficit of almost £89,000. West Dunbartonshire Licensing Board is in fact only able to recover 52.8% of the expenditure to administer the licensing regime. It is therefore very misleading to suggest that licensing boards have the power to ensure that licensing is self-funding.”

56. The FM notes that the recent Review of Alcohol Licensing Fees carefully considered issues relating to fees “but determined that there was insufficient information to determine whether Licensing Boards were recovering their costs, or making a surplus/deficit”. As such it was not possible for the review to make firm recommendations on the level of fees and it recommended instead that Licensing Boards be put under a statutory duty to report on their income and expenditure.” The Bill requires the publication of an annual financial report and the FM states that any additional costs arising from this “should be minimal.”

57. South Ayrshire Council (SAC) questioned the form and purpose of such reports and stated that it was “not wholly accurate” to say that fees are based on cost recovery—

“In our view a significant level of cross-subsidy exists within the licensing fee structure, where some aspects generate a surplus of income while others bear a net cost. This would become clear in the publication of an annual financial report.”

58. WDC suggested that such reports might be beneficial to it in publicising the deficit it incurred. Noting that expenditure might be calculated differently by different local authorities, WDC suggested that—

“It would be helpful if the Scottish Government was to publish guidance for licensing boards (and councils for civic licensing) that sets out the wide range of costs that boards and councils should be recovering e.g. employee costs (incl. national insurance and superannuation), managerial costs, legal and committee administration costs, overheads and central support costs.”

59. COSLA also commented on the reports, stating—

“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.”

60. In oral evidence, the Bill Team explained that—

“The idea was to finesse and improve the existing legislation, not to impose substantial additional burdens on licensing boards. On that basis, we felt that it was reasonable to say that the costs would be broadly neutral.”¹⁰

61. The Bill Team went on to state that it would be “sympathetic to the idea of amending the existing limits on the licensing fees,” but had undertaken “detailed work in reviewing them and got scant response from the local authorities”¹¹

62. On that basis, the Bill Team felt that the Government did not currently have enough evidence on which to increase fee levels.

63. However, the Bill Team explained that—

“Inserting a statutory duty on local authorities to report on their income and expenditure will give us a basis on which to understand all the local authorities’ costs—in relation to both expenditure and time—in order to allow the fees to be increased, if that is felt to be appropriate.”¹²

64. SAC also expressed “particular concerns” that the fee for occasional licenses had not been reviewed, stating that the current fee was insufficient to cover the cost of work involved in processing a licence application.

65. In response to this point, the Bill Team confirmed that its fees review had found the current occasional licence fee limit of £10 to be insufficient. It further confirmed that as the current fee level was set by secondary legislation and was outwith the

¹⁰ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 30](#)

¹¹ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 30](#)

¹² [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 30](#)

scope of the Bill, “we feel that we can increase the occasional licence fee without extensive further work, and fairly soon.”¹³

66. The FM states that it is difficult to estimate any additional costs for Licensing Boards as a result of the “fit and proper person” test because “it largely depends on the manner in which they deploy these powers within the exercise of their existing functions.” However, the FM anticipates that “any additional cost is likely to be minimal.”

67. DGLB stated that the Bill’s proposals appear to foster better use of resources, “at least at first flush”. However, it went on to draw attention to a number of issues relating to the revocation of personal licences which, it considered, would lead to increased uncertainty and the potential for more hearings and appeals resulting in the need for additional resources. In particular, the Board suggested that “drawing on the licensing objectives within the ‘fit and proper person’ criterion would likely lead to complicated and lengthy appeals.”

68. Commenting on the potential for appeals against decisions made under the “fit and proper person” provisions, DGLB stated that—

“Boards should feel confident in their decisions; the Boards should not be put in a position of feeling the need not to make a decision on the grounds that an appeal is likely and that defending the appeal would impact on operational budgets.”

69. Glasgow City Council Licensing Board (GCCLB) echoed this point stating that, in its view—

“the current drafting of the bill creates uncertainty as to the scope of the test and, unless corrected, will expose Boards to increased litigation costs until case law provides necessary judicial clarity.”

70. However, in oral evidence, the Bill Team stated that the fit and proper person test was not a completely new concept and had been framed—

“with reference to the overarching licensing objectives for the Licensing (Scotland) Act 2005. Those objectives are broadly framed and put certain constraints on decisions that the local authority can make. Were local authorities to ignore those constraints, they would still be bound by the overall scope of the bill.”

71. Both DGLB and GCCLB drew attention to the *Brightcrew vs. City of Glasgow Licensing Board* decision which found that a Board may only have regard to matters flowing directly from the sale of alcohol and should not seek to regulate other activities.

72. The Bill Team, however, stated that the Brightcrew decision related to a board making decisions that went beyond the scope of the Bill. it further stated that—

¹³ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 30](#)

“Referencing the fit-and-proper-person test to the overarching licensing objectives ensures that decisions that the board makes are constrained within the scope of the 2005 Act.”¹⁴

73. The lead committee may wish to seek confirmation from the Cabinet Secretary of whether the Government intends to increase the current occasional licence fee limit of £10 via secondary legislation and, if so, of the proposed timescales for doing so.

