The Scottish Parliament
Pàrlamaid na h-Alba

Passage of the

Air Weapons and Licensing (Scotland) Bill 2014

SPPB 219
Passage of the

Air Weapons and Licensing (Scotland) Bill 2014

SP Bill 49 (Session 4), subsequently 2015 asp 10

SPPB 219
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Bill (As Passed) (SP Bill 49B)
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The oral and written evidence received by the Local Government and Regeneration Committee at Stage 1 was originally published on the web only. That material is included in this volume after the Stage 1 Report.

The Local Government and Regeneration Committee’s Stage 1 Report did not include material relating to the Delegated Powers and Law Reform Committee’s consideration of the delegated powers provisions in the Bill or the Finance Committee’s consideration of the Financial Memorandum. The Delegated Powers and Law Reform Committee’s report at Stage 1 is included in this volume. The Committee did not take oral evidence on the Bill and agreed its report without debate. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume.
The Delegated Powers and Law Reform Committee considered the delegated powers in the Bill after Stage 2, and agreed its report without debate. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume.
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Air Weapons and Licensing (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; to amend and extend the licensing provisions of the Civic Government (Scotland) Act 1982; and for connected purposes.

PART 1

AIR WEAPONS

Meaning of air weapon

1 Meaning of “air weapon”

(1) This section defines the expression “air weapon” for the purposes of this Part.

(2) The expression generally has the same meaning as that given in section 1(3)(b) of the Firearms Act 1968 (“the 1968 Act”).

(3) In addition, the expression includes—

(a) the component parts of an air weapon (within the meaning of section 1(3)(b) of the 1968 Act), and

(b) any accessory to such a weapon designed or adapted to diminish the noise caused by discharging the weapon.

(4) But the expression does not include—

(a) an air weapon (within the meaning of section 1(3)(b) of the 1968 Act)—

(i) which is not capable of discharging a missile with kinetic energy of more than one joule as measured at the muzzle of the weapon, or

(ii) that is designed to be used only when submerged in water, or

(b) the component parts of an air weapon described in paragraph (a)(i) or (ii).

(5) Other words and expressions used in this Part are defined in section 40.
Air Weapons and Licensing (Scotland) Bill
Part 1—Air weapons

Air weapon certificates

2 Requirement for air weapon certificate
(1) It is an offence for a person to use, possess, purchase or acquire an air weapon without holding an air weapon certificate.
(2) A person who commits an offence under subsection (1) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
   (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
(3) Schedule 1 contains exemptions from—
   (a) the offence under subsection (1), and
   (b) certain other offences under this Part.
(4) The Scottish Ministers may by regulations amend schedule 1 so as to—
   (a) add further exemptions,
   (b) remove or modify exemptions.

3 Application for grant or renewal of air weapon certificate
(1) An individual aged 14 years or more may apply to the chief constable for—
   (a) the grant of an air weapon certificate, or
   (b) the renewal of an air weapon certificate.
(2) An application is valid only if it complies with the requirements of—
   (a) section 4 (verification of applications),
   (b) if applicable, section 7 (special requirements and conditions for young persons),
   and
   (c) any regulations under section 37 which apply to the application.
(3) The chief constable must maintain a register containing the details of each application made under this section (whether or not the application results in an air weapon certificate being granted or renewed).

4 Verification of applications
(1) An application for the grant or renewal of an air weapon certificate must be verified in the prescribed form and manner by an individual who meets the requirements of subsection (2) (“a verifier”).
(2) The requirements are that a verifier must—
   (a) have known the applicant for at least 2 years,
   (b) in the opinion of the chief constable, be of good standing in the community,
   (c) not be—
      (i) a relative of the applicant,
      (ii) a registered firearms dealer,
Air Weapons and Licensing (Scotland) Bill
Part I—Air weapons

(ii) a constable or a member of police staff,

(iii) a member of, or a member of staff of, the Scottish Police Authority, or

(iv) ordinarily resident outwith the United Kingdom.

The chief constable may only grant or renew an air weapon certificate if satisfied that the applicant—

(a) is fit to be entrusted with an air weapon,

(b) is not prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act,

(c) has a good reason for using, possessing, purchasing or acquiring an air weapon, and

(d) in all the circumstances, can be permitted to possess an air weapon without danger to the public safety or to the peace.

The chief constable may, when considering an application made under section 3 by an applicant who holds a firearm or shot gun certificate, treat paragraphs (a) and (b) of subsection (1) as being satisfied in relation to the applicant.

The chief constable may, before determining an application made under section 3, require that the applicant permit a constable or member of police staff—

(a) to visit the applicant at the applicant’s usual place of residence,

(b) to inspect any place where the applicant intends to store or use an air weapon.

Every air weapon certificate is subject to any prescribed mandatory conditions.

The chief constable may, when granting or renewing an air weapon certificate, attach conditions to the certificate (and, in the case of a renewal, may attach different conditions from those attached to the certificate prior to its renewal).

The chief constable may not attach to an air weapon certificate a condition which is inconsistent with—

(a) a prescribed mandatory condition which applies to air weapon certificates, or

(b) a condition which must be attached to the certificate under this Part.

It is an offence for a holder of an air weapon certificate to fail to comply with a condition attached to the holder’s certificate.

An individual who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

This section applies where an applicant for an air weapon certificate is under the age of 18.
(2) A parent or guardian of the applicant must consent in the prescribed form and manner to the applicant making the application.

(3) Where the chief constable grants an air weapon certificate to an individual under the age of 18, the chief constable must attach to the certificate—
   (a) the condition described in subsection (4),
   (b) one or more of the conditions described in subsection (5).

(4) The condition is that the holder may not purchase or otherwise own an air weapon.

(5) The conditions are that—
   (a) the holder may use and possess an air weapon only for the purposes of target shooting on private land,
   (b) the holder may use and possess an air weapon only for the purposes of participating in events or competitions,
   (c) the holder may use and possess an air weapon only for the purposes of the holder’s membership of an approved air weapon club,
   (d) the holder may use and possess an air weapon only for the purposes of protecting livestock, crops or produce on land used for or in connection with agriculture,
   (e) the holder may use and possess an air weapon only while carrying on business as a pest controller or acting as the employee of a pest controller.

(6) It is sufficient, for the purposes of section 5(1)(c), for the chief constable to be satisfied that the applicant has a good reason for using or possessing an air weapon.

(7) For the purposes of this section, “agriculture” is to be construed in accordance with section 85 of the Agricultural Holdings (Scotland) Act 1991.

8 Duration of air weapon certificate

(1) An air weapon certificate expires (unless earlier revoked or cancelled)—
   (a) in the case of a certificate granted to an individual under the age of 18, when the individual attains the age of 18,
   (b) in any other case, at the end of the period of 5 years beginning with the date on which the certificate is granted or renewed.

(2) Where an individual has applied for the renewal of an air weapon certificate before its expiry but the chief constable has not, as at the date of its expiry, determined whether or not to grant the renewal, the certificate is to continue to have effect until the application is determined.

(3) The Scottish Ministers may by regulations amend subsection (1)(b) to specify a different period.

9 Alignment of different types of certificate

(1) Subsection (2) applies where an individual—
   (a) holds a firearm or shot gun certificate, and
   (b) makes an application for the grant or renewal of an air weapon certificate under section 3.
Part I—Air weapons

(2) Where this subsection applies, the applicant may request that the chief constable grant or renew an air weapon certificate for such shorter period than is provided for in section 8 as is appropriate to secure that it expires on the same day as the applicant’s firearm or shot gun certificate (or, if the applicant holds both a firearm and shot gun certificate, either of them).

(3) Subsection (4) applies where an individual—
   (a) holds an air weapon certificate, and
   (b) makes an application for the grant or renewal of a firearm or shot gun certificate under the 1968 Act.

(4) Where this subsection applies, the applicant may make an application under section 3 of this Act for the air weapon certificate to be renewed as from the same day as that on which the firearm or shot gun certificate is granted or renewed.

10 Variation of air weapon certificate

(1) The chief constable may, by giving notice to the holder of an air weapon certificate—
   (a) vary the holder’s certificate,
   (b) attach conditions to the certificate, or
   (c) vary or revoke a condition attached to the certificate other than—
      (i) a prescribed mandatory condition which applies to air weapon certificates, or
      (ii) a condition which must be attached to the certificate under this Part.

(2) The chief constable may give a notice under subsection (1)—
   (a) on the application of the holder of an air weapon certificate, or
   (b) of the chief constable’s own accord (at any time).

(3) The chief constable may not attach to an air weapon certificate a condition which is inconsistent with—
   (a) a prescribed mandatory condition which applies to air weapon certificates, or
   (b) a condition which must be attached to the certificate under this Part.

(4) For the purposes of this section, the chief constable may by notice given to the holder of an air weapon certificate require the holder to produce the certificate within the period of 21 days beginning with the date on which the notice is given.

11 Revocation of air weapon certificate

(1) The chief constable must revoke an air weapon certificate if—
   (a) the chief constable is satisfied that the holder of the certificate cannot be permitted to possess an air weapon without danger to the public safety or to the peace, or
   (b) the holder is prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.

(2) The chief constable may revoke an air weapon certificate if—
   (a) the chief constable has reason to believe that the holder—
      (i) is not a fit person to be entrusted with an air weapon, or
(ii) does not have a good reason to use, possess, purchase or acquire an air weapon,

(b) the chief constable is satisfied that the holder of the certificate has failed to comply with a condition attached to the certificate, or

(c) the holder fails to produce the certificate when required to do so under section 10(4).

(3) An air weapon certificate is revoked by the chief constable giving notice to the holder of the certificate to that effect.

(4) A notice under subsection (3) must—

(a) be given at least 7 days before the date on which the revocation is to take effect, and

(b) require the holder to surrender the certificate and any air weapons that the holder possesses by such date as the chief constable may specify in the notice.

(5) It is an offence for a person, without reasonable excuse, to fail to comply with the requirements of a notice given under subsection (3).

(6) A person who commits an offence under subsection (5) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(7) In the event that the holder of an air weapon certificate makes an appeal under section 35 against a decision to revoke the holder’s certificate—

(a) the revocation does not take effect, but

(b) the holder must still surrender the certificate and any air weapons that the holder possesses in accordance with the requirements of the notice given under subsection (3), pending the determination or withdrawal of the appeal.

Permits

12 Police permits

(1) The chief constable may, on the application of an individual, grant a permit (“a police permit”) authorising the individual—

(a) to possess or acquire an air weapon without holding an air weapon certificate, or

(b) to sell (or expose for sale) an air weapon in the course of that individual’s business.

(2) A police permit must not be granted to an individual who is prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.

(3) A police permit expires (unless earlier revoked or cancelled) on the expiry date specified in the permit.

(4) An application for a police permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.
Visitor permits

(1) The chief constable may, on the application of a qualifying visitor, grant a permit (“a visitor permit”) authorising the visitor to use, possess, purchase or acquire an air weapon without holding an air weapon certificate for the period (or a part of it) that the qualifying visitor is in Scotland.

(2) A person may, on behalf of a group of 2 to 20 qualifying visitors, make an application to the chief constable for each member of the group to be granted a visitor permit.

(3) The chief constable may grant a visitor permit to some or all of the members of the group.

(4) The chief constable may grant a visitor permit only if satisfied—

(a) in the case of an individual application, that the qualifying visitor has a good reason for using, possessing, purchasing or acquiring an air weapon while visiting Scotland,

(b) in the case of a group application, that each qualifying visitor is to use and possess an air weapon while visiting Scotland only—

(i) for sporting purposes (including shooting live quarry) on private land,

(ii) for the purposes of target shooting on private land, or

(iii) for the purposes of participating in an event or competition,

(c) in every case—

(i) that the qualifying visitor can be permitted to possess an air weapon without danger to the public safety or to the peace, and

(ii) that the qualifying visitor is not prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.

(5) For the purposes of subsection (4)(b)(i) and (ii) the chief constable may require the applicant to produce evidence that the owner or occupier of the land consents to the visitors’ intended use or possession of air weapons on the land.

(6) Except where section 14 applies, the chief constable must, on granting a visitor permit in respect of a group application, attach to the permit as a condition that the holder of the permit may use and possess an air weapon only for such of the purposes described in subsection (4)(b) as the chief constable may specify in the condition.

(7) A visitor permit expires (unless earlier revoked or cancelled) on the expiry date specified in the permit.

(8) No visitor permit is to be granted for a period of longer than 12 months.

(9) An application for a visitor permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.

(10) For the purposes of this section and section 14—

“group application” means an application under subsection (2) for visitor permits made by a person on behalf of qualifying visitors in a group,

“individual application” means an application under subsection (1) for a visitor permit made by the qualifying visitor,

“qualifying visitor” means an individual who is—

(a) aged 14 years or more,
Not ordinarily resident in Scotland, and
visiting (or intending to visit) Scotland.

14 Visitor permits: young persons

(1) This section applies—

(a) where an individual applicant for a visitor permit is under the age of 18,
(b) in respect of any individual who is—

(i) under the age of 18, and
(ii) on whose behalf a visitor permit is applied for as part of a group application.

(2) A parent or guardian of the applicant or individual under the age of 18 must consent in the prescribed form and manner to the making of the application.

(3) The chief constable must, on granting a visitor permit in respect of an individual application, attach to the permit—

(a) the condition described in section 7(4), and
(b) one or more of the conditions described in subsection (5) of that section.

(4) The chief constable must, on granting a visitor permit in respect of a group application, attach to the permit—

(a) the condition described in section 7(4), and
(b) either or both of the conditions described in paragraphs (a) and (b) of subsection (5) of that section.

(5) It is sufficient, for the purposes of section 13(4)(a), for the chief constable to be satisfied that the applicant has a good reason for using or possessing an air weapon.

(6) The chief constable is not, in respect of a group application, to be satisfied that the individual’s use and possession of an air weapon is for the purposes described in section 13(4)(b)(i).

15 Police and visitor permits: conditions

(1) Every police permit and visitor permit is subject to any prescribed mandatory conditions.

(2) The chief constable may, when granting a police permit or a visitor permit, attach conditions to the permit.

(3) The chief constable may not attach to a police permit or a visitor permit a condition which is inconsistent with—

(a) a prescribed mandatory condition which applies to police permits or, as the case may be, visitor permits, or
(b) a condition which must be attached to the permit under this Part.

(4) It is an offence for the holder of a police permit or a visitor permit to fail to comply with a condition attached to the permit.

(5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
16  **Police and visitor permits: variation and revocation**

(1) The chief constable may, by giving notice to the holder of a police permit or a visitor permit—

(a) vary the permit,

(b) attach conditions to the permit,

(c) vary or revoke a condition attached to the permit other than—

(i) a prescribed mandatory condition which applies to the permit, or

(ii) a condition which must be attached to a permit under this Part, or

(d) revoke the permit.

(2) The chief constable may give a notice under subsection (1)—

(a) on the application of the holder of a police permit or visitor permit, or

(b) of the chief constable’s own accord (at any time).

(3) The chief constable may not attach to a police permit or a visitor permit a condition which is inconsistent with—

(a) a prescribed mandatory condition which applies to police permits or, as the case may be, visitor permits, or

(b) a condition which must be attached to the permit under this Part.

(4) For the purposes of paragraphs (a) to (c) of subsection (1), the chief constable may by giving notice to the holder of a police permit or a visitor permit require the holder to produce the permit within the period of 21 days beginning with the date on which the notice is given.

(5) A notice given under subsection (1) which revokes a police permit or a visitor permit must—

(a) be given at least 7 days before the date on which the revocation is to take effect, and

(b) require the holder of the permit to surrender the permit and any air weapons that the holder possesses by such date as the chief constable may specify in the notice.

(6) It is an offence for the holder of a police permit or a visitor permit, without reasonable excuse, to fail to comply with a requirement contained in a notice under subsection (1).

(7) An individual who commits an offence under subsection (6) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(8) In the event that the holder of a police permit or a visitor permit makes an appeal under section 35 against a decision to revoke the holder’s permit—

(a) the revocation does not take effect, but

(b) the holder must still surrender the permit and any air weapons that the holder possesses in accordance with the requirements of the notice given under subsection (1), pending the determination or withdrawal of the appeal.
Event permits

(1) The chief constable may, on the application of a person ("the organiser") who is organising or otherwise responsible for an event, grant a permit authorising individuals at the event to borrow, hire, use and possess air weapons while engaging in an event activity without holding an air weapon certificate ("an event permit").

(2) The chief constable may, when granting an event permit, attach conditions to it.

(3) The organiser must ensure that the event permit (or a copy of it) is prominently displayed at the event so as to be capable of being read by any person attending the event.

(4) It is an offence for the organiser—
   (a) to fail to comply with a condition attached to the event permit, or
   (b) without reasonable excuse, to fail to comply with subsection (3).

(5) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(6) An application for an event permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.

(7) For the purposes of this section, an “event activity” is an activity—
   (a) involving the use and possession of air weapons by individuals, and
   (b) which has been planned by (or on behalf of) the organiser as part of the event.

Approval of air weapon clubs

(1) The chief constable may, on the application of an air weapon club, grant or renew an approval of the club.

(2) An application for the grant or renewal of an approval of an air weapon club is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.

(3) The chief constable may, at any time by giving notice to an approved air weapon club, withdraw the club’s approval.

(4) Every approval of an air weapon club is subject to any prescribed mandatory conditions.

(5) The chief constable may, when granting or renewing an approval, attach conditions to the approval (and in the case of a renewal, may attach different conditions from those attached to the approval prior to its renewal).

(6) The chief constable may not attach to an approval a condition which is inconsistent with a prescribed mandatory condition which applies to approvals.

Variation of approval

(1) The chief constable may, by giving notice in writing to an approved air weapon club—
   (a) vary the club’s approval,
   (b) attach conditions to the club’s approval, or
(c) vary or revoke a condition attached to the club’s approval other than a prescribed mandatory condition which applies to approvals.

(2) The chief constable may give a notice under subsection (1)—
(a) on the application of the approved air weapon club, or
(b) of the chief constable’s own accord (at any time).

(3) The chief constable may not attach to an approval a condition which is inconsistent with a prescribed mandatory condition which applies to approvals.

### 20 Duration of approval

(1) An approval of an air weapon club expires (unless earlier withdrawn) at the end of the period of 6 years beginning with the date on which the approval is granted or renewed.

(2) Where an approved air weapon club has applied for the renewal of its approval before its expiry but the chief constable has not, as at the date of its expiry, determined whether or not to grant the renewal, the approval is to continue to have effect until the application is determined.

(3) The Scottish Ministers may by regulations amend subsection (1) to specify a different period.

### 21 Alignment of club approvals

(1) Subsection (2) applies where an air weapon club—
(a) is approved as a rifle club under section 15 of the Firearms (Amendment) Act 1988 (“the 1988 Act”), and
(b) makes an application for the grant or renewal of an approval under section 18(1) of this Act.

(2) Where this subsection applies, the club may request that the chief constable grant or renew its approval under section 18(1) of this Act for such shorter period than is provided for in section 20(1) of this Act as is appropriate to secure that it expires on the same day as the club’s approval under section 15 of the 1988 Act.

(3) Subsection (4) applies where a club—
(a) is an approved air weapon club, and
(b) makes an application for the grant or renewal of an approval as a rifle club under section 15 of the 1988 Act.

(4) Where this subsection applies, the club may make an application under section 18(1) of this Act for the club’s approval to be renewed as from the same day as that on which the club’s application for approval under section 15 of the 1988 Act is granted or renewed.

### 22 Power to enter and inspect club premises

(1) The chief constable may, for the purposes of ascertaining whether the provisions of this Part or any conditions attached to an approved air weapon club’s approval are being complied with, authorise a constable or a member of police staff—
(a) to enter any club premises of an approved air weapon club, and
(b) to inspect those premises and anything on them which is relevant to the purposes for which the authorisation was granted.

(2) The power of a constable or a member of police staff under subsection (1)(b) to inspect anything on club premises includes power to require any information which is stored in electronic form and accessible from the premises to be produced in a form which is visible and legible.

(3) A constable or a member of police staff may exercise the powers of entry conferred by this section only at a reasonable time, unless it appears to the constable or member of police staff that the purposes of entering the club premises may be frustrated if the constable or member of police staff seeks to enter at a reasonable time.

(4) A constable or a member of police staff must, if asked, produce the authorisation before entering any premises under this section.

(5) The chief constable may delegate the power to grant an authorisation under subsection (1) only to a constable who holds the rank of inspector or above.

(6) It is an offence for a person to obstruct intentionally a constable or a member of police staff in the exercise of the constable’s or member of police staff’s powers under an authorisation granted under this section.

(7) A person who commits an offence under subsection (6) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(8) In this section, “club premises”, in relation to an approved air weapon club, means any premises, other than a dwelling, occupied or used by the club.

23 Requirements for recreational shooting facilities

(1) A person who operates a recreational shooting facility must—

(a) hold or (if not an individual) ensure that an individual responsible for the management and operation of the facility holds, an air weapon certificate, and

(b) at all times that the facility is in use, display the certificate (or a copy of it) prominently on the facility so as to be capable of being read by anyone considering whether to use the facility.

(2) It is an offence for a person who operates a recreational shooting facility—

(a) to fail to comply with subsection (1)(a), or

(b) without reasonable excuse, to fail to comply with subsection (1)(b).

(3) A person who commits an offence under subsection (2) is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

(4) In this section, “recreational shooting facility” means—

(a) a miniature rifle range or a shooting gallery at which air weapons are used, or

(b) a facility for combat games which involve using an air weapon, which is operated with a view to making a profit.

(5) This section does not apply to an approved air weapon club.
24 **Restrictions on transactions involving air weapons**

(1) It is an offence for a person other than a registered firearms dealer, by way of trade or business, to—

(a) manufacture, sell, transfer, repair or test an air weapon,

(b) expose an air weapon for sale or transfer, or

(c) possess an air weapon for the purposes of its sale, transfer, repair or testing.

(2) It is an offence for a person ("A") to sell or transfer an air weapon to another person ("B") unless—

(a) B is a registered firearms dealer,

(b) B holds an air weapon certificate (without a condition attached to it preventing B from purchasing or acquiring an air weapon) and shows it to A,

(c) A is a registered firearms dealer and is satisfied that—

   (i) in a case where B is an individual, B is aged 18 years or more, and

   (ii) the air weapon is to be delivered to a place outwith Great Britain without first coming into B’s possession, or

(d) B provides evidence to A that B is otherwise entitled to purchase or acquire an air weapon without holding an air weapon certificate by virtue of the provisions of this Part.

(3) It is an offence for a person ("A") to manufacture, repair or test an air weapon for another person ("B") unless—

(a) B is a registered firearms dealer,

(b) B holds an air weapon certificate and shows it to A, or

(c) B provides evidence to A that B is otherwise entitled to possess an air weapon without holding an air weapon certificate by virtue of the provisions of this Part.

(4) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

25 **Requirement for commercial sales of air weapons to be in person**

(1) This section applies where a person ("the seller") sells an air weapon by way of trade or business to an individual in Great Britain who is not a registered firearms dealer.

(2) It is an offence for the seller, for the purposes of the sale, to transfer possession of the weapon to the purchaser otherwise than at a time when both the purchaser and the seller (or a representative of the seller) are present in person.

(3) The reference in subsection (2) to a representative of the seller is a reference to—

(a) a person who is employed by the seller in the seller’s business as a registered firearms dealer,
(b) a registered firearms dealer (“A”) who has been authorised by the seller to act on the seller’s behalf in relation to the sale, or
(c) a person who is employed by A in A’s business as a registered firearms dealer.

(4) A person who commits an offence under this section is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

26 Requirement to notify chief constable of certain sales

(1) This section applies where a registered firearms dealer sells an air weapon—

(a) to an individual who—

(i) does not hold an air weapon certificate, and
(ii) is aged 18 years or more, and

(b) the air weapon is to be delivered to a place outwith Great Britain without first coming into the purchaser’s possession.

(2) The registered firearms dealer must, within 48 hours of the sale, give notice of the transaction to the chief constable.

(3) A notice given under subsection (2) must include the particulars of the transaction which the registered firearms dealer is required to enter in the register kept by the dealer under section 40 of the 1968 Act.

(4) It is an offence for a registered firearms dealer to fail to comply with subsection (2).

(5) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Enforcement

27 Power of search with warrant

(1) A sheriff may, on the application of a constable or a member of police staff, grant a warrant to the applicant under this section if satisfied, by evidence on oath, that there is a reasonable ground for suspecting—

(a) that an air weapon offence has been, is being, or is about to be committed, or
(b) that, in connection with an air weapon, there is a danger to the public safety or to the peace.

(2) A warrant under this section may authorise a constable or a member of police staff—

(a) to enter at any time any place named in the warrant, if necessary by force, and to search the place and every person found there,
(b) to seize and detain anything that the constable or member of police staff may find at the place, or on any such person, in respect of which or in connection with which the constable or member of police staff has a reasonable ground for suspecting—

(i) that an air weapon offence has been, is being or is about to be committed, or
(ii) that in connection with an air weapon there is a danger to the public safety or to the peace.
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(3) The power of a constable or a member of police staff under subsection (2)(b) to seize and detain anything found at any place, or on any person found there, includes power to require any information which is stored in any electronic form and is accessible from the place or by the person to be produced in a form—

(a) which is visible and legible and can be taken away, or
(b) from which it can be readily produced in a visible and legible form and can be taken away.

(4) It is an offence for an individual to obstruct intentionally a constable or member of police staff in the exercise of the constable’s or member of police staff’s powers under a warrant granted under this section.

(5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

28 Production of air weapon certificate

(1) A constable may require a person whom the constable believes to be in possession of an air weapon to produce—

(a) the person’s air weapon certificate, or
(b) evidence that the person is entitled to possess an air weapon without holding an air weapon certificate by virtue of the provisions of this Act.

(2) Where a person fails to produce the air weapon certificate or evidence required under subsection (1), the constable may—

(a) seize and detain the air weapon, and
(b) require the person to provide (immediately) the person’s name and address.

(3) It is an offence for a person—

(a) to fail to comply with a requirement under subsection (2)(b), or
(b) to provide a false name or address.

(4) A person who commits an offence under subsection (3) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

29 Cancellation of air weapon certificate

(1) Subsection (2) applies where an individual (“A”) holding an air weapon certificate—

(a) is convicted of—

(i) an air weapon offence,
(ii) an offence under the 1968 Act, or
(iii) an offence for which A is sentenced to imprisonment or to detention in a young offenders’ institution,

(b) has been ordered to keep the peace or to be of good behaviour and, as a condition of that, is not to possess, carry or use an air weapon or other firearm,

(c) is subject to a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 which contains a requirement not to possess, carry or use an air weapon or other firearm, or
(d) has been ordained to find caution and as a condition of that, is not to possess,
carry or use an air weapon or other firearm.

(2) Where this subsection applies, the court by or before which A is convicted, or which
imposes the condition or requirement, may cancel the air weapon certificate held by A.

(3) Where the court cancels an air weapon certificate under this section—

(a) the court must notify the chief constable of the cancellation, and

(b) the chief constable must, by notice given to A, require A to surrender A’s air
weapon certificate within the period of 21 days beginning with the date the notice
is given.

(4) It is an offence for an individual, without reasonable excuse, to fail to comply with the
requirements of a notice under subsection (3)(b).

(5) An individual who commits an offence under subsection (4) is liable, on summary
conviction, to a fine not exceeding level 3 on the standard scale.

30  Forfeiture and disposal of air weapons

15  (1) Subsection (2) applies where a person (“A”) is convicted of an air weapon offence.

(2) Where this subsection applies, the court by or before which A is convicted may make
such order as to the forfeiture or disposal of any air weapon found in A’s possession as
the court thinks fit.

(3) A constable may seize and detain an air weapon which may be the sub ject of an order
for forfeiture under this section or which, but for subsection (5), could be the subject of
such an order.

(4) A sheriff may, on an application of the chief constable, order the disposal (by any means
the chief constable thinks fit) of any air weapon seized and detained by a constable
under this Part.

(5) No order is to be made under subsection (2) or (4) for the forfeiture or disposal of an air
weapon which is possessed for the purposes of a museum.

(6) Subsection (7) applies where—

(a) an air weapon is surrendered in pursuance of—

(i) a notice given under section 11(3) which revokes an individual’s air
weapon certificate, or

(ii) a notice given under section 16(1) which revokes an individual’s police
permit or visitor permit, and

(b) the individual appeals against the decision to revoke the individual’s air weapon
certificate, police permit or, as the case may be, visitor permit (and does not
withdraw that appeal prior to its determination).

(7) Where this subsection applies—

(a) if the appeal is successful, the air weapon must be returned,

(b) if the appeal is dismissed, the sheriff may make such order for the disposal of the
air weapon as the sheriff considers appropriate.

(8) Subsection (9) applies where—

(a) an air weapon is surrendered in pursuance of—
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(i) a notice given under section 11(3) which revokes an individual’s air weapon certificate, or

(ii) a notice given under section 16(1) which revokes an individual’s police permit or visitor permit, and

(b) the individual—

(i) does not appeal against the decision to revoke the individual’s air weapon certificate, police permit or, as the case may be, visitor permit, or

(ii) makes and subsequently withdraws an appeal against such a decision.

Where this subsection applies, the air weapon is to be disposed of—

(a) in such manner as the chief constable and the owner of the weapon may agree, or

(b) in default of such agreement, in such manner as the chief constable may decide.

(10) Where the chief constable decides to dispose of an air weapon under subsection (9)(b), the chief constable must give the owner notice of the decision.

Offences

31 Failure to keep air weapons secure or to report loss to police

(1) It is an offence for a person—

(a) to fail to take reasonable precautions for the safe custody of an air weapon possessed by the person, or

(b) to fail to report immediately to the chief constable the loss or theft of an air weapon possessed by the person.

(2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

32 False statements, certificates and permits

(1) It is an offence for an individual to knowingly or recklessly make any statement which is false in any material particular for the purposes of procuring (either personally or for another person)—

(a) the grant, renewal or variation of an air weapon certificate,

(b) the grant or variation of a police or visitor permit,

(c) the grant of an event permit, or

(d) the grant, renewal or variation of an approval of an air weapon club.

(2) It is an offence for an individual, with a view to purchasing, acquiring or procuring the repair or testing of an air weapon—

(a) to produce a false air weapon certificate, police permit or visitor permit,

(b) to produce an air weapon certificate, police permit or visitor permit which has been improperly altered, or

(c) to knowingly or recklessly make a statement which is false in a material particular.
(3) An individual who commits an offence under this section is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

33 Time limit for offences

Section 136 of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences) applies to an air weapon offence which is triable only summarily as if the references in subsection (1) of that section to 6 months were to 36 months (and subsection (2) of that section were omitted).

34 Offences by bodies corporate etc.

(1) Subsection (2) applies where—

(a) an offence under this Part has been committed by—

(i) a body corporate,

(ii) a Scottish partnership, or

(iii) an unincorporated association other than a Scottish partnership, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate (other than a limited liability partnership)—

(i) a director, manager, secretary or similar officer of the body,

(ii) where the affairs of the body are managed by its members, a member,

(b) in relation to a limited liability partnership, a member,

(c) in relation to a Scottish partnership, a partner,

(d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

General

35 Appeals

(1) A person aggrieved by a decision of the chief constable under a section listed in subsection (2) may appeal against the decision to the appropriate sheriff.

(2) The sections are—

(a) section 5(1) (grant or renewal of air weapon certificate),

(b) section 6(2) (air weapon certificates: conditions),
(c) section 7(3)(b) (special requirements and conditions for young person’s air weapon certificate),
(d) section 10(1) (variation of air weapon certificate),
(e) section 11(1)(a) or (2) (revocation of air weapon certificate),
(f) section 12(1) (police permits),
(g) section 13(1) or (6) (visitor permits),
(h) section 14(3)(b) or (4)(b) (visitor permits: young persons),
(i) section 15(2) (police and visitor permits: conditions),
(j) section 16(1) (police and visitor permits: variation and revocation),
(k) section 17(1) or (2) (event permits),
(l) section 18(1), (3) or (5) (approval of air weapon clubs),
(m) section 19(1) (variation of approval for air weapon club),
(n) section 30(9)(b) (forfeiture and disposal of air weapons).

(3) An appeal must be made within the period of 21 days beginning with the date on which the decision appealed against was made.

(4) An appeal under this section is to be determined on the merits (and not by way of review).

(5) The sheriff hearing the appeal may consider any evidence or other matter, whether or not it was available at the time the chief constable made the decision appealed against.

(6) On determining the appeal, the sheriff may—
   (a) dismiss the appeal,
   (b) give the chief constable such direction as the sheriff considers appropriate as respects the matter which is the subject of the appeal.

(7) The decision of the sheriff may be appealed against only on a point of law.

(8) In this section, “the appropriate sheriff” means—
   (a) in a case where the appellant resides in Scotland, a sheriff of the sheriffdom in which the appellant resides, or
   (b) in a case where the appellant resides outwith Scotland, a sheriff of the sheriffdom of Lothian and Borders, sitting at Edinburgh.

(1) The Scottish Ministers may by regulations make provision for the charging of fees by the chief constable—
   (a) in respect of applications under this Part, and
   (b) otherwise in respect of the performance of functions by the chief constable under this Part.

(2) Regulations under subsection (1) may—
   (a) specify different fees for different circumstances,
   (b) specify circumstances in which no fee is payable,
(c) provide for fees to be determined by reference to such factors (including the value of money) as may be specified in the regulations.

(3) Where regulations under subsection (1) provide for a fee to be charged in respect of an application under this Part, the application is valid only when the fee is paid.

(4) Nothing in this section limits the generality of section 75.

37 Power to make further provision

(1) The Scottish Ministers may by regulations make further provision for the purposes of this Part.

(2) Without limiting that generality (or the generality of section 75), regulations under subsection (1) may—

(a) make provision about the application processes under this Part (for example, prescribing the form and content of applications, any required supporting documentation or making further provision about the verification of applications),

(b) make provision in relation to air weapon certificates, police permits, visitor permits, event permits and approvals of air weapon clubs (for example, prescribing their form and content or the conditions which may or must be attached to them).

38 Transitional arrangements for existing certificate holders

(1) This section applies where, on the day on which section 2(1) comes into force, a person aged 14 years or more holds a firearm certificate or a shotgun certificate (“the existing certificate”).

(2) It is not an offence under section 2(1) for the person to use and possess an air weapon without holding an air weapon certificate for the duration of the transitional period.

(3) The person must, in relation to such use or possession, comply with—

(a) any prescribed mandatory conditions which apply to the use and possession of air weapons, and

(b) if the person is under the age of 18, the conditions mentioned in section 7(5).

(4) A person who fails to comply with a condition mentioned in subsection (3) commits an offence.

(5) But it is not an offence under subsection (4) for a person to fail to comply with a condition mentioned in subsection (3) if—

(a) the person is entitled to use or possess an air weapon by virtue of an exemption under schedule 1, and

(b) the failure relates to the use or possession of an air weapon in accordance with the exemption.

(6) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(7) In this section, the “transitional period” means, in relation to an existing certificate, the period—

(a) beginning with the day on which section 2(1) comes into force, and
(b) ending with (the earlier of)—

(i) the day on which the existing certificate is, or falls to be, renewed, or

(ii) the day on which the existing certificate is surrendered, cancelled or revoked.

(8) For the purposes of subsection (7)(b)(i), where a person holds both a firearm certificate and a shot gun certificate, the existing certificate is the certificate which is, or which falls to be, renewed later.

(9) For the purposes of subsection (7)(b)(ii), where a person holds both a firearm certificate and a shot gun certificate—

(a) the surrender of one of the certificates does not end the transitional period, but

(b) the cancellation or revocation of either certificate ends the transitional period.

(10) For the purposes of paragraph 16 of schedule 1, this section is to be treated as if it were an exemption under that schedule.

39 Guidance

(1) The chief constable must, in exercising any function under this Part, have regard to any guidance issued by the Scottish Ministers.

(2) The Scottish Ministers must publish any guidance they issue for the purposes of this Part.

(3) The Scottish Ministers may revise and revoke such guidance.

40 Interpretation of Part 1

(1) In this Part, unless the context otherwise requires—

“the 1968 Act” means the Firearms Act 1968,

“acquire” means hire, accept as a gift or borrow and “acquisition” is to be construed accordingly,

“air weapon” is to be construed in accordance with section 1,

“air weapon certificate” means an air weapon certificate granted under section 5(1),

“air weapon club” means an association of individuals which has as a purpose the activity of target shooting with air weapons,

“air weapon offence” means any offence under this Part,

“approval”, in relation to an air weapon club, means an approval granted to the club under section 18(1),

“approved air weapon club” means an air weapon club which has been granted an approval by the chief constable under section 18(1),

“chief constable” means the chief constable of the Police Service of Scotland,

“condition” includes requirement and restriction,

“constable” has the meaning given in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“event permit” means a permit granted under section 17(1),
“firearm certificate” is to be construed in accordance with section 57(4) of the 1968 Act,

“guardian”, in relation to an individual, means a person appointed by deed or will or by a court of competent jurisdiction to be the guardian of the individual,

“member of police staff” means an individual appointed under section 26 of the Police and Fire Reform (Scotland) Act 2012,

“member of staff of the Scottish Police Authority” means an individual appointed under paragraph 6(1) of schedule 1 to the Police and Fire Reform (Scotland) Act 2012,

“miniature rifle range” is to be construed in accordance with section 11 of the 1968 Act,

“museum” means a museum or similar institution which has as its purpose, or one of its purposes, the preservation for the public benefit of a collection of historical, artistic or scientific interest which is maintained wholly or mainly out of money provided by Parliament, a Minister of the Crown, the Scottish Ministers or a local authority,

“police permit” means a permit granted under section 12(1),

“premises” means any place and includes a vehicle, vessel or moveable structure,

“prescribed” means prescribed in regulations made under section 37,

“registered firearms dealer” means a person registered as a firearms dealer under section 33 of the 1968 Act,

“relative”, in relation to an individual, means—

(a) the spouse, civil partner, parent, stepparent, child, stepchild, grandparent or grandchild of the individual or of the individual’s spouse, former spouse, civil partner or former civil partner, or

(b) the sibling, uncle, aunt, nephew or niece (whether of the full blood or of the half blood or by affinity) of the individual or the individual’s spouse, former spouse, civil partner or former civil partner,

and includes, in relation to an individual who is living or has lived with another individual as if they were spouses or civil partners, any individual who would fall within paragraph (a) or (b) if the parties were married or civilly partnered to each other,

“shot gun certificate” is to be construed in accordance with section 57(4) of the 1968 Act,

“transfer” includes let on hire, give, lend and part with possession,

“visitor permit” means a permit granted under section 13(1).

(2) In this Part, a reference to an individual holding an air weapon certificate, a police permit or a visitor permit is a reference to an individual holding an air weapon certificate, police permit or, as the case may be, visitor permit—

(a) granted to the individual under section 5, 12 or, as the case may be, 13 and

(b) which has not expired or been revoked or cancelled.
(3) In this Part, a reference to a condition attached to an air weapon certificate, police permit, visitor permit, event permit or approval of an air weapon club includes a reference to any condition to which the certificate, permit or as the case may be, approval is subject by virtue of this Act.

(4) Any expression used in this Part which is also used in an Act listed in subsection (5) is, unless the context otherwise requires, to be construed in accordance with any decisions or opinions of a court interpreting the expression for the purposes of the Act.

(5) The Acts are—
(a) the 1968 Act,
(b) the Firearms (Amendment) Act 1988, and
(c) the Firearms (Amendment) Act 1997.

PART 2
ALCOHOL LICENSING

Licensing objectives

41 Licensing objectives: protecting young persons from harm
In section 4 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) (the licensing objectives), in subsection (1)(e), after “children” insert “and young persons”.

Statements of licensing policy

42 Statements of licensing policy: licensing policy periods
In section 6 of the 2005 Act (statements of licensing policy)—
(a) in subsection (1), for “3 year period” substitute “licensing policy period”,
(b) in subsection (2), for “3 year period” substitute “licensing policy period”,
(c) after subsection (3) insert—
“(3ZA)A Licensing Board may, in preparing a licensing policy statement, decide that the licensing policy period to which the statement relates is to begin on a date earlier than it otherwise would under subsection (7).

(3ZB)Where a Licensing Board make a decision under subsection (3ZA) they must, when publishing the licensing policy statement under subsection (6), publicise the date on which they have decided the licensing policy period is to begin.”,
(d) in subsection (4), for “3 year period” substitute “licensing policy period”,
(c) for subsection (7) substitute—
“(7) Subject to subsection (3ZA), in this section, “licensing policy period” means the period between each relevant date.

(8) For the purposes of subsection (7), “relevant date” means the date occurring 18 months after an ordinary election of councillors for local government areas takes place under section 5 of the Local Government etc. (Scotland) Act 1994.”.
Fit and proper person test

43 Premises licence application: ground for refusal

(1) Section 23 of the 2005 Act (determination of premises licence application) is amended as follows.

(2) In subsection (5)—

(a) after paragraph (b) insert—

“(ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence;”,

(b) in paragraph (c), after “would” insert “otherwise”.

(3) In subsection (8)(b), for “(5)(c)” substitute “(5)(ba) or (c)”.

44 Application to transfer premises licence: ground for refusal

(1) The 2005 Act is amended as follows.

(2) In section 33 (transfer on application of licence holder)—

(a) after subsection (7) insert—

“(7A) On giving a notice under subsection (6)(a) or (b), the chief constable may also provide to the Licensing Board any information in relation to—

(a) the transferee, or

(b) where the transferee is neither an individual nor a council, a connected person,

that the chief constable considers may be relevant to consideration by the Board of the application.”,

(b) in subsection (8)—

(i) the word “and” immediately following paragraph (a) is repealed,

(ii) after paragraph (b) insert “, and

(c) no information has been provided under subsection (7A),”;

(c) in subsection (10)—

(i) after “notice” insert “and any information provided under subsection (7A)”,

(ii) in paragraph (a), for the words from “it” to “objectives” substitute “a ground for refusal applies”,

(d) after subsection (10) insert—

“(11) The grounds for refusal are—

(a) that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence,

(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.”.

(3) In section 34 (transfer on application of person other than licence holder), in subsection (4), for “(10)” substitute “(11)”.
Ground for review of premises licence

(1) The 2005 Act is amended as follows.

(2) In section 36 (application for review of premises licence)—
   (a) in subsection (3), before paragraph (a) insert—
       “(za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence,”,
   (b) in subsection (5), before paragraph (a) insert—
       “(za) where the ground is that specified in subsection (3)(za), a summary of the information on which the applicant’s view that the alleged ground applies is based,”.

(3) In section 37 (review of premises licence on Licensing Board’s initiative), in subsection (4), before paragraph (a) insert—
   “(za) where the ground is that specified in section 36(3)(za), a summary of the information on which the Board’s view that the alleged ground applies is based,”.

(4) In section 39 (Licensing Board’s powers on review)—
   (a) after subsection (1), insert—
       “(1A) Subsection (1) is subject to subsection (2A).”,
   (b) after subsection (2), insert—
       “(2A) Where, at a review hearing in relation to any premises licence, the Licensing Board are satisfied that the ground for review specified in section 36(3)(za) is established, the Board must revoke the licence.”.

(5) In section 39A (notification of determinations), in subsection (1)—
   (a) the word “or” immediately following paragraph (a) is repealed,
   (b) after paragraph (b), insert “, or
   (c) decides to revoke a premises licence under section 39(2A).”.

(6) In Part 1 of schedule 5 (appeals to the sheriff principal), in the entry in the left-hand column relating to a decision under section 39(1), after “39(1)” insert “or (2A)”.

Personal licence applications and renewals: ground for refusal

(1) The 2005 Act is amended as follows.

(2) In section 73 (notification of application to the chief constable), after subsection (4) insert—
   “(5) On giving a notice under subsection (3)(a) or (b), the chief constable may also provide to the Licensing Board any information in relation to the applicant that the chief constable considers may be relevant to consideration by the Board of the application.”.

(3) After section 73 of the 2005 Act insert—
“73A Notification of application to Licensing Standards Officer

(1) Where a Licensing Board receive a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board’s area.

(2) A Licensing Standards Officer may, within 21 days of the date of receipt of a notice under subsection (1), respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration by the Board of the application.”.

(4) In section 74 (determination of personal licence application)—

(a) in subsection (2), after paragraph (c) insert—

“(ca) no information has been provided under section 73(5) or 73A(2),”,

(b) after subsection (5A) insert—

“(5AA) If—

(a) all of those conditions are met in relation to the applicant,

(b) the notice received from the chief constable under subsection (3)(a) or (b) of section 73 does not include a recommendation under subsection (4) of that section, and

(c) information has been provided under subsection (5) of that section or under section 73A(2),

the Board may hold a hearing for the purpose of considering and determining the application.”,

(c) in subsection (5B), after “(5A)” insert “or (5AA),”

(d) in subsection (6)—

(i) for “(5) or (5A)” substitute “(5), (5A) or (5AA),”

(ii) after “notice” insert “and any information provided under section 73(5) or 73A(2),”

(iii) in paragraph (a), for the words from “it” to “objectives” substitute “a ground for refusal applies”,

(e) after subsection (6) insert—

“(6A) The grounds for refusal are—

(a) that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence,

(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.”.

(5) In section 78 (renewal of personal licence), in subsection (5), for “73 and 74” substitute “73, 73A and 74”.

47 Personal licence holders: procedure on receipt of notice of conviction

(1) The 2005 Act is amended as follows.

(2) In section 83 (procedure where Licensing Board receive notice of conviction)—

(a) after subsection (8), insert—
“(8A) Subsection (8) is subject to subsection (9A).”,

(b) after subsection (9), insert—

“(9A) Where, at the hearing, the Licensing Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.”;

(c) in subsection (10), after “(9)” insert “or (9A)”.

(3) In Part 2 of schedule 5 (appeals to the sheriff), in the entry in the left-hand column relating to a decision to make an order under section 83(9), 84(7) or 86(3), for “83(9)” substitute “83(9) or (9A)”.

48 Personal licence holders: conduct inconsistent with the licensing objectives

(1) The 2005 Act is amended as follows.

(2) In section 84 (conduct inconsistent with the licensing objectives)—

(a) after subsection (6), insert—

“(6A) Subsection (6) is subject to subsection (7A).”;

(b) after subsection (7), insert—

“(7A) Where, at the hearing, the Licensing Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.”;

(c) in subsection (8), after “(7)” insert “or (7A)”.

(3) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives), in subsection (3), for “(6), (7)” substitute “(6), (6A), (7), (7A)”.

(4) In Part 2 of schedule 5 (appeals to the sheriff), in the entry in the left-hand column relating to a decision to make an order under section 83(9), 84(7) or 86(3), for “84(7)” substitute “84(7) or (7A)”.

49 Premises licences: procedure in relation to relevant offences or foreign offences

In section 44 of the 2005 Act (procedure where Licensing Board receive notice of conviction in relation to a premises licence)—

(a) in subsection (7), after “subsection (4)(b)” insert “which includes a recommendation under subsection (5)”;

(b) after subsection (7) insert—

“(7A) If the Licensing Board receive from the chief constable a notice under subsection (4)(b) which does not include a recommendation under subsection (5), the Licensing Board must—

(a) make a premises licence review proposal in respect of the premises licence, or

(b) decide to take no further action in relation to the conviction.”.
50 Personal licences: procedure in relation to relevant offences or foreign offences
In section 83 of the 2005 Act (procedure where Licensing Board receive notice of a conviction in relation to a personal licence)—

(a) in subsection (7), after “subsection (4)(b)” insert “which includes a recommendation under subsection (5)”;

(b) after subsection (7) insert—

“(7A) If the Licensing Board receive from the chief constable a notice under subsection (4)(b) which does not include a recommendation under subsection (5), the Licensing Board must—

(a) hold a hearing, or

(b) decide to take no further action in relation to the conviction.”,

(c) in subsection (8), for “the hearing” substitute “a hearing under subsection (7) or (7A)(a)”.

51 Relevant offences and foreign offences: spent convictions
In section 129 of the 2005 Act (relevant offences and foreign offences), subsection (4) is repealed.

Supply of alcohol to a child or young person

52 Offences of supplying alcohol to a child or young person
(1) After section 104 of the 2005 Act insert—

“104A Supply of alcohol to a child

(1) A person, other than a child or young person, who—

(a) buys or attempts to buy alcohol—

(i) on behalf of a child, or

(ii) for a child, or

(b) gives alcohol (or otherwise makes it available) to a child, commits an offence.

(2) Subsection (1)(a)(ii) and (b) does not apply to the buying of alcohol for, or (as the case may be) giving or making available of alcohol to, a child—

(a) for consumption other than in a public place, or

(b) for the purposes of religious worship.

(3) In subsection (2)(a), “public place” includes—

(a) relevant premises,

(b) any place to which the public have access for the time being (whether on payment of a fee or otherwise), and

(c) any place to which the public do not have access but to which the child unlawfully gains access.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to—
(a) a fine not exceeding level 5 on the standard scale,
(b) imprisonment for a term not exceeding 3 months, or
(c) both.

104B Supply of alcohol to a young person

(1) A person, other than a child or young person, who knowingly—

(a) buys or attempts to buy alcohol—

(i) on behalf of a young person, or

(ii) for a young person, or

(b) gives alcohol (or otherwise makes it available) to a young person,

commits an offence.

(2) Subsection (1)(a)(ii) and (b) does not apply to—

(a) the buying of alcohol for, or (as the case may be) giving or making available of alcohol to, a young person—

(i) for consumption other than in a public place, or

(ii) for the purposes of religious worship, or

(b) the buying, or (as the case may be) giving or making available, of beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises.

(3) In subsection (2)(a)(i), “public place” includes—

(a) relevant premises,

(b) any place to which the public have access for the time being (whether on payment of a fee or otherwise), and

(c) any place to which the public do not have access but to which the young person unlawfully gains access.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to—

(a) a fine not exceeding level 5 on the standard scale,

(b) imprisonment for a term not exceeding 3 months, or

(c) both.”.

(2) In section 105 of the 2005 Act (purchase of alcohol by or for a child or young person)—

(a) subsections (4), (5) and (7) are repealed,

(b) the section title becomes “Purchase of alcohol by a child or young person”.

Miscellaneous

53 Meaning of “alcohol”: inclusion of angostura bitters

In section 2 of the 2005 Act (meaning of “alcohol”), in subsection (1)(b), paragraph (iv) is repealed.
54 Overprovision

(1) The 2005 Act is amended as follows.

(2) In section 7 (duty to assess overprovision)—

(a) in subsection (2), after “Act” insert “and in doing so the Board may determine that the whole of the Board’s area is a locality”,

(b) in subsection (3)—

(i) the word “must” is repealed,

(ii) for paragraph (a) substitute—

“(a) may have regard to (among other things) the number, capacity and licensed hours of licensed premises in the locality.”,

(iii) at the beginning of paragraph (b) insert “must”.

(3) In section 23(5)(e) (refusal of premises licence on grounds of overprovision), for “and capacity” substitute “, capacity and licensed hours”.

(4) In section 30(5)(d) (refusal to vary premises licence on grounds of overprovision), for “and capacity” substitute “, capacity and licensed hours”.

55 Duty of Licensing Boards to produce annual financial report

(1) The 2005 Act is amended as follows.

(2) After section 9 insert—

“9A Annual financial report

(1) Each Licensing Board must prepare and publish a report not later than 3 months after the end of each financial year.

(2) A report under this section must include—

(a) a statement of—

(i) the amount of relevant income received by the Licensing Board during the financial year, and

(ii) the amount of relevant expenditure incurred in respect of the Board’s area during the year, and

(b) an explanation of how the amounts in the statement were calculated.

(3) For the purposes of subsection (2)—

“relevant income”, in relation to a Licensing Board, means income received by the Board in connection with the exercise of the Board’s functions under or by virtue of—

(a) this Act, or

(b) section 14(1) of the Alcohol etc. (Scotland) Act 2010 (social responsibility levy) in so far as relating to holders of premises licences or occasional licences, and

“relevant expenditure”, in relation to a Licensing Board, means any expenditure—
which is attributable to the exercise of the Board’s functions under or by virtue of—

(i) this Act, or

(ii) section 14(1) of the Alcohol etc. (Scotland) Act 2010 (social responsibility levy) in so far as relating to holders of premises licences or occasional licences, and

(b) which is incurred by—

(i) the Board,

(ii) the relevant council, or

(iii) the Licensing Standards Officer (or Officers) for the Board’s area.

(4) A report under this section may also include such other information about the exercise of the Licensing Board’s functions as they consider appropriate.

(5) At the request of a Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section.

(6) The Scottish Ministers may by regulations make further provision about reports under this section including provision—

(a) about the form and content of reports including, in particular—

(i) how a statement required under subsection (2) is to be set out, and

(ii) what constitutes relevant income and relevant expenditure for the purposes of subsection (2), and

(b) the publication of reports.

(7) Regulations under subsection (6)(a) may modify subsection (3).

(8) In this section, “financial year” means a yearly period ending on 31 March.”.

(3) In section 146 (orders and regulations: affirmative procedure),

(a) in subsection (4)(c), after “applies,” insert “regulations under section 9A(6) or”,

(b) in subsection (5), before paragraph (a) insert—

“(za) regulations under section 9A(6) containing provisions which add to, replace or omit any part of the text of subsection (3) of that section,”.

56 Interested parties

(1) The 2005 Act is amended as follows.

(2) In section 40A (connected persons and interested parties: licence holder’s duty to notify changes)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (a) is repealed,

(ii) paragraph (b) is repealed,

(b) in subsection (2), the words “or an interested party” are repealed,
(c) the section title becomes “Connected persons: licence holder’s duty to notify changes”.

(3) The italic cross heading preceding section 40A becomes “Connected persons”.

(4) In section 48(1)(c) (notification of change of name or address)—

(a) the word “or” immediately following sub-paragraph (i) is repealed,

(b) sub-paragraph (ii) is repealed.

(5) In section 147(5) (interpretation), in the opening words, the words “nor the premises manager” are repealed.

57 Personal licences: grant, duration and renewal

(1) The 2005 Act is amended as follows.

(2) In section 74 (determination of personal licence application), in subsection (3)(c), after “revoked” insert “under any provision of this Act other than section 87(3)”.

(3) In section 77 (period of effect of personal licence), in subsection (8), for “3” substitute “9”.

(4) In section 78 (renewal of personal licence), in subsection (2)—

(a) for “2” substitute “9”,

(b) for “3” substitute “12”.

(5) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives), in subsection (3), for “(8)(a)” substitute “(8)”.

58 Processing and deemed grant of applications

(1) The 2005 Act is amended as follows.

(2) After section 134 insert—

“134ZA Duty to acknowledge applications

(1) This section applies where a Licensing Board receive a relevant application.

(2) In a case where the Licensing Board are satisfied that the application meets the prescribed requirements they must, unless subsection (3) applies, give an acknowledgement to the applicant—

(a) confirming that they are satisfied that the application meets the prescribed requirements,

(b) listing any documents received in support of the application and the date or dates on which the documents were received by them, and

(c) informing the applicant about the period for determining the application under section 134ZB.

(3) This subsection applies where the Licensing Board consider it appropriate to determine the application on its merits without first giving an acknowledgement to the applicant.

(4) In a case where the Licensing Board are not satisfied that the application meets the prescribed requirements, they must give a notice to the applicant—
(a) indicating that they are treating the application as incomplete and not having been made, and
(b) stating their reasons for treating the application in that way.

(5) Subsection (4) does not prevent an applicant from submitting further information in support of the application if that is otherwise competent.

(6) A Licensing Board must give an acknowledgement under subsection (2) or give a notice under subsection (4) as soon as is practicable.

(7) For the purposes of this section, “prescribed requirements”, in relation to a relevant application, means the requirements (as to form, content, etc.) which are imposed by or under this Act or any other enactment in respect of the type of relevant application in question.

(8) In this section, a “relevant application” is—
(a) a premises licence application,
(b) a premises licence variation application,
(c) an application under section 33(1) or 34(1) to transfer a premises licence,
(d) an application under section 35(1) for variation of a premises licence on transfer,
(e) a provisional premises licence application,
(f) an application under section 46 for confirmation of a provisional premises licence,
(g) an application under section 47(2) for a temporary premises licence,
(h) an occasional licence application,
(i) an extended hours application,
(j) a personal licence application,
(k) a personal licence renewal application.

**134ZB Period for determination of applications**

(1) A Licensing Board must determine every relevant application which meets the prescribed requirements (including an application mentioned in subsection (2)) before the end of the period of 9 months beginning with (the later of)—
(a) the date on which the Licensing Board received the application, or
(b) where the application did not initially meet the prescribed requirements, the date on which the application met the prescribed requirements.

(2) Where a Licensing Board consider it appropriate to determine a relevant application without first giving an acknowledgement under section 134ZA(2), they must determine the application as soon as is practicable.

(3) A sheriff of the appropriate sheriffdom may, on an application by a Licensing Board in relation to a relevant application, extend the period for determining the application under subsection (1).

(4) The sheriff may extend the period only if—
(a) it appears to the sheriff that there is a good reason to do so, and
(b) no previous extension has been granted in relation to the relevant application.

(5) The applicant in relation to a relevant application is entitled to be a party to proceedings on an application to a sheriff under subsection (3).

(6) In this section—

“prescribed requirements” has the same meaning as in section 134ZA,
“relevant application” has the same meaning as in section 134ZA.

134ZC Deemed grant of applications

(1) Subsection (2) applies where a Licensing Board have failed to determine a relevant application before the expiry of the determination period.

(2) Where this subsection applies—

(a) the application is deemed to have been granted on the date on which the determination period expired, and

(b) the deemed grant of the application has the same effect, for the purposes of this Act, as if the application had been granted by the Licensing Board.

(3) A Licensing Board may not impose any conditions (other than those which they must impose under this Act) in respect of an application which is deemed to have been granted under subsection (2).

(4) Subsection (5) applies in relation to an application—

(a) that is deemed to have been granted under subsection (2), and

(b) in respect of which the Licensing Board must, on granting such an application, determine the period during which the thing applied for is to have effect.

(5) The thing applied for is to have effect for the duration of the period stated in the application (subject to any limits imposed by this Act).

(6) In this section—

“determination period” means, in relation to a relevant application, the period for determining the application under section 134ZB(1) including (if applicable) any extension to that period granted under subsection (3) of that section,

“prescribed requirements” has the same meaning as in section 134ZA,
“relevant application” has the same meaning as in section 134ZA.”.

59 Form etc. of communications under the 2005 Act

(1) Section 134 of the 2005 Act (form etc. of applications, proposals and notices) is amended as follows.

(2) In each of the following provisions, for “or notice” substitute “, notice or other communication”, namely—

(a) subsection (1)(a) and (d), and

(b) subsection (2).
(3) The section title becomes “Form etc. of applications, proposals, notices and other communications”.

**PART 3**

**CIVIC LICENSING**

**Taxis and private hire cars**

60 **Refusal to grant private hire car licences on grounds of overprovision**

In section 10 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) (taxi and private hire car licences), after subsection (3) insert—

“(3A) Without prejudice to paragraph 5 of Schedule 1, the grant of a private hire car licence may be refused by a licensing authority if, but only if, they are satisfied that there is (or, as a result of granting the licence, would be) overprovision of private hire car services in the locality (or localities) in their area in which the private hire car is to operate.

(3B) It is for the licensing authority to determine the localities within their area for the purposes of subsection (3A) and in doing so the authority may determine that the whole of their area is a locality.

(3C) In satisfying themselves as to whether there is or would be overprovision for the purposes of subsection (3A) in any locality, the licensing authority must have regard to—

(a) the number of private hire cars operating in the locality, and
(b) the demand for private hire car services in the locality.”.

61 **Testing of private hire car drivers**

In section 13 of the 1982 Act (taxi and private hire car driving licences), in subsection (5)—

(a) after “licence” where first occurring insert “or a private hire car driver’s licence”,
(b) after “taxi” where second occurring insert “or, as the case may be, private hire car”.

62 **Exemptions from requirements of sections 10 to 21 of 1982 Act**

(1) Section 22 of the 1982 Act (saving for certain vehicles etc.) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) Paragraph (c) of that subsection is repealed.

(4) After that subsection, insert—

“(2) The Scottish Ministers may by regulations specify further circumstances in which sections 10 to 21 (with the exception of subsection (7) of section 21) are not to apply.

(3) Regulations under subsection (2)—

(a) may make transitional, transitory and saving provision,
(b) are subject to the negative procedure.”.

(5) The title to section 22 becomes “Exemptions”.

Metal dealers

63 Removal of exemption warrants for certain metal dealers

(1) The 1982 Act is amended as follows.

(2) In section 28 (metal dealers: licensing and regulation)—

(a) in subsection (1), for the words “Subject to subsection (2) below, a” substitute “A”,

(b) subsections (2) and (3) are repealed.

(3) Section 29 (metal dealers’ exemption warrants) is repealed.

64 Abolition of requirement to retain metal for 48 hours

Section 31 of the 1982 Act (retention of metal) is repealed.

65 Acceptable forms of payment for metal

After section 33 of the 1982 Act insert—

“33A Acceptable forms of payment for metal

(1) A metal dealer or an itinerant metal dealer may pay for metal only by a method of payment specified in subsection (2).

(2) The methods of payment are—

(a) by means of a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or

(b) by electronic transfer of funds to an account in the name of the payee.

(3) If a metal dealer or an itinerant metal dealer pays for metal otherwise than in accordance with subsection (1), the dealer and each of the persons listed in subsection (4) (if any) commit an offence.

(4) The persons are—

(a) in a case of payment being made by a metal dealer at a place of business of the dealer, the person with day to day management of the place,

(b) in any case, any person who, acting on behalf of the metal dealer or the itinerant metal dealer, makes the payment.

(5) It is a defence for a metal dealer, an itinerant metal dealer or a person described in subsection (4)(a) who is charged with an offence under this section to prove that the dealer or, as the case may be, person—

(a) made arrangements to ensure that the payment was to be made only in accordance with subsection (1), and

(b) took all reasonable steps to ensure that those arrangements were complied with.
A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

The Scottish Ministers may by regulations—

(a) amend subsection (2) so as to add, amend or remove methods of payment, and

(b) make such consequential modification of section 33B(3) as they consider appropriate.

Regulations under subsection (7) are subject to the affirmative procedure.

In this section, “place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer’s business as a metal dealer.”.

Metal dealers and itinerant metal dealers: records

(1) The 1982 Act is amended as follows.

(2) Sections 30 (keeping of records) and 33 (receipts and invoices: itinerant metal dealers) are repealed.

(3) After section 33A (as inserted by section 65 of this Act), insert—

Requirement to keep records

(1) This section applies where a metal dealer or an itinerant metal dealer (“the dealer”), in the course of the dealer’s business—

(a) acquires any metal (whether or not for value), or

(b) processes or disposes of any metal (by any means).

(2) In respect of any metal acquired, the dealer must record the following information—

(a) the description and weight of the metal,

(b) the date and time of the acquisition of the metal,

(c) if the metal is acquired from another person—

(i) the name and address of the person,

(ii) the means by which the person’s name and address was verified,

(d) the price, if any, payable in respect of the acquisition of the metal, if that price has been ascertained at the time when the entry in the record relating to that metal is to be made,

(e) the method of payment of the price (if applicable),

(f) where no price is payable for the metal, the value of the metal at the time when the entry is to be made as estimated by the dealer,

(g) in the case of metal delivered to the dealer by means of a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) borne by the vehicle.

(3) Where the dealer has paid for metal, the dealer must keep a copy of—

(a) the cheque, or

(b) the document evidencing the electronic transfer of funds.
(4) In respect of any metal processed or disposed of, the dealer must record the following information—

(a) the description and weight of the metal immediately before its processing or disposal,

(b) the date of the processing or disposal of the metal,

(c) in the case of metal which is processed, the process applied,

(d) in the case of metal disposed of by sale or exchange—

(i) the consideration for which it is sold or exchanged,

(ii) the name and address of the person to whom the metal is sold or with whom it is exchanged, and

(iii) the means by which the person’s name and address was verified,

(e) in the case of metal disposed of otherwise than by sale or exchange, its value immediately before its disposal as estimated by the dealer.

(5) The dealer must—

(a) keep separate records in relation to—

(i) metal acquired, and

(ii) metal processed or disposed of,

(b) record the information immediately after the metal is acquired, processed or disposed of,

(c) keep a copy of any document produced by a person to verify that person’s name or address, and

(d) retain information recorded or documents kept under this section for a period of not less than 3 years beginning with the date on which the information was recorded or document obtained.

(6) The Scottish Ministers may by regulations require further information to be recorded about any metal acquired, processed or disposed of by metal dealers or itinerant metal dealers.

(7) Regulations under subsection (6)—

(a) may make different provision for different purposes, and

(b) are subject to the negative procedure.

33C Form of records

(1) A metal dealer or an itinerant metal dealer (“a dealer”) must record the required information—

(a) in books with serially numbered pages, or

(b) by means of a device for storing and processing information.

(2) Where a dealer records the required information in books, the dealer must use separate books for recording the required information about—

(a) metal acquired, and

(b) metal processed or disposed of.
(3) Where a dealer uses a device for storing and processing information, the dealer must, by means of the device or otherwise, keep details of all modifications made in the records kept by the device.

(4) Where a dealer is required to keep a copy of a document under section 33B, it is sufficient for the dealer—

(a) to keep an electronic copy of the document, and

(b) in relation to a document verifying a person’s name or address, keep only one copy of the document.

(5) In this section, “required information” means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33B(2), (4) or (6).

33D Metal dealer to keep records for each place of business

(1) A metal dealer must keep separate records of the required information in relation to—

(a) each place of business operated by the dealer, and

(b) any metal acquired, processed or disposed of otherwise than at such a place of business.

(2) Where a metal dealer records the required information in books, the dealer must not, at any time at a place of business, use more than—

(a) one book for recording the required information about metal acquired, and

(b) one book for recording the required information about metal processed or disposed of.

(3) In this section—

“place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer’s business as a metal dealer,

“required information” means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33B(2), (4) or (6).”.

(4) In section 34 (offences relating to metal dealing)—

(a) after subsection (2) insert—

“(2A) Any metal dealer or itinerant metal dealer who fails to comply with a requirement of section 33B, 33C or 33D commits an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.”;

(b) in subsection (3), for the words from “furnishes” to “keep” substitute “produces any information or document which the dealer is required to record or keep under section 33B which is false or misleading in a material particular”.

Public entertainment venues

Licensing of theatres etc.

(1) In section 41 of the 1982 Act (public entertainment licences)—
(a) in subsection (2)(d), the words “the Theatres Act 1968, or” are repealed,

(b) after subsection (3) insert—

“(3A) In relation to a public entertainment licence which authorises the use of premises for the performance of plays, no condition may be attached to the licence as to the nature of the plays which may be performed, or the manner of performing plays, under the licence.

(3B) Subsection (3A) does not prevent a licensing authority from attaching, by virtue of section 3B or in accordance with subsection (3) or paragraph 5 of Schedule 1, any condition which they consider appropriate on the grounds of public safety.”.

(2) In section 1 of the Theatres Act 1968 (“the 1968 Act”) (abolition of censorship of the theatre), subsection (2) is repealed.

(3) Sections 12 to 14 of the 1968 Act (licensing of premises for public performances of plays) are repealed.

(4) In section 15 of the 1968 Act (powers of entry and inspection)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (a) is repealed,

(ii) paragraph (b) is repealed,

(iii) the words “or, in a case falling within paragraph (b) above, any police officer or authorised officer of the licensing authority” are repealed,

(iv) paragraph (ii) is repealed,

(b) subsections (2), (3), (5) and (6) are repealed.

(5) In section 18 of the 1968 Act (interpretation), in subsection (1), the definition of “licensing authority” is repealed.

(6) Schedule 1 to the 1968 Act (provision about licenses to perform plays) is repealed.

Sexual entertainment venues

68 Licensing of sexual entertainment venues

(1) The 1982 Act is amended as follows.

(2) In section 41(2) (definition of place of public entertainment), after paragraph (aa) insert—

“(ab) a sexual entertainment venue (as defined in section 45A) in relation to which Schedule 2 (as modified for the purposes of section 45B) has effect, while being used as such;”.

(3) After section 45 insert—

“45A Licensing of sexual entertainment venues: interpretation

(1) This section applies for the purposes of the interpretation of section 45B and Schedule 2 (as modified for the purposes of section 45B).

(2) “Sexual entertainment venue” means any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.
(3) For the purposes of that definition—

“audience” includes an audience of one,
“financial gain” includes financial gain arising directly or indirectly from the provision of the sexual entertainment,

“organiser”, in relation to the provision of sexual entertainment in premises, means—

(a) the person (“A”) who is responsible for—

(i) the management of the premises, or
(ii) the organisation or management of the sexual entertainment,

or

(b) where A exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person,

“premises” includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted,

“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).

(4) For the purposes of the definition of “sexual entertainment”, “display of nudity” means—

(a) in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus,

(b) in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.

(5) Sexual entertainment is provided if (and only if) it is provided (or allowed to be provided) by or on behalf of the organiser.

(6) References in Schedule 2 (as modified for the purposes of section 45B) to the use of any premises by a person as a sexual entertainment venue are to be read as references to their use by the organiser.

(7) The following are not sexual entertainment venues—

(a) a sex shop (within the meaning of paragraph 2(1) of Schedule 2),
(b) such other premises as the Scottish Ministers may by order specify.

(8) An order under subsection (7)(b) may make different provision for different purposes.
(9) Premises at which sexual entertainment is provided as mentioned in subsection (2) on a particular occasion (“the current occasion”) are not to be treated as a sexual entertainment venue if sexual entertainment has not been provided on more than 3 previous occasions which fall wholly or partly within the period of 12 months ending with the start of the current occasion.

(10) For the purposes of subsection (9)—
   (a) each continuous period during which sexual entertainment is provided on the premises is to be treated as a separate occasion, and
   (b) where the period during which sexual entertainment is provided on the premises exceeds 24 hours, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion.

(11) The Scottish Ministers may by order provide for—
   (a) descriptions of performances, or
   (b) descriptions of displays of nudity,
   which are not to be treated as sexual entertainment for the purposes of this section.

(12) An order under subsection (7)(b) or (11) is subject to the negative procedure.

45B Licensing of sexual entertainment venues

(1) A local authority may resolve that Schedule 2 (as modified for the purposes of this section) is to have effect in their area in relation to sexual entertainment venues.

(2) If a local authority passes a resolution under subsection (1), Schedule 2 (as so modified) has effect in their area from the day specified in the resolution.

(3) The day mentioned in subsection (2) must not be before the expiry of the period of one year beginning with the day on which the resolution is passed.

(4) A local authority must, not later than 28 days before the day mentioned in subsection (2), publish notice that they have passed a resolution under this section.

(5) The notice must—
   (a) state the general effect of Schedule 2 (as modified for the purposes of this section), and
   (b) be published electronically or in a newspaper circulating in the local authority’s area.

(6) For the purposes of this section, paragraphs 1 and 3 to 25 of Schedule 2 apply with the following modifications—
   (a) references to a sex shop are to be read as references to a sexual entertainment venue,
   (b) references to the use by a person of premises, vehicles, vessels or stalls as a sexual entertainment venue are to be read as references to their use by the organiser,
   (c) in paragraph 1—
in sub-paragraph (b)—

(A) the word “or immediately following paragraph (i) is omitted,
(B) paragraph (ii) is omitted, and
(ii) sub-paragraph (c) is omitted,

(d) in paragraph 7—

(i) in sub-paragraph (2), at the beginning insert “Subject to sub-
paragraph (3A),”, and
(ii) after sub-paragraph (3) insert—

“(3A)If a local authority consider it appropriate to do so in relation to an
application, the local authority may dispense with the requirement to
publish an advertisement under sub-paragraph (2) and may instead
publish notice of the application electronically.

(3B) Publication under sub-paragraph (3A) must be not later than 7 days after
the date of the application.”,

(e) in paragraph 9—

(i) in sub-paragraph (5)(c)—

(A) after the word “in” insert “the local authority’s area or”,
(B) after the word “for” insert “their area or”,
(ii) after sub-paragraph (5) insert—

“(5A)For the purposes of sub-paragraph (5)(c), a local authority must—

(a) from time to time determine the appropriate number of sexual
entertainment venues for their area and for each relevant locality,
and
(b) publicise the determination in such manner as they consider
appropriate.”,

(iii) after sub-paragraph (6) insert—

“(6A)A local authority may refuse an application for the grant or renewal of a
licence despite the fact that a premises licence under Part 3 of the
Licensing (Scotland) Act 2005 is in effect in relation to the premises,
vehicle, vessel or stall to which the application relates.”,

(f) in paragraph 12(2)(b), for “shorter” substitute “other”,

(g) in paragraph 19, after sub-paragraph (1) insert—

“(1A)But it is not an offence—

(a) under sub-paragraph (1)(b) for the holder of a licence for a sexual
entertainment venue to employ a person under the age of 18 in the
business of the sexual entertainment venue if the employee’s
duties do not involve the employee being in the sexual
entertainment venue at a time when sexual entertainment is being
provided, or
(b) under sub-paragraph (1)(e) for the holder of a licence for a sexual entertainment venue, or the servant, employee or agent of such a person, to permit an employee under the age of 18 to enter the sexual entertainment venue at times when sexual entertainment is not being provided.”, and

(h) in paragraph 25, in each of sub-paragraphs (1)(a) and (2), for “45” substitute “45B”.

(7) In carrying out functions conferred by virtue of this section, a local authority must have regard to any guidance issued by the Scottish Ministers.”.

(4) The title of Part 3 becomes “Control of sex shops and sexual entertainment venues”.

Miscellaneous and general

69 Deemed grant of applications

(1) The 1982 Act is amended as follows.

(2) In section 3 (discharge of functions of licensing authorities)—

(a) in subsection (1), for the words from “shall” to the end substitute “must—

(a) consider each relevant application made to them within the period of 3 months beginning with the date on which the application was made, and

(b) subject to the following provisions of this section, reach a final decision on the application within the period of 6 months beginning with the end of the 3 month period referred to in paragraph (a).”,

(b) in subsection (4)—

(i) the words “applied for” are repealed

(ii) for “or, as the case may be, renewed” substitute “, renewed or, as the case may be, varied”,

(iii) the words from “and” where first occurring to the end are repealed,

(c) after subsection (4) insert—

“(4A) A licence deemed to have been granted or renewed under subsection (4) is—

(a) in the case of a temporary licence, to remain in force for the duration of the period sought in the application (up to a maximum period of 6 weeks), or

(b) in any other case, to remain in force for the period of one year.

(4B) A variation of the terms of a licence deemed to have been granted under subsection (4) is to have effect for the remaining period of the licence.

(4C) Subsections (4) and (4B) do not affect—

(a) the powers of revocation under section 7(6)(a),

(b) paragraph 8(5) of Schedule 1 (which relates to renewals of existing licences),

(c) the powers of variation under paragraph 10 of that Schedule, or

(d) the powers of suspension under paragraphs 11 and 12 of that Schedule.”,
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(d) for subsection (5) substitute—

“(5A) The deemed grant, renewal or variation of the terms of a licence under subsection (4) is, for the purposes of Schedule 1, to be treated as a decision of the licensing authority to grant, renew or vary the terms of a licence.

(5B) For the purposes of this section, a “relevant application” is an application under paragraph 1, 7 or 10 of Schedule 1.”.

(3) After section 45B (as inserted by section 68 of this Act) insert—

“45C Deemed grant of applications

(1) For the purpose of the discharge of their functions under this Part, every local authority must—

(a) consider each relevant application made to them within the period of 3 months beginning with the date on which the application was made, and

(b) subject to the following provisions of this section, reach a final decision on the application within the period of 6 months beginning with the end of the 3 month period referred to in paragraph (a).

(2) On an application by the local authority within the 6 month period referred to in subsection (1)(b), the sheriff may, if it appears that there is a good reason to do so, extend that period as the sheriff thinks fit.

(3) The applicant is entitled to be a party to proceedings on an application under subsection (2).

(4) Where the local authority have failed to reach a final decision on the application before the expiry of—

(a) the 6 month period referred to in subsection (1)(b), or

(b) such further period as the sheriff may have specified on application under subsection (2),

the licence is deemed to have been granted, renewed or, as the case may be, varied on the date of such expiry.

(5) A licence deemed to have been granted or renewed under subsection (4) is to remain in force for the period of one year.

(6) A deemed variation of the terms of a licence deemed under subsection (4) is to have effect for the remaining period of the licence.

(7) Subsections (4) and (6) do not affect—

(a) the powers of revocation under paragraph 13 of Schedule 2, and

(b) the powers of variation under paragraph 15 of that Schedule.

(8) The deemed grant, renewal or variation of the terms of a licence under subsection (4) has the same effect, for the purposes of Schedule 2, as a decision of the licensing authority to grant, renew or vary the terms of a licence.

(9) For the purposes of this section, a “relevant application” is an application under paragraph 6 or 15 of Schedule 2.”.

(4) In Schedule 1 (licensing: further provisions as to the general system), in paragraph 10, after sub-paragraph (5) insert—
“(6) Sub-paragraph (5) does not apply to a deemed variation of the terms of a licence under section 3(4).”.

(5) In Schedule 2 (control of sex shops and sexual entertainment venues), in paragraph 15, after sub-paragraph (4) insert—

“(4A) Sub-paragraph (4) does not apply to a deemed variation of the terms of a licence under section 45C(4).”.

70 Procedure for hearings

(1) The 1982 Act is amended as follows.

(2) In Schedule 1 (licensing: further provisions as to the general system), after paragraph 18 insert—

“Power to make provision about hearings

18A(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a licensing authority under this Schedule.

(2) Regulations under this paragraph may, in particular, make provision—

(a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,

(b) about the rules of evidence which are to apply for the purposes of the hearing,

(c) about the representation of any party at the hearing,

(d) as to the times by which any step in the procedure must be taken, and

(e) as to liability for expenses.

(3) Regulations under this paragraph may make different provision for different purposes including, in particular, different types of licence.

(4) Regulations under this paragraph are subject to the negative procedure.”.

(3) In Schedule 2 (control of sex shops and sexual entertainment venues), after paragraph 24 insert—

“Power to make provision about hearings

24A(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a local authority under this Schedule.

(2) Regulations under this paragraph may, in particular, make provision—

(a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,

(b) about the rules of evidence which are to apply for the purposes of the hearing,

(c) about the representation of any party at the hearing,

(d) as to the times by which any step in the procedure must be taken, and

(e) as to liability for expenses.
(3) Regulations under this paragraph may make different provision for different purposes, including, in particular, different types of licence.

(4) Regulations under this paragraph are subject to the negative procedure.”.

71 Conditions for Part 3 licences

(1) The 1982 Act is amended as follows.

(2) After section 45C (as inserted by section 69) insert—

“Conditions of licences granted under this Part

45D Mandatory licence conditions

(1) The Scottish Ministers may by order prescribe conditions to which licences granted by local authorities under this Part are to be subject.

(2) Different conditions may be prescribed under subsection (1)—

(a) in respect of different licences or different types of licence,

(b) otherwise for different purposes, circumstances or cases.

(3) An order under subsection (1) is subject to the affirmative procedure.

(4) Subsection (1) does not affect any other power of the Scottish Ministers under this Act or any other enactment to prescribe conditions—

(a) to which licences granted by local authorities under this Part are to be subject, or

(b) to be imposed by local authorities in granting or renewing licences under this Part.

(5) The following conditions are referred to in this Part as “mandatory conditions”—

(a) conditions prescribed under subsection (1),

(b) conditions prescribed under any power referred to in subsection (4), and

(c) conditions imposed, or required to be imposed, by any provision of this Part.

(6) In this section and section 45E, references to licences granted by local authorities include references to—

(a) licences renewed by local authorities, and

(b) licences deemed by virtue of section 45C to have been granted or renewed by local authorities.

45E Standard licence conditions

(1) A local authority may determine conditions to which licences granted by them under this Part are to be subject.

(2) Conditions determined under subsection (1) are referred to in this Part as “standard conditions”.

(3) Different conditions may be determined under subsection (1)—

(a) in respect of different licences or different types of licence,
(b) otherwise for different purposes, circumstances or cases.

(4) A local authority must publish, in such manner as they think appropriate, any standard conditions determined by them.

(5) Standard conditions have no effect—

(a) unless they are published, and

(b) so far as they are inconsistent with any mandatory conditions.

(6) Subsection (1) is subject to paragraph 9(1A) of Schedule 2.”.

(3) In paragraph 9 of Schedule 2 (disposal of applications for licences)—

(a) in sub-paragraph (1)—

(i) the word “unconditionally” is repealed,

(ii) paragraph (b) is repealed,

(b) after sub-paragraph (1) insert—

“(1A) In granting or renewing a licence under sub-paragraph (1)(a), a local authority may (either or both)—

(a) disapply or vary any standard conditions,

(b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.”,

(c) in sub-paragraph (2)—

(i) for “sub-paragraph” where first occurring substitute “sub-paragraphs (2ZA) and”,

(ii) for “(1)” substitute “(1A)(b)”,

(d) after sub-paragraph (2) insert—

“(2ZA) A variation made under sub-paragraph (1A)(a) or a condition imposed under sub-paragraph (1A)(b) has no effect in so far as it is inconsistent with any mandatory condition to which the licence is subject.”,

(e) in sub-paragraph (2A), for “(1)” substitute “(1A)(b)”.

72 Civic licensing standards officers

After Part 3 of the 1982 Act insert—

“PART 3A

CIVIC LICENSING STANDARDS OFFICERS

45F Civic licensing standards officers

(1) Each local authority must appoint for their area one or more officers (a “civic licensing standards officer”)—

(a) to exercise, in relation to the authority’s area, the general functions conferred on civic licensing standards officers by virtue of section 45G, and

(b) to exercise any other functions that may be conferred on such an officer by virtue of this or any other enactment.
(2) A civic licensing standards officer appointed by a local authority is taken to be an authorised officer of the authority for the purposes of Parts 1 to 3.

(3) A person may hold more than one appointment under subsection (1) (so as to be a civic licensing standards officer for more than one local authority area).

(4) Nothing in this section prevents an officer of a local authority other than a civic licensing standards officer from being an authorised officer of the authority for a purpose of Parts 1 to 3.

(5) In this Part, a reference to a local authority includes a reference to that authority acting as the licensing authority for their area and a reference to an authorised officer of a local authority (however expressed) is to be construed accordingly.

45G General functions of a civic licensing standards officer
(1) The general functions of a civic licensing standards officer are—
(a) to provide to any interested person information and guidance concerning the operation of Parts 1 to 3 in the officer’s area,
(b) to supervise the compliance by the holder of a licence granted under Parts 1 to 3 in the officer’s area with—
(i) the conditions of the licence, and
(ii) the other requirements of Parts 1 to 3,
(c) to provide mediation services for the purposes of avoiding or resolving disputes or disagreements between—
(i) the holder of a licence granted under Parts 1 to 3 in the officer’s area, and
(ii) any other person,

concerning any matter relating to compliance with the conditions of the licence or the other requirements of Parts 1 to 3.

(2) The function under subsection (1)(b) includes, in particular, power for a civic licensing standards officer, where the officer believes that a condition to which the licence is subject has been or is being breached—
(a) to give a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice, and
(b) to refer the breach to the local authority which granted the licence for consideration at a meeting of the authority.

(3) A civic licensing standards officer may only refer a breach of a condition under subsection (2)(b) if—
(a) the officer has given notice under subsection (2)(a) and the holder of the licence has failed to comply with it, or
(b) the officer considers that it is appropriate for the breach to be referred to the authority without such a notice being given.

(4) In this section, a reference to an officer’s area is a reference to—
(a) the local authority area for which the officer is appointed under section 45F(1), or
(b) where the officer is appointed for more than one local authority area, the area for which the officer is exercising a function at the relevant time.”.

73 Electronic communications under the 1982 Act

(1) The 1982 Act is amended as follows.

(2) In Schedule 1 (licensing: further provisions as to the general system)—

(a) after paragraph 3(3), insert—

“(3A) Where a licensing authority have determined to accept objections and representations by means of an electronic communication under paragraph 16A, an objection or representation is made for the purpose of sub-paragraph (1) of this paragraph if it is sent—

(a) to the authority by means of an electronic communication which complies with the determination, and
(b) within the time specified in sub-paragraph (1).

(3B) Sub-paragraph (3A) is without prejudice to sub-paragraph (3).”,

(b) after paragraph 16 insert—

“Electronic communications

16A(1) A licensing authority may determine to accept—

(a) applications for the grant or renewal of a licence under paragraph 1,
(b) objections or representations under paragraph 3,
(c) notifications of a change to a licence under paragraph 9,
by means of an electronic communication.

(2) Where a licensing authority make a determination under sub-paragraph (1) they must—

(a) specify in the determination—

(i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,
(ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and
(iii) any means of authentication (in addition to an electronic signature) that are acceptable, and
(b) publicise the determination as they consider appropriate.

(3) In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—

(a) to be in writing is satisfied if the communication is—

(i) in the form specified under sub-paragraph (2)(a)(i), and
(ii) sent to the address specified under sub-paragraph (2)(a)(ii),
(b) to be satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).

(4) A licensing authority may determine to—

(a) give notices under paragraphs 5, 9, 10, 11 or 12, and

(b) give reasons under paragraph 17,

by means of an electronic communication.

(5) A licensing authority may only give a notice or reasons by means of an electronic communication if—

(a) the person to whom the notice or reasons is or are to be given has agreed to receive notices and reasons by means of an electronic communication, and

(b) the communication is sent to an electronic address, and is in an electronic form, specified for that purpose by the person.

(6) In relation to any notice or reasons given by means of an electronic communication, any requirement of this Schedule for the notice or reasons to be given in writing is satisfied if the communication is sent in accordance with sub-paragraph (5).

(7) When a licensing authority gives a notice or reasons by means of an electronic communication then, unless the contrary is proved, it is to be treated as having been received by the person to whom it was sent on the second working day after the day on which it was sent.

(8) For the purposes of sub-paragraph (7), “working day” means a day which is not—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning, or

(e) a day which is a local or public holiday in the area in which the electronic communication is to be sent.

(9) A licensing authority may make different determinations for different purposes including, in particular, for different types of licence.

(10) In this Schedule—

“electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,

“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.”.

(3) In Schedule 2 (control of sex shops and sexual entertainment venues)—

(a) after paragraph 8(4) insert—
“(4A) Where a local authority have determined to accept objections and representations by means of an electronic communication under paragraph 22A, an objection or representation is made for the purpose of sub-paragraph (2) of this paragraph if it is sent—

(a) to the authority by means of an electronic communication which complies with the determination, and

(b) within the time specified in sub-paragraph (2).

(4B) Sub-paragraph (4A) is without prejudice to sub-paragraph (4).”

(b) after paragraph 22 insert—

“Electronic communications

22A(1) A local authority may determine to accept—

(a) applications for the grant or renewal of a licence under this Schedule,

(b) objections or representations under paragraph 8,

(c) notifications of a change to a licence under paragraph 14,

by means of an electronic communication.

(2) Where a local authority make a determination under sub-paragraph (1) they must—

(a) specify in the determination—

(i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,

(ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and

(iii) any means of authentication (in addition to an electronic signature) that are acceptable, and

(b) publicise the determination as they consider appropriate.

(3) In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—

(a) to be in writing is satisfied if the communication is—

(i) in the form specified under sub-paragraph (2)(a)(i), and

(ii) sent to the address specified under sub-paragraph (2)(a)(ii),

(b) to be signed is satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).

(4) A local authority may determine to—

(a) give notices under paragraphs 8, 10, 13, 14 or 15, and

(b) give reasons under paragraph 23,

by means of an electronic communication.

(5) A local authority may only give a notice or reasons by means of an electronic communication if—
(a) the person to whom the notice or reasons is or are to be given has agreed to receive notices and reasons by means of an electronic communication, and

(b) the communication is sent to an electronic address, and is in an electronic form, specified for that purpose by the person.

(6) In relation to any notice or reasons given by means of an electronic communication, any requirement of this Schedule for the notice or reasons to be given in writing is satisfied if the communication is sent in accordance with sub-paragraph (5).

(7) When a licensing authority gives a notice or reasons by means of an electronic communication then, unless the contrary is proved, it is to be treated as having been received by the person to whom it was sent on the second working day after the day on which it was sent.

(8) For the purposes of sub-paragraph (7), “working day” means a day which is not—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning, or

(e) a day which is a local or public holiday in the area to which the electronic communication is sent.

(9) A local authority may make different determinations for different purposes including, in particular, for different types of licence.

(10) In this Schedule—

“electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,

“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.”.

**PART 4**

**GENERAL**

74 **Interpretation**

(1) In this Act—

“the 1982 Act” means the Civic Government (Scotland) Act 1982,

“the 2005 Act” means the Licensing (Scotland) Act 2005.

(2) See section 40 for the interpretation of words and expressions used in Part 1.

75 **Regulations**

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—
(a) different provision for different purposes,
(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(2) Regulations under section 2(4), 8(3) or 20(3) are subject to the affirmative procedure.

(3) Regulations under section 76(1) containing provisions which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.

(4) All other regulations under this Act are subject to the negative procedure.

76 Ancillary provision

(1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision of this Act or any provision made under it.

(2) Regulations under this section may modify this or any other enactment.

77 Minor and consequential amendments and repeals

Schedule 2 contains—

(a) minor amendments, and

(b) amendments and repeals consequential on the provisions of this Act.

78 Commencement

(1) This Part, other than section 77, comes into force on the day after Royal Assent.

(2) The other provisions of this Act (including section 77) come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under this section may include transitional, transitory or saving provision.

79 Short title

The short title of this Act is the Air Weapons and Licensing (Scotland) Act 2015.
SCHEDULE 1
(introduced by section 2(3))

EXEMPTIONS

Approved air weapon clubs

1 It is not an offence under section 2(1) for an individual ("A") to use or possess an air weapon without holding an air weapon certificate if—
   (a) A is a member of an approved air weapon club,
   (b) the use or possession occurs while A is engaged as such a member—
      (i) in target shooting at the club, another approved air weapon club, an event or competition, or
      (ii) in connection with such target shooting, and
   (c) where A is under the age of 14, A’s use and possession of an air weapon is supervised by another club member aged 21 years or more.

Registered firearms dealers and their employees

2 (1) It is not an offence under section 2(1) for an individual to use, possess, purchase or acquire an air weapon without holding an air weapon certificate if—
   (a) the individual is carrying on business as a registered firearms dealer or is the employee of a registered firearms dealer, and
   (b) the possession occurs in the ordinary course of the business as such a dealer.

(2) For the purposes of sub-paragraph (1), it is irrelevant whether the use, possession, purchase or acquisition of the air weapon occurs at a place—
   (a) which is not a place of business of the registered firearms dealer, or
   (b) which the dealer has not registered as a place of business under section 33 or 37 of the 1968 Act.

3 (3) It is not an offence under section 2(1) for an individual ("A") to—
   (a) borrow an air weapon from a registered firearms dealer, and
   (b) use and possess the weapon on land occupied by the dealer, without holding an air weapon certificate, if the conditions in sub-paragraph (4) are complied with.

(4) The conditions are—
   (a) A uses and possesses the air weapon under the supervision of the registered firearm dealer or an employee of the dealer ("the supervisor"), and
   (b) where A is under the age of 14, the supervisor is aged 21 years or more.

Auctioneers

3 (1) It is not an offence under section 2(1) for an individual to possess, acquire or purchase an air weapon without holding an air weapon certificate if—
Air Weapons and Licensing (Scotland) Bill
Schedule I—Exemptions

(a) the individual is carrying on business as an auctioneer or is the employee of an auctioneer, and
(b) the possession occurs in the ordinary course of the business as an auctioneer.

(2) It is not an offence under section 24 for an individual (“A”) who is an auctioneer (but not a registered firearms dealer) in the course of A’s business as such an auctioneer to sell (or expose for sale) by auction an air weapon if A holds a police permit granted by the chief constable under section 12.

Carriers and warehouse keepers

4 It is not an offence under section 2(1) for an individual to possess an air weapon without holding an air weapon certificate if—

(a) the individual is carrying on business as a carrier or warehouse keeper or is the employee of a carrier or warehouse keeper, and
(b) the possession occurs in the ordinary course of the business as a carrier or warehouse keeper.

Artistic performers

5 (1) It is not an offence under section 2(1) for an individual to use or possess an air weapon without holding an air weapon certificate while the individual is taking part in an activity listed in sub-paragraph (2).

(2) The activities are—

(a) a theatrical performance or a rehearsal of such a performance,
(b) the production of a film for cinema, television or other genuine and prearranged artistic purpose.

Cadet corps

6 (1) It is not an offence under section 2(1) for an individual to use or possess an air weapon without holding an air weapon certificate if—

(a) the individual is a member of an approved cadet corps or the instructor of such a member, and
(b) the use or possession occurs while the individual is engaged in drill or target shooting exercises as such a member or instructor.

(2) In this paragraph “approved cadet corps” means a cadet corps which has been approved by the Secretary of State under section 54(5)(b) of the 1968 Act.

Bodies corporate etc.

7 (1) It is not an offence under section 2(1) for a person who is not an individual (“the entity”) to possess, purchase or acquire an air weapon without holding an air weapon certificate if an officer of the entity holds an air weapon certificate in the officer’s capacity as such an officer.

(2) For the purposes of sub-paragraph (1), a reference to an officer of the entity is a reference to—
(a) in relation to a body corporate (other than a limited liability partnership)—
   (i) a director, manager, secretary or similar officer of the body,
   (ii) where the affairs of the body are managed by its members, a member,
(b) in relation to a limited liability partnership, a member,
(c) in relation to a Scottish partnership, a partner,
(d) in relation to an unincorporated association other than a Scottish partnership, an
   individual who is concerned in the management or control of the association.

Holders of police permits

8 (1) It is not an offence under section 2(1) for an individual who holds a police permit under
section 12 to possess or acquire an air weapon without holding an air weapon certificate
if the permit authorises the possession or acquisition.

(2) It is not an offence under section 24 for an individual who holds a police permit under
section 12 to sell (or expose for sale) an air weapon, in the course of the holder’s
business, if the permit authorises the sale.

Holders of visitor permits

9 It is not an offence under section 2(1) for an individual who holds a visitor permit under
section 13 to use, possess, purchase or acquire an air weapon without holding an air
weapon certificate if the permit authorises the use, possession, purchase or, as the case
may be, acquisition.

Authorised events

10 (1) It is not an offence under section 2(1) for an individual to—
   (a) at an event in respect of which an event permit has been granted by the chief
       constable under section 17, and
   (b) engaging in an event activity.

(2) In this paragraph, “event activity” has the meaning given in section 17(7).

Supervised use of air weapons on private land

11 (1) It is not an offence under section 2(1) for an individual (“A”) to—
   (a) borrow an air weapon from the occupier of private land, and
   (b) use and possess the weapon on that land,
without holding an air weapon certificate, if the conditions in sub-paragraph (2) are
complied with.

(2) The conditions are—
   (a) A uses and possesses the air weapon under the supervision of the occupier of the
       land or an employee or agent of the occupier (“the supervisor”),
   (b) the supervisor holds an air weapon certificate,
(c) A complies with any conditions attached to the supervisor’s certificate so far as relevant to the use and possession of the air weapon by A, and

(d) where A is under the age of 14, the supervisor is aged 21 years or more.

**Use of air weapons at recreational shooting facilities**

12 (1) It is not an offence under section 2(1) for an individual (“A”) to borrow, hire, use or possess an air weapon without holding an air weapon certificate at a recreational shooting facility, if—

(a) A reasonably believes that an individual who is responsible for the management and operation of the facility holds an air weapon certificate, and

(b) A’s use or possession occurs only while A is at the facility.

(2) It is not an offence under section 2(1) for an individual (“B”) to use or possess an air weapon without holding an air weapon certificate at a recreational shooting facility, if—

(a) B reasonably believes that an individual who is responsible for the management and operation of the recreational shooting facility holds an air weapon certificate, and

(b) B is an employee of the operator of the facility and is acting in the ordinary course of the employer’s business as such an operator.

(3) In this paragraph, “recreational shooting facility” means—

(a) a miniature rifle range or a shooting gallery at which air weapons are used, or

(b) a facility for combat games which involve an air weapon, which is operated with a view to making a profit.

**Museums**

13 (1) It is not an offence under section 2(1) for an individual who is responsible for the management of a museum or is an employee of the museum to possess, purchase or acquire an air weapon without holding an air weapon certificate if—

(a) the possession, purchase or acquisition is for the purposes of the museum, and

(b) either—

(i) there is a museums firearms licence in force in respect of the museum, or

(ii) an individual mentioned in sub-paragraph (2) holds an air weapon certificate.

(2) The individuals are—

(a) an individual responsible for the management of the museum, or

(b) a curator at the museum.

(3) In this paragraph—

(a) a reference to an individual responsible for the management of the museum is a reference to a member of the board of trustees or the governing body or an individual exercising corresponding functions,

(b) “museums firearms licence” means a licence granted under the Schedule to the Firearms (Amendment) Act 1988.
Air weapons on ships

14 It is not an offence under section 2(1) for a person to use and possess an air weapon without holding an air weapon certificate while on board a ship if the weapon is part of the equipment of the ship.

Purchase of air weapons for delivery outwith Great Britain

15 It is not an offence under section 2(1) for an individual to purchase an air weapon from a registered firearms dealer without holding an air weapon certificate if—

(a) the purchaser is aged 18 years or more, and

(b) the weapon is to be delivered to a place outwith Great Britain without first coming into the purchaser’s possession.