74. The Committee welcomes the proposed introduction of a statutory requirement for Licensing Boards to report on their income and expenditure. The lead committee may wish to seek clarification of the expected timescales for reviewing current licence fee limits following publication of these reports.

Part 3 – Civic Licensing

75. The FM states that the Bill “seeks to improve the effectiveness of the civic government licensing schemes administered by local authorities” in respect of a number of topics.

Taxis and private hire cars

76. The FM states that the Bill “will give local authorities the power to refuse to grant private hire car licences on grounds of overprovision.” It also extends the testing of taxi drivers to include private hire car drivers and removes the “contract exemption”, bringing hire cars used on contract work into the licensing regime.

77. The FM notes that licensing authorities will incur costs as a result of having to develop a policy in relation to overprovision. This would likely require a public consultation which would result in costs to the authority. The FM states that the costs of such a consultation could “vary significantly” depending on its methodology, but gives an indicative figure of £10,000.

78. The power to refuse a private hire licence on the grounds of overprovision is discretionary although the FM suggests that if a local authority chose to undertake an assessment of private hire services, it might incur costs of £15,000 to £20,000 every three years. These costs would be recouped through license fees but the FM does not expect the majority of licensing authorities to undertake such assessments, instead carrying them out only where there is a perceived problem of overprovision.

79. However Glasgow City Council Licensing Authority (GCCLA) suggested that “it would be extremely complex to measure demand in the private hire sector” and that “any model used to make the necessary assessment (and likely to conduct future ongoing assessments) would require to be developed by a specialist third party.”

80. SAC estimated the cost of assessing overprovision to be “in the region of £30,000 to £50,000 on a tri-annual basis.” It went on to state that “as this could result in legal challenges, it is a policy decision unlikely to be adopted by SAC.”

¹⁴ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 34](#)

81. SLC and DGLB agreed with this perspective, with SLC suggesting that the costs in the FM “would be a minimum figure” and estimating that such an assessment would cost it “in excess of £20,000” whilst DGC stated that these costs “appear low”.

82. The Scottish Taxi Federation (STF) stated that the FM had “got things badly wrong” and questioned how the FM’s estimate had been reached as no suitable methodology or measuring tool currently existed. It further stated that it would be “difficult if not impossible” to devise such a tool and that it would therefore be “equally difficult to quantify the cost of such a measurement tool assuming it is possible.”

83. The STF further stated that the FM’s example of measurement of significant unmet demand (SUD) related to demand for taxis as opposed to private hire cars and stated that such SUD surveys “can and do cost more than the £15,000 to £20,000 suggested.”

84. In response to questioning from the Committee, the Bill Team acknowledged that at present there was no equivalent test for private hire cars and explained that the figure in the FM (based on work by Napier University to assess unmet demand for taxis) was provided by way of example.

85. The Bill Team went on to confirm that any assessment of unmet demand for private hire cars would be a “completely new test” and it had “not yet devised a procedure to determine what the appropriate demand would be.” However, the Bill Team confirmed that it would be happy to “work with local licensing authorities and relevant stakeholders to develop an appropriate methodology.”¹⁵

86. Whilst accepting that the figure of £15,000 “might be on the low side” for larger authorities such as the City of Edinburgh or Glasgow City Council, the Bill Team also stated that, a lot of local licensing authorities have very small numbers of private hire cars and would therefore incur lower costs as a result of any assessment of unmet demand.

87. The FM also notes that the Bill might result in greater numbers of court challenges to refusals to grant a licence. However, as the Government expects any costs to be recovered from licence holders through fees, the FM states that the overall cost impact on local authorities “should, therefore, be neutral.”

88. The FM acknowledges that individuals and businesses may incur additional costs through possible increases to fees. New applicants who are refused a licence would lose the money spent on their application and could incur further costs (for example, in legal fees) should they choose to challenge the decision.

89. The STF highlighted the potential impact on its members stating—

“We therefore, do not accept that the anticipated cost of court challenges to the question of over provision, which in our view are more likely as a result of

¹⁵ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 31](#)

the weakness in the legislation, should simply be passed back to licence fees.”

90. The STF went on to suggest that “licence holders are in effect being punished for a system that the Scottish Government acknowledge in advance, is more likely to be challenged.”