Loaning of air weapons for exempted purposes

16 (1) It is not an offence under section 24(1) or (2) for a person listed in sub-paragraph (2) to loan an air weapon to an individual (“A”), who does not hold an air weapon certificate, for the purpose of A’s using and possessing the weapon in accordance with an exemption under this schedule.

(2) The persons are—

(a) a holder of an air weapon certificate, or

(b) a person who—

(i) does not hold an air weapon certificate, but

(ii) is entitled to use or possess an air weapon without committing an offence by virtue of an exemption under this schedule.

Public servants carrying out official duties

17 (1) It is not an offence under this Part for a person listed in sub-paragraph (3) to carry out an activity listed in sub-paragraph (2) without holding an air weapon certificate, if the carrying out of the activity is for or in connection with the person’s duties.

(2) The activities are the use, possession, purchase, acquisition, manufacture, testing, repair, sale, transfer or disposal of an air weapon.

(3) The persons are—

(a) a constable,

(b) a member of police staff,

(c) a police cadet appointed under section 25 of the Police and Fire Reform (Scotland) Act 2012,

(d) a person providing forensic services in pursuance of section 31 of the Police and Fire Reform (Scotland) Act 2012,

(e) a member of the Ministry of Defence police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987,

(f) a member of the British Transport Police,

(g) a member of the Civil Nuclear Constabulary,
(h) a civilian officer of the British Transport Police or the Civil Nuclear Constabulary,

(i) a member of any other police force while executing a warrant or otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,

(j) a person in the armed forces of Her Majesty,

(k) a member of the armed forces of another country when that member is serving with the armed forces of Her Majesty,

(l) the Queen’s Lord Treasurer and Remembrancer.

(4) In this paragraph “armed forces” means naval, military or air services.

Holders of certificates or permits with conditions

18 (1) It is not an offence under section 6(4) for a holder of an air weapon certificate to fail to comply with a condition attached to the holder’s certificate if the conditions in sub-paragraph (2) are complied with.

(2) The conditions are—

(a) that the holder of the certificate would be entitled to use, possess, purchase or, as the case may be, acquire an air weapon by virtue of an exemption under this schedule if the holder did not hold the certificate, and

(b) that the failure relates to the use, possession, purchase or, as the case may be, acquisition of an air weapon in accordance with the exemption.

(3) It is not an offence under section 15(4) for a holder of a police permit or a visitor permit to fail to comply with a condition attached to the holder’s permit if the conditions in sub-paragraph (4) are complied with.

(4) The conditions are—

(a) that the holder of the permit is entitled to use, possess, purchase or, as the case may be, acquire an air weapon by virtue of an exemption under this schedule, and

(b) that the failure relates to the use, possession, purchase or, as the case may be, acquisition of an air weapon in accordance with the exemption.

SCHEDULE 2
(introduced by section 77)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1

AMENDMENTS AND REPEALS RELATING TO PART 1

Firearms Act 1968

1 (1) The Firearms Act 1968 is amended as follows.

(2) In section 3(1) (offences relating to manufacturing, selling or transferring firearms when not a firearms dealer)—

(a) immediately following paragraph (a), insert “or”,

Firearms Act 1968
(b) the word “or” immediately following paragraph (b) is repealed,
(c) paragraph (c) is repealed.

(3) In section 21A (firing an air weapon beyond premises), after subsection (1) insert—
“(1A) A person commits an offence if the person—

(a) is supervising the use and possession of an air weapon on private
premises by a person under the age of 18, and

(b) allows the supervised person to fire any missile beyond those premises.”.

(4) Section 22(4) (offence for person under 18 to possess an air weapon or ammunition for
an air weapon) is repealed.

(5) Section 23 (exceptions from section 22(4) of that Act) is repealed.

(6) In section 24(4) (supplying firearms to minors), in paragraph (b), for the words from
“by” to the end substitute “the person holds an air weapon certificate granted under
section 5 of the Air Weapons and Licensing (Scotland) Act 2015 or the possession is
otherwise in accordance with Part 1 of that Act.”.

(7) In section 24ZA (failing to prevent minors from having air weapons), for subsection (2)
substitute—
“(2) Subsection (1) does not apply where—

(a) the person under the age of 18 holds an air weapon certificate granted
under section 5 of the Air Weapons and Licensing (Scotland) Act 2015,
or

(b) the use or possession of the weapon by the person under the age of 18 is
otherwise in accordance with Part 1 of that Act.”.

(8) In section 57 (interpretation)—

(a) in subsection (3), for “22(4), 22(5), 23(1)” substitute “21A(1A),”;

(b) in subsection (4), in the definition of “firearms dealer”, in paragraph (b), for “sells
or transfers” substitute “manufactures, sells, transfers, repairs or tests”.

(9) In Schedule 6 (prosecution and punishment of offences)—

(a) in the table in Part 1 (punishments)—

(i) in the entry for section 21A (person making improper use of air weapon), in
the first column, for “21A” substitute “21A(1) and (1A),”;

(ii) the entry for section 22(4) is repealed,

(iii) the entry for section 23(1) is repealed,

(b) in Part 2 (supplementary provisions as to trial and punishment of offences)—

(i) in paragraph 7, for “21A, 22(3) or (4), 23(1)” substitute “21A(1), 21A(1A),
22(3),”;

(ii) in paragraph 8, for “21A, 22(3) or (4), 23(1),” substitute “21A(1),
21A(1A), 22(3),”.
Violent Crime Reduction Act 2006

Section 32 of the Violent Crime Reduction Act 2006 (sales of air weapons by way of trade or business to be face to face) is repealed.

PART 2

AMENDMENTS RELATING TO PART 2

Licensing (Scotland) Act 2005

(1) The 2005 Act is amended as follows.

(2) In section 37 (review of premises licence on Licensing Board’s initiative)—

(a) in subsection (3), for “subsection” where second occurring substitute “section”,

(b) in subsection (4)—

(i) in paragraph (a), for “subsection” substitute “section”,

(ii) in paragraph (b), for “subsection” substitute “section”.

PART 3

AMENDMENTS RELATING TO PART 3

Civic Government (Scotland) Act 1982

(1) The 1982 Act is amended as follows.

(2) In Schedule 1 (licensing: further provisions as to the general system)—

(a) in paragraph 5—

(i) the sub-paragraph (2A) which was inserted by section 172(6)(d) of the Criminal Justice and Licensing (Scotland) Act 2010 is renumbered as sub-paragraph (2ZA),

(ii) in the sub-paragraph (2A) which was inserted by paragraph 11(6)(b)(ii) of Schedule 1 to the Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006, SSI 2006/475, for “(1)(b)” substitute “(1A)(b)”,

(b) in paragraph 7(3), for “(2), (2A)” substitute “(1A), (2), (2ZA), (2A)”.


Air Weapons and Licensing (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; to amend and extend the licensing provisions of the Civic Government (Scotland) Act 1982; and for connected purposes.

Introduced by: Kenny MacAskill
On: 14 May 2014
Bill type: Government Bill
AIR WEAPONS AND LICENSING (SCOTLAND) BILL

EXPLANATORY NOTES

(CONTENT AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Air Weapons and Licensing (Scotland) Bill introduced in the Scottish Parliament on 14 May 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 49–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

PURPOSE

3. The Bill introduces a system of licensing for air weapons in Scotland. The Bill creates a number of new offences related to possession, use and acquisition of air weapons by persons who do not hold a licence or do not act in accordance with the licensing regime. The Bill also sets out the framework through which the Police Service of Scotland may grant an air weapon licence to appropriate individuals.

4. The Bill will give local communities the power to regulate sexual entertainment venues in their areas. The Bill also amends the licensing regimes in relation to alcohol licensing, taxis and private hire cars, metal dealers, as well as making systematic changes across the civic licensing regimes contained within the Civic Government (Scotland) Act 1982 (“the 1982 Act”).

5. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

STRUCTURE AND SUMMARY OF THE BILL

6. The Bill is in four parts:

- **Part 1 Air weapons** sets out a new licensing system for air weapons administered by the Police Service of Scotland. Specific provisions include:
  - a definition of the air weapons that will be subject to licensing;
  - a requirement for air weapon certificates and the process for applications, grants (including conditions and duration) variations, renewal and revocation of these;
  - a system of police permits, visitor permits and event permits;
  - restrictions on the commercial sale, sale for delivery outwith Scotland, manufacture, repair, testing of air weapons and the operation of recreational shooting facilities;
  - Enforcement powers and offences;
  - Power to set fees and provide guidance;
  - Air gun clubs;
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

- Exemptions from the licensing regime.

**Part 2 Alcohol licensing** amends the existing licensing regime for alcohol licensing included within the Licensing (Scotland) Act 2005 (“the 2005 Act.”) Specific provisions include:

- Amendment of the licensing objective in relation to children to also include young persons;
- Amendment of the duration of a licensing policy statement to align with the term of Local Government elections;
- Inserting a fit and proper person test in relation to the issue or continued holding of a premises or a personal licence;
- Removal of the automatic requirement for a hearing to be held where a Licensing Board is notified of a relevant or foreign offence in relation to a premises or personal licence;
- Amendment of the definition of relevant offences and foreign offences to no longer disregard a matter that is spent for the purposes of the Rehabilitation of Offenders Act 1974;
- Creation of new offences of giving, or making available, alcohol to a child or young person for consumption in a public place;
- Inclusion of the flavouring angostura bitters in the definition of alcohol for the purposes of the Act;
- Clarification that for an overprovision assessment, the whole Board area may be considered as an area of overprovision;
- For an overprovision assessment allow Boards to take account of licensed hours, among other things;
- A duty on Boards to prepare an annual financial report in respect of their licensing activities;
- Removal of the requirement for a premises licence holder to notify a change in interested parties and amendment of the definition of an “interested party” to remove premises managers;
- Changes to the personal licence holder requirements including removal of the five year restriction on re-applying for a licence revoked on grounds of failing to undertake refresher training or notifying the board of such, and other changes to the personal licence holder requirements;
- A requirement for a Licensing Board to issue an acknowledgement of complete applications, unless the Board does not consider that it would be appropriate to do so;
- Automatic grant of a licence where a Licensing Board has failed to determine an application within the required period or the extended period as granted by a sheriff. This clarifies compliance with the EU Services Directive.
Part 3 Civic Licensing amends the existing licensing regimes included within the 1982 Act:

**Sexual entertainment venues**
Sets out a new licensing system for sexual entertainment venues administered by local authorities. Specific provisions include:

- The definition of sexual entertainment venues;
- The power for local authorities to license sexual entertainment venues according to the existing structure set out in Schedule 2 of the 1982 Act;
- The power for local authorities to determine the number of sexual entertainment venues in their area.

**Metal dealers**
Amendments to the metal dealer regime. Specific provisions include:

- Removal of the exemption warrants system that allowed a metal dealer with a larger turnover to be exempted;
- Limit payment for metal by metal dealers or itinerant metal dealers to prescribed methods i.e. bank transfer or cheque;
- Amended standards for identification of customers;
- Amended standards of record keeping;
- Removal of mandatory requirement that metal dealers should not process metal for 48 hours after receiving it.

**Taxis and private hire cars**
Amendments to the taxis and private hire cars regime. Specific provisions include:

- The power to refuse to grant private hire car licences on grounds of overprovision;
- The extension of taxi driver testing to include private hire car drivers;
- Removal of the contract exemptions to the licensing and regulation of taxis and private hire cars, bringing hire cars used on contracts into the regime.

**Public entertainment venues**
Abolish ‘theatre licences’ as currently required under the Theatres Act 1968 and instead regulate theatres through the existing public entertainment licencing regime provided for in the 1982 Act.

**Miscellaneous and general**
Amendments to the operation of all civic government licensing regimes. Specific provisions include:

- Power for Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings;
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

- Introduction of a new role, Civic Licensing Standards Officer;
- Where it has not already been provided for, the deemed grant of a licence where the Local Authority has failed to determine an application within the required period or the extended period granted by a sheriff.

- **Part 4 General Provision** sets out general provisions, such as for the making of ancillary provision by regulations. It also contains definitions, the short title and provisions for commencement of the Act by order.

**PART 1 – AIR WEAPONS**

7. The provisions in this Part establish a licensing regime in relation to air weapons.

*Meaning of air weapon*

**Section 1 – Meaning of “air weapon”**

8. Section 1 defines the term “air weapon” for the purposes of the Part. Subsection (2) adopts the definition from section 1(3)(b) of the Firearms Act 1968 (“the 1968 Act”). Section 1(3)(b) of the 1968 Act provides that an air weapon is an air rifle, air gun or air pistol which does not fall within section 5(1) of the 1968 Act and which is not of a type declared by the Secretary of State by rules to be “specially dangerous”. The Firearms (Dangerous Air Weapons) (Scotland) Rules 1969 (S.I. 1969/270) as amended are the applicable rules made by the Secretary of State.

9. The effect of this is that the Part applies to air weapons capable of a muzzle energy equal to or lower than 12 foot pounds (ft/lb), or 6 ft/lb for an air pistol (approximately 16.27 joules and 8.13 joules respectively). Air weapons above these thresholds – or those that come within section 5(1) of the 1968 Act, for example by being disguised as another object, or designed or adapted to use a self-contained gas cartridge system – will continue to require to be held on a Firearms Certificate issued under the 1968 Act. Note that section 48 of the Firearms (Amendment) Act 1997 provides that any reference to an air rifle, air pistol or air gun in the Firearms Acts 1968 to 1997 includes a reference to any such rifle, pistol or gun which is powered by compressed carbon dioxide and therefore such weapons also fall to be licensed by the Part.

10. Subsection (4)(a)(i) adds a lower power threshold of one joule (approximately 0.74 ft/lb) to this definition, so that air weapons with a muzzle energy of one joule or below do not require to be held on an air weapon certificate. Subsection (4)(a)(ii) also excludes air weapons designed for use only underwater, for example spear guns, from requiring a certificate. Such weapons are excluded from existing UK firearms legislation by regulation 2 of the Firearms (Dangerous Air Weapons) (Scotland) Amendment rules 1993 (S.I. 1993/1541).

11. Subsection (3) sets out that component parts and sound moderators for air weapons are included in the definition of “air weapon”, and require to be held on an air weapon certificate.
Air weapon certificates

Section 2 – Requirement for air weapon certificate

12. This section makes it an offence for a person to use, possess, purchase or acquire an air weapon (as defined in section 1) without holding a valid air weapon certificate or otherwise than in accordance with the Part. Subsection (2) specifies that this offence is triable summarily or on indictment, and sets out the maximum penalties for both. The offence attracts strict liability. A “person” includes non-natural (e.g. corporate bodies) as well as natural persons.

13. Subsection (3) introduces schedule 1, which sets out a number of exemptions from the requirement to hold an air weapon certificate, and certain other offences created by the Part. Commentary on schedule 1 begins at paragraph 222 of this paper. Subsection (4) provides the Scottish Ministers with the power to add, remove or modify exemptions in schedule 1 by regulations. Such regulations are subject to the affirmative procedure in the Scottish Parliament.

Section 3 – Application for grant or renewal of air weapon certificate

14. This section sets out the process by which an individual can apply for an air weapon certificate, or the renewal of a certificate which has previously been granted. Subsection (1) states that applications must be made to the Chief Constable of the Police Service of Scotland, and sets a lower age limit of 14 for applicants.

15. Subsection (2) provides that applications for an air weapon certificate must be made in the form specified in regulations issued under section 37 and must be verified as set out in section 4. Additionally, applicants below the age of 18 must provide information specified in section 7. If an application is not accompanied by the required information it cannot be considered by the Chief Constable. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

16. Subsection (3) requires the Chief Constable to keep a register of all applications for a new or renewed air weapon certificate, even if the application is ultimately unsuccessful.

Section 4 – Verification of applications

17. This section, combined with section 3(2)(a), requires an application for a new or renewed air weapon certificate to be verified by an appropriate individual before it can be considered by the Chief Constable. Subsection (2) sets out who can verify an application but subsection (2)(c) lists those who can never verify an application, and subsection (3) requires the verifier to confirm the accuracy of any information supplied with the application. In every case the verifier must have known the applicant personally for at least two years, but not be related to them (see the definition of “relative” in section 40) or be ordinarily resident outside the United Kingdom, or be a Registered Firearms Dealer or be a constable or member of police staff of the Police Service of Scotland or a member or employee of the Scottish Police Authority. The Chief Constable must also be satisfied that verifiers are of good standing in the community. Further detail on who can verify an application will be provided in guidance published by the Scottish Ministers under section 39.
Section 5 – Grant or renewal of air weapon certificate

18. This section allows the Chief Constable to issue a new or renewed air weapon certificate provided that the applicant is fit to be entrusted with an air weapon; is not prohibited from possessing any firearms by section 21 of the 1968 Act (which makes provision to prohibit for life or 5 years possession of firearms, including air weapons, by persons who have been convicted and sentenced to specified terms of imprisonment); has a good reason to use, possess, purchase or acquire an air weapon (for example, pest control, sporting target shooting, or being a collector); and in all the circumstances can do so without danger to the public safety or the peace (this last test is intended to allow account to be taken of factors not only directly about the applicant but beyond, such as the applicant’s wider domestic situation or acquaintances). Further clarity on how the Chief Constable should test applicants against these criteria will be provided in guidance published by the Scottish Ministers under section 39.

19. Subsection (2) allows the Chief Constable to consider applicants who already hold a firearm or shotgun certificate issued under the 1968 Act to have met the “fit” and “not prohibited” criteria without further enquiry, on the grounds that these tests will already have been met for the grant of the firearm or shotgun certificate.

20. Subsection (3) allows the police to visit an applicant’s home, or any other place where air weapons are intended to be stored or used, and conduct enquiries relating to the criteria in subsection (1) before granting or renewing an air weapon certificate.

Section 6 – Air weapon certificate: conditions

21. This section relates to conditions which are applied to air weapon certificates. Conditions are defined in section 40(1) as including requirements and restrictions and may comprise positive or negative obligations. Conditions may therefore place restrictions on the way that the certificate holder stores or uses their weapons, or may require the holder to carry out certain administrative functions (for example, informing the Chief Constable if they change address).

22. Subsection (1) sets out that all air weapon certificates will carry certain mandatory conditions, which will be specified in regulations issued under section 37. Subsection (2) allows the Chief Constable to attach additional conditions to certificates as required, and to change a certificate’s conditions at the time of renewal.

23. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by subsection (1)), or any other condition attached as a requirement of this Part (for example, the conditions for 14-17 year olds required by section 7(3)).

24. Subsections (4) and (5) create the offence of non-compliance with any conditions attached to an air weapon certificate, and set out the maximum penalty available respectively. This offence attracts strict liability.
Section 7 – Special requirements and conditions for young persons

25. This section sets out additional requirements for applications and certificates granted where the applicant is aged under 18. When combined with the minimum age for applicants at section 3(1), this section applies to applicants aged 14-17.

26. When read with section 3(2)(b), subsection (2) of this section requires that applications for an air weapon certificate from an individual aged 14-17 must contain a statement of consent from the applicant’s parent or guardian in the form and manner prescribed by regulations under section 37. The term “guardian” is defined at section 40(1).

27. Subsections (3) to (5) set out mandatory conditions for air weapon certificates granted to 14-17 year olds. The condition in subsection (4) prohibits a 14-17 year old with an air weapon certificate from purchasing or owning an air weapon, meaning that they may only use borrowed or hired air weapons. This condition applies to all air weapon certificates granted to young persons. Subsection (5) lists the specific activities for which a 14-17 year old might be granted an air weapon certificate. The Chief Constable must apply one or more of the conditions listed at subsection (5) to the young person’s air weapon certificate, as appropriate.

28. Subsection (6) disapplies the requirement that a young applicant need satisfy the Chief Constable that the applicant has a good reason for purchasing or acquiring an air weapon because an air weapon certificate granted to a young person will not permit them to purchase or own such a weapon and therefore that aspect of the test for grant or renewal is not relevant.

29. Subsection (7) defines agriculture for the purposes of this section, specifically subsection (5)(d). The definition used at section 85 of the Agricultural Holdings (Scotland) Act 1991 is adopted, which refers to “horticulture, fruit growing; seed growing; dairy farming; livestock breeding and keeping; the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds; and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes: and “agricultural” shall be construed accordingly”.

Section 8 – Duration of air weapon certificate

30. Subsection (1) sets the normal duration of air weapon certificates at five years, except in the case of a certificate issued to a 14-17 year old, where the certificate expires on the holder’s 18th birthday. At this point the young person’s air weapon certificate can be renewed and the conditions required by section 7 may be removed (for example, the prohibition on purchasing a weapon).

31. Subsection (2) provides that an air weapon certificate will remain valid beyond its stated expiry date, provided that the holder has applied to the Chief Constable for a renewal before that expiry date and the Chief Constable has not yet approved or rejected that renewal. The renewal application must be valid, i.e. comply with the requirements in section 3 and section 36, for this subsection to apply. The effect of this section is that the holder neither has to surrender the holder’s weapons nor commits the offence at section 2(1) when the original certificate expires, provided that renewal is being actively considered by the Chief Constable.
32. Subsection (3) provides the Scottish Ministers with the power to change the duration of air weapon certificates other than those in relation to young people. The regulations will be subject to the affirmative procedure in the Scottish Parliament.

Section 9 – Alignment of different types of certificate

33. This section allows air weapon certificates to be made co-terminous with firearm or shotgun certificates issued under the 1968 Act. This allows for all certificates to be due for renewal at the same time, minimising the workload for the applicant and the Chief Constable. Regulations under section 36 are expected to make provision for a proportionately lowered fee where such air weapon certificates are granted or renewed for significantly shorter duration. This section does not affect the duration of firearm or shotgun certificates.

34. Subsections (1) and (2) allow an applicant who already holds a valid firearm and/or shotgun certificate to request that the expiry date on an air weapon certificate – if granted or renewed – match the expiry date on their existing firearm and/or shotgun certificate(s). Because the standard duration for firearm, shotgun and air weapon certificates are all set at five years, an air weapon certificate issued in this way will necessarily have a shorter than normal duration when it is first granted.

35. Subsections (3) and (4) allow an applicant who already holds a live air weapon certificate to request that that certificate be renewed before it has run its full five year lifespan, and re-issued on the same date that a new or renewed firearm and/or shotgun certificate is granted, so that the expiry dates on all certificates are aligned. This will necessarily mean that the air weapon certificate which they originally paid for on a five year basis will not have lasted for its full duration.

Section 10 – Variation of air weapon certificate

36. This section allows the Chief Constable to vary any of the details on an air weapon certificate after it has been granted or renewed, including adding, amending or removing conditions on the certificate (except the mandatory conditions required by section 6, and, if applicable, section 7). The Chief Constable may vary a certificate at any time, but is obliged to notify the certificate holder of the changes made.

37. Subsection (2)(a) separately allows the holder of an air weapon certificate to request that the Chief Constable make such a variation, for example to provide an updated contact address, or to request the removal or amendment of an outdated condition. Decisions whether to grant such variations are made at the Chief Constable’s discretion.

38. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by section 6(1)), or any other condition attached as a requirement of this Part (for example, the conditions for 14-17 year olds required by section 7(3)).
39. Subsection (4) allows the Chief Constable to require an air weapon certificate holder to relinquish their certificate within 21 days, for the purpose of varying the physical certificate in any way. Failure to do so may result in revocation of the certificate under section 11(2)(c).

**Section 11 – Revocation of air weapon certificate**

40. This section deals with revocation of an air weapon certificate. Subsection (1) requires the Chief Constable to revoke an air weapon certificate if satisfied that there is a danger to public safety or the peace if the certificate holder continues to possess an air weapon, or that the certificate holder is prohibited from possessing firearms under section 21 of the 1968 Act. These tests reflect those at sections 5(1)(d) and 5(1)(b) respectively.

41. Subsection (2) separately provides – but in contrast with subsection (1) does not require – the Chief Constable with discretion to revoke an air weapon certificate where the Chief Constable has reason to believe that the certificate holder is no longer a fit person to possess an air weapon (for example, if the holder was convicted of a crime of violence, or there is evidence of drug or alcohol abuse that meant that they could no longer be trusted with a firearm), or that they no longer have a good reason to hold a certificate (for example, if the holder had been a member of an airgun club but had not renewed membership of it). These tests reflect those at sections 5(1)(a) and 5(1)(c) respectively.

42. Subsections (2)(b) and (2)(c) provide the Chief Constable with discretion to revoke an air weapon certificate where the holder has failed to comply with a condition on that certificate, or has failed to surrender the certificate to the police for the purpose of a variation (as required by Section 10(4)). As with subsection (2)(a), in these circumstances the Chief Constable has the power to revoke but is not required to do so.

43. Subsections (3) to (6) set out the process for the revocation of an air weapon certificate. The Chief Constable must provide at least seven days’ advance notice of a revocation, within such time the certificate holder must relinquish the certificate and any air weapons or commit an offence (unless a reasonable excuse, for example illness, prevents them from doing so). Subsection (7) provides that, should the certificate holder make an appeal against the decision of the Chief Constable to revoke under section 35, the notice period will be suspended until such time as the appeal is disposed of or abandoned. However, subsection (7)(b) requires that the certificate holder must still surrender their certificate and weapons. If an appeal is successful then the court will quash the notice. If the appeal is rejected then the notice continues to run its remaining period from the date it was suspended.

**Permits**

**Section 12 – Police permits**

44. This section makes provision for police permits, which are distinct from air weapon certificates and are intended for use in transient situations where an individual may find themselves in possession of an air weapon, but grant of an air weapon certificate would not be appropriate (for example, where the executor of an estate takes possession of an air weapon when ingathering the deceased’s property). In this respect this section is intended to perform a similar function to that of section 7 of the 1968 Act, which allows the police to issue similar
permits to allow the temporary possession of a firearm covered by section 1 of that Act. This section should be read in conjunction with the exemption at paragraph 8 of schedule 1 to the Bill.

45. Subsection (1) sets out that the Chief Constable may issue a permit to allow an individual to possess or acquire and/or sell an air weapon in the course of business without requiring an air weapon certificate (or, in the case of sale in the course of business, being a Registered Firearms Dealer). These permissions may be applied or omitted from the permit at the Chief Constable’s discretion. Subsection (2) states that a police permit must not be granted to anyone prohibited from possessing firearms under section 21 of the 1968 Act, which is explained in more detail at paragraph 20 of this paper.

46. Subsection (3) allows police permits to have variable durations, set at the discretion of the Chief Constable in each case but, as reflects the transient situation for which a permit is to cater, the duration of a permit is not intended to be of the order of that for an air weapon certificate.

47. Subsection (4) provides that applications for a police permit must comply with the requirements set out in regulations made under section 37 or the application will not be treated as having been made. The effect is that an application for a permit cannot be considered by the Chief Constable if the application processes set out in the regulations are not followed. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

Section 13 – Visitor permits

48. This and the following related sections provide for a system whereby visitors to Scotland may apply to the Chief Constable for a permit to use, possess, purchase or acquire air weapons while in Scotland, without holding an air weapon certificate. This section should be read in conjunction with the exemption at paragraph 9 of schedule 1.

49. Subsection (4) sets out the criteria for grant of a visitor permit. For individual visitors, subsection (4)(a) requires the applicant to have a good reason, and subsection (4)(c) provides that the visitor must not be prohibited from possessing firearms, nor should their possession of an air weapon present a danger to the public. These requirements match those for applicants for an air weapon certificate in section 5, with the omission of the ‘fit person’ test which would be difficult to apply effectively to visitors from abroad.

50. Subsections (2) and (3) allow for applications by groups of two to 20 people to be made on behalf of the group. The Chief Constable does not have to grant or refuse every member of the group a permit en bloc and can reject some while accepting others. Subsection (4)(b) provides that the Chief Constable must be satisfied that each member of the group individually is to use and possess an air weapon only for one of the listed activities. Each member of the group individually must also not be prohibited from possessing firearms, nor should their possession of an air weapon present a danger to the public. Subsection (5) permits the Chief Constable to require proof from the person applying on behalf of the group that the group has the permission of the owner or occupier of the land in question for the activities mentioned in subsection (4)(b)(i) and (ii).
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51. Subsection (6) requires the Chief Constable to attach a condition to a visitor permit granted as part of a group application which restricts the permit holder to taking part in the activity or activities listed in subsection (4)(b) for which the permit has been granted. However, subsection (6) does not apply to a visitor who is part of a group but is aged 14-17, who will be subject to the separate restrictions under section 14.

52. Subsection (7) allows visitor permits to have variable durations, set at the discretion of the Chief Constable, although subsection (8) sets a maximum duration of 12 months.

53. Subsection (9) requires that an application for a visitor permit must comply with the requirements set out in regulations issued under section 37 or it will not be regarded as having been made. The effect is that an application for a permit cannot be considered by the Chief Constable if the application processes set out in the regulations are not followed. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

54. Subsection (10) provides definitions, including specifying that applicants for a visitor permit must be aged 14 or over, and must live outside Scotland but intend to visit (or, be visiting at the time of application).

Section 14 – Visitor permits: young persons

55. This section makes provision where applications for visitor permits are from people under 18 years of age. When read with the definition of “qualifying visitor” in section 13(10) the effect is that this section applies to applicants aged 14 to 17 years.

56. Subsection (2) requires that applications for a visitor permit from an individual aged 14 to 17 years must contain a statement of consent from the applicant’s parent or guardian, set out in a form to be specified in regulations made under section 37. The term “guardian” is defined at section 40(1) and should be construed in light of the relevant jurisdiction of the applicant.

57. Subsections (3) and (4) provide that certain mandatory conditions set out in section 7 must be applied to visitor permits granted to young people, either individually or as part of a group. This means that young people with a visitor permit are subject to equivalent conditions as a young person residing in Scotland who holds an air weapon certificate.

58. Subsection (5) makes equivalent provision to that in section 7(6) as a young person with a visitor permit will not be able to purchase or acquire an air weapon while in Scotland. Subsection (6) makes it clear that a group of young visitors will not be granted a permit for the purpose in section 13(4)(b)(i) – that is for sporting purposes (including shooting live quarry) on private land, which a 14-17 year old holder of an air weapon certificate could not be permitted to do under sections 7(3) and (5).

Section 15 – Police and visitor permits: conditions

59. This section relates to conditions that are applied to police and visitor permits which have been granted under section 12 or section 13 respectively. Conditions will have the same effect as
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described in section 6. Subsection (1) sets out that all such permits will be subject to any mandatory conditions, which will be specified in regulations issued under section 37. Subsection (2) allows the Chief Constable to attach additional conditions to police and visitor permits as required.

60. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions required by subsection (1), or any other condition attached as a requirement of this Part (for example, by virtue of the visitor’s age (under section 14) and/ or their being part of a group (under section 13)).

61. Subsections (4) and (5) make it an offence for the permit holder to contravene any condition attached to a permit under this section, and set out the penalty. This offence attracts strict liability.

Section 16 – Police and visitor permits: variation and revocation

62. This section relates to variation and revocation of police permits or visitor permits which have been granted under section 12 and section 13 respectively.

63. Subsection (1) allows the Chief Constable to vary any details on a police permit or a visitor permit after it has been granted, including adding, amending or removing conditions, except any mandatory condition required by section 15(1), or any conditions which must be attached to a visitor permit by virtue of the visitor’s age (under section 14) and/ or their being part of a group (under section 13). Subsection (2) provides that a variation may occur either on the application of the permit holder, or at the Chief Constable’s discretion although the Chief Constable is obliged to notify the permit holder of the changes made. Subsection (4) allows the Chief Constable to require a permit holder to relinquish their permit within 21 days, for the purpose of varying it in this way. Guidance is expected to set out that failure to surrender a permit in this way would be grounds for the permit to be revoked.

64. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions required by section 15(1), or any other condition attached as a requirement of this Part (for example, by virtue of the visitor’s age (under section 14) and/ or their being part of a group (under section 13)).

65. Subsection (1)(d) allows the Chief Constable to revoke a police or visitor permit at any time, at the Chief Constable’s discretion. The Chief Constable must notify the permit holder of the revocation, and subsection (5) requires this notification to provide at least seven days’ notice of revocation, within which time the permit holder must relinquish the revoked permit and any air weapons possessed.

66. Subsections (6) and (7) make it an offence for a permit holder to fail, without reasonable excuse, to relinquish a permit for the purpose of revocation within the timescale specified by the Chief Constable.
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67. Subsection (8) provides that when a permit holder appeals against a decision to revoke a permit, the notice period for that revocation is put on hold until the outcome of the appeal is known. However, by virtue of subsection (8)(b) the holder must still surrender the permit and any weapons to the Chief Constable. This mirrors the provision at section 11(7).

Section 17 – Event permits

68. This section provides for air weapon event permits. These are distinct from other permits as they are to be required where an event is to take place at which people may borrow, hire, use or possess an air weapon for a short timescale, without holding individual air weapon certificates. Examples of situations where an event permit might be granted would be a Highland Games with an air weapon shooting component, or a variant of modern biathlon or pentathlon. This section should be read in conjunction with the exemption at paragraph 10 of schedule 1.

69. Subsection (1) sets out that applications for an event permit should be made to the Chief Constable, by a person responsible for the event. A “person” here includes non-natural (e.g. corporate bodies) as well as natural persons. Event permits are granted at the Chief Constable’s discretion, and permit the borrowing, hiring, possessing and/or using of air weapons at a specified time and place, for the purpose of participating in a planned event activity as defined at subsection (7). Subsection (2) adds that the Chief Constable may attach conditions to an event permit as required.

70. Subsection (3) requires that an event permit – or a copy thereof – be displayed at the event to which it pertains. This requirement allows a participant at the event to confirm that a permit is in place and the exemption therefore applies when handling air weapons.

71. Subsections (4) and (5) create the offence of failing to comply with any condition attached to an event permit, or failing to display the permit as required by subsection (3) without a reasonable excuse. In either case the offence is committed by the event organiser named on the permit. The offence in subsection (4)(a) attracts strict liability.

72. Subsection (6) states that applications for an event permit cannot be considered unless they comply with the requirements set out in regulations to be made under section 37. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

Air weapon clubs and recreational shooting facilities

Section 18 – Approval of air weapon clubs

73. This section sets out the process by which an air weapon club can be approved by the Chief Constable, to allow its members to benefit from the exemption at paragraph 1 of schedule 1, as well as allowing members to put forward their club membership as evidence that they meet the ‘good reason’ criteria required by section 5(1)(c) for the grant of an individual air weapon certificate.
74. Subsection (1) states that the Chief Constable may, at the Chief Constable’s discretion, approve an air weapon club on receipt of an application from a club. Subsection (2) states that an application for an air weapon club approval cannot be considered unless it complies with the requirements set out in regulations to be made under section 37. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

75. Subsection (3) allows the Chief Constable to withdraw a club approval at any time, by giving notice to the club to that effect.

76. Subsection (4) states that all club approvals will be subject to mandatory conditions, which will be specified in regulations issued under section 37. Subsection (5) provides for the Chief Constable to attach other conditions to air weapon club approvals, which may place positive or negative obligations on the club’s secretariat and membership. But, in accordance with subsection (6), the Chief Constable may not attach any conditions which are inconsistent with any mandatory conditions.

Section 19 – Variation of approval

77. This section allows the Chief Constable to vary any of the details on an air weapon club approval after it has been granted or renewed, including adding, amending or removing conditions on the approval (except the mandatory conditions required by section 18(4)). The Chief Constable may vary an approval at any time, but is obliged to notify the club of the changes made.

78. Subsection (2)(a) separately allows the club to request that the Chief Constable make such a variation, for example to provide an updated contact address, or to request the removal or amendment of an outdated condition. Decisions whether to grant such variations are made at the Chief Constable’s discretion.

79. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by section 18(4)).

Section 20 – Duration of approval

80. Subsection (1) sets the duration of air weapon club approvals at six years, which is consistent with approvals issued to rifle or muzzle-loading pistol clubs under section 15 of the Firearms (Amendment) Act 1988 (“the 1988 Act”).

81. Subsection (2) provides that an air weapon club approval will remain valid beyond its stated expiry date, provided that the club has applied to the Chief Constable for a renewal before that expiry date and the Chief Constable has not yet approved or rejected that renewal. The effect of this subsection is that club members can continue to benefit from the exemption at paragraph 1 of schedule 1 when the original approval expires, provided that renewal is being actively considered by the Chief Constable.
82. Subsection (3) provides the Scottish Ministers with the power to change the duration of air weapon club approvals. The regulations will be subject to the affirmative procedure.

Section 21 – Alignment of club approvals

83. This section allows air weapon club approvals to be made co-terminous with a rifle club approval issued by the Scottish Ministers under section 15 of the 1988 Act. This allows for both approvals to be due for renewal at the same time, minimising the workload for the applicant and the Chief Constable. Regulations under section 36 are expected to make provision for a proportionately lowered fee where such air weapon club approvals are granted or renewed for significantly shorter duration. This section does not affect the duration of rifle club approvals.

84. Subsections (1) and (2) allow an air weapon club which already holds a valid rifle club approval to request that the expiry date on an air weapon club approval – if granted or renewed – matches the expiry date on their existing rifle club approval. Because the standard duration for rifle and air weapon club approvals are both set at six years, an air weapon club approval issued in this way will necessarily have a shorter than normal duration when it is first granted.

85. Subsections (3) and (4) allow a club that already holds a live air weapon club approval to request that that approval be renewed before it has run its full six year lifespan, and re-issued on the same date that a new or renewed rifle club approval is granted, so that the expiry dates on both approvals are aligned. This will necessarily mean that the air weapon club approval which was originally paid for on a six year basis will not have lasted for its full duration.

86. References in this section to “rifle club approvals” include clubs approved for the use of small-bore rifles, full-bore rifles and/or muzzle-loading pistols, all of which are approved under section 15 of the 1988 Act.

Section 22 – Power to enter and inspect club premises

87. This section empowers the Chief Constable – or a delegated officer not below the rank of inspector – to authorise a police constable or member of police staff to enter and inspect any approved air weapon club premises, other than a private dwelling, to ensure that the requirements in this Part are being complied with. Subsection (3) provides that the inspection should, where possible, take place at a reasonable time, which may be any time that the club is operating including in the evenings or at weekends. Subsections (1)(b) and (2) set out that the police constable or member of police staff can inspect anything on the club premises, including requiring electronic information to be reproduced in a way that can be removed from the premises. However inspection should only be of those things for the purpose of ascertaining whether the provisions of the Part or any conditions attached to a club’s approval are being complied with.

88. Subsection (4) requires that the police constable or member of police staff must produce their authorisation if asked before entering a club premises to inspect it in accordance with this section.
89. Subsections (6) and (7) set out the offence of intentionally obstructing a police constable or member of police staff from carrying out their duties when authorised under this section – for example, by refusing them access to the club premises, or by concealing evidence from them.

Section 23 – Requirements for recreational shooting facilities

90. This section and the exemption in paragraph 12 of schedule 1 set out arrangements for commercial recreational shooting facilities where individuals who do not hold air weapon certificates will be able to borrow or hire air weapons for short durations, for a specific purpose – for example, a paintball venue.

91. Subsection (1) sets out that the operator of such a facility (or, where the operator is a non-natural person, must ensure that an individual responsible for the management and operation of the facility) must hold a valid air weapon certificate granted for this purpose, and must display this certificate (or a copy) at the venue. This requirement allows users of the facility to confirm that a certificate is in place and the exemption in paragraph 12 of schedule 1 therefore applies to them.

92. Subsections (2) and (3) make it an offence for anyone to operate a recreational shooting facility without either holding a valid air weapon certificate or ensuring that an individual responsible for the management and operation of the facility holds one for that purpose, or to fail to display that certificate at the facility without a reasonable excuse. The offence in subsection (2)(a) attracts strict liability.

93. Subsection (4) defines a recreational shooting facility for the purposes of the section as a shooting range or gallery, or a facility for combat games (such as paintball), where air weapons are used and which is run for the purpose of making a profit. Subsection (5) makes it clear that approved air weapon clubs are not subject to the requirements of the section.

Transactions involving air weapons and commercial matters

Section 24 – Restrictions on transactions involving air weapons

94. Subsection (1) makes it an offence for any person except a Registered Firearms Dealer under section 33 of the 1968 Act to manufacture, sell, transfer, expose for sale or transfer, repair or test an air weapon by way of trade or business, or to possess an air weapon for one of these purposes. This subsection makes analogous provision to that in section 3(1) of the 1968 Act and adds manufacture, repair and test of air weapons to the activities limited to Registered Firearms Dealers. This offence only applies to sales, transfers etc. by way of trade or business, and does not prohibit private sales between individuals. “Person” here includes non-natural persons (e.g. corporate bodies) as well as natural persons. The offences in this section attract strict liability.

95. Subsection (2)(a), (b) and (d) makes it an offence for anyone to sell or transfer an air weapon (including private sales) without first confirming that the recipient is entitled to have the air weapon by: showing a valid air weapon certificate; demonstrating that the recipient does not need to have a certificate; or, by virtue of being a Registered Firearms Dealer.
96. Subsection (2)(c) specifically allows a Registered Firearms Dealer to sell an air weapon to someone without requiring to see an air weapon certificate or evidence that an exemption applies, provided that the air weapon in question will be sent out of Great Britain without first coming into the possession of the purchaser. Where the purchaser is an individual (as opposed to, for example, a corporate body) the individual must also be aged 18 or over for this paragraph to apply. For example, an overseas visitor to Scotland who does not hold a visitor permit allowing purchase might have a Registered Firearms Dealer export an air weapon directly to their home country.

97. Subsection (3) broadly reflects subsection (2), and makes it an offence to manufacture, repair or test an air weapon for anyone without confirming that they hold a valid air weapon certificate or are a Registered Firearms Dealer or do not need to have a certificate.

98. Subsection (4) sets out the penalties for any of the offences committed in this section.

**Section 25 – Requirement for commercial sales of air weapons to be in person**

99. This section requires that commercial sales of air weapons are done face-to-face, and is intended to make analogous provision to section 32 of the Violent Crime Reduction Act 2006. Subsection (1) sets out that this section applies to all sales by way of trade or business except those between two Registered Firearms Dealers, and to those where the sale is concluded outside Great Britain (for example mail order sales).

100. Subsection (2) requires that, at the point at which possession of the air weapon(s) is/ are transferred to the purchaser, both the purchaser and the seller – or their representative – must be physically present, otherwise the seller commits an offence. Subsection (3) sets out different categories of person who may act as a representative of the seller for the purposes of this section. A “person” here means a non-natural (e.g. corporate bodies) as well as a natural person. This offence attracts strict liability.

**Section 26 – Requirement to notify chief constable of certain sales**

101. Subsection (1) sets out that this section applies to sales made under section 24(2)(c), where an air weapon is sold to someone who does not hold an air weapon certificate, to be sent out of Great Britain without coming first into the purchaser’s possession. Subsections (2) and (3) require the Registered Firearms Dealer who made the sale to notify the Chief Constable with the details of the sale entered into the dealer’s register, within 48 hours of the sale being made. Subsections (4) and (5) make it an offence for a Registered Firearms Dealer to fail to provide such notification. This offence applies to all types of “person” and attracts strict liability.

**Enforcement**

**Section 27 – Power of search with warrant**

102. This section relates to search warrants issued where there is a reasonable ground to suspect that an air weapon offence has been, is being or is about to be committed or there is a danger to the public safety or the peace involving an air weapon. Subsection (1) sets out that such a warrant may be granted by a sheriff on application by a constable or member of police
staff. Subsections (2) and (3) set out what a constable or member of police staff may do under such a warrant – that is, enter and search premises and seize or detain anything found there in relation to the commission of an air weapon offence. This includes anything in the possession of a person on those premises, and includes the power to require that any electronic information to be reproduced in a way that can be removed from the premises.

103. Subsections (4) and (5) make it an offence for any person to obstruct intentionally a police constable while carrying out a search under this section, and set out the attached penalty. “Person” includes both natural and non-natural persons.

Section 28 – Production of air weapon certificate

104. Subsection (1) empowers a constable to require the production of an individual’s air weapon certificate, or proof that the person does not require to hold a certificate, if the constable believes that an air weapon is in that person’s possession. “Person” in this section includes both natural and a non-natural persons. Subsection (2) allows the constable to seize any air weapons held and require the person’s name and address if a certificate or exemption is not provided.

105. Subsections (3) and (4) make it an offence to fail to provide a name and address, or to provide a false one, when required by this section. This offence attracts strict liability.

Section 29 – Cancellation of air weapon certificate

106. This section allows a court to order the cancellation of an individual’s air weapon certificate when that individual is convicted of one or more of the offences, or is subject to one of the other orders, set out in subsection (1). Orders may make provision about any type of firearm as well as air weapons.

107. Subsection (3) requires the court to notify the Chief Constable of a cancellation made under this section, at which point the Chief Constable must notify the certificate holder and allow 21 days for surrender of the certificate.

108. Subsections (4) and (5) make it an offence for an individual to fail to surrender the certificate within 21 days when required by subsection (3)(b), without reasonable excuse (for example, if they were unable to comply because they were serving a prison sentence).

Section 30 – Forfeiture and disposal of air weapons

109. This section allows a court to order the forfeiture or disposal of any air weapon in the possession of someone who has been convicted of any offence introduced by this Part. Subsection (3) allows a police constable to seize the weapon(s) in question, and subsection (4) allows the Chief Constable to apply to a sheriff to dispose of the weapon(s) in any manner the Chief Constable sees fit, for example by sale at auction, destruction by scrap metal dealer, or transfer to a museum if the weapon is of historic or other significance.

110. Subsection (5) provides that a court may not order the forfeiture or disposal of an air weapon which is possessed by a museum following a conviction for an air weapon offence or
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

where it was seized or detained by a constable. This provides for situations where, for example, a person is convicted of possession of an air weapon where he or she has stolen it from a museum, or a member of museum staff commits an offence with a museum weapon, so that the court does not inadvertently order forfeiture and thereby prevent the museum from getting return of an air weapon which may be of historic or other significance.

111. Subsections (6) and (7) set out what happens to air weapons where the Chief Constable has revoked an air weapon certificate, police permit or visitor permit on which they are held, but the holder appeals against that revocation. If the appeal is successful then the air weapons must be returned to their owner, and if it is not then the court may order their disposal as the Sheriff considers appropriate.

112. Subsections (8) and (9) set out what happens to air weapons where the air weapon certificate, police permit or visitor permit has been revoked and the holder does not appeal, or withdraws their appeal. In such a case the Chief Constable and the owner of the weapon should seek to agree arrangements for disposal (for example, transfer to someone permitted to possess air weapons, or sale through a Registered Firearms Dealer). If an agreement cannot be reached then the Chief Constable may dispose of them as he or she sees fit, which may be by one of the methods outlined in paragraph 111 above. In such a circumstance subsection (10) requires the Chief Constable to notify the owner of the method of disposal, who may then appeal against the Chief Constable’s decision under section 35(2)(n).

Offences

Section 31 – Failure to keep air weapons secure or to report loss to police

113. This section makes it an offence for a person in possession of an air weapon to fail to take reasonable precautions for its safe custody, or to fail to immediately report the loss or theft of the air weapon to the Chief Constable. This offence applies to any person who possesses an air weapon and applies to natural and non-natural persons. The offence attracts strict liability.

Section 32 – False statements, certificates and permits

114. This section creates two offences around providing false information in order to obtain an air weapon certificate, permit, or approval, or producing a falsified or improperly altered certificate or other information in order to obtain the repair or testing of an air weapon.

115. Subsection (1) makes it an offence to knowingly or recklessly make a statement which contains false information in order to procure an air weapon certificate, police permit, visitor permit, event permit, or club approval. This could include, for example, providing a false name, or declining to disclose a criminal history when asked. This offence may also be committed by the person verifying the application, if the verifier knew that the information was incorrect or was reckless in verifying false information.

116. Subsection (2) makes it an offence to produce a false or improperly altered air weapon certificate, police permit or visitor permit, or to provide any other false information, in order to purchase or acquire an air weapon, or to have one repaired or tested. This could include, for
example, impersonating an air weapon certificate holder, or amending the details on an expired certificate so that it appeared to still be live.

Section 33 – Time limit for offences

117. This section provides that anyone committing a summary-only air weapon offence could have proceedings brought against them up to three years after that offence has been committed. Section 136 of the Criminal Procedure (Scotland) Act 1995 normally sets a time limit of six months after the offence has been committed. This only applies to summary-only offences, which is all of the offences in this Part except the ones at section 2 and section 24.

Section 34 – Offences by bodies corporate etc.

118. This section provides for cases where there may be an offence committed by a non-natural person such as a body corporate, partnership or unincorporated association (e.g. an auctioneer, carrier firm, operator of a recreational shooting facility etc.). Subsection (2) states that both the individual who committed the specific offence, as well as the corporate entity on whose behalf the criminal act was done, can be proceeded against for the purpose of that offence.

General

Section 35 – Appeals

119. This section allows persons to appeal against various decisions made by the Chief Constable in administering the air weapon licensing regime. Subsection (2) lists the decisions that can be appealed.

120. Subsections (1) and (3) set out that appeals must be made to the appropriate sheriff, as defined by subsection (8), within 21 days of the decision being appealed against. Subsections (4) and (5) state that the sheriff should undertake a full consideration of the merits of the Chief Constable’s decision of new, including considering any evidence that the Chief Constable may not have been aware of at the time.

121. Subsection (6) allows the sheriff hearing the appeal either to dismiss it or to direct the Chief Constable to take whatever action the sheriff sees fit to resolve the matter under appeal (for example, ordering the Chief Constable to grant a refused certificate, or not to revoke a certificate).

122. Subsection (7) states that the decision of the sheriff may only be appealed on point of law. The effect of this is that appeals may be made on point of law ultimately to the Inner House of the Court of Session. The “appropriate sheriff” is defined as being the sheriff of the sheriffdom where the appellant resides or, where the appellant resides outside Scotland, the sheriff at Lothian and Borders. The latter is necessary because in certain circumstances an appellant may reside outside of Scotland, for example where a visitor permit has been refused.
Section 36 – Fees

123. This section allows the Scottish Ministers to set out fees for various aspects of the air weapon licensing regime in secondary legislation. Regulations under this section will be subject to the negative procedure in the Scottish Parliament. Subsection (1) provides that a fee can be set in relation to any application for a certificate, permit etc. under this Part, or to any other service provided by the Chief Constable in relation to the Chief Constable’s performance of functions under the Part. Subsection (2) provides that the Scottish Ministers may set out a range of fees taking into account different circumstances – for example, lower fees for co-terminous certificates – as well as situations where a fee may be waived entirely. Subsection (2)(c) allows fees to be raised or reduced by reference to factors specified in the regulations, such as inflation.

124. Subsection (3) provides that until the appropriate fee is tendered with an application it is not valid and this means the Chief Constable cannot consider any application under the Bill until the appropriate fee has been paid.

Section 37 – Power to make further provision

125. This section allows the Scottish Ministers to make regulations via secondary legislation setting out detailed provisions regarding the application and grant process for air weapon certificates, police permits, visitor permits, event permits, or club approvals. This would include, for example, setting out templates for application forms, granted certificates, and specifying the conditions referred to in section 6. Regulations under this section will be subject to the negative procedure in the Scottish Parliament.

Section 38 – Transitional arrangements for existing certificate holders

126. This section introduces a temporary exemption that applies to persons who are aged 14 years or over and already hold a firearm and/ or shotgun certificate issued under the 1968 Act at the point when the section 2 offence is brought into force. Under subsection (2) such persons can possess and use (but not purchase or acquire) air weapons without holding an air weapon certificate, until their existing firearm and/ or shotgun certificate expires or is renewed. When renewing the firearm or shotgun certificate the individual should apply to the Chief Constable for first grant of an air weapon certificate if it is desired to continue to possess or use an air weapon.

127. This section also applies to firearm and shotgun certificates issued in the rest of Great Britain, so someone from England or Wales who holds valid a firearm and/ or shotgun certificate could visit Scotland with an air weapon without requiring to apply for a visitor permit, subject to the restrictions set out below.

128. Subsection (3) requires that a person making use of this exemption must nonetheless comply with the mandatory conditions for air weapon certificates to be specified in regulations issued under Section 37 – and, in the case of an individual aged below 18, can only use the air weapon for of the purposes mentioned in section 7(5). Subsections (4) to (6) set out the offence, exception and penalty related to non-compliance with the conditions mentioned in subsection (3). This offence attracts strict liability.
129. Subsection (7) sets out that this transitional exemption applies from the day that the offence at section 2 comes into effect, and ends on the day that the individual’s firearm and/or shotgun certificate is renewed or expires. Subsection (7)(b)(ii) provides that should the firearm and/or shotgun certificate be surrendered, cancelled or revoked before its stated expiry date, the transitional exemption will also end.

130. Subsections (8) and (9) apply where the individual holds both a firearm and shotgun certificate, which are not co-terminous. Subsection (8) states that the transitional exemption ends on the later of the two certificate expiry dates. Subsection (9) states that should either certificate be surrendered the transition exemption continues in force until the remaining one expires or is surrendered, while if either certificate is cancelled or revoked then the transitional exemption ends immediately. Subsection (10) ensures that those making use of the exemption are also able to make use of the exemption in paragraph 16 of schedule 1.

Section 39 – Guidance

131. This section allows the Scottish Ministers to publish, revise and revoke guidance on any aspect of the air weapon licensing regime. Subsection (1) obliges the Chief Constable to take account of this guidance when carrying out his or her duties. Guidance will also be publicly available so that all stakeholders are aware of the Scottish Ministers’ view on application of the regime.

Section 40 – Interpretation of Part 1

132. This section provides definitions for various terms used throughout the Part.

133. Subsections (4) and (5) provide that where terms used in the Part are the same as those used in existing UK firearms legislation then the jurisprudence of the courts on interpretation of those terms in the existing UK firearms legislation applies equally to those terms when used in the Bill. The effect of this is to ensure that common terms are interpreted consistently across the Bill and the wider corpus of firearms legislation.

PART 2 – ALCOHOL LICENSING

134. The provisions in this Part amend the licensing regime for alcohol licensing within the Licensing (Scotland) Act 2005.

 Licensing objectives

Section 41 – Licensing objectives: protecting young persons from harm

135. Section 41 amends the licensing objective at section 4(1)(e) of the 2005 Act to include young persons. The term young person is defined at section 147 of the 2005 Act and means a person aged 16 or 17. Under the current legislation, Boards must ensure that their decision making is underpinned by the five licensing objectives, including the objective ‘to protect children from harm’. This amendment expands this requirement so that Boards must also consider protecting ‘young people’ from harm.
Statements of licensing policy

Section 42 – Statements of licensing policy: licensing policy periods

136. Section 42 amends section 6 of the 2005 Act in relation to statements of licensing policy. A statement of licensing policy will generally have effect from 18 months after a local government election until 18 months after the next local government election. For example, the next local government elections are scheduled for May 2017 and May 2021 with the result that, in the usual case, the statements of licensing policy would last November 2018 until November 2022.

137. It is possible for the Licensing Board to decide that a statement of licensing policy should come into effect earlier than it otherwise would, and if they do so, then they must publish the licensing policy statement and publicise the date on which the licensing policy statement is to come into effect.

Fit and proper person test

138. The Bill introduces a ‘fit and proper person test’ into the processes for obtaining, reviewing and revoking licenses under the 2005 Act by virtue of sections 45 to 53. In each of these sections, the fit and proper test is considered with regard to the licensing objectives. It also makes some associated changes to the handling of information relating to relevant offences and foreign offences.

Section 43 – Premises licence application: ground for refusal

139. Section 43 amends section 23 of the 2005 Act in relation to the grounds of refusal for a premises licence application. Section 43 provides that it is a ground for refusal at a hearing when determining premises licence applications in section 23 of the 2005 Act, if the Licensing Board considers that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a premises licence. An amendment is also made to section 23(8) so that, where the Licensing Board refuses a licence on the fit and proper person ground, the Board must state the licensing objective that the ground relates to.

Section 44 – Application to transfer premises licence: ground for refusal

140. Section 44 amends section 33 and 34 of the 2005 Act in relation to grounds for refusal for an application to transfer a premises licence (whether on the application of the current licence holder or someone else). Section 44 provides that it is a ground for refusal at a hearing when determining applications to transfer premises licences under section 33 or 34 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence. This section also expands the information that can be provided to the Licensing Board by the Chief Constable upon receiving notice of a transfer of a premises licence. If information is provided, the Licensing Board must hold a hearing to determine the application.
Section 45 – Ground for review of premises licence

141. Section 45 makes amendments with regards to review of a premises licence (both on an application by a third party for a review and on a proposal for a review initiated by the Licensing Board itself). Section 45 provides that it is a ground for review of a premises licence, if having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence. If a review is based on this ground, the review application or proposal must include a summary of the information on which the applicant or the Board based its view that the alleged ground applies.

142. If at the review hearing the Licensing Board is satisfied that the fit and proper person ground for review is established, the Board must revoke the licence. Thereafter the Board must provide notification of its determination to the licence holder and where the decision is taken in connection with a premises licence review application, the applicant. A decision to revoke the licence is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff principal.

Section 46 - Personal licence applications and renewals: ground for refusal

143. Section 46 makes amendment to sections 73, 74 and 78 of the 2005 Act in relation to personal licence applications and renewals. Section 46 provides that it is a ground for refusal at a hearing when determining personal licence application or personal licence renewal application under section 74 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a personal licence.

144. Subsection (2) provides that on giving a notice under subsection (3)(a) or (b) of section 73 of the 2005 Act, the Chief Constable may also provide to the Licensing Board any information in relation to the applicant that the Chief Constable considers may be relevant to consideration of the application by the Board.

145. Section 46 also inserts a new section 73A into the 2005 Act to provide that where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board’s area. A Licensing Standards Officer may, within 21 days of the date of receipt of this notice, respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration of the application by the Board. If information is supplied to the Board by the Chief Constable or by a Licensing Standards Officer, the Board may hold a hearing.

Section 47 – Personal licence holders: procedure on receipt of notice of conviction

146. Section 83 of the 2005 Act provides the procedure that a Licensing Board must follow where they receive notice of a conviction (or otherwise become aware of a conviction) of a personal licence holder. The Board must notify the Chief Constable of the conviction and, where the existence of the conviction is confirmed by the Chief Constable, the Board must hold a hearing to review the licence.
147. Section 47 of the Bill amends section 83 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

Section 48 – Personal licence holders: conduct inconsistent with the licensing objectives

148. Section 84 of the 2005 Act provides the procedure that a Licensing Board must follow when, in the course of reviewing a premises licence under section 38 of the 2005 Act, they find that a personal licence holder was acting on the premises in a manner not consistent with the licensing objectives. Where the Licensing Board makes such a finding a hearing must be held where the Board can revoke, suspend or endorse the licence if they believe it necessary to do so.

149. Section 48 of the Bill amends section 84 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

Relevant offences and foreign offences

Section 49 – Premises licences: procedure in relation to relevant offences or foreign offences

150. Section 49 amends section 44 of the 2005 Act so that when a Licensing Board receives a notice of conviction in relation to a premises licence holder (or a person connected to the premises licence holder) they must initiate a review of the premises licence and hold a hearing only where the Chief Constable has made a recommendation under section 44(5), namely that having regard to the conviction specified in the notice, it is necessary for the purposes of any of the licensing objectives that the premises licence should be varied, suspended or revoked. Where the Chief Constable has not made such a recommendation then the Board may either make a premises licence review proposal, (and hold a hearing), or decide to take no further action in relation to the conviction.

Section 50 – Personal licences: procedure in relation to relevant offences or foreign offences

151. Section 50 amends section 83 of the 2005 Act so that when a Licensing Board receives notice of a conviction in relation to a personal licence they must hold a hearing only where the Chief Constable has made a recommendation under section 83(5), namely that having regard to the conviction specified in the notice it is necessary for the purposes of any of the licensing objectives that personal licence should be varied, suspended or revoked. Where the Chief Constable has not made such a recommendation then the Board may either hold a hearing, or decide to take no further action in relation to the conviction.
Section 51 – Relevant offences and foreign offences: spent convictions

152. Section 51 repeals section 129(4) of the 2005 Act which prohibits any consideration of a conviction for a relevant offence or foreign offence if it is spent for the purposes of the Rehabilitation of Offenders Act 1974. This amendment will make it possible for spent convictions to be brought to and considered by Boards as part of their decision-making.

Supply of alcohol to a child or young person
Section 52 – Offences of supplying alcohol to a child or young person

153. Subsection (1) of this provision inserts section 104A into the 2005 Act making it a criminal offence for a person, other than a child or young person, to buy or attempt to buy alcohol for or on behalf of a child or to give or otherwise make available alcohol to a child.

154. It also inserts a new section 104B which makes it a criminal offence for a person, other than a child or young person, to buy, attempt to buy, give or otherwise make alcohol available, to a young person. “Young person” is defined in section 147 of the 2005 Act as a person who is 16 or 17 years of age.

155. It is not an offence under either section however to buy alcohol for, or give alcohol to, a child or young person, a) for consumption other than in a public place or b) for the purposes of religious worship.

156. In addition, it is not an offence under section 104B – if beer, wine, cider or perry is bought, given or made available to the young person along with a meal to be consumed in relevant premises.

157. These exceptions do not apply to the offences of buying alcohol on behalf of a child or young person.

158. There is also a defence to the section 104B offence if the person who bought or gave the alcohol did not know the young person was under 18 years.

159. A person convicted of either offence may receive a fine, not exceeding level 5 on the standard scale, imprisonment for up to three months, or both.

160. In both sections, “public place” is defined as relevant premises, any place to which public have access to at the relevant time (on payment or not), and any place to which the public do not have access but which the child or young person unlawfully gains access to. The term “relevant premises” is defined in section 122 of the 2005 Act.

161. Subsection (2) repeals subsections (4), (5) and (7) of section 105 of the 2005 Act (and consequentially renames that section), as the substance of those subsections is replicated in new sections 104A and 104B.
Miscellaneous

Section 53 – Meaning of “alcohol”: inclusion of angostura bitters

162. This provision amends section 2 of the 2005 Act to include angostura bitters within the definition of “alcohol”. Angostura Bitters were exempt from Excise and were excluded from the 2005 Act definition of alcohol. However, they are now liable for Excise duty and have been brought into the definition of alcohol.

Section 54 – Overprovision

163. Section 54 amends section 7 of the 2005 Act which deals with the duty of Licensing Boards to assess overprovision, and provides that where a Board determines the “localities” for the purposes of the Act then it may determine that the whole of the Board’s area is a single locality.

164. Section 7 is further amended so that the Board may have regard to (among other things) the number, capacity and licensed hours of licensed premises in the locality. Amendments are also made to allow these wider factors to be taken into account at:

- section 23(5)(e) (refusal of a premises licence on grounds of overprovision), and;
- section 30(5)(d) (refusal to vary premises licence on grounds of overprovision).

Section 55 – Duty of Licensing Boards to produce annual financial report

165. This provision inserts section 9A into the 2005 Act requiring Licensing Boards to produce an annual financial report on their alcohol licensing activities.

166. Section 9A(1), (2) and (3) place a duty on Licensing Boards to prepare and publish the annual financial report no later than three months after the end of the financial year. It should contain details of relevant income received by the Licensing Board during the financial year; details of relevant expenditure incurred in respect of the Board’s area during the year; and an explanation of how the amounts in the report were calculated. The Board is required to break down its figures into the component sources of relevant income and expenditure. Relevant income for example would be premises licence application fees, personal licence fees or fees charged in respect of an application to vary a premises licence and relevant expenditure would for example be the salary cost of a Licensing Standards Officer in respect of his duties under the alcohol licensing regime or the costs for the Board in administering the alcohol licensing regime.

167. Section 9A (4) and (5) provide that the aforementioned annual financial report may also include such other information about the performance of the Licensing Board’s functions as they consider appropriate, and that at the request of the Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section. Subsection (6) gives the Scottish Ministers an order making power to make further provision about reports under this section, including provision about the form and content of reports; further details on what constitutes relevant income and relevant expenditure; and the publication of reports.
Section 56 – Interested parties

168. This provision amends section 40A (Connected persons and interested parties: licence holder’s duty to notify changes,) to remove the references to interested parties, including within the section title. It also removes a requirement to notify changes of interested parties. The licence holder now only requires to provide notification in respect of connected persons.

169. It also amends the definition of an interested party at section 147(5) by permitting that a premises manager can be an interested party. This has the effect of allowing the premises manager to be subject to vicarious liability for offences under s141B.

Section 57 – Personal licences: grant, duration and renewal

170. This provision amends section 74 of the 2005 Act regarding the determination of a personal licence application. Section 74(3) provides conditions which must be met before an application can be granted. This provision amends section 74(3)(c) which currently states a personal licence cannot be granted if one has been revoked in the last five years. This provision amends section 74(3)(c) to provide that the provision is not applicable to persons who have had a personal licence revoked under section 87(3) of the 2005 Act. Accordingly, if a personal licence is revoked under section 87(3) the person will no longer have to wait for five years to elapse before applying for a new personal licence.

171. This provision also amends section 77(8) of the 2005 Act to increase the length of time prior to the expiry date of a personal licence that the relevant Licensing Board must give notice to the licence holder that the licence will cease to have effect on the expiry date unless renewed. The period of time is increased to nine months before the expiry date of a personal licence.

172. The provision amends section 78 of the 2005 Act to increase the length of the time period in which a personal licence holder may apply to the relevant Licensing Board for renewal of the licence, as well as to increase the length of the period provided for the Licensing Board’s consideration of this application. The period of time to submit an application under section 78(1) is now within the nine months period beginning 12 months before the expiry date of the licence.

173. Finally section 84A of the 2005 Act is amended to provide that if a Chief Constable reports conduct inconsistent with the licensing objectives to the relevant Licensing Board, the whole of section 84(8) now applies in relation to an order made under subsection (2) of this section as opposed to only section 84(8)(a). This means that the Board making the order must now notify the order to the licence holder, the Board who gave the original notice and the Board who issued the licence, if these are different Boards.

Section 58 – Processing and deemed grant of applications

174. Section 58 inserts a requirement for Licensing Boards to issue an acknowledgement for relevant applications, where the application meets the requirements. The requirements for an application form are those imposed under the 2005 Act or any other relevant enactment in respect of the type of application.
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

175. The acknowledgement must amongst other things inform the applicant of the timescale within which the application must be decided. The acknowledgement must be issued as soon as is practicable.

176. Where an application does not meet the requirements, the Licensing Board must give notice to the applicant that they are treating the application as incomplete and as not having been made, along with their reasons.

177. A Licensing Board must determine accepted applications within nine months of the date of receipt, as recorded in the letter of acknowledgement. This period of nine months can be extended, once, on application to the sheriff. The sheriff may extend the period for determining the application only if it appears to them, that there is a good reason for doing so. The applicant is entitled to be a party to proceedings to consider such an extension.

178. The Licensing Board is not required to issue an acknowledgement where it would not be appropriate to do so, however this would not alter the requirement to determine an application within nine months unless an extension has been granted by the sheriff. A Board may for example decide to grant a minor variation under subsection 30(2) without first issuing an acknowledgement.

179. If the Licensing Board fails to determine the application in this period then the licence will be deemed to have been granted and the Licensing Board must issue the licence to the applicant as soon as practicable. The Licensing Board must apply the relevant mandatory conditions, under schedule 3, or 4, including, where applicable, the Late Opening Premises Conditions, as set out in The Licensing Conditions (Late Opening Premises)(Scotland) Regulations 2007, but at time of issue, may not apply pool conditions or local conditions to a licence granted in this way.

**Section 59 – Form etc. of communications under the 2005 Act**

180. Section 59 expands the order making power provided at section 134 of the 2005 Act in relation to the form etc. of applications, proposals and notices to also include other communications. This means, for example, that the Scottish Ministers may make regulations expressly facilitating the use of email or other internet based systems for any type of application, notice, proposal or communication required under the 2005 Act.

**PART 3 – CIVIC LICENSING**

181. This Part of the Bill makes a number of amendments to the licensing provisions in the Civic Government (Scotland) Act 1982.

**Taxis and private hire cars**

**Section 60 – Refusal to grant private hire car licences on grounds of overprovision**

182. Section 60 amends section 10 of the 1982 Act. This enables (but does not require) the licensing authority to refuse a private hire car licence application on the grounds of overprovision of private hire car services in a given locality or localities. It allows the licensing
authority to determine the localities within their area, allowing them to either treat the whole licensing authority area as one locality or sub-divide it. The section also provides that when assessing overprovision the licensing authority must have regard to the number of private hire cars operating in the locality and the demand for private hire car services in the locality.

Section 61 – Testing of private hire car drivers

183. Section 61 amends section 13 of the 1982 Act to allow licensing authority to require testing of applicants for a private hire car driver licence, as per the current ability to do so for a taxi driver’s licence. Licensing authorities will be able to require the same testing of both taxi and private hire car drivers or different elements of testing (or no testing) of one set of drivers.

Section 62 – Exemptions from requirements of sections 10 to 21 of 1982 Act

184. Section 62 amends section 22 of the 1982 Act to remove the exemption at subsection (c) which applies to ‘any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours’. This brings vehicles that are being used on contract in this manner into the licensing regime for taxis and private hire cars. Examples of the type of service that could potentially be brought within the licensing regime for taxi and private hire cars are: executive hire work – where a car is hired to transport an individual between meetings over the course of a day; airport transfers – where a car is hired to transport customers on longer journeys (meaning the car can only do one job in the 24 hour period) e.g. collecting from Glasgow Airport and taking a group to Iona.

185. Subsection (4) gives the Scottish Ministers the power to specify by order further exemptions from taxi and private hire car licensing. It is assumed the definition of a hire car within the 1982 Act makes clear the type of operation that should covered: ‘…“hire car” means a motor vehicle with a driver…which is, with a view to profit, available for hire by the public for personal conveyance.’ However, if it becomes clear types of service not intended to be covered are being swept up in taxi and private hire car licensing, this power could be used e.g. where a service is providing some kind of transport as an ancillary part of the wider service, not the main focus. An example could be if child-minders are being expected to be licensed as private hire car drivers and their vehicles licensed for collecting children in their care from school by car. The power could be used to make explicit that this type of operation is not intended to be covered.

Metal dealers

Section 63 – Removal of exemption warrants for certain metal dealers

186. This section amends section 28 of the 1982 Act and repeals section 29 of the 1982 Act to remove the current provisions that allow a metal dealer with an audited turnover in excess of a figure specified by order (currently £1 million) to be exempted from licensing requirements. This will have the effect of ensuring that all dealers are subject to licensing requirements.
Section 64 – Abolition of requirement to retain metal for 48 hours

187. This section repeals section 31 of the 1982 Act to remove the mandatory requirement that metal dealers should not process metal for 48 hours after receiving it. This would allow a dealer to process metal quickly (which may be required for the safe operation of the site).

Section 65 – Acceptable forms of payment for metal

188. This section creates a new section 33A in the 1982 Act. This specifies acceptable forms of payment that may be accepted by a metal dealer or itinerant metal dealer. The acceptable forms of payment are a cheque or electronic transfer. Cash is not an acceptable form of payment. A dealer who makes payment in a method not specified commits an offence. The offence extends to a person with day to day management responsibilities and the person who makes the payment. The metal dealer and manager are provided with a defence that they have made arrangements to ensure that payment is made by the specified methods and have taken all reasonable steps to ensure compliance. Subsection (7) gives Scottish Ministers the power by regulation to add or remove forms of payment that are acceptable.

Section 66 – Metal dealers and itinerant metal dealers: records

189. This section amends the record keeping requirements for metal dealers and itinerant metal dealers. A new section 33B is inserted into the 1982 Act and provides the details that must be recorded by a dealer when metal is acquired or disposed of and supports the separate provisions stipulating acceptable forms of payment by requiring dealers to keep copies of documentation evidencing the form of payment used. Subsection (6) of section 33B provides the Scottish Ministers the power by regulation to amend the record keeping requirement.

190. The section also inserts a new section 33C into the 1982 Act to stipulate how records should be stored and a new section 33D to require records to be kept for each place of business a dealer operates from.

191. The section also creates an offence in relation to a failure to comply with the new requirements in relation to record keeping and amends the existing offence in relation to providing false or misleading information.

Public entertainment venues

Section 67 – Licensing of theatres etc.

192. This section repeals existing licensing requirements in the Theatres Act 1968 ("the 1968 Act) and supporting provisions in the 1968 Act that allow for powers of entry and inspection and prevent licensing being used to censor the content of plays.

193. The section also removes the exemption for premises licensed under the 1968 Act from the 1982 Act thereby allowing plays to fall into the activities that may be licensed under public entertainment licensing arrangements. An equivalent of the anti-censorship provisions in the 1968 Act is inserted into the 1982 Act.
Sexual entertainment venues

Section 68 – Licensing of sexual entertainment venues

194. The Section creates a new licensing regime for sexual entertainment venues.

195. This is achieved by amending the existing licensing scheme for sex shops found in Part 3 and Schedule 2 of the 1982 Act, such that it applies to sexual entertainment venues also, with modifications as necessary. The following paragraphs explain the key features of the new regime as modified.

196. The section amends section 41(2) of the 1982 Act to preclude a sexual entertainment venue from being licensed under public entertainment licences.

197. The section creates a new section 45A which establishes for the purposes of the legislation what is meant by a sexual entertainment venue and provides definitions of ‘audience’, ‘financial gain’, ‘organiser’, ‘premises’, ‘sexual entertainment’ itself and ‘display of nudity’.

198. A power is provided by the section to allow the Scottish Ministers to prescribe types of premises that are not sexual entertainment venues. Sex shops are specifically identified as not being sexual entertainment venues.

199. A further power is provided to allow the Scottish Ministers to prescribe descriptions of performances or displays of nudity that are not to be treated as sexual entertainment for the purposes of the legislation.

200. The section specifies that a venue hosting sexual entertainment very occasionally (defined as three occasions or less) would not be treated as a sexual entertainment venue.

201. A new section 45B is created which requires a resolution by a local authority in order for sexual entertainment venue licensing to have effect in their area. The section requires that a resolution under the section would not have effect until a specified date (which cannot be less than one year after the resolution is passed). A resolution must be publicised either electronically or in a local newspaper.

202. 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 much be publicised in a manner considered appropriate by the local authority.

203. Section 45B also clarifies that a licence for a sexual entertainment does not have to be granted even when a premises licence under Part 3 of 2005 Act (an alcohol licence) is in place.

204. Unlike sex shops, it will be permissible for a person under 18 to enter a sexual entertainment venue or be employed by such a venue but only at times when sexual entertainment is not taking place.”
205. Section 45B also provides that local authorities must have regard to any guidance issued by the Scottish Ministers.

Miscellaneous and general

Section 69 – Deemed grant of applications

206. The section modernises and expands the requirement for licensing authorities to deal with matters expeditiously. Failure to do so has the result that the application will be deemed to have been authorised. The expanded requirement also includes applications for variations to a licence so that a failure to take a decision within the specified timescale would have the effect that the variation would be deemed to have been agreed.

207. Section 3 of the 1982 Act is amended to modernise the language to provide greater clarity of the requirement to consider an application within three months and then reach a final decision within a further six months.

208. Section 3(4) is amended to include variations and to clarify the language used to describe the effect of a failure of a licensing authority to reach a decision.

209. A new subsection (4A) is inserted in section 3 of the 1982 Act to specify the duration of a licence or temporary licence granted under the ‘deemed grant provisions’.

210. A new subsection (4B) is inserted in section 3 of the 1982 Act to clarify that a licence issued under these provisions is not immune to the separate powers of a licensing authority to vary, suspend or revoke licences or to consider renewal.

211. A new section 45C is added to the 1982 Act to replicate these provisions in relation to sex shops and sexual entertainment venues.

Section 70 – Procedure for hearings

212. Section 70 amends the 1982 Act by inserting paragraph 18A, in Schedule 1 and inserting paragraph 24A in Schedule 2. The new paragraphs create an order-making power to allow the Scottish Ministers to make provision about hearings in relation to activities licensed under Part 1 to 3 of the 1982 Act. The regulations may cover notice of hearings, rules of evidence, representation, timescales for steps in the procedure, and liability for expenses. The regulations may differentiate between different purposes, for example, different types of licence.

Section 71 – Conditions for Part 3 licences

213. This section recreates powers that allow the Scottish Ministers to set mandatory conditions that would apply to all licences issued under Part 3 of the 1982 Act. The condition setting power is broad, would be specified by Order and could encompass different licences and particular purposes and sets of circumstances or cases.
214. The section also allows local licensing authorities to produce standard conditions to which licences issued by them under this Part would be subject. The conditions would have no effect until they are published and cannot be inconsistent with the mandatory conditions. Standard conditions can be varied or dis-applied for particular applications, although a variation could also not be inconsistent with a mandatory requirement.

Section 72 – Civic licensing standards officers

215. Section 72 inserts a new Part 3A into the 1982 Act. This introduces a statutory requirement for a local authority or licensing authority to appoint an individual or individuals in a new role, referred to as a ‘Civic Licensing Standards Officer’. These new Civic Licensing Standards Officers will have the same powers and duties as an ‘authorised officer’ within the 1982 Act but will also have specific functions in relation to providing information and guidance, checking compliance, providing mediation and taking appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act.

Section 73 – Electronic communications under the 1982 Act

216. The section amends Schedule 1 of the 1982 Act to permit a licensing authority to determine to receive electronic communications for a variety of matters. The matters are:

(a) applications for the grant or renewal of a licence under paragraph 1,

(b) objections or representations under paragraph 3,

(c) notifications of a change to a licence under paragraph 9.

217. Where a licensing authority makes a determination to receive electronic communications they must specify the form of electronic communication, the address to be used and any means of authentication that may be used in addition to an electronic signature.

218. The section clarifies that an electronic communication meeting the requirements set out will meet any requirement under schedule 1 for a communication to be in writing and signed.

219. A licensing authority may also determine to make communications in respect of the giving of notices or the giving of reasons electronically. The giving of reasons or notices electronically would only be acceptable if the intended recipient has agreed to receive communications in such a form and has specified an address. If the requirements are satisfied then any requirement for a notice or reasons to be given in writing will be met.

220. Determinations in relation to electronic communications may be made for different purposes and for different licences.

221. Similar amendments regarding electronic communications are made to Schedule 2 in respect of sex shops and sexual entertainment venues.
PART 4 – GENERAL

Section 74 – Interpretation

222. Section 74 defines various expressions used in the Bill.

Section 75 – Regulations

223. Section 75 provides procedural requirements for orders and regulations made under the Bill.

Section 78 – Commencement

224. Section 78 provides that the provisions of the Bill (except those which come into force at the beginning of the day following the day on which the Bill receives Royal Assent) will come into force on a date or dates determined by order, made by Ministers.

Section 79 – Short title

225. Section 79 gives the short title of the Bill.

SCHEDULE 1: EXEMPTIONS

Paragraph 1 – Approved air weapon clubs

226. This paragraph exempts members of an air weapon club approved by the Chief Constable under section 18 from the requirement to hold an air weapon certificate, for the purpose of possessing or using an air weapon for target shooting at that club. The air weapon in question may be owned by the club and held on an air weapon certificate issued to the club secretary, or borrowed from elsewhere (for example another club member who holds their own air weapon certificate).

227. Sub-paragraph (b)(i) sets out that this exemption applies while the member is target shooting at other approved air weapon clubs, or at an event or competition, provided that the shooting is in connection with their club membership. Sub-paragraph (b)(ii) also allows possession and use of an air weapon in connection with club target shooting, for example to allow a club member to transport an air weapon owned by the club between shooting venues.

228. Sub-paragraph (c) requires that, where an air weapon club member is aged below 14, they must be supervised by another club member aged 21 or over for this exemption to apply. There is no lower age limit to the application of this exemption.

Paragraph 2 – Registered firearms dealers and their employees

229. This paragraph exempts firearms dealers who are registered with the Chief Constable under section 33 of the 1968 Act from requiring to hold an air weapon certificate when carrying out their business.
230. Sub-paragraph (1)(b) extends this exemption to the Registered Firearms Dealer’s employees, and sub-paragraph (2) allows this exemption to apply anywhere (i.e. not just at the dealer’s usual place of business). Sub-paragraphs (3) and (4) allow for an individual to borrow an air weapon from a Registered Firearms Dealer and use it on land the dealer occupies provided the individual is supervised by the dealer or an employee of the dealer. Where the individual is under 14 then the supervisor must be aged 21 or over.

231. Sub-paragraph (1)(b) extends this exemption to the Registered Firearms Dealer’s employees, and sub-paragraph (2) allows this exemption to apply anywhere (i.e. not just at the dealer’s usual place of business).

Paragraph 3 – Auctioneers

232. This paragraph exempts auctioneers and their employees from requiring to hold an air weapon certificate when carrying out their business. This exemption only allows the possession, acquisition and purchase of air weapons, not their use.

233. Sub-paragraph (2) extends this exemption to allow an auctioneer to sell an air weapon by way of trade or business without committing the offence at section 24, provided that the auctioneer holds a police permit issued under section 12.

Paragraph 4 - Carriers and warehouse keepers

234. This paragraph exempts carriers and warehouse keepers, and their employees, from requiring to hold an air weapon certificate when carrying out their business. This exemption only allows the possession of air weapons, not their use, acquisition or purchase.

Paragraph 5 – Artistic performers

235. This section allows an individual taking part in a theatrical performance, a rehearsal, or a film production – as defined by sub-paragraph (2) – to possess and use an air weapon without holding an air weapon certificate. This exemption only applies to the performer involved, and only for the duration of the performance. This exemption does not permit purchase or acquisition of an air weapon.

Paragraph 6 – Cadet corps

236. This paragraph exempts members of a cadet corps approved under section 54(5)(b) of the 1968 Act, and their instructors, from requiring to hold an air weapon certificate for the purposes of drilling and target shooting with air weapons.

Paragraph 7 – Bodies corporate etc.

237. This paragraph exempts corporate bodies from possessing, purchasing or acquiring an air weapon provided that a natural person who is an officer of the body listed in sub-paragraph (2) has an air weapon certificate.
Paragraph 8 – Holders of police permits

238. This paragraph sets out the specific exemption that applies to a holder of a permit issued under section 12. Sub-paragraph (2) extends this exemption to allow a permit holder to sell an air weapon by way of trade or business without committing the offence at section 24.

Paragraph 9 – Holders of visitor permits

239. This paragraph sets out the specific exemption that applies to a holder of a permit issued under section 13.

Paragraph 10 – Authorised events

240. This paragraph sets out the specific exemption that applies to attendees at an event covered by a permit issued under section 17. Sub-paragraph (1)(b) specifies that the attendee must be using the air weapon to engage in an activity at the event for the exemption to apply. Use of an air weapon at an event when not engaging in event activities is therefore not exempted from the section 2(1) offence.

Paragraph 11 – Supervised use of air weapons on private land

241. This paragraph allows a person without an air weapon certificate to borrow an air weapon from an individual who holds a valid air weapon certificate, and to possess and use it while on private land and under the supervision of the certificate holder, or their employee. Any use must be in line with the conditions attached to the relevant air weapon certificate.

242. Sub-paragraph (2)(d) provides that if the borrower is younger than 14, then the supervisor must be aged 21 or over. There is no lower age limit to the application of this exemption.

Paragraph 12 – Use of air weapons at recreational shooting facilities

243. This paragraph sets out the specific exemption that applies to participants at a commercial recreational shooting facility which complies with the requirements at section 23. Sub-paragraph (1)(b) specifies that this exemption only applies while the user is on site – thus they cannot remove air weapons from the premises. Sub-paragraph (2) extends this exemption to apply to employees working at the recreational shooting facility.

Paragraph 13 – Museums

244. This exemption relates to museums which hold air weapons as part of their collection. Sub-paragraph (1)(b) sets out that, for this exemption to apply, the museum must either be approved by the Scottish Ministers under Schedule 1 to the 1988 Act (which will be the case if it already holds section 1 or 2 firearms), or, if the only firearms held by the museum are air weapons to which section 1 of the 1968 Act does not apply, a responsible person as defined by sub-paragraph (2) must hold an air weapon certificate.
245. Provided that either of these requirements is met the employees of the museum are exempted from requiring individual air weapon certificates to possess, purchase or acquire air weapons in the course of their duties at the museum.

**Paragraph 14 - Air weapons on ships**

246. This exemption applies to the possession and use of air weapons while on board a ship, provided that the air weapons are part of the ship’s equipment. This might cover, for example, air weapons for pest control, or an air weapon range on a cruise liner. An air weapon certificate or police permit would be required to remove an air weapon from the ship, or to purchase or acquire new air weapons for it.

**Paragraph 15 – Purchase of air weapons for delivery outwith Great Britain**

247. This paragraph sets out the specific exemption that allows someone who does not hold an air weapon certificate to purchase an air weapon in the manner set out in section 24(2)(c), without committing the offence at section 2(1) of purchasing an air weapon without a valid air weapon certificate.

**Paragraph 16 – Loaning of air weapons for exempted purposes**

248. This exemption allows the holder of an air weapon certificate (or a person who does not hold a certificate but is entitled to possess or use an air weapon without committing an offence by virtue of another exemption) to loan an air weapon by way of trade or business to another individual who does not hold an air weapon certificate, and to possess air weapons for the purpose of loan by way of trade or business, without committing the offences at section 24(1) and (2). Section 24 otherwise limits such transactions to Registered Firearms Dealers. This exemption only applies provided that the recipient of the loaned air weapon will possess or use the air weapon in accordance with one of the exemptions in schedule 1. For example, this would allow an operator of a recreational shooting facility to loan weapons for the exemption at paragraph 12, or a theatrical armourer to loan weapons for the exemption at paragraph 5.

**Paragraph 17 – Public servants carrying out official duties**

249. This paragraph exempts various categories of public servants listed at sub-paragraph (3) from requiring an air weapon certificate. This exemption relates to members of the police or armed forces who may be required to use or take possession of air weapons in connection with their duties (for example, a police constable seizing an air weapon, or a police forensic examiner testing its muzzle energy). This exemption only applies while the individual is carrying out their role as a public servant, and only when they are required to handle an air weapon in the fulfilment of their duties.

**Paragraph 18 – holders of certificates or permits with conditions**

250. This paragraph allows an air weapon certificate, visitor or police permit holder to make use of the exemptions in the schedule notwithstanding any condition which may be attached to the certificate or permit. This means that a person who holds, for example, a visitor permit that permits use and possession, can take advantage of the exemption in paragraph 15 to purchase an
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

air weapon for delivery to that person’s home country. Or, an air weapon certificate holder whose certificate has a condition limiting them to shooting for pest control purposes could separately be a member of an approved air weapon club, and shoot at the club under the exemption in paragraph 1.

SCHEDULE 2: MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1 – AMENDMENTS AND REPEALS RELATING TO PART 1

Paragraph 1 – Firearms Act 1968 (c.27)

251. This paragraph amends various provisions of the Firearms Act 1968 as it applies in Scotland. Sub-paragraph (2) repeals the offence limiting sales of air weapons to Registered Firearms Dealers, as this requirement is recreated by section 24 of the Bill. Sub-paragraph (8)(b) also extends the definition of Firearms Dealer to include anyone who manufactures, repairs or tests air weapons by way of trade or business. This brings the definition of Firearms Dealers in Scotland in line with the commercial offences being introduced at section 24 of the Bill. Sub-paragraphs (3) to (8) amend and repeal various provisions relating to use of air weapons by young people, as these provisions are superseded by the creation of an air weapons licensing regime. Sub-paragraph (9) amends the table of offences and penalties in the 1968 Act accordingly.

Paragraph 2 – Violent Crime Reduction Act 2006 (c.38)

252. This paragraph repeals section 32 of the Violent Crime Reduction Act 2006 in Scotland, which is restated by section 25 of the Bill.
FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Air Weapons and Licensing (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 14 May 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Policy Memorandum, which is published separately, explains in detail the background to the Bill and the policy intention behind the Bill. The purpose of this Financial Memorandum is to set out the costs associated with the measures introduced by the Bill, and as such it should be read in conjunction with the Bill and the other accompanying documents.

3. 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.

4. This Financial Memorandum sets out the costs and savings associated with the Bill under the following headings:
   - Air weapons
   - Alcohol licensing
   - Civic licensing:
     - Taxis and private hire cars
     - Metal dealers
     - Public entertainment venues
     - Sexual entertainment venues
     - Miscellaneous and general.

5. Under each of these headings substantive costs are then reported against the different bodies involved.

Air weapons

6. The Bill introduces a licensing regime for air weapons, which will be administered by the Police Service of Scotland (Police Scotland).

7. The Bill sets out a licensing regime, which aims to be appropriate, recognisable and practicable both for the police, who will be the licensing authority, and for those in the legitimate shooting community.
8. The overarching policy objective of this Part of the Bill is not to ban air weapons, but to ensure that only those people who have a legitimate reason for owning and using one should have access to them.

9. There will be a long lead-in time to full commencement of the measures in Part 1 to ensure as many people as possible are aware of the new regulations in relation to air weapons and to allow for a hand-in period before the primary criminal offence comes into force. There will be no compensation scheme for old or unwanted weapons which are handed in. Once the Bill is fully in force it will be an offence to have an air weapon without a certificate or an exemption and the police will seize weapons as and when offences are detected.

**Alcohol licensing**

10. Alcohol licensing, along with Minimum Unit Pricing and NHS investment in prevention, treatment and support measures, is part of the broader Government Strategy “Changing Scotland’s Relationship with Alcohol (2009)”. There is a significant social and financial cost of problem drinking. It is estimated that alcohol misuse costs the Scottish economy around £3.6 billion every year particularly in terms of alcohol related crime, mortality and hospital admissions.¹

11. It is vital that police and Licensing Boards have the powers they need to reduce crime and preserve public order so that people can lead productive lives within safe and secure communities.

12. Alcohol licensing is not however intended to prohibit responsible consumption nor to undermine the economic interests of the alcohol trade.

13. The Bill seeks to improve the effectiveness of the alcohol licensing regime set out in the Licensing (Scotland) Act 2005 (“the 2005 Act”) as added to by the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol etc. (Scotland) Act 2010 and the Alcohol (Minimum Pricing) (Scotland) Act 2012, as well as secondary legislation.

**Summary of provisions**

14. Under the current licensing regime, it is not an offence for adults to supply alcohol to someone under the age of 18 outwith a licensed premises. This allows outdoor drinking dens of young people where those in the group who are aged 18 or over buy alcohol for younger members. The Bill closes this loophole and gives the police the powers they need to disrupt these drinking dens. This fulfils a manifesto commitment.

15. The Bill will provide Licensing Boards with powers to consider a broader range of information when making licensing decisions. It will re-introduce a ‘fit and proper’ test into alcohol licensing. This is intended to give Boards a greater ability to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information including police intelligence. The 2005 Act currently focuses on the use of relevant offences and foreign offences to assess the suitability of applicants and licence holders. It will also, in time, allow Boards to consider spent convictions although the existence of spent convictions would not

¹ The Societal Cost of Alcohol Misuse in Scotland. [http://www.scotland.gov.uk/Publications/2009/12/29122804/0]
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necessarily bar an applicant from being granted a licence. The Boards will consider each case on its own merits as they currently do with unspent convictions for relevant offences.

16. Licensing Boards charge fees for a range of services such as applications for premises licences, payment of annual fees for premises licences, applications for personal or occasional licences, and transferring or varying existing licences. Some of these are set by local Licensing Boards and others are centrally set by the Scottish Ministers.

17. The fees regime is intended to reflect the Scottish Government’s intention to make the system self-funding. There is, however, currently no transparent accounting statement of the direct and indirect costs of Licensing Boards and the level of fees have therefore been a source of dispute with the trade. The Alcohol Fees Review Group, including representatives of both the trade and Licensing Boards, recommended in 2013 that Boards should be under a duty to produce an annual financial report. The Bill includes provision for this. Boards should be transparent about these costs to demonstrate that the fees they set are based upon cost recovery (unless they choose to operate to a deficit). As Licensing Boards are already under an obligation to ensure their fee income is broadly equivalent to their costs, this duty will simply require them to make public the calculations that are already being carried out.

18. The Bill will also take forward a range of technical recommendations to clarify and improve the operation of the current alcohol licensing legislation to ensure effective regulatory processes and to reduce unnecessary burdens on business. Included in this is the automatic granting of an application that has not been considered within a set period. This confirms compliance with the EU Services Directive\(^2\).

Civic licensing

19. The Bill seeks to improve the effectiveness of the civic government licensing regimes administered by local authorities, adjusting the regimes for taxi and private hire cars and metal dealers, addition of theatre licensing to the public entertainment venue licensing regime and the creation of a new licensing regime for sexual entertainment venues.

Sexual entertainment venues

20. There are a number of concerns around venues offering sexual entertainment such as lap dancing. There has been some suggestion that sexual entertainment may be associated with a risk of criminality and, as with other forms of public entertainment (licensed under a separate regime), there are also risks of adverse impacts on neighbours and general disorder. There is also concern regarding the working conditions in sexual entertainment venues and the possible financial exploitation of dancers. Finally, there is the view of violence against women stakeholders that sexual entertainment is a form of commercial sexual exploitation and is, therefore at odds with the Scottish Government’s position on violence against women.

21. A specific system of licensing for sexual entertainment was considered by the Scottish Parliament as part of the Criminal Justice and Licensing (Scotland) Act 2010, through an amendment proposed by Sandra White MSP. Whilst the Scottish Government supported these proposals, they were rejected by the Scottish Parliament due to concerns around the effect of operating a dual licensing system, with sexual entertainment being regulated under a regime of its own as well as under the alcohol licensing system. In addition, there was concern that as the proposals were introduced late in the Bill process they had not had the opportunity for appropriate scrutiny.

22. However, since 2010, court judgements have called into question the ability of Licensing Boards to set conditions beyond the tight focus on the sale of alcohol. This leaves uncertainty in the regulation of sexual entertainment, with many Licensing Boards believing that the alcohol licensing system is not, as currently constructed, able to provide adequate control, and that there is no effective alternative in place.³

23. A specific licensing regime for sexual entertainment venues offers local licensing authorities the ability to consider local circumstances and develop approaches appropriate to those circumstances. This would include the ability to set a desired number of sexual entertainment premises for their area (and for that number to be zero). It would also include the ability to set conditions that control the conduct of activities on premises in their area.

24. The Bill creates a new licensing regime for sexual entertainment venues. The new regime falls into the civic licensing arrangements under the Civic Government (Scotland) Act 1982 (“the 1982 Act”) and uses, in part, the architecture of existing provisions for the control of sex shops.

25. The provisions of the Bill require a licence for premises operated as sexual entertainment venues for financial gain. Definition is provided as to what is meant by sexual entertainment both to capture what is intended to be licensed, such as lap dancing, strip shows, peep shows, live sex shows, but to avoid licensing what is not, such as artistic performances. Powers are included to specify exceptions from the licensing requirement to remedy any unanticipated activity falling within the licensing ambit.

Metal dealers

26. Metal theft has been a growing problem in recent years. A variety of measures have been taken to tackle the problem including a dedicated task force which has been established by The British Transport Police, the announcement of a tougher prosecution policy by the Crown Office and Procurator Fiscal Service and the establishment of a national metal theft working group to co-ordinate action against metal theft.

27. An important feature of metal theft is that the consequences of a metal theft are out of all proportion to the scrap value of the metal stolen. The costs of metal theft include the cost of replacement and repair, wider economic costs through delay and disruption to business and

³ Brightcrew Ltd v City of Glasgow Licensing Board [2011] CSIH 46
members of the public and in some cases there are emotional costs. At the extreme, metal thefts have resulted in loss of life and serious injury.

28. Scrap metal dealers provide a valuable service to the community by providing a means for unwanted metal to be recycled into a useful raw material for manufacturers. Nevertheless, the scrap metal industry does provide a route by which a metal thief can convert stolen goods into cash.

29. The Bill seeks to improve the current regulation of metal dealers under the 1982 Act as part of the broader strategy to combat the significant disruption, danger and costs associated with metal theft, whilst supporting the legitimate scrap metal trade.

30. The Bill removes the exemption warrant system that exempted dealers with a larger turnover from the licensing requirements. It will limit payment for metal by metal dealers to prescribed methods i.e. bank transfer or cheque. By removing the option of paying in cash it seeks to ensure that a metal thief is not attracted by the possibility of being paid in an anonymous fashion. Instead, transactions will be traceable and auditable. It also makes provisions designed to improve standards for identification of customers and record keeping.

31. The Bill also removes the mandatory requirement that dealers should not process metal for 48 hours after receiving it. It is felt that this step is impractical for many dealers and should not be a compulsory requirement (though local licensing authorities could impose it on a case by case basis).

**Taxis and private hire cars**

32. Taxis and private hire car services are licensed to preserve public safety and order and to prevent crime. Local authorities are responsible for the taxi and private hire car licensing regimes following the framework provided for in the 1982 Act. They have discretion in applying a local regime that best meets the specific requirements of their local area and can take account of the views of both customers and trade.

33. The Bill aims to bring greater consistency between and within taxi and private hire car licensing regimes as well as expanding the scope of the licensing regime and tightening the regulation. This is with a view to addressing concerns that the legitimate trade is being unfairly challenged in some areas by businesses and individuals circumventing the current licensing regime with a consequential effect on public safety.

34. The provisions of the Bill will give local authorities the power to refuse to grant private hire car licences on grounds of overprovision. It extends taxi driver testing to include private hire car drivers and removes the ‘contract exemption’, bringing hire cars used on contracts into the licensing regime. These provisions, in part, acknowledge that in parts of the country, taxis, private hire cars and contract hire cars are essentially operating in a very similar market. Some of the distinctions between their mode of operation - for example pre-booking versus ranks and hailings – have been blurred with changes in technology.
Public entertainment venues

35. The Bill abolishes ‘theatre licences’ as currently required under the Theatres Act 1968 and instead regulates theatres through the existing public entertainment licencing regime provided for in the 1982 Act. This simplification intends to see theatres transferred to a lighter touch licensing regime which still ensures public safety.