91. When asked what assessment it had conducted on whether the legislation might result in increased licence fees, the Bill Team stated that this was difficult to gauge as overprovision in relation to private hire cars was a discretionary power. However, the Bill Team noted that the evidence did not appear to indicate that local authorities were keen to use the additional power and confirmed “If local authorities decide not to use it, no additional cost will be incurred.”¹⁶

92. When asked whether, in the event that a local authority chose to use the power, the associated costs would be charged back to private hire operators through licence fees or whether they would be charged through the licensing regime in general, the Bill Team was unable to confirm which was the case, stating—

“I am not sure whether local authorities restrict the cost of that to the existing taxis or whether they spread it across the private hire regime. I suspect that it is really an issue for the local authority to decide on.”¹⁷

93. The Committee welcomes the Bill Team’s commitment to “work with local licensing authorities and relevant stakeholders to develop an appropriate methodology” in respect of assessing unmet demand for private hire cars. The lead committee may wish to seek further detail regarding the Government’s proposals for doing so.

94. The lead committee may wish to seek clarification of whether any associated costs would be expected to be recouped from private hire car operators or from the licensing regime in general.

Public entertainment venues

95. The FM states that the Bill will abolish “Theatre Licenses” and transfer theatres to “a lighter touch” licensing scheme in order to afford greater flexibility to local licensing authorities. Local authorities are able to charge reasonable fees to cover their costs so the impact of the Bill on them is expected to be neutral.

96. The FM states that “the proposal represents a decrease in regulatory burden overall” as a discretionary regime will allow a flexible approach to be taken. The FM points out that there is “wide variation in licensing fees from one authority to another” and notes that the cost of a public entertainment licence “may be less or more than that currently paid.”

97. DGC stated that those authorities not currently licensing places of public entertainment would need to undertake a “substantial and detailed process” to assess whether there is a need to licence theatres as places of public entertainment.

¹⁶ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 36](#)

¹⁷ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 36](#)

It further stated that those that already do would incur “significant press publication fees for statutory notices if the authority’s resolution is to be widened to include theatres.”

98. GCCLA agreed with this point suggesting that “there will be costs associated with the amending and publishing of the public entertainment resolution.” It urged the Government to introduce “provisions to allow the necessary amendment to the resolution to be expedited” which, it suggested, would “reduce the costs to theatre owners etc.”

99. When asked how the “decrease in regulatory burden” could be reconciled with additional costs in some areas, the Bill Team explained that the decreased regulatory burden would benefit theatres themselves which could apply for a single licence instead of both a theatre licence and a public entertainment licence which some might currently hold.

100. In response to GCCLA’s suggestion that the nine-month period between a local authority passing a resolution and it coming into force should be expedited, the Bill Team explained that, whilst it was “not especially wedded to that period”, it was reasonable for some time to elapse before an announcement comes into force.

101. The Bill Team confirmed that it would not expect “a substantial and detailed process to be required”, in respect of theatres due to the “strong assumption that they should fall under public entertainment licensing”.¹⁸

102. Whilst recognising that costs would be incurred as a result of the existing requirement to publish classified adverts when changing a public entertainment resolution, the Bill Team noted that this would only cost “a few hundred pounds” and would be incurred only twice during the process. The Bill Team also confirmed that applications from a number of separate venues could all be captured within a single advert.¹⁹

Sexual entertainment venues

103. The Bill creates a new licensing regime for sexual entertainment venues. Again, the FM states that as local authorities are able to charge reasonable fees to cover their costs, the impact of the Bill on them is expected to be neutral.

104. However, the FM notes that some local authorities might receive no fee income from sexual entertainment venues (i.e. where none exist in a local authority area) but could incur tens of thousands of pounds in legal fees should an operator challenge a decision not to grant a licence.

105. SAC confirmed that it may find itself in this position as it receives “no fee income against which to offset the cost of appeals against unsuccessful applications.”

106. GCC expressed similar concerns stating—

¹⁸ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 35](#)

¹⁹ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 35](#)

“In short, if the licensing regime for SEVs is properly implemented with the points raised by the Licensing Authority and other respondents taken account of, then the costs will be minimal. However, if there is a lack of clarity or guidance from the Scottish Government, then the Licensing Authority expects there could be significant litigation and therefore cost to the Authority.”

107. GCC went on to suggest that “much of the uncertainty surrounding potential litigation costs can be reduced by ensuring that clear guidance is issued detailing what factors a Licensing Authority may have regard to in determining SEV applications and in setting any policy on the number of venues in its area.”

108. In response to questioning from the Committee the Bill Team explained that the scope for appeals was limited as there were “only about 17 to 20” sexual entertainment venues in Scotland.”²⁰

109. When asked whether it had considered the scenario of new licence applications being rejected in addition to those venues already in operation given that Standing Orders require an FM to contain best estimates of costs and savings arising from a piece of legislation, the Bill Team stated that as a result of the low numbers of such venues currently in existence, it was “reasonable to infer that demand for licences was limited”.

110. The Bill Team further stated that—

“the cost of any appeals will depend on how far they are pursued through the courts. Going to the inner house of the Court of Session would be expensive. We have never had a better estimate of what exactly an appeal would cost than the figure of tens of thousands of pounds.”²¹

CONCLUSION

111. The lead committee is invited to consider this report as part of its scrutiny of the Air Weapons and Licensing (Scotland) Bill.

²⁰ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 35](#)

²¹ [Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 33](#)