36. Currently theatre licensing (under the 1968 Act) is a mandatory licence that requires all premises at which public performances of a play are staged to hold a licence. No allowance is made for the size of the premises or the potential audience. This contrasts with other forms of public entertainment (licensed under the 1982 Act) which is a flexible system that allows local licensing authorities to determine in a local context how licensing should be regulated in their area. By bringing theatre under the public entertainment licencing arrangements greater flexibility will be allowed. It will be open to a local licensing authority to exclude premises offering plays only to very small audiences from the licensing requirement. It also allows greater consistency and legislative clarity by bringing theatres within the same public entertainment licencing arrangements as other forms of the arts such as concerts and comedy shows.

Miscellaneous and general

37. The Bill includes a number of provisions aimed at improving the operation of all civic government licencing regimes. This includes the power for the Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings. This power will provide Ministers with the ability, if considered necessary and appropriate, to bring a level of consistency in the way hearings are conducted both across local licensing authorities and across civic and alcohol regimes. The Bill also includes a new role of civic licensing standards officer (CLSO) with specific functions in relation to providing guidance and checking compliance. This is modelled on the successful licensing standards officer (LSO) role within the 2005 Act and is intended to ensure a statutory minimum in the support local authorities provide in relation to licensing regimes under the 1982 Act. The Scottish Government is aware that many local licensing authorities already have in place high quality support of this kind and the Scottish Government’s intention is to not disrupt good practice where it is happening.

38. The Bill adds to the situations where an application for variation of a licence is deemed to be granted in circumstances where the local authority has not decided on an application or sought an extension from the sheriff within a set period. This is intended to ensure compliance with the EU Services Directive.

PART 1 – AIR WEAPONS

INTRODUCTION

39. Part 1 of the Bill makes provision for a licensing and regulatory regime for the acquisition, possession, use and disposal of low-powered air weapons in Scotland. These weapons have not previously been subject to licensing in Scotland or the rest of Great Britain. However, the scheme to be introduced follows, to a broad extent, the existing systems for licensing more powerful firearms under the Firearms Acts. That legislation, and responsibility for policy and legislation on the majority of firearms, remains reserved to the UK Parliament. Air weapons in Northern Ireland are licensed as part of the separate firearms regime in that country.
40. Given that the provisions in this Part of the Bill are broadly based on existing legislation and systems, it is important to emphasise that much of the infrastructure, knowledge and experience required to set up and administer air weapons licensing is already in place. This is true not only of Police Scotland, but amongst established shooting organisations and members of the legitimate shooting community. This part of the Memorandum is largely concerned with setting out estimates of the new or additional costs which will fall to agencies or individuals as a result of the licensing regime.

Where the costs will fall

41. The licensing authority for air weapons, as for the majority of firearms and shotguns, will be the chief constable of Police Scotland. Day-to-day responsibility for managing and administering the service is delegated to firearms licensing officers and staff across Scotland. As such, the majority of the costs involved in setting up and maintaining the licensing service will fall to Police Scotland.

42. Certain central costs will fall to the Scottish Administration. It is anticipated that these will fall into two broad areas: firstly, providing funding to help to meet initial set up costs; and secondly, to promote information and education, both in Scotland and further afield, on the new licensing requirement for air weapons. In addition, there will be costs to the Crown Office and Procurator Fiscal Service, Scottish Court Service, Scottish Prison Service and other agencies, arising from the enforcement of the new provisions. Costs at a lower level will also fall on a number of other government departments and agencies, other stakeholders and businesses including registered firearms dealers.

43. The Bill also provides powers for a tariff of fees to be charged at the point at which a person applies for an air weapons certificate (AWC) or, in certain cases, for a permit or other approval. Fees will be collected by Police Scotland and will help to offset the costs of providing the service. The fees will be payable by the individual applying for a certificate or, as appropriate, by air weapons clubs or other corporate bodies. Unlike other firearms applications, the fee will be charged whether the application is successful or not. The broad structure of the fee tariff will follow that in place for other firearms and shotguns. The actual fee amounts payable in each case will be set out in secondary legislation.

Consultation and source of figures

44. In November 2011 the Cabinet Secretary for Justice convened the Scottish Firearms Consultative Panel (SFCP) to discuss and advise on developing the new regime. Following the work of the Panel, the Government undertook a public consultation exercise on the principles of the proposed licensing regime between December 2012 and March 2013.

45. The Government has discussed the costs which may arise as a consequence of the licensing scheme with key stakeholders to prepare this Memorandum. The estimates of the numbers of weapons and owners, the value of weapons and business transactions, and the costs of the new system used throughout this part of the Memorandum are therefore based on estimates made by the Scottish Government, informed by discussions with stakeholder individuals and organisations. In particular, the Scottish Government has developed these estimates in discussion with representatives of Police Scotland and the Scottish Police Authority, the Crown Office and Procurator Fiscal Service (COPFS), the Gun Trade Association / Airgun...
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

Manufacturers and Traders Association, and other members of the SFCP. The figures provided below do not, however, represent the views of those organisations, which may wish to comment separately.

General assumptions made

Number of air weapons currently held in Scotland

46. Given that air weapons have not previously been subject to licensing in Scotland it has been difficult to make an accurate assessment of the number of air weapons currently held.

47. The issue of the number of weapons was raised again during meetings of the SFCP during 2011 and 2012. It was agreed by the Panel that there was no definitive count of air weapons held, nor any way of assessing that number completely accurately. However, work done by the member from the Gun Trade Association on behalf of the Panel examined sales figures for air guns over a 20-year period to 2011. This confirmed a sales pattern which was broadly consistent with an overall estimate of some 500,000 weapons in circulation.

48. A number of stakeholders who are opposed to the principle of licensing have argued that a much higher figure, perhaps as many as 700,000 air weapons, would be a more appropriate estimate. The Scottish Government has not, however, seen or been provided with any objective evidence to support a significantly higher figure than the 500,000 weapons discussed by the SFCP.

49. Given these discussions the Scottish Government has adopted the figure of 500,000 air weapons as the core estimate for the purposes of this memorandum and other calculations.

Estimated number of certificate applications

50. Taking a base estimate of 500,000 air weapons in Scotland it is accepted by all parties to the discussions and consultation that there will, in fact, be a much lower level of applications for AWCs. There are a number of reasons for this including:

- A significant number of air weapons are likely to be inoperative or broken, or may have been disposed of by the owners already.
- A large number are likely to be held unused. This may be because a person no longer shoots, because the weapon has been inherited and held as a family item, or simply because they have been put aside at some stage in the past and left unwanted or, in many cases, forgotten.
- A significant number of people in possession of an air weapon are likely to possess more than one. This may arise as a result of shooting over a long period and purchasing newer or better guns over time, owning a variety of weapons for different purposes, or because air weapons are used by more than one member of the household. An AWC will be valid for any number of air weapons held by the certificate holder.
- As of December 2012 there were some 60,000 holders of firearm or shotgun certificates in Scotland, who possess approximately 213,000 weapons. Many of these existing certificate holders will also hold and wish to retain air weapons. The Bill includes, as a transitional measure, provision for those people to continue to possess and use those air weapons, subject to conditions, until such time as their existing certificate expires. At
that stage it will be open to them to seek to obtain co-terminous certificates for all of the
guns they possess.

51. Alongside all of these factors, the Scottish Government accepts that there will be a
number of air weapons in circulation which do not, at least in the short term, come to the
attention of the licensing regime. This will occur for a number of reasons. For example, a
number of people may not be aware of the new legislation from the outset. In addition, it is
possible that a number of people will seek to avoid or ignore the new requirements. Such a
decision would represent an offence in terms of the legislation and the Bill empowers the police
to seize any unlicensed weapons discovered and charge the person with the relevant offence(s).

52. Given the above, it is impossible to provide any firm number of applications which are
likely to be received by Police Scotland. In discussions around the SFCP and elsewhere with
stakeholders, estimates range from a very small number of “new” applications (i.e. from
individuals without an existing firearm or shotgun certificate) to around 75% of air weapon
owners.

53. The Scottish Government believes that the figures above are likely to be at the extremes
of the range of actual applications, and that it is appropriate to set out the main estimates of costs
based on a range of potential new applications – that is, applications from those who hold only
air weapons and are currently unknown to police firearms licensing departments. Following
discussions with Police Scotland and others the Scottish Government considers that a range of
10,000, 20,000 and 30,000 new applications provides a suitable estimate of such applications in
the first licensing round. The costs and fee income figures below are calculated on this basis.

54. As noted above, it is accepted that there is likely to be a large number of existing firearm
and/or shotgun certificate holders who wish to obtain an AWC. The Government estimates that
this could be in the region of 40,000 existing certificate holders. Furthermore, as serious
competitive or professional shooters, many of these individuals are likely to own several air
weapons meaning that they will account for a considerable portion of the estimated 500,000 air
weapons in circulation. The costs of processing applications from existing certificate holders
will, however, be relatively small as the necessary background checks on such applicants will
already have been carried out. It is envisaged that a lower fee for such applications should be
sufficient to cover such costs, making the processing of these applications cost-neutral.

COSTS ON THE SCOTTISH ADMINISTRATION

Scottish Government

55. Air weapons licensing will be administered by Police Scotland alongside the existing
licensing systems for more powerful firearms and shotguns. However, it is anticipated that some
costs will be borne centrally by the Scottish Administration.

Guidance

56. The Scottish Government is mindful of the need to support the legislation with detailed
guidance for the police, for registered firearms dealers and others affected by the changes and for
owners and users of air weapons. That guidance will follow the terms of the legislation and the
aim is to draw on the existing, recently reviewed Home Office Guide on Firearms Licensing
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Law, which was published in full in November 2013, as well as consolidated guidance for police and shooters in Scotland currently being prepared by Police Scotland, and on existing material produced by the shooting organisations. All of the main shooting organisations, and other stakeholders, have expressed their willingness to work with the Government to ensure as many people as possible are aware of the new requirements.

57. The preparation of the guidance will be a matter for the Scottish Government as part of the normal business of the Safer Communities Directorate.

Public information

58. The Scottish Government has given a firm commitment, throughout the discussions and consultation on the air weapons provisions of the Bill, to ensuring that as many people as possible are aware of the new licensing requirements. It is anticipated that there will be a substantial lead-in period to full commencement of Part 1 of the Bill, to allow people to take decisions on whether they intend to apply for an AWC or dispose of weapons they hold. As part of this, the Government will undertake a high-profile media campaign to explain the new legislation. This will draw on the experience of the highly successful 2009 campaign to raise awareness of the danger of air weapons and is likely to use printed materials, the internet and possibly local radio to ensure the information reaches a wide audience. As noted above, all of the main shooting organisations have committed to working with the Government to ensure as many people as possible are aware of the new requirements.

59. The Government has estimated that the initial costs of such a campaign would be in the region of £225,000, spread over two years. Ongoing costs would be met from within existing resources.

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<tbody>
<tr>
<td>Media Campaign</td>
<td>£150,000</td>
<td>£75,000</td>
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Police Service of Scotland and Scottish Police Authority

60. The cost estimates set out below are, as far as possible, expressed in terms of the cost per certificate application process. The figures are drawn from three main sources:

- Knowledge of the costs of operating the existing firearms licensing service. These costs were provided by the former Scottish police forces, prior to April 2013, as part of the discussions at the SFCP and from additional, more recent material from Police Scotland;

- Figures provided by Police Scotland in an internal briefing paper dated September 2013, and shared to inform discussions with the Scottish Government; and

- Figures under discussion between the Association of Chief Police Officers (ACPO) Firearms and Explosives Licensing Working Group (FELWG) and the Home Office, in the context of revising the existing fee tariff. A Home Office working group, which includes a representative from Police Scotland, is currently examining this issue in detail. While no firm decisions are expected for some time, both Police Scotland and the Scottish Government have been kept informed of progress and of the assumptions used.
**Set up costs**

61. Police Scotland’s Licensing and Violence Reduction Division is well established and includes trained, experienced officers and police staff who operate the existing firearms licensing function. The new air weapons regime will build on this function and should be capable of being introduced without significant disruption. There are, however, likely to be some set up costs associated with introducing the new regime. The Scottish Government’s best estimates of these costs are set out below.

62. **Staffing** - The current licensing service employs some 66 administrative staff and 25 police officers, in order to service the 60,000 certificate holders. The Government proposes that the new system will not be unduly burdensome in terms of the application process, background checks on the applicant, home visits, etc. (see below). In addition, the provisions include transitional measures which will allow an existing certificate holder to “delay” application for an AWC until their existing certificate expires. Given this, the Scottish Government does not believe that there will be a need for significant additional staffing to process new applications. It is acknowledged, however, that staffing may be subject to the normal peaks and troughs of the certification cycle, and that there is likely to be a particular impact in the first 12 to 24 months of the licensing process. The calculations on application processing costs set out below reflect the anticipated staff time involved in each of the main processes, and therefore translate to staffing impacts.

63. **Training** – As noted above, Police Scotland already operates a full licensing service. The air weapons regime is based on the current firearms regime and will use the same or familiar forms, processes and considerations. The additional training of staff for the new legislation is therefore expected to be relatively low impact and will, over time, be built into the current training programme. Following discussions with Police Scotland, it is anticipated that it will be possible to absorb any additional training requirement within existing resources.

64. **ICT** – Police Scotland uses the SHOGUN IT system for processing and recording firearms and shotgun applications, certificates and other information. The system was used by several of the legacy forces prior to April 2013 and is expected to be fully rolled out across Scotland by the second half of 2014, under a five-year maintenance and development contract. Discussions with Police Scotland indicate that it will be possible to build onto the existing systems to include air weapons certification within SHOGUN and Police Scotland have confirmed this in principle with the software contractor. This allows for familiarity in the processing function, and ensures that all certification and related systems – such as the Criminal History System – will operate smoothly together. At this stage, no formal discussions have taken place with the company responsible for SHOGUN and it is not possible to state likely development costs with any certainty. However, initial discussions indicate that the costs of software development built on existing systems and any additional hardware capacity should not be high. An allowance of up to £50,000 has been made at this stage.

65. A summary of anticipated set up costs is therefore:

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</thead>
<tbody>
<tr>
<td>ICT costs</td>
<td>£50,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Processing costs

66. The main costs falling to Police Scotland will arise from the initial certification of air weapons holders, and ongoing checks and renewals of certificates once the main regime is in place. To a great extent all of the main elements of the regime are already in place, so that the impact of any new work and costs will be reduced as far as possible. In addition, it is not the intention to repeat or duplicate background and other checks unnecessarily where a firearms or shotgun certificate is already held. More generally, it is expected – and has been agreed with Police Scotland - that extensive, detailed background checks and home visits will be necessary only in a very small proportion of cases. This is reflected in the calculation of costs below.

67. Work done by ACPO in 2012, to inform fee discussions with the Home Office, suggested that processing of the grant of a firearms or shotgun certificate could involve more than five hours of a police enquiry officer’s time, with almost two further hours of administrative officer time for each process, on average. This level of resource would lead to a total cost of some £196 per certificate granted. Timings and charges at this level were not agreed by the shooting lobby or by the Home Office at the time. Further work has been done since, and is continuing, to reassess these workloads, and to estimate processes and timings involved in a system which could operate through an online regime, and which draws out greater efficiencies in the service overall.

68. For the purposes of the air weapons regime, the Scottish Government believes that an appropriate level of checking and processing could be achieved at significantly lower costs than the figures set out above. Experience of “disclosure” style background checks under other legislation – for example, when dealing with the protection of vulnerable groups – has shown this to be both achievable and successful. In discussion, Police Scotland agrees that this level of check would be appropriate for air weapons in the vast majority of cases. Relatively few air weapons applications would require a significantly higher level of background check and inquiry, perhaps including a home visit for the purposes of checking location, security, etc..

69. Drawing all of these considerations together, and taking into account latest (March 2014) ACPO/Home Office discussions around processing times for online applications, the Scottish Government believes that the tables below represent a reasonable estimate of the costs of processing new air weapons applications. The unit staff costs used are those set out in a Police Scotland briefing paper dated 11 December 2013 and are derived from unit costs currently being used to inform the wider examination of firearms fees by the Home Office.

<table>
<thead>
<tr>
<th>Staff type</th>
<th>Average salary per annum 2013</th>
<th>On costs</th>
<th>Indirect overheads</th>
<th>Total cost per annum for 2013</th>
<th>Hourly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enquiry officer</td>
<td>£27,000</td>
<td>£5,670</td>
<td>£9,801</td>
<td>£42,471</td>
<td>£28.30</td>
</tr>
<tr>
<td>Administrative officer</td>
<td>£19,300</td>
<td>£4,053</td>
<td>£7,006</td>
<td>£30,359</td>
<td>£20.10</td>
</tr>
</tbody>
</table>
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

<table>
<thead>
<tr>
<th>Process Enquiry Officer</th>
<th>Admin officer</th>
<th>Background checks</th>
<th>Mileage (visit)</th>
<th>Total £</th>
</tr>
</thead>
<tbody>
<tr>
<td>98% (Standard process)</td>
<td>0.00</td>
<td>£0.00</td>
<td>£24.15</td>
<td>£84.15</td>
</tr>
<tr>
<td>2% (Detailed process incl home visit)</td>
<td>1.75</td>
<td>£49.50</td>
<td>£24.15</td>
<td>£20.00</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td></td>
<td></td>
<td>Approx. £85.55</td>
</tr>
</tbody>
</table>

70. This results in total estimated processing costs of new applications (i.e. from individuals without an existing firearm or shotgun certificate):

- 10,000 applications - £855,500
- 20,000 applications - £1,711,000
- 30,000 applications - £2,566,500

71. These costs would be spread across the normal five-year licensing period but it is intended that air weapons holders will be able to apply for their first licence in advance of full commencement. Transitional arrangements also mean that existing firearm or shotgun certificate holders do not have to apply for a new AWC until their existing certificate is being renewed. For the purposes of this memorandum it is anticipated that commencement of the main provisions of Part 1 would come into effect on 1 April 2016. Given this, the estimated profile of application costs is set out in the following table:

<table>
<thead>
<tr>
<th>No. of applications</th>
<th>Year 0 (2015-16) 20%</th>
<th>Year 1 (2016-17) 30%</th>
<th>Year 2 (2017-18) 20%</th>
<th>Year 3 (2018-19) 10%</th>
<th>Year 4 (2019-20) 10%</th>
<th>Year 5 (2020-21) 10%</th>
</tr>
</thead>
<tbody>
<tr>
<td>10,000</td>
<td>£171,100</td>
<td>£256,650</td>
<td>£171,100</td>
<td>£85,550</td>
<td>£85,550</td>
<td>£85,550</td>
</tr>
<tr>
<td>20,000</td>
<td>£342,200</td>
<td>£513,300</td>
<td>£342,200</td>
<td>£171,100</td>
<td>£171,100</td>
<td>£171,100</td>
</tr>
<tr>
<td>30,000</td>
<td>£513,300</td>
<td>£769,950</td>
<td>£513,300</td>
<td>£256,650</td>
<td>£256,650</td>
<td>£256,650</td>
</tr>
</tbody>
</table>

72. In addition to the above, there will be a significant number of existing holders seeking co-terminous certificates. The costs of processing such certificates will be greatly reduced, as much of the required information and checking will already have been done for the firearms or shotgun process. The Scottish Government estimates that the additional costs involved would amount to some £10 per certificate. It is assumed, for the purposes of this memorandum, that there would be some 40,000 such applications over the period. This would amount to some £400,000 over the five-year licensing period, averaged out to £80,000 per year. However, it is anticipated that these costs could be fully recovered by way of a fee charged for the co-terminous procedure. The net financial impact on Police Scotland is therefore nil.
Other processes

73. The above estimates relate to the initial five-year period when almost all applications will be for new AWCs. For Year 6 onwards, many of the certificate applications will relate to renewals of existing authorities and processing costs should generally be lower as much of the data would already exist and Police Scotland would have knowledge and experience of the applicant at that stage. While this memorandum does not detail estimates beyond the first five-year cycle, the relevant costs for processing a renewal application could be estimated at:

<table>
<thead>
<tr>
<th>Enquiry Officer Hrs</th>
<th>Admin officer Hrs</th>
<th>Enquiry Officer @ £28.30 / Hr</th>
<th>Admin officer@£20.10/Hr</th>
<th>Mileage (visit)</th>
<th>Total £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Renewal</td>
<td>0.00</td>
<td>1.00</td>
<td>£0.00</td>
<td>£20.10</td>
<td>£20.10</td>
</tr>
</tbody>
</table>

74. Similar estimates have been made for the other main applications processes set out in Part 1 of the Bill:

<table>
<thead>
<tr>
<th>Enquiry Officer Hrs</th>
<th>Admin officer Hrs</th>
<th>Enquiry Officer @ £28.30 / Hr</th>
<th>Admin officer@£20.10 / Hr</th>
<th>Mileage (visit)</th>
<th>Total Cost £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police Permit</td>
<td>0.50</td>
<td></td>
<td>£10.05</td>
<td></td>
<td>£10.05</td>
</tr>
<tr>
<td>Visitor Permit</td>
<td>0.00</td>
<td>1.00</td>
<td>£0.00</td>
<td>£20.10</td>
<td>£20.10</td>
</tr>
<tr>
<td>Events Permit</td>
<td>1.00</td>
<td>1.00</td>
<td>£28.30</td>
<td>£20.10</td>
<td>£68.40</td>
</tr>
<tr>
<td>Air Weapons Club approval</td>
<td>2.00</td>
<td>1.75</td>
<td>£56.60</td>
<td>£35.18</td>
<td>£111.78</td>
</tr>
</tbody>
</table>

75. As there has been no previous experience of licensing such weapons, or of issuing permits for specific activities, it is not possible to provide any robust estimates of the numbers of applications likely to be received and processed. However, the Scottish Government considers that the fee to be charged for these processes can and should be set at a cost-recovery level, offsetting the costs of each process – see table of potential fees at paragraph 104. Fees set at these levels should not be prohibitive when measured, in the case of visitor permits for example, against the costs of travel to or holidaying in Scotland, or could be recovered by the applicant through entrance or membership fees. The fee tariff will be set in secondary legislation and detailed discussion of the potential fee levels is set out at paragraph 101 below.

Compliance costs

76. In line with the Scottish Government approach to regulating air weapons, the Scottish Government envisages that the majority of existing firearm and shotgun certificate holders will properly apply for a new AWC at the appropriate point in time. For those not already within the firearms licensing systems, it is not the intention that Police Scotland should pursue unlicensed air weapons as a significant new priority. Rather, the regime will allow the police to identify and regulate legitimate air weapons holders, and to identify and seize unlicensed weapons as part of
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

their wider responsibility for policing. Detection and enforcement of the new provisions will, therefore, form part of existing operations in the majority of cases. In line with this approach, no additional police officers should be required as a consequence of the new legislation.

77. Police Scotland and the Head of Firearms at the Scottish Police Authority have sought to estimate the costs involved in recording and reporting cases where an air weapon is retrieved by officers in the course of their investigation, and the costs of testing any such weapon to assess its specification, power, etc.. The Scottish Government accepts their stated estimate that each case would involve an average of around two hours of work, costing some £180 per case, if a full court report is required. The Government also noted that the development and use of a simpler, standardised reporting format could reduce this unit cost to as low as £100.

78. As above, it is difficult to make any firm estimate of how many air weapons would fall to be tested as a result of the new legislation. However, taking account of the 171 offences involving air weapons recorded in 2012-13 and allowing for new cases and seizures arising from the new provisions Police Scotland considers that some 500 new tests could be needed each year – broadly 10 cases a week.

79. The estimated maximum additional enforcement, testing and reporting costs are therefore:

500 cases @ £180 per case = £90,000 per annum.

Hand-ins and disposals

80. One of the effects of the introduction of the new legislation will be to encourage people to consider whether they wish to license weapons held, or to dispose of them. Many such disposals could be through sales, etc., but it is anticipated that many old or unwanted air weapons could be handed in to the police for disposal and destruction. Police Scotland would collect such weapons and make arrangements, either locally or nationally to have them held securely then destroyed. This would build on existing arrangements for the handling of firearms generally.

81. As with other aspects of the proposals, it is not possible to estimate accurately how many such air weapons could be involved, nor what the disposal arrangements are likely to cost in total. The Scottish Government notes, however, that a long lead-in period is anticipated before the licensing provisions are fully commenced, and that Police Scotland already has in place arrangements to dispose of firearms. Such arrangements include “no cost” agreements with companies to securely destroy the weapons with the private company benefitting from any scrap value resulting. At this stage, the Government’s best estimate of the additional hand-in and disposal costs arising from the Bill provisions is some £30,000 spread over the initial years of the licensing regime. Thereafter, it is believed that the costs of ongoing disposals, forfeitures, etc. would be absorbed within existing resources.

82. A summary of the additional ongoing costs anticipated is:

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<tbody>
<tr>
<td>Weapons testing</td>
<td>£90,000</td>
<td>£90,000</td>
<td>£90,000</td>
<td>£90,000</td>
<td>£90,000</td>
<td>£90,000</td>
</tr>
</tbody>
</table>
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| Hand-ins & disposals | £20,000 | £10,000 |

Scottish Court Service / Scottish Prison Service

83. As noted above, it is not the intention that Police Scotland should pursue unlicensed air weapons as a significant new priority. Prosecutions for licensing offences are therefore likely, in the majority of cases, to be pursued in parallel with other offences, whether these relate to offences of assault, vandalism, threatening behaviour, animal cruelty etc.. There were some 171 offences involving air weapons in the year 2012-13 and the additional costs of reporting and pursuing any associated licensing offence in such cases would, for the most part, represent a marginal addition to the policing and prosecution costs involved. This memorandum is therefore mainly concerned with estimating the number and costs of new, stand-alone licensing offences under Part 1 of the Bill, as unlicensed air weapons are identified and seized in the course of other investigations and police operations.

New cases

84. Given this background, the Scottish Government anticipates that the new measures will lead to a very small additional number of the most serious licensing offences, for example in relation to repeat offenders, being prosecuted in the sheriff courts under solemn procedure, with the expectation that a custodial sentence and/or substantial fine would be imposed on conviction. It is difficult to predict exact levels of activity at this stage, but the Scottish Government estimates that between two and five additional cases would be tried each year in solemn proceedings in the sheriff court.

85. There will also be a higher number of less serious cases, for example failure to comply with conditions on an AWC. In addition, Police Scotland has stated that it currently encounters a large number of low-value air weapons in the course of its operations which it would be likely to seize once the new legislation comes into force. Such cases would most probably be dealt with by way of summary procedures. The Scottish Government considers that a realistic estimate of new summary prosecutions under the licensing provisions of the Bill would, in the early years of the regime, lie between 50 and 100 additional cases detected per annum. Given that the majority of such cases would relate to licensing offences, it is estimated that a very small proportion would result in custodial sentences, perhaps as low as 2%, with an assumed sentence length of six months (with three months served).

Costs arising

86. Estimates have been made about the “unit costs” associated with pursuing prosecutions through both the solemn and summary court procedures. These estimates are based on assumed average costs in each case and have been calculated by the Scottish Government in consultation with stakeholders. Similarly, assumptions about potential disposals, whether custodial or by fine have been estimated, based on existing experience of court disposals.

87. In summary, the assumptions made in the relevant sections below are:
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

<table>
<thead>
<tr>
<th>Costs</th>
<th>Solemn cases</th>
<th>Summary cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Aid costs per case</td>
<td>£1,900</td>
<td>£660</td>
</tr>
<tr>
<td>(Source: Scottish Legal Aid Board Annual Report 2012-2013)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecution costs per case</td>
<td>£8,000</td>
<td>£400</td>
</tr>
<tr>
<td>(Estimate)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court costs per case</td>
<td>£1,850</td>
<td>£335</td>
</tr>
<tr>
<td>(Estimate)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual cost per prison place</td>
<td>£42,620</td>
<td>£42,620</td>
</tr>
<tr>
<td>(Source: Scottish Prison Service Annual Report and Accounts 2012-13)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disposals</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>% custodial</td>
<td>50%</td>
<td>2%</td>
</tr>
<tr>
<td>Sentence length</td>
<td>One year</td>
<td>six months</td>
</tr>
<tr>
<td>Actual time served</td>
<td>six months</td>
<td>three months</td>
</tr>
<tr>
<td>% fine/other disposal</td>
<td>50%</td>
<td>98%</td>
</tr>
</tbody>
</table>

88. Using the assumptions above, a summary of the projected costs is shown below. Costs have been assumed at the mid-point of estimates for the purposes of this Memorandum.

<table>
<thead>
<tr>
<th>Solemn</th>
<th>Range</th>
<th>Selected</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Range</td>
<td></td>
<td></td>
</tr>
<tr>
<td>cost per case</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Aid</td>
<td>£1,900</td>
<td>£3,800</td>
</tr>
<tr>
<td>Prosecution</td>
<td>£8,000</td>
<td>£16,000</td>
</tr>
<tr>
<td>Court costs</td>
<td>£1,850</td>
<td>£3,700</td>
</tr>
<tr>
<td></td>
<td>£23,500</td>
<td>£58,750</td>
</tr>
<tr>
<td>Prisons</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>% custodial</td>
<td>50%</td>
<td>1</td>
</tr>
<tr>
<td>Sentence length</td>
<td>One year</td>
<td></td>
</tr>
<tr>
<td>Actual time served</td>
<td>six months</td>
<td>0.5</td>
</tr>
<tr>
<td>Annual cost of prison places</td>
<td>£42,620</td>
<td>£21,310</td>
</tr>
</tbody>
</table>
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

### Summary

<table>
<thead>
<tr>
<th>Range</th>
<th>Selected</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>100</td>
</tr>
</tbody>
</table>

- **Cost per case**
  - **Legal Aid**
    - £660
    - £33,000
    - £66,000
    - £49,500
  - **Prosecution**
    - £400
    - £20,000
    - £40,000
    - £30,000
  - **Court costs**
    - £335
    - £16,750
    - £33,500
    - £25,125

- **Prisons**
  - 50
  - 100
  - 75

- **% custodial**
  - 2%
  - 1
  - 2
  - 1.5

- **Sentence length**
  - six months

- **Actual time served**
  - three months
  - 0.25
  - 0.5
  - 0.375

- **Annual cost of prison places**
  - £42,620
  - £10,655
  - £21,310
  - £15,985

### Summary of selected costs

<table>
<thead>
<tr>
<th>Legal, prosecution and court costs</th>
<th>Scottish Service</th>
<th>Prison Service</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Solemn (3pa)</strong></td>
<td>£35,250</td>
<td>£31,965</td>
<td>£67,215</td>
</tr>
<tr>
<td><strong>Summary (75pa)</strong></td>
<td>£104,625</td>
<td>£15,985</td>
<td>£120,610</td>
</tr>
</tbody>
</table>

**£139,875**

| **£47,950** | **£187,825** |

89. In each case, the estimated number of new cases arising directly from the provisions of Part 1 of the Bill, and the costs associated with such cases, do not translate to any significant new burden on the courts or prison services. The Scottish Court Service Annual Report 2011-12 showed that there were some 1,128 solemn trials and 6,846 summary trials where evidence was led. In addition, the average daily prison population in Scotland in 2012-13 was 8,014. The likely impacts of air weapons licensing, therefore, represent a very small percentage of the total costs of these organisations and should be accommodated within existing workloads and likely fluctuations therein. The relevant costs have, therefore, been classed as opportunity costs.

### COSTS ON LOCAL AUTHORITIES

90. The licensing authority for air weapons in Scotland will be Police Scotland. The Scottish Government does not propose any formal role for local authorities within the new regime. This is in line with the present firearms and shotgun licensing arrangements. As a result, the Scottish Government does not anticipate any new costs falling on local authorities as a result of Part 1 of the Bill.
COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Registered firearms dealers

91. The Gun Trade Association Ltd (GTA) is the UK's officially recognised body representing the legitimate sporting, recreational and professional gun trade. It has over 700 members and its mission is to promote and protect the industry at all levels. The GTA (and the Airgun Manufacturers & Trade Association Ltd (AMTA)) were represented on the Scottish Government’s SFCP and provided or confirmed a number of the main figures and assumptions used in developing this memorandum.

92. Scottish Government statistics showed that there were 353 registered firearms dealers (RFDs) in Scotland at December 2012. Many of these are involved in trading air weapons, with GTA/AMTA servicing around 114 air weapon outlets. Figures provided by the GTA/AMTA in October 2012 (and confirmed in March 2014) estimated that retail sales of air weapons at that time amounted to approximately three guns per week per outlet, with a total estimated retail value of some £2.4 million per annum. An additional £2 - 3 million per year was estimated as being attributable to “related” products and sales, including clothing, targets, scopes, etc..

93. The Scottish Government understands that GTA/AMTA members at the time reported a small downturn in sales in the period 2010 to 2012, against a background of the general economic downturn, as well as unfounded speculation about an “air weapons ban” in Scotland. However, this had to be seen against a longer term trend of a rise in sales over a nine- or ten-year period. This rise has occurred despite the introduction of greater controls over the possession and sale of air weapons in the Anti-social Behaviour Act 2003, the Violent Crime Reduction Act 2006 and the Crime and Security Act 2010.

94. Overall, the Scottish Government accepts that there may be an adverse impact on sales figures as a result of this legislation coming into force. However, this is not expected to be large. The licensing regime is designed to ensure that a reasonable person with a legitimate reason for possessing an air weapon should be able to obtain a certificate and continue to shoot. Gun sales to this customer base will, in many cases, be focused at the higher value end of the market, along with sales of related products. Sales of lower powered weapons are, therefore, likely to reduce as a proportion of all sales and the Government believes that such a reduction is justified in terms of the wider benefits to public safety.

95. In terms of ongoing costs, the new legislation places two main responsibilities on air weapons traders. Firstly, the dealer will be required to ensure that a person buying an air weapon holds a valid AWC. That check should be relatively simple and builds on existing requirements with regard to the conduct and recording of air weapons sales, introduced by the Violent Crime Reduction Act 2006. Secondly, dealers will be required to notify the chief constable of any air weapon sold for delivery outwith Great Britain. Again this builds on existing procedures for firearms and shotguns and will not represent any significant new burden for RFDs.

Shooting clubs

96. There is already a small network of air weapon clubs across Scotland, many of which are affiliated with recognised shooting organisations such as the Scottish Air Rifle and Pistol Association (SARPA), UK Association for Hunter Field Target (UKHAFT), and National Small-
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014.

bore Rifle Association (NSRA). Such clubs should have appropriate premises which can be inspected and approved by Police Scotland. The Bill sets a framework for such an approval process and the Scottish Government will supplement this with detailed guidance, following the model of the current Home Office guidance on the approval of rifle clubs and muzzle-loading pistol clubs, which are governed under section 15 of the Firearms (Amendment) Act 1988.

97. A fee will be payable by the club to help meet the costs of this approval process. While such fees will represent a cost to the club and to members, the Scottish Government believes that the overall impact should be very small when viewed against the overall costs of providing suitable premises or a shooting range, and the wider costs involved in air weapon shooting.

Shooting organisations

98. As with air weapons clubs, the Scottish Government does not consider that there will be any significant impact on shooting organisations. It is likely that the majority of existing legitimate and serious air weapons shooters are, and will continue to be, members of or subscribe to one or more of the main organisations. Conversely, those who should not possess weapons or who possess them with the aim of causing mischief are unlikely to be members of shooting organisations.

Tourism

99. The Bill provides for a system of visitor permits for those who wish to visit Scotland with their own air weapons, or to shoot in Scotland, for example on private land or at an organised event. This will draw on the well-established system of visitor permits for firearms and shotguns under the current firearms legislation. The applicant for such a permit will be required to pay a fee at the point of application. The exact level of fees has not yet been set: the current fee for a firearms visitor permit is set at £12, whereas the estimates of processing costs set out above suggest that a fee of around £20 may better reflect the actual costs of dealing with an application. In any event, a fee set at or close to this level would represent a small addition to the costs of a visit to Scotland, particularly where that visit includes significant travel and accommodation costs. The Scottish Government considers that such additional costs are not material and would be unlikely to lead to any significant impact on tourism in Scotland.

Recreational shooting

100. The Bill also provides for event permits, to allow the applicant to organise and promote specific events at which air weapons shooting is to take place. Such events could, for example, include fairs and other situations where it is possible for those who do not normally shoot in a competitive environment to hire or borrow air weapons; specific shooting competitions; or other events which include recreational shooting. The costs of processing an application for a permit to operate such an event are estimated at paragraph 74 above and may amount to some £60 - £70 per event. Such a cost is likely to be small in comparison to the overall costs of staging and promoting such events and could be recouped by the organisers through entry fees or other remuneration. The Scottish Government considers that any impact on the costs of organising recreational shooting events is, therefore, likely to be marginal.
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

Fees

101. As noted above, the Bill enables a tariff of fees to be charged at the point at which a person applies for an AWC, a permit or for other approvals. The fee will be payable regardless of whether or not a certificate is granted. Fees will be collected by Police Scotland and will help to offset the costs of providing the service. The fees will be payable by the individual applying for a certificate or, as appropriate, by air weapons clubs or other corporate bodies.

102. The broad structure of the tariff will follow that in place for other firearms and shotguns. Those fees are set by the UK Government under reserved legislation. The actual fee amounts payable in each case will be set out in secondary legislation and are likely to be set at levels which strike a balance between the current tariff for firearms, at least in the initial years of the regime, and the estimated average costs of processing each application. The Scottish Government believes it would be inequitable to set an air weapons fee tariff which is greater than that for other guns. This could also encourage ownership of more powerful weapons. The Scottish Government’s aim, however, is to move towards a level of fees set at full cost recovery levels.

103. The following table sets out the current (March 2014) fee levels for firearms and shotguns, and shows indicative fees for the equivalent main air weapons processes. The proposals are set at different levels for the purposes of illustrating potential impacts on overall costs. It is also important to note a number of general points:

- Firstly, the existing tariff charges fees for the grant of the certificate. The Scottish Government proposes that it is more appropriate to require payment of a fee at the point of application, and that the fee is not returnable in the event of a refusal of the application. This better reflects the true costs of running the licensing service, as the processing checks and administration have to be carried out regardless of the final decision made;

- Secondly, there are a number of processes (police permits and events permits) where the Scottish Government intends to set a fee, which have no direct equivalent in the current firearms legislation; and

- Thirdly, much of the current tariff has been in place since 1 January 2001 (fees for clubs and museums have been unchanged since 1988). There has been considerable pressure from a number of stakeholders, in particular the police, calling for fees to be increased in line with inflation and to better represent the costs of providing the licensing service. As noted above, work is currently underway in a Fees Working Group, convened by the Home Office and including representation from Police Scotland, to consider an increase in the firearm and shotgun tariff. This work is not yet complete, and it is unclear as to whether a full cost recovery fee level is likely to be set, either from the point of change or on a phased basis.

104. In the table below, two indicative fee levels have been shown, for estimation purposes. These are:
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

Level 1 – Fee levels set at or close to current firearms/shotgun fee levels, where fees are in place

Level 2 – Indicative fee levels based on the estimates of the full cost of processing each type of air weapons case, as set out above

Fees

<table>
<thead>
<tr>
<th>Process</th>
<th>Current firearms / shotgun fee</th>
<th>Air weapons fee (Level 1)</th>
<th>Air weapons fee (Level 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant of certificate</td>
<td>£50</td>
<td>£50</td>
<td>£85</td>
</tr>
<tr>
<td>Co-terminous certificate</td>
<td></td>
<td>£10</td>
<td>£10</td>
</tr>
<tr>
<td>Renewal of certificate</td>
<td>£40</td>
<td>£40</td>
<td>£20</td>
</tr>
<tr>
<td>Police permit</td>
<td></td>
<td>£10</td>
<td>£10</td>
</tr>
<tr>
<td>Visitor permit</td>
<td>£12</td>
<td>£15</td>
<td>£20</td>
</tr>
<tr>
<td>Event permit</td>
<td></td>
<td>£50</td>
<td>£65</td>
</tr>
<tr>
<td>Air weapons club</td>
<td>£84</td>
<td>£85</td>
<td>£110</td>
</tr>
</tbody>
</table>

OVERALL COSTS OF PART 1

105. Drawing together all of the above information and given the assumptions made, the following sets out the Scottish Government’s best estimates at this stage of the potential costs arising from the air weapons provisions as set out in Part 1 of the Bill.

106. As noted at paragraph 53 the Government estimates that the number of new applications for AWCs will fall in the range 10,000, 20,000 or 30,000 with the mid-range estimate of 20,000 new applications considered the most likely scenario. Applications will be spread in the run up to full commencement and over the first five-year licensing period. Many applications are likely to arise in the first years, but transitional measures and other factors mean that the application rate is likely to be spread over the whole period. The estimated profile is set out in the table at paragraph 71 above. The costs of new applications on this basis are set in the table below. Assumed fee levels are calculated at Level 1 (i.e. existing fee tariff).

Processing Costs to Police Scotland

<table>
<thead>
<tr>
<th>No. of new applications</th>
<th>Year 0 (2015-16)</th>
<th>Year 1 (2016-17)</th>
<th>Year 2 (2017-18)</th>
<th>Year 3 (2018-19)</th>
<th>Year 4 (2019-20)</th>
<th>Year 5 (2020-21)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>10,000</td>
<td>£71,100</td>
<td>£106,650</td>
<td>£71,100</td>
<td>£35,550</td>
<td>£35,550</td>
<td>£35,550</td>
<td>£355,500</td>
</tr>
<tr>
<td>20,000</td>
<td>£342,200</td>
<td>£513,300</td>
<td>£342,200</td>
<td>£171,100</td>
<td>£171,100</td>
<td>£171,100</td>
<td>£1,711,000</td>
</tr>
<tr>
<td></td>
<td>£200,000</td>
<td>£300,000</td>
<td>£200,000</td>
<td>£100,000</td>
<td>£100,000</td>
<td>£100,000</td>
<td>£1,000,000</td>
</tr>
</tbody>
</table>
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

<table>
<thead>
<tr>
<th>Net cost</th>
<th>£142,200</th>
<th>£213,300</th>
<th>£142,200</th>
<th>£71,100</th>
<th>£71,100</th>
<th>£71,100</th>
<th>£711,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>30,000</td>
<td>£213,300</td>
<td>£319,950</td>
<td>£213,300</td>
<td>£106,650</td>
<td>£106,650</td>
<td>£106,650</td>
<td>£1,066,500</td>
</tr>
</tbody>
</table>

107. Taking the mid-range estimates shown above the following table seeks to summarise the full costs arising from Part 1 of the Bill. A number of other costs are considered to be “up-front costs” and are shown in the table accordingly. The ongoing costs for other agencies are shown per annum.

### Summary of cost estimates

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scottish Government (Media)</strong></td>
<td>59</td>
<td>150,000</td>
<td>75,000</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>£225,000</td>
</tr>
<tr>
<td><strong>Police Scotland</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net processing cost</td>
<td>106</td>
<td>142,200</td>
<td>213,300</td>
<td>142,200</td>
<td>71,100</td>
<td>71,100</td>
<td>71,100</td>
<td>£711,000</td>
</tr>
<tr>
<td>PS/SPA - Weapons testing and reporting</td>
<td>82</td>
<td>0</td>
<td>90,000</td>
<td>90,000</td>
<td>90,000</td>
<td>90,000</td>
<td>90,000</td>
<td>£450,000</td>
</tr>
<tr>
<td>ICT costs</td>
<td>65</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>£50,000</td>
</tr>
<tr>
<td>Hand-in and Disposals</td>
<td>82</td>
<td>20,000</td>
<td>10,000</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>£30,000</td>
</tr>
<tr>
<td><strong>COPFS/Courts (Mid-level estimates)</strong></td>
<td>88</td>
<td>0</td>
<td>35,250</td>
<td>35,250</td>
<td>35,250</td>
<td>35,250</td>
<td>35,250</td>
<td>£176,250</td>
</tr>
<tr>
<td>Solemn (three pa)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summary (75pa)</td>
<td>88</td>
<td>0</td>
<td>104,625</td>
<td>104,625</td>
<td>104,625</td>
<td>104,625</td>
<td>104,625</td>
<td>£523,125</td>
</tr>
<tr>
<td>Scottish Prison Service</td>
<td>88</td>
<td>0</td>
<td>£47,950</td>
<td>£47,950</td>
<td>£47,950</td>
<td>£47,950</td>
<td>£47,950</td>
<td>£239,750</td>
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<tr>
<td>Total</td>
<td>362,200</td>
<td>576,125</td>
<td>420,025</td>
<td>348,925</td>
<td>348,925</td>
<td>348,925</td>
<td>348,925</td>
<td>£2,405,125</td>
</tr>
</tbody>
</table>
PART 2 - ALCOHOL

INTRODUCTION

108. There are nineteen separate provisions in relation to alcohol licensing in the Bill. The main amendments are listed below it is believed that their overall financial impact is likely to be close to neutral. The more significant financial impacts on stakeholders are described throughout this section of the Financial Memorandum

109. Part 2 of the Bill amends the system of alcohol licensing by:

- The creation of a new offence of supplying alcohol to children or young people for consumption in a public place. This fulfils a manifesto commitment;
- Amendment of the licensing objective in relation to children to also include young persons;
- Amendment of the duration of a licensing policy statement to better align with the term of Licensing Boards;
- Inserting a fit and proper person test in relation to the issue or continued holding of a premises or a personal licence;
- Removal of the automatic requirement for a hearing where a Licensing Board is notified of a relevant or foreign offence in relation to a premises or personal licence;
- Amendment of the definition of relevant offences and foreign offences to no longer disregard a matter that is spent for the purposes of the Rehabilitation of Offenders Act 1974;
- Inclusion of the flavouring angostura bitters in the definition of alcohol for the purposes of the Act;
- Clarification that for an overprovision assessment, the whole Board area may be considered as an area of overprovision, and allow Boards to take account of licensed hours, among other things;
- Imposition of a duty on Boards to prepare an annual financial report;
- Removal of the requirement for a premises licence holder to notify a change in interested parties and removal a premises manager from the definition of interested party;
- Removal of the five-year restriction on re-applying for a licence revoked on grounds of failing to undertake refresher training and other changes to the personal licence holder requirements;
- Introduction of a requirement for a Licensing Board to issue an acknowledgement, unless it would be impractical;
- Provision for the automatic grant of a licence (or its variation) where a Licensing Board has not either decided on an application or sought an extension from the sheriff within a set period. This clarifies compliance with the EU Services Directive.
COSTS ON THE SCOTTISH ADMINISTRATION

Scottish Government

110. Alcohol licensing will continue to be administered locally by local authority Licensing Boards so centrally borne costs will continue to be minimal.

111. The Scottish Government already produces and updates guidance in relation to alcohol licensing. The production of guidance on the alcohol licensing aspects of the Bill, would form part of this existing work and, therefore, be met from within existing budgets. No additional costs to the Scottish Government have been identified in respect of Part 2 of the Bill.

Police Service of Scotland

112. In 2007, the overall estimate for the cost of alcohol-specific offences and alcohol-specific crimes and offences was estimated £727.1 million.4

113. Police Scotland is very supportive of these measures in the Bill, which will improve departmental effectiveness with no anticipated impact on policing demands or financial outlay. Police Scotland has stated that the measures may actually save money and prevent it having to manage particular problems in certain premises which is a time-consuming and more expensive option.

114. Under the Bill, police responsibility will remain broadly the same with responsibility for conducting checks on licence holders, enforcement and offering views on complaints. However with the introduction of the ‘fit and proper’ test and the consideration of spent convictions, the police will have powers to provide a wider range of information to Boards.

115. No additional police costs are anticipated in this regard. The background work is already carried out for every new applicant and/or transferee and in response to incidents occurring which are linked to licensed premises and holders of personal licences. Spent convictions are automatically checked when the police undertake background checks in their role as statutory consultee so there will be no additional burden in this regard.

116. Police Scotland has welcomed the new offence of supplying alcohol to young people/children for consumption in a public place. It is not clear that policing the offence would be an additional cost to Police Scotland as the police are already committing resource to dealing with the behaviour to which it relates. Police Scotland feels that this offence will prove to be a deterrent and useful preventative measure as well as an additional tool to tackle the source of alcohol to young persons, underage drinking, and associated antisocial behaviour and disorder. Ultimately, these changes should reduce the pressure on police resource caused by this behaviour which has come to blight the evening economies of towns and cities, especially at the weekend.

117. In common with similar offences under the 2005 Act, the Scottish Government anticipates that Police Scotland will use it to encourage compliance, with only a relatively small number of prosecutions being taken where necessary to protect public safety. The actual number

of prosecutions under this offence would, however, depend on the approach taken by Police Scotland. The estimated cost involved in processing a summary case from the point at which the crime is committed to the point at which a suspect is charged is £439. 5 A similar offence under section 105 of the 2005 Act was the basis of 50 prosecutions in 2012/13. Together these provide a possible indicative cost to Police Scotland of around £21,950 per annum for this offence although, as noted above, a proportion of this cost is already spent in policing the behaviour to which it relates.

Scottish Court Service / Scottish Prison Service

118. It is anticipated that the majority of disposals for incidents of supplying alcohol to a child or young person in a public place will be through early intervention or by means of fixed penalty notices, and as such it is less likely that there will be a significant impact on procurators fiscal or indeed custody provision.

119. The alcohol licensing regime relies on Licensing Boards, made up by local authority councillors. In the main, any punitive action is taken in relation to the relevant licence. The 2005 Act provides a right of appeal for certain Licensing Board decisions. It is not anticipated that the Bill will make significant changes to the number of appeals that are made.

120. There are, however, also a number of existing offences within the legislation, and this Bill provides an additional offence in relation to the supply of alcohol to a child or young person in a public place. It is not anticipated that this new offence will lead to substantial numbers of additional prosecutions. A person who commits this offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale, imprisonment for a term not exceeding three months or both.

121. The average estimated cost of a summary case is £2,148.5 This figure includes not just prosecution costs, but also police costs and court costs involved in a case being taken through Scottish summary courts. Excluding the costs incurred up to the point that the suspect is charged, which will fall largely to the police, the average estimated cost of a summary case is £1,709.

122. As set out above in paragraph 117, in common with similar offences under the 2005 Act, the Scottish Government anticipates that Police Scotland will use it to encourage compliance, with only a relatively small number of prosecutions being taken where necessary to protect public safety. Nevertheless, on the basis of the number of prosecutions under section 105 of the 2005 Act in 2012/13, a possible indicative cost of about £85,450 per annum can be derived.

COSTS ON LOCAL AUTHORITIES

123. The alcohol licensing regime is administered at local authority level by Licensing Boards. The Bill will not change this. Local authorities will continue to bear the costs of administering the licensing process, and they recoup their costs through the licensing fees.

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124. The Licensing (Scotland) Act 2005 section 136 enables the Scottish Ministers to make provision for the charging of alcohol licensing fees by Licensing Boards in a range of situations such as applying for premises licences/paying annual fees, applying for personal licences, occasional licences, and transfer or variation of licences.

125. Licensing Boards are empowered to set their own fees as long as they do not exceed the maximum limits, where appropriate, outlined in the Licensing (Fees) (Scotland) Regulations 2007 (“the 2007 Regulations”). The fees are intended to reflect the Scottish Government’s intention to make the system self-funding i.e. to cover both direct and indirect costs incurred by Licensing Boards. As stated in the 2007 Regulations, regulation 13:

“a Board is to have regard to the desirability of ensuring that the total fees payable under these Regulations to that Board in respect of any period are likely to be broadly equivalent to the expenses incurred by the Board and the council for the area of that Board, in administering the Act generally during that period.”

126. Most of these fees, such as those charged for occasional licences or variations, are the same for all licensees regardless of the size of their business. Premises applications/annual fees are linked to the business’s rateable value, with a number of exceptions such as members clubs, visitor attractions etc., detailed in the 2007 Regulations.

127. In addition to the payment for premises licence applications, personal licence holder applications etc., it is a mandatory condition of the premises licence that holders pay an annual fee to ensure that the system is sufficiently resourced. Licensing Boards are empowered to set their own annual fees for premises licences, as long as they do not exceed the maximum limits outlined in the 2007 Regulations. Licensing Boards will be put under a statutory duty to report their income and expenditure. This will provide a better understanding of their costs and, if demonstrated to be necessary, the maximum limits within the 2007 Regulations will be amended.

### Alcohol licensing fee structure

<table>
<thead>
<tr>
<th>Category of licence</th>
<th>Application fee</th>
<th>Annual fee</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Maximum</td>
<td>Maximum</td>
</tr>
<tr>
<td>Category 1 – not entered on valuation roll, no rateable value, nil rateable value, visitor attractions, clubs, provision of accommodation only</td>
<td>£200</td>
<td>£180</td>
</tr>
<tr>
<td>Category 2 – rateable value between £1 and £11,500</td>
<td>£800</td>
<td>£220</td>
</tr>
<tr>
<td>Category 3 – rateable value between £11,501 and £35,000</td>
<td>£1,100</td>
<td>£280</td>
</tr>
<tr>
<td>Category 4 – rateable value between £35,001 and £70,000</td>
<td>£1,300</td>
<td>£500</td>
</tr>
<tr>
<td>Category 5 – rateable value between £70,001 and £140,000</td>
<td>£1,700</td>
<td>£700</td>
</tr>
<tr>
<td>Category 6 – rateable value over £140,000</td>
<td>£2,000</td>
<td>£900</td>
</tr>
</tbody>
</table>
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

<table>
<thead>
<tr>
<th>Statutory</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Application to vary premises licence under 31 (1)</td>
<td>£31 n/a</td>
</tr>
<tr>
<td>Application to vary premises licence – minor variation</td>
<td>£20 n/a</td>
</tr>
<tr>
<td>Occasional licence</td>
<td>£10 n/a</td>
</tr>
<tr>
<td>Extended hours licence</td>
<td>£10 n/a</td>
</tr>
<tr>
<td>Personal licence</td>
<td>£50 n/a</td>
</tr>
</tbody>
</table>

**Review of alcohol licensing fees**

128. It is for local Licensing Boards to determine the level of appropriate fees, subject to any prescribed level, and to ensure that the licensing regime is self-funding. The recent Review of Alcohol Licensing Fees carefully considered these issues but determined that there was insufficient information to determine whether Licensing Boards were recovering their costs, or making a surplus/deficit, and therefore it was not possible to make firm recommendations on the level of fees. The review, therefore, recommended that Licensing Boards be put under a statutory duty to report on their income and expenditure. The lack of transparency as to Licensing Board costs has also significantly restricted the possibility of accurate costs being developed for the purpose of this memorandum.

129. To increase transparency, this Bill, therefore, puts a duty on Licensing Boards to provide an annual report of their income and expenditure from the fees regime so it is clear that the fees are being set at appropriate levels to cover the Board’s costs.

130. The ultimate fees regime in an area will, therefore, reflect the unique circumstances faced in the local authority, and the impact of many factors such as demography, geography and health of the local economy, it is inevitable that there is variation between the licensing fees charged in different local authorities.

<table>
<thead>
<tr>
<th>Scotland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises licences in force on 31 March 2013</td>
</tr>
<tr>
<td>Personal Licences in force on 31 March 2013</td>
</tr>
<tr>
<td>Number (full-time equivalent) of licensing standards officers employed</td>
</tr>
</tbody>
</table>

**Licensing objectives and statements of licensing policy**

131. The Bill amends the licensing objective ‘protecting children from harm’ to ‘protecting children and young people from harm’. There will be administration costs associated with updating written materials, websites, training materials etc. The bulk of these materials is online and subject to periodic review. The Scottish Government would, therefore, expect such costs to be low.

132. The Licensing (Scotland) Act 2005 requires Licensing Boards to produce and consult on a statement of policy every three years regarding licensing within their areas, as well as creating an overprovision assessment. This process prompts Boards to pro-actively assess what policies
are suitable for their area and provides the licensed trade with a visible record of the Board’s planned approach which helps them to plan over a three-year period.

133. Creating robust, evidence-based licensing policy statements and overprovision assessments imposes an administrative cost on Licensing Boards and their consultees such as police and health bodies. The amount of time spent on work related to policy statements varies between Boards, some of which spend hundreds of staff hours on the accompanying processes such as engagement, Board meetings, liaising with Licensing Forums, sending letters etc.

134. The Bill amends the 2005 Act to require these policy statements within 18 months of an ordinary election of councillors from local government areas which takes place under section 5 of the Local Government etc. (Scotland) Act 1994. In practice this will usually mean every five years. Reducing the frequency of licensing policy statements will reduce costs for some local authorities. Some Boards may wish to update their policy statements more regularly and they will be able to do by preparing a supplementary policy statement.

135. Reducing the frequency of reviewing the Licensing Policy Statement from every three years to better align with local government electoral terms will potentially result in a 40% saving from existing costs in relation to reviewing their Licensing Policy Statement for Licensing Boards. It will be for individual Boards to determine whether a five-year review is appropriate, and certain Boards may wish to review their Licensing Policy Statement more frequently. It is, therefore, impossible to arrive at an accurate estimate of savings, but the Scottish Government would expect many Boards to find a five-yearly review more proportionate.

**Greater powers for Licensing Boards and the police**

136. The Bill provides greater powers for Licensing Boards to consider whether applicants or licence holders are ‘fit and proper’ persons, as well as allowing them to consider spent convictions.

137. It is difficult to estimate any additional costs for Boards because it largely depends on the manner in which they deploy these powers within the exercise of their existing functions. While it is possible that these greater powers could result in more reviews by Licensing Boards and a more detailed consideration of applications, these functions will form part of the business conducted at the regular Board meetings. It is, therefore, anticipated that any additional cost is likely to be minimal. If their fees are below the maximum levels, Licensing Boards could cover any additional costs by raising their alcohol licensing fees.

138. A more detailed consideration of individual licences and applications will improve the existing licensing regime and improve compliance over the long term.

**Relevant offences and foreign offences**

139. Under the current regime, Licensing Boards are compelled to review a premises licence if they receive a notice from the chief constable confirming that the premises licence holder or connected person has gained a conviction for a relevant or foreign offence. The current regime also compels Boards to hold a hearing if they receive a notice or become aware that a personal licence holder has gained a conviction for a relevant or foreign offence.
140. Many licensed premises have outlets across the whole of Britain. Under the current legislation, if a premises licence holder or connected person is convicted of an offence, for example, in England, there must be a hearing in every Board area in which the person has a premises. This may be appropriate if the offence is sufficiently severe, but Boards do not currently have the power to make that decision and must hold a hearing for every offence no matter how minor.

141. Hearings are usually dealt with as part of the regular business at Licensing Board meetings held monthly or quarterly.

142. The Bill allows Boards to determine whether a review/ hearing is necessary, and provides them with the power to take no further action. This will provide Boards with some cost and time savings. Anecdotal evidence and consultation responses suggest that a significant number of such hearings currently take place across Scotland, serving little purpose. Removing the automatic requirement for such hearings will lead to ongoing resource savings for Boards.

**Duty of Licensing Boards to produce annual financial report**

143. The Bill requires each Licensing Board to prepare and publish an annual financial report setting out their income and expenditure from the alcohol licensing fees regime. As set out in paragraphs 128 and 128 above, Licensing Boards are already required to base their fees on cost recovery but there is a lack of clarity as to what these costs are. While in theory publishing these calculations should not require significant additional resource, it is recognised that some changes may need to be made to some Boards’ financial and accounting practices to enable this. It is anticipated that any additional costs arising from this should be minimal. The annual financial reports will inform the Scottish Government on appropriate maximum fee levels.

**COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

**Trade**

144. The 2005 Act only came into force in September 2009 and the regime is still settling in. It is the Scottish Government’s view that in the main it is working well. Therefore, rather than proposing any radical overhauls of the regime, the Bill is intended to improve the existing system and reduce burdens on trade.

145. As explained in paragraphs 139 to 142 above, when a Licensing Board receives notice or becomes aware of the existence of a conviction for a relevant or foreign offence in relation to a premises licence holder or a connected person, they must hold a hearing. For businesses who operate in multiple local authorities, this means that for a relatively minor conviction, they may have to attend many different Licensing Board reviews as there is at least one Board in every local authority. Some businesses may be represented by legal agents at these hearings with associated costs.

146. This is considered to be a disproportionate burden on businesses, so the Bill amends the 2005 Act to allow individual Boards to determine whether a review is necessary. This will save money and time for those businesses which may be affected by this, but the extent of this saving...
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

to each of these will depend, amongst other things, on the number of local authority areas the business operates in. Cost savings by the Board should result in lower alcohol licensing fees.

147. The 2005 Act provides that if a personal licence holder does not meet the deadline for providing evidence to the relevant Licensing Board that the holder has undergone the refresher training, the holder’s personal licence must be revoked. Once revoked, a person cannot apply for another personal licence for five years. The consequences of the revocation of a personal licence could include the sale of alcohol no longer being permitted in the holder’s premises, unless appropriate steps are taken to name an alternative personal licence holder as the designated premises manager. In addition, personal licence holders who have their licences revoked will no longer be allowed to authorise sales of alcohol or conduct the mandatory staff training and will be unable to obtain another personal licence for a period of five years.

148. The cost for some businesses and individuals could be disproportionate. The Bill amends the legislation so that if a personal licence is revoked for failure to meet this deadline under s87(3) of the 2005 Act, the person can apply for another licence again immediately. As the circumstances which this provision seeks to address have not yet arisen, it is difficult to quantify possible savings to businesses and individuals. However, substantial business disruption will be avoided, and individuals who might otherwise have had to leave their employment will be able to sit refresher training and remain in the sector.

PART 3 – CIVIC LICENSING

TAXIS AND PRIVATE HIRE CARS

149. There are three provisions in relation to taxi and private hire car licensing. The provisions in the Bill are part of a larger body of work which aims to create greater consistency as well as widening and tightening the licensing regime. Specific provisions include:

- The power to refuse to grant private hire car licences on grounds of overprovision;
- The extension of taxi driver testing to include private hire car drivers;
- Removal of the contract exemptions to the licensing and regulation of taxis and private hire cars, bringing hire cars used on contracts into the regime.

150. The anticipated financial impacts on stakeholders are detailed below. As general background, according to the most recently published figures, there are 10,603 taxis and 10,208 private hire cars licensed in Scotland. There are also 24,600 licensed taxi drivers and 11,349 licensed private hire car drivers. Figures are not collected for booking office licences. However, according to an informal request for snapshot figures (completed by 23 out of 32 local authorities), there were 224 booking offices licenced in the period October/November 2013.

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REFUSAL TO GRANT PRIVATE HIRE CAR LICENCES ON GROUNDS OF OVERPROVISION

Costs on the Scottish Administration

Scottish Government

151. There will be a nil to minimal additional cost in terms of providing guidance on this provision to local licensing authorities. The Scottish Government already publishes guidance and a more general update of this will be due once the Bill is law.

Costs on local authorities

152. This provision is discretionary and will not result in any automatic costs to local authorities. However, if a local licensing authority introduced an ‘overprovision’ policy in relation to private hire car services, there will be associated costs. As there is no previous experience of this specific power, the Scottish Government has based some costs on an equivalent power available to local licensing authorities to limit numbers of taxi vehicle licences. This power allows a taxi vehicle licence to be refused on the basis that there is no significant demand for taxi services that is unmet. Based on recent research, cited above, approximately 44% of local licensing authorities who responded currently limit taxi vehicle licence numbers. Indicative costs for the provision in relation to private hire car services will include the costs described in paragraphs 153-155 below.

Costs to assess the current provision of private hire car services

153. The legislation does not prescribe a method to assess provision and establish overprovision. The method used for assessing ‘unmet demand’ has largely been settled by practice over the years. Local licensing authorities can contract out these assessments and a figure of £15,000 to £20,000 has been quoted for the cost by the Transport Research Institute at Napier University, Edinburgh. However, authorities can also conduct an assessment using internal resources. There is also no legislative basis for the frequency with which such assessments should take place, but guidance from the Scottish Government in relation to taxis states that ‘licensing authorities should carry out a survey sufficiently frequently to be able to respond to any challenge to the satisfaction of a court’. This follows various cases where a licensing authority has been challenged on the accuracy of its assessment in relation to the application being currently considered. A policy of restriction cannot be inflexible and each application should be assessed on its own merits and in reference to the current context. It is difficult, therefore, to establish exactly how often a licensing authority should conduct an assessment but may be approximately every three years. If a licensing authority chose to carry out an assessment of private hire car services, then the costs would be in the region of £15,000 to £20,000 every three years. These costs would be recovered through licence fees. It would be reasonable to assume that the bulk of licensing authorities will not choose to carry out such an assessment, only carrying one out where they perceive problems arising from the overprovision of private hire car services.

Developing a policy on overprovision

154. Licensing authorities will develop a policy in relation to overprovision which will require input from officials as well as time of elected members considering and agreeing to the policy. There will likely be a need to conduct a public consultation on any proposed policy. The cost of
a public consultation could vary significantly depending on the detail it covers and the methodology used. As an indicative figure, a recent Scottish Government policy consultation on a civic licensing regime cost in the region of £10,000.

**Defending refusals**

155. It is currently the case that where a licensing authority refuses a licence application, this can be challenged by the applicant in court. The cost of defending such a case varies depending on the facts of the case. While the Bill will provide licensing authorities with an additional ground for possibly refusing applications and this may in turn result in more appeals, it is not anticipated that this will be a significant number.

156. Scottish Government would expect any costs on local authorities to be met by the fees recovered from licence holders. Section 12 of the 1982 Act empowers local licensing authorities to charge fees that are sufficient to meet their expenses in carrying out their functions in relation to taxi and private hire car licensing under the 1982 Act. The overall cost impact for local authorities as a result of this proposal should, therefore, be neutral.

157. There would also be potential savings for local licensing authorities in being able to better manage the trade and a reduction in complaints related to issues with an overprovision of private hire car services.

**Costs on other bodies, individuals and businesses**

158. There will be potential costs on licence holders (both individuals and businesses) if fees are increased as a result of the increased costs on local authorities detailed above. As the new provision will only be applied to new applications, an existing licence holder could not lose a licence on renewal as a result of this provision. However, new licence applicants will lose any money spent on the application if it is refused and they may face additional costs if they chose to challenge this refusal. Costs would include any legal advice obtained and representation if appearing at court.

159. It is assumed that if a licensing authority introduces an overprovision policy, it has recognised that the current market for private hire car services in its area is not functioning effectively. Evidence of over-supply might include private hire cars attempting to work illegally either out of area or by picking up passengers without a pre-booking. In such situations it is likely that a viable, legal livelihood may be difficult to achieve for all private hire service providers and, therefore, a refusal would be in the interests of the applicant as well as others already providing the service. The quality of service for the consumer may also suffer as a result of overprovision. The potential for an increase in illegal activity alongside a drop in quality both have clear public safety risks attached. The Scottish Government believes that, although this measure might restrict new entrants to the private hire car trade, it would ensure that those within the trade can operate a viable business while complying with laid down requirements.
TESTING OF PRIVATE HIRE CAR DRIVERS

Costs on the Scottish Administration

Scottish Government

160. The production of guidance on testing of private hire car drivers would form part of the Scottish Government’s existing work and would, therefore, be met from within existing budgets.

Costs on local authorities

161. This provision is discretionary and there are, therefore, no automatic costs to local authorities. If a local licensing authority decides to introduce testing of private hire car drivers, there could be costs associated with:

- Developing a policy on the testing of private hire car drivers;
- Developing or adapting an appropriate test and any associated training materials;
- Administering tests and associated training.

162. The extent of these costs would depend entirely on the design and detail of testing regime but the licensing authority would be able to recover them from fee income. Section 12 of the 1982 Act empowers local licensing authorities to charge fees that are sufficient to meet their expenses in carrying out their functions in relation to taxi and private hire car licensing under the 1982 Act. Any overall increase in costs for local authorities as a result of this proposal, therefore, should be capable of being recouped through fees.

163. If a local licensing authority decides to require testing of private hire car drivers, the Scottish Government would assume this is as a result of a concern at the level of skills and knowledge of the trade. The costs will, therefore, be offset by an improvement in the service provided to customers and an increase in the professionalism of the trade. Introducing a requirement for testing of private hire car drivers may also be introduced as a first step to tackle concerns with an overprovision of vehicles, prior to the use of the power to limit discussed above. This could therefore save the local licensing authority from the costs associated with that provision. There will also be potential cost savings from a reduction in complaints against the trade that need to be addressed by the local licensing authority. The Scottish Government would only expect a local licensing authority to introduce testing of private hire car drivers where they believed that there was a need or that it would make a positive impact on the trade. It would be possible for licensing authorities to draw upon existing training for taxi drivers, or work jointly with other licensing authorities to reduce the costs of developing new materials.

Costs on other bodies, individuals and businesses

164. There may be a cost attached to taking a test, particularly if an applicant needs to re-take a test. These will vary between local authorities but may be in the region of £50. Any new requirement for testing may also result in existing licence holders having to take time off from work to take the test.

165. Private hire car drivers are often seen as being less professional than their taxi driver counterparts in some areas due to the lack of a testing requirement. Licence holders who are
required to undergo any testing may benefit from the improvement in perception of their professionalism.

EXEMPTION FROM REQUIREMENTS OF SECTIONS 10 TO 21 OF 1982 ACT

Costs on the Scottish Administration

Scottish Government

166. The costs associated with updating guidance and potentially making regulations in relation to further exemptions forms part of the Scottish Government’s existing work and will be met within existing budgets.

Costs on local authorities

167. There will be costs for local licensing authorities in terms of preparation for the licensing of a new set of drivers, vehicles and booking offices and then the processing and ongoing administration of the increased number of licences. The current cost of existing taxi and private hire car licenses, which should represent the costs incurred in administering those licences, give an indication of what these costs might be.

168. Section 12 of the 1982 Act empowers local licensing authorities to charge fees that are sufficient to meet their expenses in carrying out their functions in relation to taxi and private hire car licensing under the 1982 Act. Any overall increase in costs for local authorities as a result of this proposal therefore should be minimal.

Costs on other bodies, individuals and businesses

169. There will be costs for the individuals and businesses who currently work under the contract exemption. As this is an area that is currently unlicensed, there are no figures on numbers of operators in Scotland. The potential range of services affected will be wide – from individual operators, e.g. working as part of a council contract to transport school pupils, to large executive hire firms with a fleet of luxury vehicles offering high-end chauffeur services.

170. The cost of driver, vehicle and booking office licences vary according to the local licensing authority. There may also be additional costs for testing vehicles and testing drivers, as well as various fees for approving signage, substituting vehicles, approving wheelchair accessible vehicles etc. In order to give an indicative value of the cost to driver, vehicle and booking offices, examples of the fees associated with the three levels of licence in five licensing authority areas are outlined below:
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

<table>
<thead>
<tr>
<th>Local authority</th>
<th>Driver licence (both taxi and private hire car unless otherwise stated)</th>
<th>Vehicle/operator licence (both taxi and private hire car unless otherwise stated)</th>
<th>Booking office licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberdeen</td>
<td>Grant (one year) £50</td>
<td>Grant (one year) £395</td>
<td>Grant (three years) £218</td>
</tr>
<tr>
<td></td>
<td>Renewal (three years) £105</td>
<td>Renewal (one year) £215</td>
<td>Renewal (three years) £191</td>
</tr>
<tr>
<td>Highland</td>
<td>Grant/renewal (three years) £247</td>
<td>Grant/renewal (three years) £384</td>
<td>£306 (three years)</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>Grant, private hire (one year) £72</td>
<td>Grant (one year) £1567</td>
<td>Grant/renewal (one year) £500</td>
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<tr>
<td></td>
<td>Grant, taxi (one year) £91</td>
<td>Renewal (private hire/taxi, three years) £156</td>
<td>Renewal (one year) £267</td>
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<tr>
<td></td>
<td>Renewal (private hire/taxi, three years) £156</td>
<td></td>
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</tr>
<tr>
<td>Glasgow</td>
<td>Grant (one year) £68; (two years) £120; (three years) £162</td>
<td>Grant (one year) £168; (two years) £301; (three years) £402</td>
<td>Grant/renewal (three years) £298</td>
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<tr>
<td></td>
<td>Renewal (two years) £120; (three years) £162</td>
<td>Renewal (two years) £301; (three years) £402</td>
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<tr>
<td>Dumfries and Galloway</td>
<td>Grant/renewal (three years) £100</td>
<td>Grant/renewal (three years) £329</td>
<td>Grant/renewal (three years) £329</td>
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METAL DEALERS

171. The Bill contains proposals for the reform of licensing arrangements for metal dealers. These proposals are aimed at reducing levels of metal theft by tightening the existing licensing regime for metal dealers that operates under the 1982 Act. The measures include steps to tighten record keeping and customer identification requirements. In addition exemptions are removed that allowed some larger dealers to avoid licensing requirements. A new prohibition is created that would prevent a dealer from paying for metal in cash – thus removing the incentive of ready cash for a potential metal thief.

Costs falling on the Scottish Administration

Scottish Government

172. No costs are anticipated. Once enacted, the costs of administering the licensing regime will fall on local authorities.

Costs on local authorities

173. Paragraph 15 of Schedule 1 to the 1982 Act empowers local authorities to charge reasonable fees - they must seek to ensure that the fees are sufficient to meet their expenses in carrying out their functions under the 1982 Act. The overall impact on local authorities of the proposal in relation to metal dealer licensing therefore should be neutral. Costs are explored
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

further below but, given that the number of metal dealers is not especially large and given that the current fees for a metal dealer’s licence and an exemption warrant are not dissimilar, the impact on licensing authorities should be manageable. The best estimate of the actual costs incurred can be provided by reference to the fees that are charged by licensing authorities for metal dealer and itinerant metal dealer licences. These are detailed in the costs on business section below and range from just over £100 for a three-year licence to as much as £500 a one-year licence.

Costs on other bodies, individuals and businesses

174. The cost to the UK economy of metal theft has been estimated in a report commissioned by the ACPO at £220 million to £260 million per annum. Higher figures have been suggested but it is very hard to measure the consequential costs of many of these thefts. The figure of £220 million to £260 million suggests about £100 million of direct costs to conduct repair and replacements and a further £120 million to £160 million of indirect costs through, for example, commuters being delayed and businesses losing internet connections. Specific data for Scotland is more limited, though it is clear that the cost to Scotland amounts to many millions. A more recent study was conducted by the Association of Chief Police Officers in Scotland and for the first time looked at the situation specifically in Scotland. It estimated the value of metal theft in Scotland at £6.9m for 2011/12 and a further £4.1m for 2012/13. These figures relate purely to the value of the metal stolen and do not look at the indirect costs and collateral damage of these thefts. The measures in the Bill are aimed at bearing down on these costs.

175. There are believed to be 142 metal dealers in Scotland (around 280 licences exist but about 130 of these have ceased trading or are not actively dealing / processing scrap metal despite being in receipt of the relevant licence to do so). The Scottish Government believes around half of these are currently licensed with the remainder exempt from licensing requirements by being in possession of an exemption warrant granted because they are higher turnover businesses. The Bill proposes the abolition of the exemption warrant system so, therefore, around 72 additional businesses will fall into the licensing regime. A further 146 itinerant metal dealers licences are believed to be in existence.

176. The costs to these businesses will vary depending upon the approach taken by the local licensing authority. Dealers would be required to pay a licensing fee (although they will already be paying a fee for an exemption certificate) and to face costs required in order to comply with licensing conditions. The licensing fee is hard to predict since variations in licensing fees and structures from local authority area to local authority area are common. Local licensing authorities operate on a cost recovery basis so that fee income should cover the cost of licensing, without making a profit. Currently the fee for a metal dealers licence for one year in Edinburgh is £504 (the fee for exemption is £1500 for three years). Glasgow City Council charges £124 for one year and £298 for three years (an exemption warrant is £121). Angus Council is £83 for a new application and £69 for renewal. Dumfries and Galloway Council charges £390 for an annual licence and £205 for an annual exemption. North Ayrshire Council’s charge is £105 for a three-year licence. Whilst fees will vary, in most cases the change from paying for an exemption warrant to paying for a full licence will not result in significant extra costs.

177. The costs that may be incurred in complying with licensing conditions could also vary considerably depending upon the nature of the conditions imposed. Conditions that affect hours of operation could potentially have a serious impact. Potentially cost requirements could also
include CCTV requirements and improved security. These costs could vary widely depending upon the exact specification. For example CCTV ranges from as little as £200 to several thousand for more extensive and sophisticated systems that may be required for larger premises.

178. Whilst there will be variation due to differences in how licensing is administered locally, many of the costs will be evenly applied due to mandatory requirements being introduced by the Bill. Foremost of these will be the requirement that payment for metal can only be made by prescribed means (these being cheque or bank transfer).

179. With cash no longer being an acceptable form of payment, this will have significant impact on all dealers. England and Wales, amongst several other countries, have already gone ‘cashless’ although it is still too early to consider all the impacts. An informal industry assessment from the British Metals Recycling Association (BMRA) of the impact in England and Wales commented,

“There are many variables at play (e.g. scrap supply/demand, scrap prices, seasonality, merchant geography and outreach, currency fluctuations etc.) that will have an effect on the amount of trade a merchant will have. Therefore it is very difficult to say precisely what changes to a merchant’s business can be attributed to the ban on cash for scrap metal purchases. However, merchants of varying sizes report a loss of around 20% of their previously-cash trade. For small merchants where perhaps 80% of their business was cash-based this equates to 16% of the total (20% of 80%). Larger merchants where fewer cash transactions were made – around 20% - this equates to 4% of the total. Moreover, speaking to the very largest operators, it is apparent that the materials are not coming in to their businesses via alternate routes (e.g. civic amenity contracts etc.) but ‘lost’ in their entirety. However, what cannot be determined is whether this loss of business can be attributed solely to the cash ban or wider market forces (scrap supply has been weak for the past few months despite high prices, tradesmen stockpiling scrap for fewer, larger deliveries etc.). There have been some gains for merchants, particularly from the small factories/engineering works that previously sold materials for cash to the ‘highest bidder’ now moving to reputable dealers for payment using electronic or cheque-based means. Despite these gains, business does appear to be depressed for the majority of merchants.

Overall, we believe there has been a reduction in trade of around 5%. Were this to be replicated in Scotland, total potential business loss could be £25 million (assuming total value of the industry in Scotland is around £470 million).”

180. It is clear that there may be serious impacts, particularly falling on the generally smaller dealers, who are trading to a significant degree in cash currently.

181. Costs associated with removing cash would include start-up costs such as installing card readers and increased banking costs in writing cheques more frequently. A 2012 estimate suggested that two-thirds of industry transactions were already cashless. Within that figure there are wide variations from business to business in what proportion is cashless. As noted in the industry assessment above, some smaller dealers may be conducting 80% of their business in cash.
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

182. It should be noted that, apart from the main focus of these measures which is tackling metal theft, HM Revenue and Customs considers the scrap metal industry to contain an unidentified “tax gap” – driven in large part by the use of cash.

183. Dealers will also be faced with costs in relation to meeting the record keeping and identification of customer requirements that are being proposed in the Bill. Of themselves, the Scottish Government does not believe that the changes being rolled out to all dealers will result in significant costs. Some smaller dealers may be impacted by the costs of, for example, obtaining photocopiers, scanners and computers. Nevertheless these may be regarded as one-off costs. There is concern that the additional measures may result in businesses being adversely affected by the time needed for compliance.

184. In relation to this aspect of the changes, the BMRA said,

“We estimate there to be around 180,000 cash transactions taking place in Scotland per year.

The amount of time each transaction would take to complete with ID checks and enhanced record keeping on the weighbridge would increase by around 10%. Based on an informal survey of salaries, we predict this additional time would add around £1.40 cost per transaction.

In addition, if a cheque is raised there is a cost of, on average, £0.40 per transaction. There is also a material cost to recording and/ or photocopying ID we estimate to be around £0.30.

Therefore, we predict a total additional cost per transaction to be £2.10 or £378,000 for all currently-cash transactions in Scotland.”

185. It should be noted that dealers in precious metals, e.g. cash-for-gold businesses, are also affected by the changes within the Bill. These types of businesses are already within the definition of a metal dealer so to that extent they are no more affected than any other dealer. Given the proposed change to ensure that all dealers are licensed, there may be higher turnover businesses of this type brought within licensing for the first time.

186. Clearly the costs to industry need to be seen in the context of the very substantial costs to society of metal theft.

PUBLIC ENTERTAINMENT VENUES

187. The Bill will abolish ‘theatre licences’ as currently required under the Theatres Act 1968 and instead regulate theatres through the existing public entertainment licensing regime provided for in the 1982 Act.

Costs on the Scottish Administration

Scottish Government

188. No costs are anticipated. Once enacted the costs of administering the licensing regime will fall on local authorities
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

Costs on local authorities

189. Paragraph 15 of Schedule 1 to the 1982 Act empowers local authorities to charge reasonable fees - they must seek to ensure that the fees are sufficient to meet their expenses in carrying out their functions under the 1982 Act. The overall impact on local authorities of the proposal in relation to theatres, therefore, should be neutral. The actual cost of dealing with an application can best be estimated with reference to the fees currently charged. These vary widely depending on the size of the venue (details provided in section on costs on business below).

Costs on other bodies, individuals and businesses

190. There will be some local variation in how the changes to licensing of plays impact upon individual theatre groups. The proposal represents a decrease in regulatory burden overall as it replaces a mandatory regime which required all performances of a play to be licensed with a discretionary regime which would allow a flexible approach to be taken. For example, a licensing authority could determine to exempt all performances of free-to-enter plays or plays with a potential audience of under a specified level. This would allow smaller-scale performances to avoid having to pay licensing fees and also avoid any costs that may be required to ensure compliance with licensing conditions.

191. As there is wide variation in licensing fees from one authority to another, it may be that any theatrical performances that are subject to public entertainment licensing requirements may find themselves subject to fees that differ significantly from those paid in a neighbouring authority (although that is not different to the current situation). It is also possible that the cost of a licence for public entertainment may be less or more than that currently paid.

192. Current theatre licence fees vary widely. For example, Edinburgh City Council already operates a sliding scale depending on the size of capacity with, at the maximum, venues operating commercially with a venue size of over 1000 facing fees of £2,702 for a new application followed by £1,801 for a renewal. A charitable/community organisation pays a fee of £112 a year. Glasgow City Council charges a flat fee of £597. Argyll and Bute Council charges fees of £139.90. In Clackmannanshire the application fee payable is £85, with no fee payable on an application for grant or transfer of an occasional theatre licence if the play(s) to be performed is/ are of an educational or similar character or are to be performed for a charitable or similar purpose. There is, therefore, a wide variety of fee levels and approaches. It would be for licensing authorities to integrate their current fee charging structure into their public entertainment regime.

SEXUAL ENTERTAINMENT VENUES

193. The Bill contains proposals for the establishment of a licensing regime for sexual entertainment venues.
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

Costs on the Scottish Administration

Scottish Government

194. No costs are anticipated. Once enacted, the costs of administering the licensing regime will fall on local authorities.

Costs on local authorities

195. Paragraph 18 of Schedule 2 to the 1982 Act empowers local authorities to charge reasonable fees - they must seek to ensure that the fees are sufficient to meet their expenses in carrying out their functions under Schedule 2 to the 1982 Act. The overall impact on local authorities, therefore, should be neutral. The actual cost to the local authority of dealing with an application can best be estimated with reference to the fees currently charged. These do vary significantly from a few hundred to over a thousand pounds, with one authority charging in excess of £12,000 (details in the cost on businesses section below).

196. A particular issue for local authorities is that there is a risk that a decision to refuse a licence, particularly in the case of an application from an operator already working in the sector, may result in costly legal challenge. This would raise particular issues given the very limited number of premises operating in this area. Were a local authority to set the appropriate number of premises for an area as zero, then there would be no fee income from which to recoup the costs of any legal challenges. The costs of a legal challenge would vary significantly depending upon how far a challenge was taken through the legal process but costs of tens of thousands of pounds could reasonably be expected.

Costs on other bodies, individuals and businesses

197. The proposed regime is discretionary, relying upon a resolution of a local authority for it to have effect in a particular local authority area. That being the case it is hard to estimate with confidence how many premises might be subject to licensing. The Scottish Government would anticipate that those urban authorities that have existing lap dancing bars are likely to contemplate a licensing scheme for their areas. Whilst the licensing requirement is wider than lap dancing it would, therefore, expect that at a minimum around twenty premises would be subject to licensing.

198. The costs to these businesses could vary dramatically depending upon the approach taken by the local licensing authority. At the most extreme possibility, as the Bill includes a power for a local authority to set an appropriate number of premises for its area (and for that number to be zero) then potentially existing premises could be closed. Short of that, venues would be required to pay a licensing fee (in addition to the fee already payable for an alcohol premises licence) and to face costs required in order to comply with licensing conditions. The licensing fee is hard to predict since wide variations in licensing fees from one local authority area to another are common. Local licensing authorities operate on a cost recovery basis so that fee income should cover the cost of licensing without making a profit. The closest current equivalent licence is for sex shops. A one-year sex shop licence is £1,329 in Edinburgh. The fee for the same period in Glasgow is £12,798. In Dundee the equivalent fee is £235. The costs that may be incurred in complying with licensing conditions would also vary considerably depending upon the nature of the conditions imposed. Conditions that affect hours of operation could potentially have a serious impact. Potentially costs requirements could also include required CCTV, door security and
improved facilities for workers such as changing and rest areas. These costs could vary widely depending upon the exact detail and specification. For example CCTV ranges from as little as £200 to several thousand for larger more sophisticated systems.

199. Changes to working conditions enforced through licensing are likely to be beneficial to dancers who are currently regarded as self-employed contractors and do not benefit from employment protections. Clearly, if the licensing scheme results in the closure of premises then the resultant loss of employment would be severe for the individuals involved.

200. There may be some economic impact as a result of fewer premises operating although this may be mitigated by the possibility of premises converting to other uses within the night-time economy.

MISCELLANEOUS AND GENERAL

201. There are five provisions, namely:

- Where it has not already been provided for, the deemed grant of a licence where the local authority has failed to determine an application within the required period or the extended period granted by a sheriff;
- Allow a licensing authority to determine to receive electronic communications for a variety of matters.
- Powers in relation to licence conditions in Part 3 of the 1982 Act to clarify that mandatory and standard licence conditions can be set by the Scottish Ministers and local licensing authorities respectively in relation to licences under this part of the Act;
- Power for the Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings;
- Introduce a new role, civic licensing standards officers (CLSOs);

202. The Scottish Government believes that additional costs in relation to the first three provisions will be nil or minimal. Commentary is provided below on the last two provisions.

Procedure for hearings

Costs on the Scottish Administration

Scottish Government
203. Were the Scottish Government to decide to use this power, the costs associated with updating guidance and preparing regulations would form part of the Scottish Government’s existing work and would be met within existing budgets.

Police Service of Scotland
204. There may also be costs for Police Scotland if regulations instigate any changes to its procedures. The extent of these would depend on the detail of the regulations. A key aim of any new requirements on the system would be to bring a consistent approach across Scotland, potentially leading to a simplification of police involvement in hearing processes and, therefore, savings to Police Scotland.
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

Costs on local authorities

205. Any changes to local practice that result from new regulations will incur costs in relation to changes to policies and updating processes. The extent of these will depend on the detail of the regulations. These costs can be met from fee income. There is a possibility that, after initial costs to change processes, over time processes become more efficient as a result of regulations brought in. There is, therefore, a potential for longer-term savings.

206. Paragraph 15 of Schedule 1 and paragraph 18 of Schedule 2 to the 1982 Act empowers local authorities to charge reasonable fees – they must seek to ensure that the fees are sufficient to meet their expenses in carrying out their functions under the 1982 Act. Any overall increase in costs for local authorities as a result of this proposal, therefore, should be minimal as it can be recouped from fee income.

Costs on other bodies, individuals and businesses

207. Any changes to local licensing authority costs as a result of changes brought in will affect fees paid by applicants and licence holders. This will depend on the detail of the regulations and could vary between local licensing authorities. However, there are consistent calls from legal agents and trade representatives for more consistency and greater standardisation of local authority procedures. The Scottish Government, therefore, believes that ultimately this provision will lead to savings for legal agents and the trade as it becomes more straightforward to operate across different licensing authority areas.

Civic licensing standards officers

Costs on the Scottish Administration

Scottish Government

208. Costs associated with updating guidance will form part of the Scottish Government’s existing work and will be met within existing budgets. The provisions do not include powers for the Scottish Ministers to set any requirements for training or to make any further regulations in relation to CLSOs. The Scottish Government does not, therefore, anticipate any ongoing costs for the Scottish Administration in relation to CLSOs.

Costs on local authorities

209. Costs in relation to meeting this requirement will depend on the current provision of this kind of support within the local authority.

210. While the Bill introduces a statutory requirement for a local authority or licensing authority to appoint CLSOs, some local authorities will already have officers employed in similar roles. Their costs will therefore relate to amending job descriptions and providing appropriate training for any additional duties and functions. It is anticipated that this cost is likely to be minimal.

211. Where there is a requirement to recruit new officers, additional costs will be incurred for advertising the post and the total pay package. A similar role was brought in for alcohol licensing under the Licensing (Scotland) Act 2005, the licensing standards officer. Current job advertisements for this type of role offer a salary of £30,000-£35,000 per annum.
212. While some local licensing authorities and COSLA have expressed concern at the possible impact on resourcing, the Bill is sufficiently flexible to allow a local authority to meet the requirement in a manner that best meets its needs and circumstances. In general, local licensing authorities have been supportive of the creation of such a role.

213. Paragraph 15 of Schedule 1 and paragraph 18 of Schedule 2 to the 1982 empowers local authorities to charge reasonable fees – they must seek to ensure that the fees are sufficient to meet their expenses in carrying out their licensing functions under the 1982 Act. Any overall increase in costs for local authorities should, therefore, be minimal as they can be recouped from fee income.

Costs on other bodies, individuals and businesses

214. Any changes to local licensing authority costs as a result of changes brought in will affect fees paid by applicants and licence holders. This will vary between local licensing authorities and could lead to an increase in fees. There should, however, be a benefit to applicants and licence holders in receiving a consistent level of support and scrutiny under the local licensing regime.
## Summary table of additional costs

<table>
<thead>
<tr>
<th>Paragraph reference</th>
<th>Additional costs</th>
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<tbody>
<tr>
<td><strong>Scottish Administration</strong></td>
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<td><strong>Scottish Government</strong></td>
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<td>Air weapons</td>
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<td>Alcohol</td>
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<td>Miscellaneous and general</td>
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<tr>
<td><strong>Police Service of Scotland</strong></td>
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<td>Air weapons</td>
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<td>107</td>
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</table>
**Offence of supplying alcohol to a child or young person in a public place** – In common with similar offences under the 2005 Act, the Scottish Government would expect Police Scotland to use it to encourage compliance, with only a relatively small number of prosecutions being taken where necessary to protect public safety. Actual costs would depend on the approach taken by Police Scotland. On the basis of the number of prosecutions under section 105 of the 2005 Act in 2012/13, a possible indicative cost of about £21,950 per annum can be derived.

**Scottish Court Service / Scottish Prison Service**

A variety of costs have been identified over the first five years. These are broken down as follows:

- For solemn cases, £176,000;
- For summary cases, £523,000;
- For Scottish Prison Service £240,000.

**Local authorities**

No additional costs identified.

**Licensing objectives and statements of licensing policy** – reducing the frequency of Boards reviewing their Licensing Policy Statement, could potentially result in a 40% saving from existing costs. It will be for individual Boards to determine whether to review their licensing policy statement more often than every five years.

**Greater powers for Licensing Boards and Police** – it is difficult to estimate any additional costs for Boards because it largely depends on the manner in which they deploy these powers within the exercise of their existing functions. It is anticipated that any additional cost is likely to be minimal. A more detailed consideration of individual licence and applications will improve the existing licensing regime and improve compliance over the long term.

**Relevant offences and foreign offences- removal of automatic requirement for a hearing** – Removing the requirement will lead to ongoing savings to Boards.
Duty of Licensing Boards to produce annual financial reports – Boards already base their fees on cost recovery so publishing these calculations should not require significant additional resource. It is anticipated that any additional costs arising from this should be minimal.

Refusal to grant private hire car licences on grounds of overprovision – no automatic costs, but where used, an assessment is likely to cost in the region of £15,000 to £20,000 each three years. There would also be costs in developing and considering a policy and defending decisions. Costs could be recovered through fees.

Testing of private hire car drivers – the Scottish Government would only expect a local licensing authority to introduce testing of private hire car drivers where they believed that there was a need or that it would make a positive impact on the trade. It would be possible for licensing authorities to draw upon existing training for taxi drivers, or work jointly with other licensing authorities to save on the costs of developing new materials.

Exemption from requirements of section 10 to 21 – the costs of processing additional applications would be recouped from the fees.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>Metal dealer</td>
<td>The overall impact on local authorities of the proposal in relation to metal dealer licensing should be neutral. The best estimate of the actual costs incurred can be provided by reference to the fees that are charged by licensing authorities for metal dealer and itinerant metal dealer licences. These range from just over £100 for a three-year licence to as much as £500 a one-year licence.</td>
</tr>
<tr>
<td>Public entertainment venues</td>
<td>The overall impact on local authorities of the proposal in relation to theatre licensing should be neutral. The actual cost of dealing with an application can best be estimated with reference to the fees currently charged. These vary widely depending on the size of the venue from as little as under £100 to £2,700 for a venue with a capacity of over 1,000.</td>
</tr>
<tr>
<td>Sexual entertainment venues</td>
<td>The overall impact on local authorities of the proposal in relation to sexual entertainment venue licensing should be neutral. The actual cost to the local authority of dealing with an application can best be estimated with reference to the fees currently charged. These do vary significantly from a few hundred to over a thousand pounds, with one authority charging in excess of £12,000. There may be costs if it is decided to refuse a licence, and this is appealed, particularly if the limit is set at zero and there is no fee income. The costs of a legal challenge would vary significantly depending upon how far a challenge was taken through the legal process but costs of tens of thousands of pounds could reasonably be expected.</td>
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<tr>
<td>Miscellaneous and general</td>
<td>205</td>
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<td>209 - 213</td>
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</table>

**Other bodies, individuals and businesses**

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<thead>
<tr>
<th>Air weapons</th>
<th>91 - 95</th>
<th><strong>Registered firearms dealers</strong> – there may be an impact on sales figures but this is not expected to be large.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>96-97</td>
<td><strong>Shooting clubs</strong> – a fee will be payable by clubs to help meet the costs of the approval process. The Scottish Government believes that the overall impact should be very small when viewed against overall costs.</td>
</tr>
<tr>
<td></td>
<td>98</td>
<td><strong>Shooting organisations</strong> – the Scottish Government does not consider that there will be any significant impact on shooting organisations.</td>
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<tr>
<td></td>
<td>99</td>
<td><strong>Tourism</strong> – The Bill provides for a system of visitor permits for those who visit Scotland with their own air weapons or to shoot in Scotland. The exact level of fees has not yet been set, the current fee for a firearms visitor permit is set at £12, whereas processing costs are for an air weapons visitor permit are likely to be around £20. Cost of this level would have little material impact on visitors to Scotland.</td>
</tr>
<tr>
<td></td>
<td>100</td>
<td><strong>Recreational shooting</strong> – the Bill provides for event permits, to allow the applicant to organise and promote specific events at which air weapons shooting is to take place. The costs of processing an application for a permit to operate such an event are estimated to amount to some £60-£70 per event. Such a cost is likely to be small in comparison to the overall cost of staging and promoting such an event.</td>
</tr>
</tbody>
</table>
|             | 101-104 | **Fees** – the Bill provides for a tariff of fees to be charged at the point at which a person applies for an air weapons certificate, permit or for other approvals. The fee will be payable regardless of whether or not a certificate is granted. For the grant of a certificate, the current firearms / shotgun fee is £50, while the estimated cost of
<p>| Alcohol | 146 | <strong>Relevant offences and foreign offences - removal of automatic requirement for a hearing</strong> – For a national business, this could remove a requirement to attend hearings at every Board within Scotland. Many businesses choose to have legal representation for such hearings, so the potential cost saving could be significant for larger businesses but the extent of this saving to each of these will depend, amongst other things, on the number of local authority areas the business operates in. |
| Alcohol | 148 | <strong>Removal of the five-year bar on re-applying for a personal licence that has been revoked for failure to submit evidence of refresher training</strong> – Whilst it is difficult to quantify the savings to businesses and individuals, substantial disruption and additional training will be avoided for businesses, and individuals. |
| Taxis and private hire cars | 158 - 159 | <strong>Refusal to grant private hire car licences on grounds of overprovision</strong> – there may be additional costs for licence holders if fees are increased. The provision will not apply to existing licence holders, and it is only envisaged that it would be used where there might not be a viable business for new entrants. |
| Taxis and private hire cars | 164 | <strong>Testing of private hire car drivers</strong> – there may be a cost of undertaking a test, likely to be in the region of £50 and the time taken to study and take the test. |
| Taxis and private hire cars | 170 | <strong>Exemption from requirements of sections 10 to 21 of 1982 Act</strong> – costs for new entrants of obtaining a licence and meeting requirements. |
| Metal dealer | 174 - 186 | Costs for those now required to pay a licence fee, although they will already be paying for an exemption certificate, complying with the new requirements, and a possible reduction in trade of |</p>
<table>
<thead>
<tr>
<th>Public entertainment venues</th>
<th>190 - 192</th>
<th>There is a wide range of fees charged by local authorities and costs would depend on these.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual entertainment venues</td>
<td>197 - 200</td>
<td>Costs would depend on the fees set by local authorities choose to implement and any conditions set.</td>
</tr>
<tr>
<td>Miscellaneous and general</td>
<td>207</td>
<td>Procedure for hearings – there may be specific costs incurred if the regulations cover liability for expenses. These costs would be met by the individual found liable.</td>
</tr>
<tr>
<td></td>
<td>214</td>
<td>Civic licensing standards officers – any change in fees will affect the trade, however they should benefit from a more consistent level of support and scrutiny.</td>
</tr>
</tbody>
</table>
These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 14 May 2014, the Cabinet Secretary for Justice (Kenny MacAskill MSP) made the following statement:

“In my view, the provisions of the Air Weapons and Licensing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 14 May 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Air Weapons and Licensing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
AIR WEAPONS AND LICENSING (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Air Weapons and Licensing (Scotland) Bill introduced in the Scottish Parliament on 14 May 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 49–EN.

POLICY OBJECTIVES OF THE BILL

2. The principal policy objectives of this Bill are to strengthen and 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. This is being achieved through reforms to the existing systems to alcohol licensing, taxi and private hire car licensing, metal dealer licensing and; giving local communities a new power to regulate sexual entertainment venues in their areas. The Bill will also protect public safety by creating a new licensing regime for air weapons.

3. A number of the provisions will also improve the efficiency of the operation of the licensing regimes contributing to the creation of a better regulatory environment for business.

4. The Bill contributes to the Scottish Government’s purpose of focussing public services on creating a more successful country with opportunities for all to flourish.

5. The key national outcome which the Bill will support is that we live our lives safe from crime, disorder and danger. It will also support our living longer, healthier lives; our public services being high quality, continually improving, efficient and responsive to local people’s needs, and our living in a Scotland that is the most attractive place for doing business in Europe.

6. The key justice outcomes that the Bill will contribute to are: that we are at a low risk of unintentional harm; that we experience low levels of fear, alarm and distress; that we experience low levels of crime, and; that our institutions and processes are effective and efficient.

Air weapons

7. The Bill creates a licensing regime for air weapons. The Scotland Act 2012 gave the Scottish Government the powers to introduce a licensing system for air weapons in Scotland. The regime provided for in this Bill recognises the need to protect and reassure the public in a
way which is proportionate and practicable. The Bill will help ensure that only people with a legitimate reason for possessing and using an air weapon will have access to them in future, as well as taking air weapons out of the hands of those who would use them illegally. Air weapons licensing will be administered by the Police Service of Scotland.

Alcohol licensing

8. The Bill improves the effectiveness of the alcohol licensing regime laid out in the 2005 Act ("the 2005 Act"). It makes it an offence to supply alcohol to people aged under 18 for consumption in a public place as well as taking forward a range of technical recommendations to clarify and improve the operation of the current alcohol licensing legislation to ensure effective regulatory processes and to reduce unnecessary burdens on business.

Civic licensing

9. The Bill improves the effectiveness of the Civic Government (Scotland) Act 1982 ("the 1982 Act") licensing regimes with a variety of reforms. The Bill will include provisions to extend the reach of taxi and private hire car licensing to protect the public and legitimate trade; the tightening of the licensing of metal dealers to ensure more effective regulation of the industry and to make it more difficult for metal thieves to dispose of stolen metal; as well as a range of cross-cutting additional amendments to improve the various civic licensing regimes and ensure effective regulatory burdens and reduce unnecessary burdens on business.

10. The Bill also creates a new licensing scheme for sexual entertainment venues. The Scottish Government considers it appropriate that sexual entertainment venues should be licensed in order that the risk of adverse impacts on neighbours, general disorder and criminality is reduced and both performers and customers can benefit from a safe, regulated environment. Central to this proposal is the belief that local communities should be able to exercise appropriate control and regulate sexual entertainment venues that operate within their areas. Local licensing authorities are best placed to reflect the views of the communities they serve and determine whether sexual entertainment establishments should be authorised and under what conditions. The Scottish Government believes that communities should be able to limit the number of these licences in their area.

BACKGROUND

11. The purpose of licensing is to limit or control activities which, while legitimate and permitted, are considered to have the potential to be harmful or disruptive. Licensing protects the public interest, for example in supporting public safety, as with air weapons and taxi and private hire car licensing, supporting public order and public health, as with alcohol licensing, or reducing the risk of criminality infiltrating legitimate commercial activity, as with scrap metal dealer licensing.

12. The Scottish Government believes that it is important that people have a say in the decisions that impact on the safety, health and amenity of their local communities. The existing licensing regimes set out in the 2005 Act and the 1982 Act, where local authority councillors are directly responsible for making key decisions in relation to licensing works well. Provisions of this Bill in respect of alcohol and civic licensing are designed to be complementary to this
This document relates to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

overall approach. The Scottish Government does, however, also recognise the value of consistency across licensing regimes for both businesses and the broader public. Specific provisions in this Bill as well as existing licensing legislation and the provisions of the Regulatory Reform (Scotland) Act 2013 are aimed at promoting regulatory consistency where this is practical and appropriate.

13. The Air Weapons and Licensing (Scotland) Bill draws upon a wide range of engagement and consultation exercises across the various existing licensing regimes. While, the Scottish Government believes that the existing legislation, the 2005 Act and the 1982 Act, continue to serve the people of Scotland well, those involved in licensing, such as councillors, trade, police and lawyers, have made a range of suggestions in relation to extant licensing regimes. This Bill therefore amends the existing legislation to take forward those which were considered to be most effective and practical.

14. It is in keeping with the Scottish Government’s objective of a Scotland that is the most attractive place for doing business in Europe that the Scottish Government ensures that the regimes avoid imposing undue financial or administrative burdens on business. There are a wide variety of provisions that seek to deliver this aim. In relation to alcohol licensing, undue delay will be avoided because licences will be granted automatically after a period of nine months; local authorities will be obliged to publish financial accounts in relation to their licensing activities which inform the licensing fees charged to businesses; national businesses will no longer be compelled to attend hearings in every Board area if a connected person is convicted of a relevant offence; and they will have to engage less frequently if policy statements are updated less frequently. In relation to scrap metal dealers the Bill will remove the mandatory 48 hour restriction on the processing of scrap.

15. The Bill also creates two new licensing regimes.

16. Proposals for a separate licensing regime for sexual entertainment venues were first brought to the Scottish Parliament in 2010 as a Stage 2 amendment to the Criminal Justice and Licensing (Scotland) Bill. A key argument for rejecting these proposals was that the sexual entertainment activities were already regulated under the alcohol premises licences. Since then, the regulatory context has changed with recent court judgements calling into question the ability of Licensing Boards to set conditions that stray from a tight focus on the sale of alcohol. This has created some uncertainty as to the continued regulation of sexual entertainment, with many Licensing Boards believing that the alcohol licensing system is not, as currently constructed, able to provide adequate regulation. The view of the Scottish Government is that a specific licensing regime for sexual entertainment venues is the best solution to provide clarity for future regulation of the industry. It offers local licensing authorities the ability to consider local circumstances and develop approaches appropriate to those circumstances.

17. The Scottish Government has a long standing commitment to modernise the law around air weapons, to better protect Scotland’s communities. Powers to regulate air weapons were transferred to the Scottish Parliament by the Scotland Act 2012, on 3 July 2012. The Scottish Government has developed a regime for air weapons which is related to the existing licensing regime in relation to firearms administered by the police. The licensing regime for air weapons will likewise be administered by the Police Service of Scotland. It has been developed by
working closely with the police and the Scottish Government consider the regime will protect and reassure the public while being proportionate and practicable.

CONSULTATION

18. The content of the Bill is predicated on the results of five separate public consultations conducted between November 2012 and September 2013:

Air weapons

19. In preparation for the powers to regulate air weapons being transferred to the Scottish Parliament the Cabinet Secretary for Justice established, in November 2011, the Scottish Firearms Consultative Panel (SFCP) which met four times to consider how best to develop a scheme to license air weapons. Membership of the Panel consisted of the police, the Crown Office and Procurator Fiscal Service, the British Association for Shooting and Conservation, the Scottish Target Shooting Federation, the Gun Trade Association, the British Shooting Sports Council, the Scottish Air Rifle and Pistol Association, the Gun Control Network, the Scottish Community Safety Network, the Convention of Scottish Local Authorities and the Scottish Government.

20. Following the work of the SFCP a public consultation ran from 14 December 2012 to 15 March 2013 on methods by which air weapons licensing could operate. 1,101 responses were received and all non-confidential responses were published on the Scottish Government website on 3 May 2013, followed by an independent report analysing these responses on 19 July 2013. The consultation paper itself, along with the responses and an independent analysis of them can be found at the following link:
http://www.scotland.gov.uk/Topics/Justice/crimes/Firearms/governmentaction/airweaponlicensing

21. While generating considerable opposition to the general principle of regulating air weapons the consultation was a valuable exercise in highlighting many practical issues and drawing out concerns around the high-level proposals set out in the consultation paper. While the Scottish Government was clear that the consultation was not designed to discuss the overall, and clearly stated principle of introducing licensing for air weapons, it has taken account of all the views submitted in developing the Bill provisions. In particular, the Scottish Government welcomed and has built on many of the constructive comments received.

Alcohol licensing

22. The Scottish Government consulted on Further Options for Alcohol Licensing between 19 December 2012 and 21 March 2013, with the summary of responses being published on 11 October 2013 http://www.scotland.gov.uk/Publications/2012/12/8130. The consultation asked for views on twenty one different proposals, largely raised by stakeholders, and attracted over one hundred responses. On the basis of these responses officials have taken forward a variety of proposals balancing the different stakeholder interests and aims of the licensing regime: that it is clear and operates effectively; that it protects public health and that it prevents crime and disorder.
23. In addition to the proposals consulted on there was also significant support for removing the automatic requirement for a hearing where notified of a relevant or foreign offence. The Scottish Government has responded to these views by focusing on addressing existing concerns within the licensing regime and removing the automatic requirement for a hearing where notified of a relevant or foreign offence.

24. The responses made clear that people do not want to see a root and branch review of licensing legislation. The 2005 Act only came into force 4 years ago and the regime is still settling in. Many aspects of it are working well\(^1\). However, there are areas that are not working as effectively as they should be. Therefore, rather than proposing radical overhauls of the regime, the Scottish Government has looked at these areas to find ways to improve the existing system.

**Sexual entertainment venues**

25. There has been a long history of attempts to improve regulation in this area. In 2005, the then Scottish Executive set up a Working Group on Adult Entertainment to review the scope and impact of adult entertainment activity and make recommendations to Ministers on the way forward. This followed concerns expressed about the lack of controls on adult entertainment activity. The Group made a number of recommendations aimed at improving standards in the industry, ensuring the safety of performers and customers, regulating the impact on the community.

26. A consultation on legislative proposals was conducted between April and September 2013 [http://www.scotland.gov.uk/Publications/2013/06/3607](http://www.scotland.gov.uk/Publications/2013/06/3607). The consultation attracted a significant response, albeit 90% of the responders were near identical returns sent as part of an organised campaign of opposition to a licensing scheme. Whilst these responders did not identify the nature of their interests in sexual entertainment it can be inferred that it is likely that they either work in the industry or are customers.

27. Amongst the other responders (local authorities, Police Service of Scotland and violence against women and gender groups principally) there was wide support for the principle of a new licensing regime. Some concern was raised by some arts organisations about possible inadvertent impact on their activities.

**Metal dealers**

28. An initial consultation on a limited proposal to increase the number of metal dealers falling into the licensing regime was conducted between November 2011 and February 2012 [http://www.scotland.gov.uk/Publications/2013/04/5185](http://www.scotland.gov.uk/Publications/2013/04/5185). This consultation concluded that a wider package of proposals was required. A further consultation was conducted between April and July 2013 and included many of the proposals that are now being taken forward within the Bill.

\(^1\) Monitoring and Evaluating Scotland’s Alcohol Strategy Third Annual Report
29. The consultation showed widespread support for a toughening of the licensing regime for metal dealers. This support derived from local authority regulators, the police and many of the organisations and businesses that find themselves regular victims of metal theft.

30. Dealers were for the most part accepting of the need for more effective regulation but were keen to ensure that their businesses were not damaged by excessive or inappropriate requirements.

**Taxis and private hire cars**

31. Since the end of 2011, officials have been reviewing information produced on the taxi and private hire car licensing regime to date and have had fresh discussions with stakeholders, including a public consultation which ran from 28 November 2012 to 15 March 2013 [http://www.scotland.gov.uk/Publications/2012/11/2484](http://www.scotland.gov.uk/Publications/2012/11/2484). Sixty eight responses were received during the public consultation from a wide variety of interests including: trade, local licensing authorities, police, passenger groups, disability organisations, the Law Society of Scotland, the Information Commissioner’s Office and the Office of Fair Trading. In addition, officials attended a number of meetings to discuss the consultation. Representatives at these meetings included, passenger groups (primarily focussed on passengers with disabilities) local authority officials with responsibility for licensing, police and trade (taxi, private hire and contract hire).

32. Proposals on extending testing to private hire car drivers gathered the most wide-spread support. The removal of the contract exemption was largely welcomed by the currently licensed trade, most local authorities and police. However, those working under the current contract exemption were concerned about the detail of how local licensing regimes would develop. The Scottish Government intends to delay commencement to prepare for a smooth transition for all those involved. Views on the introduction of a power to refuse private hire car licences on the basis of overprovision received a mixed response. In general, local licensing authorities which currently restrict taxi licenses were largely in favour while those who do not, were not in favour. However, the Bill will introduce a power for local licensing authorities to refuse an application, it will not require them to do so.

**Miscellaneous and general**

33. Discussions have taken place over a number of years with stakeholders regarding the implications for licensing of the European Services Directive. This Directive is transposed into UK legislation by the Provisions of Services Regulations 2009 and places requirements on how licensing schemes in the internal market should operate. These discussions with stakeholders have led these proposals which ensure compliance with the Directive and address matters such as electronic communications and the tacit authorisation of licences that are not dealt with promptly.

34. Discussions have been held with representatives of the arts groups most impacted by changes to theatre licensing regimes. The Scottish Government expects them to be generally welcoming of efforts to reduce disproportionate oversight.
35. Questions on the creation of the Civic Licensing Standards Officer (CLSO) role and the power to make regulations on hearings were included within the consultation on taxi and private hire car licensing. The CLSO proposal received support from a number of local authorities largely on the basis of the perceived success of the Licensing Standards Officer (LSO) model under alcohol licensing. Some concerns were raised in relation to resource and flexibility. The Scottish Government has taken account of these concerns in the drafting and provided local authorities with a great deal of discretion in how they meet the new requirement. The order making power to enable the Scottish Ministers to make regulations on the conduct of hearings under the 1982 Act was largely welcomed. It was felt this could bring advantages in terms of consistency in approach across licensing regimes and across licensing authorities.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

36. Information on these issues is provided in relation to each Part of the Bill. The Bill as a whole is expected to have a positive effect on the wellbeing of communities generally, including island communities. Its provisions do not have any adverse effect on human rights or sustainable development. Where the Scottish Government believes that a particular group will not be significantly affected, they have not been referred to in these sections.

BILL CONTENT

37. The Bill is structured in the following Parts:

Air weapons

38. Part 1 – sets out a new licensing system for air weapons administered by the Police Service of Scotland. This will better protect our communities by ensuring that only those people who have a legitimate reason for owning and using air weapons should have access to them and that those persons are properly licensed. Specific provisions include:

- meaning of air weapon;
- air weapon certificates;
- permits;
- approved air weapon clubs and recreational shooting facilities;
- commercial matters;
- enforcement;
- keeping air weapons secure;
- false statements;
- time limits for offences;
- appeals;
- fees;
- regulations;
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- arrangements for existing certificate holders;
- guidance;
- exemptions.

Alcohol licensing

39. Part 2 – amends the system of alcohol licensing by:

- The creation of a new offence of supplying alcohol to children or young people for consumption in a public place. This fulfils a manifesto commitment;
- Amendment of the licensing objective in relation to children to also include young persons;
- Amendment of the duration of a licensing policy statement to better align with the term of Licensing Boards;
- Inserting a fit and proper person test in relation to the issue or continued holding of a premises or a personal licence;
- Removal of the automatic requirement for a hearing where a Licensing Board is notified of a relevant or foreign offence in relation to a premises or personal licence;
- Amendment of the definition of relevant offences and foreign offences to no longer disregard a matter that is spent for the purposes of the Rehabilitation of Offenders Act 1974;
- Inclusion of the flavouring angostura bitters in the definition of alcohol for the purposes of the Act;
- Clarification that for an overprovision assessment, the whole Board area may be considered as an area of overprovision, and allow Boards to take account of licensed hours, among other things;
- Imposition of a duty on Boards to prepare an annual financial report;
- Removal of the requirement for a premises licence holder to notify a change in interested parties and removal a premises manager from the definition of interested party;
- Removal of the five year restriction on re-applying for a licence revoked on grounds of failing to undertake refresher training and other changes to the personal licence holder requirements;
- Introduction of a requirement for a Licensing Board to issue an acknowledgement, unless it would be impractical;
- Provision for the automatic grant of a licence (or its variation) where a Licensing Board has not either decided on an application or sought an extension from the sheriff within a set period. This clarifies compliance with the EU Services Directive.

40. Part 3 - amends areas of the civic licensing regimes:
Sexual entertainment venues

- Creating a new licensing regime for sexual entertainment venues. Provisions will include:
  - The definition of sexual entertainment venues;
  - The power for local authorities to license sexual entertainment venues according to the existing structure set out in Schedule 2 to the 1982 Act;
  - The power for local authorities to determine the number of sexual entertainment venues in their area.

Metal dealers

- Metal Dealer provisions will strengthen the existing licensing regime. Specific provision will be made to:
  - Remove the exemption warrants system that allowed a metal dealer with a larger turnover to be exempt from the licensing and regulation of metal dealers;
  - Limit payment for metal by metal dealers or itinerant metal dealers to prescribed methods i.e. bank transfer or cheque. By removing the option of paying in cash it will be ensured that a metal thief is not attracted by the possibility of being paid in an anonymous fashion. Instead, transactions will be traceable and auditable;
  - Improve standards for identification of customers;
  - Improve standards of record keeping;
  - Remove mandatory requirement that metal dealers should not process metal for 48 hours after receiving it. It is felt that this step is impractical for many dealers and should not be a compulsory requirement (though local licensing could impose it case by case).

Taxis and private hire cars

- The provisions in the Bill are part of a larger body of work which aims to create greater consistency as well as widening and tightening the licensing regime. Specific provisions include:
  - The power to refuse to grant private hire car licences on grounds of overprovision;
  - The extension of taxi driver testing to include private hire car drivers;
  - Removal of the contract exemptions to the licensing and regulation of taxis and private hire cars, bringing hire cars used on contracts into the regime.

Public entertainment venues

- The Bill will abolish ‘theatre licences’ as currently required under the Theatres Act 1968 and instead regulate theatres through the existing public entertainment licencing regime provided for in the 1982 Act.
Miscellaneous and general

- The Bill will also include a number of provisions aimed at improving the operation of all civic government licensing regimes and clarifying compliance with the EU Services Directive. Specific provisions include:
  - Power for the Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings;
  - Introduce a new role, Civic Licensing Standards Officer, with broadly the same powers and duties as an ‘authorised officer’ within the 1982 Act but with specific functions in relation to providing information and guidance, checking compliance, providing mediation and taking appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act;
  - Where it has not already been provided for, the deemed grant of a licence where the Local Authority has not either decided on an application or sought an extension from the sheriff within a set period. As with the similar provision in relation to alcohol, this provides clear compliance with the EU Services Directive.

41. Part 4 – makes supplementary and final provisions.

PART 1 – AIR WEAPONS

Overview

42. The Scottish Government has long campaigned for the UK Government to review all firearms legislation, or to devolve responsibility for firearms legislation to the Scottish Parliament so that Scottish needs can be at the forefront of a distinct Scottish approach to regulating firearms within our communities. In particular, Ministers are committed to introducing a robust system of air weapon licensing. This will better protect our communities by taking these potentially lethal weapons out of the hands of those who would misuse them. Following a recommendation by the Calman Commission in 2009, these powers on air weapons were transferred via the Scotland Act 2012.

43. The history and complexity of existing firearms legislation, and the fact that there are numerous anomalies in the current law – for example, differences between licensing requirements for firearms and shotguns – leads to some complex issues for air weapons. The Scottish Government has sought to set out a licensing regime which is appropriate, recognisable and practicable both for the police, who will be the licensing authority, and for those in the legitimate shooting community.

Background

44. There are estimated to be approximately 500,000 air weapons currently in circulation in Scotland. This number was arrived at with the aid of the Gun Trade Association and other stakeholders, and was approved in discussion with the SFCP.
45. Recorded offences involving firearms in Scotland fell by 32 per cent, from 535 in 2011/12 to 365 in 2012/13. This represents the lowest total recorded in Scotland since comparable records began in 1980. Air weapons offences also fell in the same period, although at 47 per cent they accounted for almost half of all incidents in 2012/13, a rise of 10 per cent on the previous year’s figure.

Policy Proposals

46. The overarching policy objective of this part of the Bill is not to ban air weapons, but to ensure that only those people who have a legitimate reason for owning and using an air weapon should have access to them and that such persons are properly licensed. The principles underpinning the system are:

- Clearly define the air weapons to be subject to licensing;
- Broadly follow the principles and practices of existing firearms legislation;
- Set out the main principles of the Scottish regime in primary legislation, with detailed provisions – for example, on fees, procedures, forms, conditions, etc. – being provided for in future secondary legislation supported by detailed guidance;
- Enable a fit person to obtain a licence to own, possess and shoot an air weapon in a regulated way, without compromising public safety;
- Prevent those persons who are unfit, or who have no legitimate reason for holding an air weapon from obtaining a licence;
- Have as its objective the removal of unwanted, unused or forgotten air weapons from circulation;
- Ensure appropriate enforcement of the new regime with suitable offences and penalties available within our justice system to deal with any person who contravenes the new regime.

Defining air weapons and what is covered

47. Section 1 of Part 1 of the Bill provides a clear statement of the types of air weapon which will be covered by the licensing regime, by defining the lower and upper power limits of the weapons themselves. The regime applies to all air weapons which, when fired, are capable of developing a muzzle energy between 1 joule (0.737 ft.lbs.) and 6 ft.lbs for air pistols or 12 ft.lbs for other air guns. Weapons below the 1 joule limit are not generally considered to be lethal (the Home Office Firearms Consultative Committee agreed in 2002 that 1 joule was the minimum threshold at which a firearm could be considered lethal – http://www.official-documents.gov.uk/document/hc0102/hc05/0501/0501.pdf), while the upper levels are set by the Firearms Act 1968, which remains reserved to Westminster. Air weapons above the upper energy level, those disguised as other objects such as a walking stick, are designated under existing Rules as “specially dangerous” and their regulation remains reserved to the UK Parliament. By linking the definition in the Bill to the 1968 Act the Scottish Government ensures that, should the UK Government ever change the upper power levels, no gap opens up between the licensing regimes of the Bill and the Firearms Act 1968 to allow a person to have an air weapon without a licence of some sort.
The requirement for an air weapon certificate

48. The fundamental requirement of the Bill is set out in section 2 and will require a person over 14 years of age to apply for and obtain a licence should they wish to possess, purchase or acquire and/or to use an air weapon in Scotland. A person under 14 years of age may shoot air weapons in suitable circumstances if appropriately supervised, but they may not hold a certificate in their own right. A person will commit an offence if they do not have a certificate and are not subject to an exemption, as set out in the schedule to the Bill. The Bill will impose the licensing requirement on the individual or person involved, with appropriate background checks being made, rather than seek to license individual weapons. Air weapons are not generally identified individually, for example by serial number or other mark, and it would therefore be impracticable to control their movements under a licensing scheme.

49. The offence of using, possessing, purchasing or acquiring a weapon without a certificate is not expected to be commenced until some time after the licensing provisions of Part 1, to allow for a hand-in period. During that period unwanted weapons can be handed in to the police, or otherwise disposed of, for example by sale (since such weapons will remain able to be sold within and outside the UK and therefore will continue to have market value). The interim period between commencement of the licensing provisions and the offence will be used to ensure as many people as possible are aware of and have the opportunity to comply with the new regime in relation to air weapons.

Certificates for people aged 14 to 17

50. A lower age limit of 14 was selected because it is broadly consistent with existing firearms legislation. This is the minimum age, for example, where a young person can shoot an air weapon on private land unsupervised under existing UK legislation (section 23 of the Firearms Act 1968). It is also the minimum age for the grant of a section 1 firearms certificate. The Scottish Government therefore consider this is a suitable age to obtain a certificate.

51. There is currently no minimum age for the grant of a shotgun certificate, although you must be aged 18 or over to purchase a shotgun and anyone aged 14 or younger must be supervised by someone aged 21 or over to be in possession of an assembled shotgun in a public place. The Scottish Government believes that the lack of a minimum age limit for shotgun certificates is an anachronism of the existing UK firearms legislation which should not be replicated in the air weapon licensing regime.

52. More generally, the Scottish Government is committed to ensuring that the use of air weapons by young people is properly and closely regulated. Consistently, more than 45% of recorded crimes and offences involving air weapons are committed by persons aged 20 and under. Similarly, over 50% of those victims injured in offences in which a firearm was alleged to have been fired were aged 20 or under in each of the past three years. (Source: Recorded Crimes and Offences Involving Firearms, Scotland, 2012-13).

53. Specific provisions are made in the Bill, therefore, which set particular requirements and conditions around the types of shooting which may be undertaken by certificate holders of 14 to 17 years of age. Section 7, for example, requires that any application by a young person must be counter-signed by a parent or guardian, and that the certificate should specify the type(s) of
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shooting which that person may undertake. These include target shooting on suitable private land or at an approved club, pest control or the protection of crops or livestock, and for participation in events and competitions. In line with existing legislation on firearms, the Scottish Government believes that the purchase and ownership of air weapons should continue to be restricted to those aged 18 and over.

54. The Scottish Government believes that these requirements and conditions strike a suitable balance between the need to control shooting by young people, and recognising the traditions of shooting and the need to allow young people to shoot in the right circumstances. Consequently, these requirements are mirrored in other provisions of the Bill which relate to young people including, for example, provisions around the need for visitors to Scotland to hold a temporary permit.

Applying for and granting a certificate

55. The Bill makes provision, at sections 3 to 5 and elsewhere, for the processes involved in applying for an air weapon certificate, and for verifying and granting or refusing such a certificate. In line with the existing firearms licensing regime, the licensing functions for air weapons will be carried out by the Police Service of Scotland. As with other firearms and shotguns, the Chief Constable will keep a register of all applicants, in order to maintain a long term record of applications made and of any information relevant to the grant or refusal of the application. This will allow the Police Service of Scotland to ensure that decisions are taken on the best available information, to maintain consistency and protect public safety. Detailed provisions around these processes will be subject to further discussions with stakeholders, including the Police Service of Scotland, and will be set out in secondary legislation. The Scottish Government’s aim is to mirror, where appropriate, existing procedures, records and forms used under the Firearms Act 1968. This allows for a familiar system for both the police and for existing certificate holders, minimising the impact of the new regime.

56. The tests for grant or renewal of an air weapon certificate are broadly in line with those for more powerful weapons under section 1 of the Firearms Act 1968: it may be granted where the Chief Constable is satisfied that the applicant is fit to be entrusted with an air weapon, is not prohibited from possessing an air weapon, has a good reason for having it his possession, or for using, purchasing or acquiring an air weapon, and can be permitted to have an air weapon in his possession without danger to public safety or the peace. The Scottish Government believe that these are the appropriate checks for requests to obtain an air weapon licence.

57. To avoid unnecessary duplication of effort, the police may accept that the first two of these criteria have been met if the applicant is already in possession of a firearm and/or shotgun certificate. This should help alleviate the amount of work done by the police on checks which have already been undertaken, and reduces the costs of the application or renewal process both to the police and to the applicant.

58. The Chief Constable is not required to grant a certificate even if all criteria are met, but the tests are sufficiently stringent that the Scottish Government would expect the Chief Constable would exercise discretion to grant/renew if the criteria are met. Refusals can be appealed to the Sheriff.
59. Certificates will, unless revoked or cancelled, normally last for a period of 5 years. Applicants who also hold a firearms or shotgun certificate may, however, apply for a co-terminous air weapons certificate, allowing for greater convenience to themselves, and allowing the police to conduct all processes at the same time. Fees for a co-terminous application would therefore be reduced. Special provision is made for young people whose certificate will, by definition, be of shorter duration (a maximum of 4 years) as it will only apply between 14 and 17 inclusive. It will therefore expire on the attainment of 18 years of age. The holder will then be eligible to apply for a full certificate.

60. As part of the process of determining an application, the police will be able to visit an applicant’s home or other places where the weapons may be used or stored. This will ensure that any concerns the police may have about the safety of the location where shooting is to take place can be checked. In practice, the Scottish Government believes that such checks should only be required in a small number of cases, provided that other considerations can be satisfied.

Applying conditions to a certificate

61. Each licence which is granted, varied or renewed should be subject to a set of mandatory conditions which will be prescribed by the Scottish Ministers in subordinate legislation. The Government does not intend this to be a long list, but would include standard requirements such as the need to keep air weapons securely when not in use, and the need to inform the Chief Constable of a change of address or other circumstances.

62. In addition, and in line with existing firearms legislation, the Chief Constable will be able to impose further conditions at the time of grant, renewal or variation. Guidance on the imposition of conditions, including standard wording for common conditions, for example relating to target shooting or pest control, or around the suitability of land on which to shoot, will be prepared and published by the Scottish Government, in consultation with other stakeholders. The Chief Constable will also be able to vary or revoke any condition or to impose a new one at any time if deemed necessary or appropriate.

63. As with other aspects of the licensing regime, a person will be able to appeal to the Sheriff with regard to the imposition of or changes to conditions.

64. One of the primary aims of the licensing regime is to prevent the use of air weapons in unsuitable or unsafe areas, or where their use may cause concern or alarm. Such areas may include the use of air weapons for “plinking” in gardens or other urban or highly populated settings. The Scottish Government accepts that this has been a common pastime for many, and is seen as an “entry level” for many young shooters who go on to take up the sport on a more regular, organised basis. However, the Scottish Government has a wider responsibility to the community to reduce alarm and protect public safety. Against this background, Ministers do not believe that target shooting in such an environment 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. Shooting at properly operated and approved air weapon clubs will be encouraged as a matter of policy, and specific provision is made in the Bill to approve air weapons clubs in future.
Variation of air weapon certificate

65. The Bill allows for the details on a certificate to be varied. This may be necessary where a certificate holder moves house, where they wish to change or add to the uses for their air weapons, or where other circumstances change. If a condition has been placed on the certificate by the Chief Constable then it should be possible to apply to have that condition removed or amended by an application for a variation. Similarly, the Chief Constable may vary a certificate as he sees fit.

Revocation of air weapon certificate

66. The Bill includes provisions to revoke an air weapons certificate so that anyone who is misusing, or likely to misuse an air weapon, can be prevented from doing so. It also ensures that anyone who becomes unfit to possess an air weapon can have it taken from them. The Chief Constable would issue a revocation notice to the certificate holder.

67. Revocation is to occur at least 7 days from the date of issue of the notice and the notice must specify that. However, the notice must also require the holder to surrender any air weapons in the holder’s possession and the air weapon certificate within a specified date – which can be sooner than the date specified on the revocation notice. The Scottish Government believes that it would not be appropriate for the Chief Constable to have to wait 7 days before seeking surrender of any air weapons if he believed that this could compromise public safety. Any revocation will be subject to appeal and, if that appeal is successful, the holder will get their certificate and air weapon returned. Where a certificate holder has his certificate revoked, provision is made to allow the holder to reach agreement with the Chief Constable on the disposal of the weapons. This will allow the certificate holder to realise the value of the air weapons, should they wish to sell them or make similar disposal arrangements.

Permits

68. The Scottish Government acknowledges that there is a limited range of circumstances where a person may need to possess or otherwise deal with air weapons on a temporary basis without being a certificate holder. In line with existing firearms legislation, the Bill makes provision for such circumstances.

69. Under section 12 of the Bill a police permit may be granted by the Chief Constable for transient situations such as executors or trustees in sequestration etc. who find themselves in possession of air weapons, or to allow the removal of an air weapon from a ship, or their sale by an auctioneer. A police permit will permit a person to possess or acquire an air weapon without an air weapon certificate, as the Chief Constable sees fit. It should not allow use of an air weapon. Permits issued to auctioneers will also allow them to sell an air weapon without being a Registered Firearms Dealer.

70. Sections 13 and 14 make provision for temporary visitor permits for those who wish to come to Scotland to shoot air weapons, either their own or those borrowed or hired while in the country. Such certificates will be time limited and will last no longer than 12 months. The Chief Constable may grant a permit to the applicant only if satisfied that it would not present a danger to public safety or the peace and that the visitor is not prohibited from possessing one. This approach should introduce a simple, pragmatic regime which is transparent to those coming to
Scotland with air weapons, while providing an appropriate level of control about their movement and use in Scotland.

71. As with full air weapons certificates, the Bill makes provision with regard to both mandatory and discretionary conditions which can be attached to a permit, and for their variation or revocation where appropriate.

72. Section 17 provides for a specific type of permit so that, where the Chief Constable has approved the time and place of an event, an individual may borrow, hire, use and possess an air weapon at that event without requiring to hold an air weapon certificate. The intention is that people attending organised events, e.g. a fair or local gala, pony club tetrathlon or bicycle biathlon may compete without necessarily requiring an air weapon certificate. Guidance will set out how and when the Chief Constable should exercise the discretion to approve. In order that individuals may know whether the Chief Constable has approved the event the person who has requested approval of the event must display the approval prominently so that those who may possess an air weapon at it are aware that they may so possess without an air weapon certificate.

Approval of air weapon clubs

73. The Scottish Government considers that properly operated air weapons clubs can provide a suitable, safe environment which air weapons users, for example target and hobby shooters, should be encouraged to attend. The Bill makes provision which allows such clubs to apply for a formal approval from the Chief Constable, similar to approvals for rifle clubs under the existing legislation. People who wish to join such clubs, and to possess or use air weapons at the club may do so without holding their own certificate. This is one of the exemptions from the general requirement for a certificate, set out in schedule 1 to the Bill. Detailed guidance will set out the security and other considerations which should be considered by the Chief Constable in processing an application for approval.

74. An air weapon club licence may be varied on the application of the club or by the Chief Constable, to reflect changed circumstances, and will expire, unless revoked earlier, after 6 years. This matches the duration of rifle club approvals under the Firearms (Amendment) Act 1988, thereby creating a familiar regulatory system for clubs. The Bill also makes provision for an air weapon club approval to be granted co-terminously with that of an existing approved rifle club. This is designed to make things easier for both clubs and the Police Service of Scotland so that approvals can be arranged for renewal all at the same time.

75. Under section 22 the Police Service of Scotland will be able to enter any approved air weapon club premises and inspect them and anything in them but only for the purposes of ascertaining compliance with their approval or the wider terms of the Bill. This includes information in electronic form. Only an officer of the rank of inspector or above may grant an authorisation. The power to enter and inspect may normally only be exercised during reasonable times of the day, for example when the club is operating. The constable or police staff member must produce the authorisation if asked. An offence will be committed if any person intentionally obstructs a constable or member of police staff in the exercise of these powers.

76. These enforcement powers reflect existing powers in respect of approved rifle clubs while also updating them and the Scottish Government consider this to be the correct approach...
This document relates to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

for air weapon clubs. Separately, as a single club may well have both types of approval and the difference between a section 1 air weapon and an air weapon subject to the Bill is not easily discernible, the Scottish Government thinks there is sense in having complementary inspection powers for approved air weapon clubs.

Recreational shooting facilities

77. A person who operates a recreational shooting facility, such as a Paintball venue or miniature rifle range, where individuals who do not hold certificates use air weapons, must hold an air weapon certificate and have it on display. This will ensure that a suitable, identified person is responsible for the possession, security and use of the air weapons at the facility. That person would be subject to the normal process for determining an air weapons certificate application.

Restrictions on transactions involving air weapons

78. The Scottish Government strongly believes that the commercial manufacture, sale, repair and testing of air weapons should be properly regulated, in line with other controls being introduced over air weapons in Scotland, to ensure that the public at large are protected from the misuse of air weapons. Provisions at sections 24 to 26 of the Bill therefore govern commercial transactions in air weapons.

79. Any person who by way of trade or business manufactures, sells, transfers, repairs or tests an air weapon or who exposes one for sale or transfer, or who possesses one to repair or test must therefore be a Registered Firearms Dealer under the Firearms Act 1968. This is broadly in line with present provisions around commercial transactions, although adds manufacture, test and repair of air weapons to the list of commercial activities restricted to Registered Firearms Dealers. The Scottish Government believes that this provides a proper regime under which to deal in air weapons for the future.

80. It will be an offence to sell or transfer to any person, other than a Registered Firearms Dealer, any air weapon unless the person it is being sold or transferred to produces a valid air weapon certificate or shows that they are otherwise entitled to purchase or acquire it without holding an air weapon certificate. It will be an offence to provide a false certificate or statement.

81. The Bill also requires that sales of air weapons are carried out face-to-face. It replicates the current requirements of section 32 of the Violent Crime Reduction Act 2006. The Scottish Government considers that this provides a reasonable level of control and check on commercial transactions, with checks to ensure that the individual buyer holds a valid air weapon certificate, where necessary.

82. The Scottish Government does not wish to undermine proper trade in air weapons, and acknowledges the importance of sales of such weapons to people from outwith Scotland. Section 26 of the Bill enables a person to purchase an air weapon from a Registered Firearms Dealer in Scotland if the air weapon is purchased for delivery outside Great Britain without first coming into the purchaser’s possession. As with existing firearms and shotgun sales of this kind, a Registered Firearms Dealer who sells an air weapon to someone so entitled to purchase must send a notice to the Chief Constable of the transaction within 48 hours.
Enforcement

83. The Bill includes a number of detailed provisions to allow for the robust and effective enforcement of the new licensing regime for air weapons. This includes provisions (at section 27) for a sheriff to grant a warrant for a constable or member of police staff to enter and search premises, or persons found there where it suspected that an offence has been, is being, or is about to be, committed or that in connection with an air weapon there is a danger to public safety or to the peace, and to seize and detain anything which may be found on the premises or any person there. This includes information in electronic form. These enforcement powers largely mirror existing powers for firearms and shotguns. Section 28 provides the power for a constable to require any person to present their air weapon certificate for inspection. Failure to produce a certificate or to permit the constable to read it or to show entitlement to have the air weapon without holding a certificate will allow the constable to seize and detain the air weapon. The Scottish Government considers that this provision will help to take illegally held air weapons off the streets, helping to protect public safety.

84. Provision is also made to give a court the discretion to cancel any air weapon certificate held by the person on conviction of certain offences or breach of orders, or to order the forfeiture and disposal of any weapon found in the possession of the offender, or disposal if the weapon has already been seized by the Police Service of Scotland. This gives courts the power to remove air weapons from those the courts do not think should have them. Specific provision is made for museums because the Scottish Government do not want air weapons which are museum exhibits to be forfeited just because they have been taken or used unlawfully. In such cases it is appropriate that the museum gets the exhibit returned to it.

Keeping air weapons secure

85. The Bill requires any person to take reasonable precautions for the safe custody of any air weapon which they have in their possession, and to report immediately to the Chief Constable the loss or theft of any such air weapon then they commit an offence. This provision seeks to keep air weapons in safe control at all times and ensure that steps can be taken to track them down if lost or stolen. Guidance will be prepared by the Scottish Government and will include advice on appropriate security for the keeping and storage of air weapons. This will build on existing good practice promoted by the gun trade and shooting organisations.

False statements, certificates and permits

86. Where a person knowingly makes a statement with a view to procuring an air weapon certificate, or police, visitor, or event permit which is false in any material detail, or uses a certificate they know to be false, then they commit an offence. This will help to guard against fraudulent applications and purchases.

Time limit for offences

87. Summary proceedings must ordinarily be instituted within six months after an offence is committed but, under section 33, for air weapon offences under the Bill they may be instituted at any time within three years of the offence. This is to ensure that summary offences which come to light sometime after commission can still be tried. The Firearms Act 1968 makes equivalent provision in relation to offences under that Act, albeit for four years.
Offences by bodies corporate etc.

88. Section 34 relates to offences by corporate bodies. It is intended to deal with the few cases where there may be an offence committed by a non-natural person such as a company, partnership or unincorporated association (e.g. an auctioneer, carrier firm owner of a recreational shooting facility etc.). Where the offence is committed by an officer of the body with that officer’s consent or connivance then this section allows the officer to be prosecuted as well as the body. The aim is to ensure that corporate status does not allow individuals to escape liability where it would otherwise fall on them.

Appeals

89. As noted earlier in this Memorandum, the Bill makes provision for appeals against the decision of the Chief Constable in a number of instances. Any appeal will be to a sheriff who will consider any evidence or other matter whether or not it was available when the Chief Constable took the decision in question. The sheriff with jurisdiction is to be the one for the area in which the appellant resides. Where a person resides outside of Scotland the sheriff at Edinburgh is to have jurisdiction. This is necessary because a certificate holder may not reside in Scotland but will need to know which court to appeal to against a relevant decision of the Chief Constable. An appeal is to be brought no later than 21 days after the date of the decision was received by the appellant.

90. The sheriff may dismiss the appeal or give the Chief Constable such direction as he thinks fit. The decision of the sheriff may only be appealed on point of law, ultimately to the Inner House of the Court of Session. The Courts Reform (Scotland) Bill proposes changes to the sheriff court system and the policy in this Bill has been formulated so as to ensure that any changes which may arise out of that one do not affect these appeal provisions.

91. These processes ensure that a fair and open system is in place and that the administrative discretion of the Chief Constable is overseen by a fully independent and impartial judicial authority with full fact and law review.

Fees

92. Firearms licensing is a service provided by the Police Service of Scotland and comes at a cost in terms of processing the application itself, carrying out background checks and home visits, issuing certificates, monitoring existing certificate holders and prosecuting those who contravene the law.

93. As such, it is right that the process for obtaining a certificate should incur a fee. Under the current firearms regime, fees are generally only charged on issue of a firearms or shotgun certificate following a successful application. The Scottish Government believes, however, that it is more appropriate to charge applicants regardless of the outcome of their application as costs are incurred considering unsuccessful applications as well as successful ones. This better reflects the costs of providing the service overall and is in line with comparable processes.

94. The Scottish Government considers that existing fees for firearms and shotguns certificates are very low and has pressed the Home Office to raise these on a regular basis. The existing tariff has been in place since 2001 and does not reflect the cost of providing the service.
Under the present tariff, for example, it costs just £50 for a five year firearms licence. In addition, the Scottish Government believes that the present levels of fees do not reflect the responsibility or safety implications of possessing and using a potentially dangerous weapon. The Scottish Government will, along with a number of other stakeholders, continue to press for significantly increased fees under the firearms legislation.

95. In the meantime, it is acknowledged that it would be inequitable to set an initial air weapons fee tariff at a higher level than those for more powerful weapons. Such a move could, for example, encourage people to move towards the ownership and use of higher powered guns, with implications for safe shooting and public safety more generally. The Scottish Government’s overarching policy in this area is, however, to move towards a full cost recovery model for fees, for air weapons and other types of firearm. Against this background, illustrative fee levels are set out and discussed in the Financial Memorandum which accompanies the Bill.

96. The scale of fees will be set out in subordinate legislation. Fees will be set for different circumstances and in relation to visitor permits and any other licensing activity under the Bill.

**Power to make further provision**

97. Section 37 of the Bill provides for the Scottish Ministers to make regulations on conditions, application forms and documents to be submitted for permits and licences. The intention here is to provide flexibility in the regime by allowing process changes to be done quickly through subordinate legislation. This is a wide power and it is intended that it will enable a single set of regulations to be made for the processes underpinning the regime (other than fees, which will be in separate regulations to permit Parliamentary consideration of that issue in isolation).

**Transitional arrangements for existing certificate holders**

98. Those who have an existing firearms and/ or shotgun licence that are already in possession of an air weapon, will not be required to obtain an air weapon certificate to continue possessing or using their air weapon until their existing licence expires (the later expiry date takes precedence if both a firearm and shotgun are held). They will, however, still be required to adhere to any mandatory conditions and will be committing an offence if they fail to do so. The cancellation of one or both existing certificates ends the transitional period.

99. An existing certificate holder who wishes to acquire a new air weapon during this transitional period will be required to apply for and obtain an air weapon certificate prior to the purchase or other acquisition. This will ensure that the seller can check that the person holds a valid certificate, simplifying the process in particular for Registered Firearms Dealers.

100. These provisions are designed to assist in the smoothing process in dealing with the influx of new applications. Tests will already have been carried out in relation to persons who have existing certificates and this will avoid duplication of effort.
Guidance

101. Just as with the extant Home Office Guidance Guide on Firearms Licensing Law around the Firearms Acts, the Scottish Ministers will publish guidance on this Part of the Bill. This guidance will be prepared by the Scottish Government working closely with the Police Service of Scotland and other stakeholders. It will have to be taken into account by the Chief Constable when exercising functions conferred by the Bill. That is important as there is considerable discretion conferred on the Chief Constable and guidance will ensure that the discretion is exercised consistently with Ministers’ vision. Guidance may also be issued more generally about anything to do with the Part and can provide the Scottish Ministers’ view on how the Bill should operate in practice so that all stakeholders understand the operational model.

Exemptions

102. There will be a category of exemptions in relation to situations where no certificate is necessary to possess, use, purchase or acquire an air weapon. The Scottish Ministers will be able to amend exemptions to react to changes in circumstances around licensing. Schedule 1 sets out these exemptions.

103. Certain public servants are exempted in their capacity as such. This includes the police as well as other public servants who could come into contact with air weapons as part of their duties. The list is able to be adjusted by the power in section 2 of the Bill should other public servants need to be included or any removed. The approach taken in the Firearms Act 1968 relies on the rule of law whereby Acts do not bind the Crown unless and to the extent that they so provide. The Interpretation and Legislative Reform (Scotland) Act 2010 reverses that position so that Acts of the Scottish Parliament bind the Crown unless and to the extent of any exemption. The Scottish Government thinks that a narrow list of exempted public servants is appropriate as a blanket one would result in unduly broad exemption.

Minor and consequential amendments

104. Schedule 2 to the Bill lists the minor and consequential amendments as a consequence of the Bill.

Alternative approaches

105. Stricter control over and licensing of air weapons has been a long-standing commitment for the Scottish Government. This was a clear Manifesto commitment in advance of both the 2007 and 2011 elections to the Scottish Parliament. The Scottish Government considers licensing of such weapons is the most appropriate way of improving public safety and reducing the potential for harm within our communities. With this principle clearly established, the Scottish Government’s consultation on this issue did not seek debate on the principle. Instead, views and contributions were invited on how best to implement a robust, proportionate and practicable system of licensing. Nevertheless, a number of alternative approaches were available in principle.

106. The first alternative option is to do nothing. As noted above, this is not considered a viable option and would not meet the Scottish Government’s aim of introducing stricter controls over the availability and use of air weapons. Although a significant number of air weapons
stakeholders do not consider it necessary to license air weapons, the tragic consequences that airgun misuse can have in our communities means that the Scottish Government cannot stand back and do nothing.

107. The second option would be to provide widespread training to air weapon users, which is the approach supported by many sections of the shooting community and raised in responses to the public consultation. Under such arrangements, the Scottish Government would roll out training across the country. However, such an approach would appeal most to those who already use airguns safely and with good reason. It seems unlikely that individuals who misuse airguns would engage with a training programme. Nor would it help to identify the estimated large number of unused and forgotten air weapons which the Scottish Government seeks to remove from circulation.

108. The third alternative would be to continue to press for full devolution of firearms legislation, and to frame the licensing of air weapons in the context of fully revised legislation on all firearms. While it would be easier and more coherent to update all firearms legislation in one all-encompassing Act, the UK Government continues to resist further devolution and the Scottish Government does not consider that it is prudent to wait for that uncertain outcome when powers exist to regulate these weapons now.

109. A fourth alternative is to introduce a minimal registration scheme with no approval process, simply registering at a location such as a post office. Although this would entail minimal disruption and cost, it would essentially mean everyone could automatically obtain authorisation and would do very little to prevent misuse. It would allow everyone who has registered to hold air weapons regardless of their fitness to do so, and their intentions in using the weapons.

110. A fifth alternative option is to have a complete ban on air weapons in Scotland. Although there was some support in the responses to the consultation exercise for this course of action, the Scottish Government does not consider this to be a proportionate response to the issue of air weapons misuse, and would be unfair to the many legitimate shooters who currently use air weapons safely and may continue to do so under a licensing regime. Those who do misuse such weapons may be likely to ignore such a ban. In addition, there is the potential unintended consequence that those who currently shoot air weapons within the law may decide to continue shooting with other weapons, including shotguns and more powerful firearms.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc. of the air weapons provisions in the Bill

Equal opportunities

111. An Equality Impact Assessment (EQIA) has been carried out and the results will be published on the Scottish Government website at: http://www.scotland.gov.uk/Publications/Recent.

112. In relation to the licensing of air weapons, the Scottish Government considers that the Bill does not discriminate on the basis of maternity and pregnancy, marriage and civil partnership, gender reassignment, race, disability, religion and belief, sex or sexual orientation.
Specific provisions are made with regard to young people, allowing those aged 14 to 17 to possess and use air weapons under certain conditions, and requiring the use of air weapons by anyone under 14 to be supervised by an appropriate adult. The Scottish Government considers these restrictions to be justifiable and proportionate in order to help protect young people, who are disproportionately the victims of gun crime, and reduce firearms offences committed by young people, while enabling them to shoot air weapons in a safe and properly regulated manner.

113. The age limits proposed in the Bill are consistent with current (unlicensed) airgun age limits, and provisions in Northern Ireland. These take into account risks to public safety.

**Human rights**

114. The Scottish Government considers that the Bill has limited impact on the human rights of individuals. Although current gun users may believe that their human rights are infringed by the introduction of a licensing system, the ownership and use of air weapons will still be permitted if the conditions set out in the legislation are met. There is no ban so no deprivation of property and the weapons retain market value by virtue of still being capable of being lawfully held and sold and the presence of an open market in England and Wales as well as the rest of the world. While the Chief Constable has considerable discretion in the performance of functions in relation to air weapons, that discretion is subject to a fully Article 6 compliant appeal mechanism. Any deprivation of property occurring in relation to cancellation of certificates and forfeiture occurs only temporarily in those narrow situations where it is necessary to do so to protect public safety and affected individuals can appeal to the court about the deprivation. The Bill does not discriminate against individuals and the policy has been carefully formulated to balance the rights of the individual with the safety of the wider populace.

**Rural/island communities**

115. During the consultation process many respondents raised concerns that air weapon licensing would be disproportionately restrictive on rural and island communities, with air weapon misuse seen as a distinctly urban problem. While misuse can take place anywhere, the Scottish Government has been clear that one of the main objectives of licensing is the removal of unnecessary air weapons from the urban environment, and the Scottish Government recognise that these weapons can be important tools in many aspects of rural life.

116. Essential rural activities such as pest control and protection of crops and livestock will be considered good reasons to be granted an air weapon certificate, provided that the other application criteria are met. Individuals in rural and island communities are also more likely than their urban counterparts to have access to suitable land for safe shooting, whether that shooting is in connection with business or leisure. The Scottish Government therefore does not consider that licensing will be unduly restrictive for rural or island communities.

**Local government**

117. The Bill has no direct impact on local authorities in discharging their duties.
Sustainable development and environmental issues

118. The Scottish Government do not anticipate that the Bill will have any negative impacts on sustainable development or environmental issues. Legitimate gamekeepers, pest controllers and the like – including more casual shooters who, for example, help to keep rabbit populations down on local farmland – will be able to apply for a certificate and continue their work with minimal impact.

119. In the case of larger wildlife – such as swans or foxes – which can often be the target of air weapon misuse, licensing will help to protect such creatures by preventing those who would commit such crimes from accessing an air weapon in the first place.

PART 2 – ALCOHOL LICENSING

120. Alcohol licensing, along with Minimum Unit Pricing and NHS investment in prevention, treatment and support measures, is part of the broader Scottish Government Strategy “Changing Scotland’s Relationship with Alcohol” (2009). There are significant social and financial costs associated with problem drinking. It has been estimated that alcohol misuse costs the Scottish economy around £3.6 billion every year particularly in terms of alcohol related crime, mortality and hospital admissions. It is vital that the police and Licensing Boards have the powers they need to reduce crime and preserve public order so that people can lead productive lives within safe and secure communities.

121. Alcohol licensing is not, however intended to prohibit responsible consumption nor to undermine the economic interests of the alcohol trade.

122. The Bill will improve the effectiveness of the alcohol licensing regime set out in the 2005 Act as added to by the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol etc. (Scotland) Act 2010, the Alcohol (Minimum Pricing) (Scotland) Act 2012, as well as secondary legislation.

123. There are a number of substantive provisions within the Bill and these have been arranged here under the following themes:

- Reducing crime and preserving public order and safety;
- Providing Boards with powers to consider a broader range of information;
- Advancing public health;
- Improvements to the existing system and reducing burdens on trade and Licensing Boards.

REDUCE CRIME AND PRESERVE PUBLIC ORDER AND SAFETY

Policy objective

124. It is vital that police and Licensing Boards have the powers they need to reduce crime and preserve public order so that people can lead productive lives within safe and secure
This document relates to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

communities. Within this Bill there are a range of provisions to help ensure that people live their lives safe from crime, disorder and danger. These measures include:-

- Creation of new offences of supplying alcohol to children or young people for consumption in a public place.
- Providing Boards with powers to consider a broader range of information such as:
  - a fit and proper test;
  - spent convictions;
  - connected persons.

Supply of alcohol to a child or young person

125. Under the current licensing regime, adults can legally supply alcohol to someone under the age of 18 outwith a licensed premises. This facilitates outdoor drinking dens of young people where those in the group who are over 18 buy alcohol for younger members. The measures within the Bill will close this loophole and give the police the powers they need to disrupt these drinking dens.

126. The police are currently able to confiscate alcohol from children and young people drinking in public places, as well as from adults who are supplying alcohol to children and young people for consumption in public places. They describe this approach as ‘putting out the fire by removing the fuel’. During these campaigns, the former Strathclyde Police Force found the majority of outdoor drinking dens consisted of small clusters of people ranging in ages from 14 to 21. In many cases, those over 18 were the suppliers of alcohol to those under 18.

127. When Strathclyde Police confiscated alcohol from children and young people in public places they found that they were powerless to stop those over 18 simply buying and sharing more alcohol. It is not, in itself, against the criminal law to give alcohol to someone under 18 for consumption in a public place, although it is an offence to buy alcohol for those under the age of 18. Consequently there is a continuing cycle of confiscation and purchasing.

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

129. The Scottish Government believes that the law should make it illegal to supply alcohol to a person under 18 both inside and outside of a licensed premises. In the Bill this is achieved by making it an offence for a person other than a child or young person to buy or attempt to buy alcohol for a child or young person for consumption in a public place.

Consultation

130. In the Scottish Government consultation on Further Options for Alcohol Licensing, this proposal attracted overwhelming support. Out of the 100 responses to this question, 94 were in
favour of making it illegal for adults to supply alcohol to an under 18 for consumption in a public place.

Alternative approaches

131. Various alternative approaches to establishing this offence were considered. Numerous definitions of what constitutes a ‘public place’ were considered as well as alternative drafting of the offence itself. The approach taken was considered to be the most proportionate and workable offence as well as the most effective at tackling the problem of drinking dens.

PROVIDING BOARDS WITH POWERS TO CONSIDER A BROADER RANGE OF INFORMATION

Policy objective

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

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

The ‘fit and proper’ test

133. Many licensing regimes rely on a ‘fit and proper’ test to determine whether someone is suitable to hold a licence. However, the ‘fit and proper’ test that applied under the Licensing (Scotland) Act 1976 was not included in the 2005 Act. Instead, the 2005 Act focused on the use of relevant offences and foreign offences to assess the suitability of candidates and licence holders, as well as providing the ability for people to object based on matters connected to the licensing objectives.

134. Since the 2005 Act came into force there has been considerable debate and serious concern expressed regarding the impact of removing the ‘fit and proper test’ from the alcohol licensing regime in Scotland, and the lack of a ‘fit and proper person’ test has been much criticised by the police, Licensing Boards and those within the alcohol trade.

135. There is a widespread view amongst stakeholders that limiting consideration to relevant offences is unduly constraining to Boards who may have no choice but to grant licences to applicants that they consider to be a risk to the public.

136. The introduction of the ‘fit and proper’ test in this Bill will provide greater scope to present information to Boards, and give them the ability to consider a greater breadth of relevant information when making decisions about applicants, licence holders and connected persons. It will also provide Licensing Boards with greater powers to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information including police intelligence and any associations with those deemed to be unsuitable.
A definition of ‘fit and proper’ is not necessary as Licensing Boards are familiar with the ‘fit and proper’ determination from other licensing regimes and there is sufficient experience and case law to guide decision making. This is in accordance with various other Acts that use the test. Furthermore, a definition of ‘fit and proper’ could limit the range of information local authorities can consider and fetter their discretion. Each application should be considered on its own merits.

**Spent convictions**

138. Under the Rehabilitation of Offenders Act 1974, spent convictions are defined as convictions where a specified period of time has elapsed which allows an individual not to have to tell people about their previous criminal activity. For example, someone receiving a fine from a court conviction will be required to advise potential employers about their court fine for 5 years (an unspent conviction). Once 5 years have passed, this conviction becomes spent and it is no longer required to be disclosed.

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

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

141. Consequently, this Bill repeals section 129(4) of the 2005 Act to allow Boards to consider spent convictions. Although the proposed changes would enable Licensing Boards to consider spent convictions for relevant offences, the existence of such convictions would not necessarily prevent an applicant from getting a personal licence. The fact that an applicant has convictions, whether spent or otherwise, may or may not act against them and this will be dependent on the nature and timing of the offence. The Board will consider each case on its own merits as they do with unspent convictions for relevant offences. To allow the consideration of spent convictions for relevant offences it will also be necessary to make amendments to the rehabilitation of offenders legislation. This is being taken forward outwith the Bill.

**Consultation**

142. In the Scottish Government consultation on Further Options for Alcohol Licensing, one of the most frequently received suggestions in this section of the consultation was that Licensing Boards should have greater powers to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information. Over two thirds of respondents felt that legislation should be amended so that Boards may consider whether an applicant is a ‘fit and proper’ person. Less than ten per cent answered ‘no’ to this question.
Alternative approaches

143. During the Scottish Government consultation on Further Options for Alcohol Licensing, many stakeholders suggested that there should be a definition of fit and proper, and that this would apply consistency across Scotland and between different Licensing Boards. The Scottish Government is however concerned that any definition would unduly constrain Licensing Boards, making them unable to consider new or novel concerns. Local Authority councillors and clerks are already familiar with successfully applying the ‘fit and proper’ test in other regimes, and there is sufficient experience and case law to guide decision making so it is not necessary to further define it.

ADVANCING PUBLIC HEALTH

Policy objective

144. The 2005 Act brought in a range of provisions to ensure that public health is at the heart of the alcohol licensing regime in Scotland. A public health objective was created to ensure that Licensing Boards’ decisions are underpinned by the goal of protecting and improving public health. Furthermore, a duty was put on Boards to formulate a statement of licensing policy every 3 years and make an assessment of overprovision in any locality within the Board’s area.

145. The consultation process made clear that since the 2005 Act came into effect relatively recently in 2009, and Minimum Unit Pricing is still the subject of legal dispute, this is not the time for further substantial changes regarding public health. Instead, the Bill contains provisions to maximise the impact of the existing public health measures, particularly with regard to:

- protecting children and young persons from harm;
- statements of licensing policy; and
- overprovision.

Protecting children and young persons from harm

146. The 2005 Act has five objectives, one more than the Licensing Act 2003 for England and Wales which does not include an objective in relation to public health.

147. The licensing objectives are the engine that drives the 2005 Act. They are a key feature of Licensing Board policy statements, the basis for refusal of a premises or occasional licence, the attachment of conditions, sanctions on a personal licence holder or a competent ground for review of a premises licence.

148. The 2005 Act includes the objective ‘protecting children from harm’. The Act defines a child as “a person under the age of 16” and a young person as “a person aged 16 or 17”. Consequently, the ‘protecting children from harm’ objective does not apply to 16 and 17 year olds.

149. Young people are particularly vulnerable to the effects of alcohol, whether they are drinking themselves or being affected by the drinking of other people in their lives. Underage
drinking can cause short and long term harm to health, as well as put young people in dangerous situations when drunk. The scientific evidence is clear that an alcohol-free childhood is the healthiest and best option. The earlier a young person begins to drink alcohol, the more likely they are to drink in ways that can be risky later in life. For these reasons, it is vital that the health interests of young persons are at the heart of the licensing regime.

150. Furthermore, the distinction between children and young persons creates difficulties for Licensing Boards when dealing with issues around young persons and has the effect that issues around 16/17 year olds cannot be considered in relation to the ‘protecting children’ objective.

151. It is not envisaged that expanding this licensing objective will create adverse consequences, or affect the considerations that Boards undertake. The broadening out of the objectives within the Bill will give Licensing Boards greater scope to protect young persons.

**Statements of licensing policy**

152. The 2005 Act introduced a duty on Licensing Boards to issue a statement of licensing policy, before the beginning of each 3 year period, setting out their general approach to licensing decisions and outlining how the Board intends to promote the five licensing objectives.

153. This requirement constituted a fundamental change to how Licensing Boards operate and transformed licensing from an application-driven process to a policy-driven one. Since this legislation came into force, licensing decisions have become part of a wider policy context and a stated policy position can be used as grounds to refuse an application for a licence.

154. The Bill amends the legislation to provide that a new Board has to prepare a new policy statement within eighteen months of being appointed, and once agreed the policy has a duration of up to five years, although Boards would retain the ability to make changes during the life of a policy statement by way of a supplementary statement and to publish an earlier licensing policy statement.

155. Linking these statements of licensing policy to local authority elections will ensure that the Licensing Policy Statement better reflects the views of the current Board, and increasing the potential duration of the statement to five years both reduces the burdens on Licensing Boards, and by providing more time to prepare the statement, helps ensure that the statements are more robust, evidence-based and capable of withstanding legal challenge.

**Overprovision**

156. The 2005 Act places a duty on Boards to make an assessment of overprovision and include a statement regarding this in their licensing policy statement. This policy provides Boards with powers to consider the unique circumstances of their area and decide whether, based on local needs, it is appropriate to restrict access to alcohol through limits on new licences, licences of a particular type, or variations of existing licences.
157. Where it is assessed that there is overprovision a rebuttable presumption is created against granting new licences although each case is judged on its own merits and there is always the possibility of exceptions.

158. It is important that the overprovision assessment is an effective and robust tool for Licensing Boards. However, to date only a few Boards have assessed that there is overprovision in a particular area. It has been argued that Boards are wary of making use of overprovision policies through fear of legal challenge.

159. The approach adopted in the 2005 Act has the effect that the area for the assessment of overprovision arguably relates to localities within the Board area rather than the entire Board area. As a result of this, Boards have experienced difficulty in determining suitable localities and establishing sufficient evidence to support overprovision for small areas. Frequently, health indicators can only be demonstrated over larger areas. This presents an obstacle when considering the wider scope of the ‘protecting and improving public health’ objective and prevents Boards from considering the availability of alcohol across their whole geographical area.

160. The Bill addresses these issues by providing Boards with powers to assess overprovision for entire Board areas. Furthermore, the Bill makes clear that increased capacity can be considered separately from an increase in the number of licensed premises in terms of overprovision and that opening hours should also be considered. Even if there is no increase in total number of alcohol outlets, the overprovision assessment is relevant if existing premises attempt to increase their capacity and/or opening hours.

Consultation

161. All of the provisions to advance public health contained within the Bill were consulted on as part of the Further Options for Alcohol Licensing consultation exercise that ran from 19 December 2012 to 22 March 2013. A majority of respondents agreed with all of the proposed provisions regarding protecting children and young persons from harm, statements of licensing policy and overprovision.

Alternative approaches

162. The alternative approaches suggested by stakeholders to improve public health were considered, at the current time, to be unduly onerous on the licensed trade. There have been suggestions such as reducing off-sales opening hours, introduction of alcohol only checkouts in large multiple retail outlets, and placing a statutory duty on Boards to promote the licensing objectives and provide annual reports on how they did so.

163. The provisions contained in the Bill are those which were most effective at improving public health while remaining proportionate and relatively straightforward to implement.
IMPROVEMENTS TO THE EXISTING SYSTEM AND REDUCING BURDENS ON TRADE AND LICENSING BOARDS

Policy objective

164. A key goal of this Bill is to improve the performance of the licensing regime for the wide range of stakeholders who interact with it including Licensing Boards, police and the trade. This Bill takes forward a number of opportunities to reduce the burdens on trade and Boards without requiring a radical overhaul of the system. These measures are related to:

- Personal licences;
- Duty of Boards to produce annual financial report;
- Processing of applications and deemed grant;
- Relevant offences and foreign offences.

Personal licence

165. The 2005 Act requires those who authorise the sale of alcohol to possess a personal licence. All premises managers (also known as designated premises managers or DPMs) must possess a personal licence. To gain the personal licence, applicants must undergo training and gain a licensing qualification so this process plays an important role in ensuring that licence holders have appropriate knowledge of licensing matters.

166. Under the current licensing legislation, a personal licence has effect, subject to conditions, for 10 years from the date on which it is issued. If they wish to continue as a personal licence holder they must apply to the relevant Licensing Board for renewal of the licence, in ‘the period of 2 months beginning 3 months before the expiry date of the licence’.

167. The Bill extends the period in which personal licence holders may apply to renew their licence to 9 months, beginning 12 months before the expiry date of the licence. This change makes the personal licence administration more effective and trade-friendly as well as allowing the Boards a longer period of time to process applications.

168. Under the existing arrangements, where a personal licence is revoked for any reason, the person who held the licence may not apply for another one for five years. It is possible that some personal licence holders will fail to submit evidence of the refresher training within the time limit, for example as a result of forgetting about the deadline and consequently will have their licences revoked. If they cannot get another personal licence for five years this may result in them losing their jobs. Furthermore, it is good practice for licensed premises to have multiple personal licence holders and the current policy could lead to less personal licence holders.

169. The Bill amends the legislation so that if a personal licence is revoked under section 87(3) of the 2005 Act (for failure to comply with the training requirement), the licence holder will not have to wait 5 years to reapply for a personal licence, although they would still have to go through the cost and inconvenience of applying for a new licence, thus serving as a deterrent to those who may consider not undergoing the refresher training. This amendment provides a
more proportionate incentive for the licensed trade and facilitates licensed premises’ best practice.

**Duty of Boards to produce annual financial report**

170. The 2005 Act enables the Scottish Ministers to make provision for the charging of alcohol licensing fees by Licensing Boards in respect of applications under the Act, and otherwise in respect of the performance of functions by Licensing Boards, councils and Licensing Standards Officers under the Act.

171. Licensing Boards charge fees for a range of activities such as applying for premises licences, annual fees for premises licences, applying for personal or occasional licences, and transferring or varying existing licences.

172. The fees regime is intended to reflect the Scottish Government’s intention to make the system self-funding i.e. to cover both direct and indirect costs incurred by Licensing Boards. In other words, the money raised by fees should be broadly equivalent to the expenses incurred by the Board and the council for that area of the Board, in administering the licensing regime during that period.

173. After the fees regime came into effect in 2009, stakeholders in the licensed trade queried the disparities between fee levels in different local authorities and suggested that Boards should be transparent about these figures to demonstrate that their fees regime are based upon cost recovery (unless they choose to make a deficit).

174. Consequently, this Bill creates a duty on Licensing Boards to produce an annual financial report and provides for what information should be included in such a report. As Licensing Boards are already under an obligation to ensure their fee income is broadly equivalent to their costs, this duty will require them to make public the calculations that are already being carried out.

**Processing applications, and deemed grant**

175. The Bill includes provisions to ensure that licensing applications are processed more efficiently and brings these timescales in line with those in the Civic Licensing regime. It will require Boards to issue a letter of acknowledgement to applicants, unless it is impractical to do so, setting out the timescale within which the application must be decided. Where an application does not meet the laid down requirements, the Board must give notice to the applicant that they are treating the application as incomplete. The Board must determine every application within nine months of the date of receipt, unless this period has been extended by the Board applying to the sheriff for an extension. If the Board fails to determine the application within the permissible period then it will automatically be deemed to have been granted and the Board will be obliged to issue the licence/appropriate authorisation. Although these provisions set a limit on how long a Licensing Board may consider an application for, the Scottish Government would expect all applications to be considered as quickly as possible and not to be unduly delayed.

176. These amendments will provide greater clarity for the licensed trade over the consideration of applications and the timescale for granting an application.
Relevant offences and foreign offences

177. During the consultation on Further Options for Alcohol Licensing that ran from 19 December 2012 to 22 March 2013 the most consistent suggestion for reform was for the Scottish Government to revisit the automatic requirement for Licensing Board to hold hearings when notified of relevant or foreign offences. This suggestion for reform was supported by both Licensing Boards and the licensed trade. The automatic requirement to have a hearing on every occasion a relevant or foreign offence is notified to the Boards, even if it is of little significance for the business being carried on and is of little consequence to the business or the licensing objectives, is considered to place an undue burden on Licensing Boards and the trade who may have to provide representation and obtain legal advice for multiple hearings across the different Scottish Boards.

178. Under the 2005 Act as it currently stands, when a Licensing Board receives notification of a conviction of the personal/premises licence holder or a connected person they must notify the Chief Constable of the notification. The Chief Constable must then provide the Licensing Board with a notice either i) advising that they are unable to confirm the existence of the convictions or that it is not a relevant or foreign offence; or ii) confirming the existence of the convictions and that it is a relevant or foreign offence. If the Licensing Board is notified that the conviction does exist and is for a relevant or foreign offence then they must make a personal/premises licence review proposal in respect of the licence. Where a Licensing Board makes such a proposal then the Board must hold a hearing for the purposes of considering and determining the proposal.

179. This Bill amends the 2005 Act so that if the Chief Constable merely confirms the existence of either a relevant or foreign conviction and does not recommend that the licence should be varied, suspended or revoked, then the Licensing Board are not obliged to make a review proposal or hold a hearing and can decide this based upon their own view as to whether the hearing/proposal is or is not necessary for the purposes of the licensing objectives. If a sanction is to be considered then a hearing/proposal is required.

180. If the Chief Constable recommends that, having regard to the conviction, the licence should be varied, suspended, revoked or endorsed then a licence review proposal must be made and a hearing must be held.

181. This amendment provides Boards with greater autonomy to make decisions as well as making their processes more streamlined and effective. It also reduces the burden and costs for trade.

Consultation

182. The Scottish Government consulted on a range of potential further options for alcohol licensing from December 2012 to March 2013. The responses made clear that although people do not want to see a root and branch review of licensing legislation, there are areas that are not working as effectively as they should be. Therefore, these provisions make the regime more effective for the trade and Licensing Boards.
183. The duty of Boards to produce an annual financial report was recommended by a group made up of representatives from the on and off trade as well as Licensing Board clerks, established to make recommendations to the Scottish Ministers about the fees system and the level of fees.

**Alternative approaches**

184. During the Scottish Government consultation on Further Options for Alcohol Licensing a number of alternative approaches were suggested that, although they may have helped progress other goals such as improving public health, would arguably be unduly onerous on the trade and Boards. One of the main goals of the Bill is to improve the existing system and reduce burdens, rather than bringing in radical new changes. Consequently, alternative approaches such as the introduction of separate alcohol only checkouts in large multiple retail outlets and placing a statutory duty on Boards to promote the licensing objectives and provide annual reports on how they did so, were not taken forward.

**Effects on equal opportunities, human rights, island communities, sustainable development etc. of the alcohol provisions in the Bill**

185. The provisions on the alcohol licensing regime are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion. The regime has no specific implications for island communities or sustainable development.

186. The Scottish Government considers that the Bill does not impact on the human rights of alcohol licence holders. Although current alcohol licence holders (both premises and personal licence holders) may believe that their human rights are infringed as the introduction of the fit and proper person test may result in their licence being revoked. The revocation would be done by the Licensing Board and not by Scottish Ministers. It will be for the Licensing Board to ensure that their actions are convention right complaint and that any revocation only occurs where the Board is satisfied, after having regard for the objectives, that the licence holder is no longer a ‘fit and proper person’ to hold the licence.

187. The Scottish Government also considers that the Bill does not impact on the licence holders right to fair trial. On each occasion where a licence holder may lose a licence or is being considered for refusal of a licence under the 2005 Act, on the grounds of not being a ‘fit and proper person’, there will be a hearing as per the existing hearing system provided in the 2005 Act. Where a licence is revoked or refused, a right to appeal exists to an appropriate sheriff principal or sheriff in an appropriate sheriffdom.

188. As such it is the Scottish Government view that the Bill does not discriminate against individuals and the policy seeks to balance the rights of the individual with public safety.
PART 3 – CIVIC LICENSING

TAXIS AND PRIVATE HIRE CARS

Background

189. Taxi and private hire car services play an essential part in local transport networks, providing an invaluable service for both residents and visitors to Scotland. The aim of a licensing regime is the preservation of public safety and order and the prevention of crime. The Scottish Government needs, therefore, to have a licensing regime for taxis and private hire cars that can meet this aim and provide customers with a safe, reliable and accessible service.

190. Local authorities are responsible for the creation, management and enforcement of the local taxi and private hire car licensing regime following the framework provided for in the 1982 Act. In general this local process works well. Local authorities have discretion in applying a local regime that best meets the specific requirements of their local area and can take account of the views of both customers and trade.

191. However, the Scottish Government has been aware of a number of concerns with the taxi and private hire car licensing regime for some time. These have been highlighted by stakeholders during informal discussion and reinforced during the public consultation which closed last year. Concerns were largely based around 2 main elements:

192. Creating greater consistency within the regime and across different licensing regimes, in particular:
   - Addressing issues with the variability in how legislation is interpreted and implemented;
   - Encouraging a consistent approach to local authority practice where this is beneficial, while maintaining appropriate local flexibility;
   - Amending legislation to take account of the changes to the current market for hire car services.

193. Widening the scope of while tightening the regulation of licensing regime. In particular:
   - Addressing concerns that the legitimate trade is being unfairly challenged in some areas by businesses and individuals circumventing or abusing/ignoring the licensing regime. This then has an effect on public safety;
   - Improving compliance checking within the regime.

194. Both prior to and during the consultation there have been calls for a thorough and radical review of the 1982 Act. However, the Scottish Government believes that the 1982 Act allows local authorities sufficient and appropriate flexibility to adapt their local licensing regimes to their local circumstances. This is an important aspect of the licensing regime and the Scottish Government is keen to maintain the elements of the system that work well.
Policy objective

195. While the provisions within this Bill aim to partly address the concerns raised, this is part of a wider body of work that will be undertaken following the legislative process including updates to secondary legislation and guidance.

Creating greater consistency

196. A significant element of the purpose of the provisions allowing licensing authorities to refuse private hire car licences on the basis of overprovision and to test private hire car drivers, is to bring a degree of consistency in the way local licensing authorities can manage taxis and private hire cars if they so wish. They are not requirements and can be used alongside or independently from the similar powers in relation to taxis. This is, in part, an acknowledgement that in parts of the country, both taxis and private hire cars are essentially operating in a very similar market. Some of the distinctions between their mode of operation – pre-booking versus ranks and hailings – have been blurred with changes in technology.

197. The Scottish Government does not consider it appropriate or proportionate at this time to consider a change to the current structure of a two-tier licensing regime that makes a distinction between taxis and private hire cars. However, the Scottish Government understands that some local licensing authorities can experience difficulty with managing local provision without explicit tools such as an ability to limit numbers of private hire cars or require testing of private hire car drivers.

198. While the Scottish Government recognises that there will be benefits in bringing a more consistent approach to licensing taxis and private hire cars, significant distinctions remain between the two types of service. With the introduction of a power to refuse a private hire car licence on the basis of overprovision, the Scottish Government chose not to extend the provisions already in place in section 10(3) in relation to taxis using an assessment of ‘unmet demand’. Because private hire cars can only be pre-booked ‘demand’ for them cannot be measured in the same way e.g. waiting times. An over-supply of private hire cars manifests differently e.g. private hire cars attempting to pick up passengers without a pre-booking. The Scottish Government intends to provide updated guidance to local licensing authorities to share best practice in developing relevant policies.

199. The Scottish Government would expect local authorities to exhaust other means of controlling the negative impacts of overprovision before considering the use of this power, e.g. increasing enforcement activity against private hire cars attempting to pick up passengers without a pre-booking or ensuring stringent training is undertaken by drivers before being granted a licence to increase professionalism and legal operation.

Widening the scope and tightening the regulation of the licensing regime

200. The main provision in the Bill that will extend the licensing regime for taxis and private hire cars is the changes to section 22 of the 1982 Act which removes the exemption at subsection (c) that applies to ‘any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours’. This effectively brings hire cars that are being used on contract within the licensing regime for taxis and private hire cars. There is a view expressed by representatives from the police, local authorities and the currently licensed trade,
that there are some types of work currently being undertaken under the section 22(c) exemption that are effectively private hire work. This area of licensing has been described as a ‘grey area’ and that there is a need for clarity to ensure the travelling public are benefitting from the same levels of scrutiny of the service as those travelling in taxis and private hire cars.

201. A similar exemption was removed from private hire licensing legislation in England and Wales, coming into effect in January 2008. A ‘Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption’ was published in November 2009. This highlighted a number of lessons learned, particularly around the difficulty in estimating numbers of those who would be affected and the level and quality of guidance provided in advance of the repeal coming into effect. There had also been concerns that a wide variety of activities would be significantly affected by the repeal although this was not generally found to have happened. Taking account of the experience in England and Wales, the removal of the ‘contract exemption’ form the 1982 Act will not come into effect immediately. The Scottish Government has also taken the precaution of adding an order-making power which allows the Scottish Ministers to make regulations specifying further exemptions from taxi and private hire car licensing. This is to help address any issues with the removal of the exemption if it becomes clear there are significant unintended consequences affecting some types of operation.

202. The Scottish Government has had representations from companies currently operating under the exemption who have expressed concern at the impact of being brought within the licensing regime. This was not overwhelmingly against such an extension but explained the nature of their business and the difficulties they would face depending on how the exemption was introduced. The Scottish Government will use the time before this provision comes into effect to ensure all individuals and businesses that will be affected have an opportunity to clarify their own position and local authorities have an opportunity to develop appropriate policies and conditions to incorporate the new licence holders successfully.

Consultation

203. Since the end of 2011, officials have been reviewing information produced on the licensing regime to date and have had fresh discussions with stakeholders, including a public consultation which ran from 28 November 2012 to 15 March 2013. Sixty eight responses were received during the public consultation. In addition, officials attended a number of meetings to discuss the consultation. Representatives at these meetings included, passenger groups (primarily focussed on passengers with disabilities) local authority officials with responsibilities for licensing, police and trade (taxi, private hire and contract hire).

Alternative approaches (and role/place of legislative changes)

204. The provisions included within the Bill are part of a wider package of work that will be undertaken following this legislative process. This includes amendments to secondary legislation and updating guidance. The main elements that will be addressed via secondary legislation are an update to the Booking Office licensing regime and a consideration of mandatory conditions for all taxi and private hire car licence types.

205. The first alternative approach to the provisions presented here would be to do nothing. The 1982 Act provides a broad framework and local licensing authorities have a relatively high
degree of flexibility in how they administer their local licensing regime. The licensing of taxis and private hire cars could continue without changes to primary legislation. However, the changes the Scottish Government is introducing recognise that there are some limitations on how licensing authorities can manage their local regimes.

206. The second alternative approach would be to radically overhaul the 1982 Act. Under this approach the Scottish Government could move to a fundamentally different approach e.g. a national licensing system or change fundamental elements of the current system e.g. moving to single tier licensing (merging taxis and private hire cars). The Scottish Government has stated that the Scottish Government believes the 1982 Act continues to serve the people of Scotland well and allows local authorities sufficient and appropriate flexibility to adapt their local licensing regimes to their local circumstances. This is an important aspect of the licensing regime and the Scottish Government is keen to maintain the elements of the system that work well. Any radical overhaul would also clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, police and ultimately the travelling public.

207. The third alternative approach would be to rely solely on non-legislative activity and changes to secondary legislation. This will have some effect, but the Scottish Government believes it has been proportionate in selecting elements that will have a significant impact without dramatically changing the nature of a system that it believes is working well.

Effects on equal opportunities, human rights, island communities, sustainable development etc. of the taxi and private hire car provisions in the Bill

208. The provisions on taxi and private hire car licensing are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion.

209. The Scottish Government considers that the Bill does not impact on the human rights of those previously exempt from the taxi licensing regime via the exemption in section 22(c) of the 1982 Act. Although those currently exempt under section 22(c) may believe that their human rights are infringed by the application of the existing licensing system, the continued ability to provide transportation services will still be permitted if the conditions set out in the legislation are met. The Bill does not discriminate against individuals and the policy seeks to balance the rights of the individual with public safety of passengers and general crime prevention.

210. The regime does not have specific implications for island communities and the important elements of local flexibility are maintained within the licensing regime. The new provisions are flexibly drafted to allow different local authorities to tailor their approach to suit their needs and circumstances. The Scottish Government does not anticipate any implications for sustainable development.

METAL DEALERS

Background

211. Metal theft has been a growing problem in recent years. This has been driven in large part by rising prices for scrap metal in international commodity markets. There is therefore a
correlation between rising international levels of construction and the incentive for criminality in Scotland. This has meant that whilst metal theft offences were relatively low in line with the economic slowdown of 2008-09, they have increased dramatically as the world economy has picked up.

212. Metal thefts have manifested in a variety of different forms ranging from low level opportunistic offences through to serious organised crime crossing international boundaries. Offences at the lower level have included theft of brass plaques and door knockers and removal of street furniture such as signage and benches. Rising up the scale there have been numerous examples of roof lead being taken from public buildings such as churches and schools and plant machinery being taken from hospitals. At the higher end there have been large scale thefts of miles of railway cable and electricity sub-stations that have caused significant disruption. There has also been an organised crime dimension with scrap metal appearing in container transports destined for abroad.

213. An important feature of metal theft is that the consequences of a metal theft are out of all proportion to the scrap value of the metal stolen. The costs of metal theft include the cost of replacement and repair, wider economic costs through delay and disruption to business and members of the public and in some cases there are emotional costs. At the extreme metal thefts have resulted in loss of life and serious injury.

214. For example the costs of a cable theft from a railway include delayed commuters being unable to reach places of work. The costs of attacks on the electricity networks have resulted in homes and businesses losing electricity for substantial periods. Loss of telephony and broadband services has a cost to business and causes real inconvenience to members of the public. There has also been widespread outrage caused by the theft of war memorial plaques and damage to churches and other historic buildings.

215. Particular examples include:

- Thieves cut power to 280 homes in Greenock and caused four house fires after stealing copper wire worth about £40 from an electricity substation. The wire theft from substation led to a dangerous power surge in some homes. Four fires have been reported, with one family having to flee their home. (BBC – 19 November 2013);

- In Milnathort bronze war memorial plaques were created as part of a £13,000 restoration of the memorial. They were stolen from the stone structure within hours of protective fencing being removed for its official unveiling. (BBC – 5 August 2013);

- Three separate incidents of cable theft on the same seven mile section of line between Huntly and Kennethmont on the Aberdeen to Inverness route. Engineers replaced over a mile of cable after it was stolen on three successive evenings from the Aberdeen to Inverness railway line. The theft caused the cancellation of trains between Inverurie and Huntly for a period of days (BBC – 31 July 2013);

- St Mary’s cathedral in Edinburgh suffered nine attacks on its roof in the space of two and a half years resulting in £40,000 of costs. (Scotsman – 10 April 2013);
• Since 2011 Scotland has seen 605 attacks on electricity sub-stations. The average direct cost of each attack is £2500 (labour and material costs) (Industry briefing paper 2014).

216. Because the costs of metal theft fall in such a widespread fashion covering both direct and indirect costs they are extremely difficult to measure. As explained above the costs go beyond the cost of replacing stolen metal and making good repairs, they extend to the costs of delayed commuters and lost services. Clearly the cost to a community of the loss of a war memorial or a local landmark such as a statue cannot adequately be expressed in monetary terms.

217. An earlier consultation by the Scottish Government on metal dealer regulation relied upon UK wide figures to estimate the cost to the economy of metal theft. A report commissioned by the Association of Chief Police Officers in 2010 estimated the UK wide costs at £770 million. A study by Deloittes posited a lower figure of £220 - £260 million. This suggested about £100 million of direct costs to conduct repair and replacements and a further £120 million to £160 million of indirect costs. A more recent study has been conducted by the Association of Chief Police Officers in Scotland and has for the first time looked at the situation specifically in Scotland. It estimated the value of metal theft in Scotland at just under £11 million over a two year period from 2011-2013. These figures relate purely to the value of the metal stolen and do not look at the indirect costs and collateral damage of these thefts. The true costs are therefore far higher.

218. Since metal theft emerged as a growing problem a variety of measures have been taken to tackle the problem. A dedicated task force has been established by The British Transport Police with a focus on visiting metal dealers and roadside stops amongst other activity.

219. The Crown Office and Procurator Fiscal Service has established a tougher prosecution policy which means there will be a strong presumption for prosecution of offenders at Sheriff Court level; the social and cultural impact of metal theft will be considered in addition to the financial impact; and victim impact statements will be submitted to the Court.

220. The Scottish Environment Protection Agency has been involved in action to ensure compliance with all aspects of environmental legislation with regard to the transportation of waste metal and its processing. This included possession of appropriate Waste Carriers Registrations, Scrap Metal Dealers licensing/ exemptions and delivering the expected duty of care.

221. A national metal theft working group has been established involving key players charged with reducing metal theft as well as frequent victims of metal theft such as infrastructure companies. The group has co-ordinated action against metal theft as well as sharing best practice in efforts to prevent and detect the crime by, for example, better labelling of metal, smart water technology, improved security etc..

222. In spite of this activity the Scottish Government is convinced that legislation is required to strengthen the current licensing regime for metal dealers that can no longer be regarded as fit for purpose.
Policy objective

223. The Scottish Government believes that efforts to reduce metal theft need to be supported by legislative action. Metal Dealers provide a valuable service to the community by providing a means for unwanted metal to be recycled into a useful raw material for manufacturers. The industry is a significant employer and is valued by industry estimates at £470 million. Nevertheless the scrap metal industry does provide a route by which a metal thief can convert their stolen goods into cash.

224. The industry has been regulated for over 30 years under the 1982 Act. A review of this legislation is now long overdue to ensure appropriate, robust and effective regulation of metal dealers and to close down the trade in stolen metal. The Bill therefore includes a number of proposals aimed at modernising the licensing regime and ensuring better oversight of dealers, improved record keeping and reliable identification of those selling metal for scrap. It also proposes that selling metal in exchange for cash would be prohibited so as to ensure an auditable, traceable transaction is established. These proposals support the aims of tackling areas of weakness in the current licensing scheme, providing a tighter licensing regime with stronger inspection and scrutiny of metal dealers and dealing with the perception that stealing metal and selling it to a scrap metal dealer is a crime that is unlikely to be detected. Improving detection and deterring thefts are at the heart of the proposals.

225. The Bill proposes specific steps to improve licensing arrangements; in particular:

- The removal of an exemption warrant system that allowed a metal dealer with a larger turnover to not be subjected to licensing requirements and therefore to be operating without appropriate levels of scrutiny;
- The limiting of payment for metal by metal dealers and itinerant metal dealers to prescribed methods i.e. bank transfer or cheque. By removing the option of paying in cash it will be ensured that a metal thief is not attracted by the possibility of being paid in an anonymous fashion. Instead, transactions will be traceable and auditable with a proper paper trail, thus deterring theft and increasing chances of detection;
- Improved standards for identification of customers by ensuring that proper ID is seen and recorded;
- Improved standards of record keeping by specifying the records that must be retained for inspection. These include details of the customer, details of the metal being bought or sold and documentation supporting the cashless payment;
- The removal of a mandatory requirement that dealers should not process metal for 48 hours after receiving it. It is felt that this step is impractical for many dealers and should not be a compulsory requirement (though local licensing could impose it case by case).

Consultation

226. An initial consultation on a limited proposal to increase the number of dealers falling into the licensing regime was conducted between November 2011 and February 2012. This consultation concluded that a wider package of proposals was required. A further consultation
was conducted between April and July 2013 and included many of the proposals that are now being taken forward by the Bill.

227. The consultation showed widespread support for a toughening of the licensing regime for metal dealers. This support derived from local authority regulators, the Police and many of the organisations and businesses that find themselves regular victims of metal theft.

228. Dealers were for the most part accepting of the need for more effective regulation but were keen to ensure that their businesses were not damaged by excessive or inappropriate requirements.

**Effects on equal opportunities, human rights, island communities, local government and sustainable development etc. of the metal dealers provisions in the Bill**

229. The provisions on the metal dealers licensing regime are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion.

230. The Scottish Government considers that the Bill does not impact on the human rights of those previously exempt from the metal dealer licensing regime via the exemption provided in section 29 of the 1982 Act. Although those currently exempt under section 29 may believe that their human rights are infringed by the application of the existing licensing system, the continued ability to carry on the business of a metal dealer will still be permitted if the conditions set out in the legislation are met. The Bill does not discriminate against individuals and the policy seeks to balance the rights of the individual with public interest argument to minimise the potential for selling illegally obtained metal in order to address the harm caused by instances of metal theft.

231. The regime has no specific implications for island communities or sustainable development.

**PUBLIC ENTERTAINMENT VENUES**

**Background**

232. Licensing arrangements should be proportionate and appropriate to what is being regulated. In light of that the Scottish Government believes that less onerous licensing requirements for theatres may in some circumstances be appropriate.

233. Currently, theatres are licensed under the Theatres Act 1968. This is a mandatory licence that requires all premises at which public performances of a play are staged to be hold a licence. No allowance is made for the size of the premises or the potential audience. This contrasts with other forms of public entertainment which are licensed under the public entertainment licensing regime under the 1982 Act. This is a flexible system that allows local licensing authorities to determine in a local context how licensing should be regulated in their area. Authorities might, for example, use the current system to determine that concerts should require a public entertainment licence but not concerts with an audience of under 20 people.
By bringing theatres under the public entertainment licensing arrangements greater flexibility will be allowed. It will be open to a local licensing authority to exclude premises offering plays only to very small audiences from the licensing requirement.

It also allows greater consistency and legislative clarity by bringing theatres within the same public entertainment licensing arrangements as other forms of the arts such as concerts, comedy shows etc..

**Policy objective**

The Scottish Government proposes to repeal the licensing requirement for theatre under the Theatres Act 1968. It will therefore be possible to allow local licensing authorities to flexibly licence plays under local licensing requirements.

In addition the Bill replicates the anti-censorship provisions contained within the 1968 Act in the 1982 Act.

**Consultation**

Informal discussions have been held with those representing licensing authorities and arts groups.

**Alternative approaches**

It would be possible to continue with existing arrangements but that would not deliver the benefits of greater flexibility that will be delivered by the bill proposals.

The provisions on the public entertainment licensing regime are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion.

The Scottish Government considers that the Bill does not impact on the human rights of current theatre licence holders. Theatre licences have a maximum duration of one year. Ancillary provisions will provide that those in possession of a theatre licence will be allowed to carry out performances under that licence until such point as it expires. Thereafter theatres will be regulated through the public entertainment licensing regime in the 1982 Act.

The regime has no specific implications for island communities and the important elements of local flexibility are maintained within the licensing regime. There are no effects on sustainable development.
SEXUAL ENTERTAINMENT VENUES

Background

243. The Scottish Government is determined that appropriate licensing arrangements are put in place to regulate venues offering sexual entertainment such as lap dancing. Existing arrangements are no longer effective and our preferred way forward is to establish a dedicated licensing regime specifically for sexual entertainment venues.

244. It has long been recognised that licensing is required in this area. There are also concerns that the nature of sexual entertainment may associate with risk of criminality. As with other forms of public entertainment there are also risks of adverse impacts on neighbours and general disorder. There is also concern regarding the conditions in sexual entertainment venues. Evidence points to specific issues such as financial exploitation of dancers through too many dancers paying a fee to organisers but then finding not enough customers are attending to allow a return and physical issues such as inadequate changing areas.

245. Additionally, the Scottish Government’s definition of violence against women includes commercial sexual exploitation which encompasses the activities covered by this licensing regime. Local licensing authorities are best placed to reflect the views of the communities they serve and determine whether sexual entertainment establishments should be authorised and under what conditions. Where a venue is approved, licensing conditions and enforcement should assist in protecting the safety and wellbeing of both staff and customers and the wider public.

246. There has been a long history of attempts to improve regulation in this area. In 2005, the then Scottish Executive set up a Working Group on Adult Entertainment to review the scope and impact of adult entertainment activity and make recommendations to Ministers on the way forward. This followed concerns expressed about the lack of controls on adult entertainment activity. The Group made a number of recommendations aimed at improving standards in the industry, ensuring the safety of performers and customers, regulating the impact on the locality, improving local accountability and control and ensuring that there was no inadvertent impact on artistic freedoms. The full recommendations and post consultation work can be found in the Group’s reports:

http://www.scotland.gov.uk/Publications/2006/04/24135036/0

http://www.scotland.gov.uk/Publications/2006/04/24111914/0

247. At the time, it was felt that as sexual entertainment venues also sold alcohol and therefore required alcohol licenses, it was best left to local Licensing Boards to regulate adult entertainment via the licensing system of alcohol. It would be up to local boards to consider the situation in their locality and set policies accordingly. They would have the discretion to use the recommendations of the Working Group as a template.

248. A specific system of licensing for sexual entertainment was considered by the Scottish Parliament in 2010 as part of the Criminal Justice and Licensing (Scotland) Act 2010. These proposals largely mirrored those that had been introduced in England and Wales by the Policing and Crime Act 2009. Whilst the Scottish Government supported such a move, the Scottish
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Parliament rejected these proposals due to concerns around the effect of operating a dual licensing system with sexual entertainment being regulated under a regime of its own as well as under the alcohol licensing system. In addition, there was concern that the proposals were introduced late in the Bill process and had not had the opportunity for scrutiny.

249. However, the regulatory context has changed since 2010. Recent court judgements (see Brightcrew Ltd v The City of Glasgow Licensing Board [2011] ScotCS CSIH_46 (12 July 2011)) have called into question the ability of Licensing Boards to set conditions that stray from a tight focus on the sale of alcohol. This leaves uncertainty in the regulation of sexual entertainment, with many Licensing Boards believing that the alcohol licensing system is not, as currently constructed, able to provide adequate control, and that there is no effective alternative in place.

250. The view of the Scottish Government is that a specific licensing regime for sexual entertainment venues (of which the Scottish Government believes there are around 20 in Scotland) is the best solution for future regulation of the industry. It removes uncertainty around attempting to regulate under alcohol licensing matters that go beyond the remit of that scheme. It offers local licensing authorities the ability to consider local circumstances and develop approaches appropriate to those circumstances. This would include the ability to set a desired number of sexual entertainment premises for their area (and for that number to be zero). It would also include the ability to set conditions that control the conduct of activities on premises in their area.

Policy objective

251. The proposals put forward by the Scottish Government create a new licensing regime for sexual entertainment venues. The new regime falls into the civic licensing arrangements under the 1982 Act and uses in part the architecture of existing provisions for sex shops.

252. The provisions require a licence for premises operated as sexual entertainment venues for financial gain. Definition is provided as to what is meant by sexual entertainment both to capture what is intended to be licensed but to avoid licensing what is not. Definition is also provided for “nudity” to avoid the use of minimal or transparent garments to avoid circumvention of the licensing intent.

253. The proposals also allow for greater local control over the provision of sexual entertainment venues in an area. There are provisions for a local licensing authority to set an appropriate number of sexual entertainment venues for their area (and for that number to be zero). It would be grounds to refuse an application if the number of venues in an area or locality already meets the appropriate number.

254. Whilst it is expected that the licensing scheme will encompass lap dancing venues, depending upon the exact nature of the activities taking place a number of other activities could be included e.g. strip shows, peep shows, live sex shows. Powers are taken to specify by order exceptions from the licensing requirement. These could be used if it transpires that some unanticipated activity is falling within the licensing ambit.
255. It is intended that any premises that holds activities falling within licensing on less than four occasions in a twelve month period should not be licensed. Whilst the number is arbitrary, it is not intended that very occasional activity should be licensed e.g. a pub which allows a birthday party with some sort of performance. Whilst there is no distinction in the activity, frequency makes a qualitative difference and to not allow a de minimis level of activity would significantly increase the scope of the scheme. The de minimis level has not been set so high so as to allow a loophole to emerge whereby frequent activity is unlicensed.

Consultation

256. A consultation on legislative proposals was conducted between April and September 2013. The consultation attracted a significant response, albeit 90% of the responders were near identical responses sent as part of an organised campaign of opposition to a licensing scheme. Whilst the responders did not identify themselves it can be inferred that they were from those who either work in the industry or those who are customers.

257. Amongst the other responders (local authorities, Police and violence against women and gender groups principally) there was wide support for the principle of a new licensing regime.

258. Concern was raised by some arts organisations about possible inadvertent impact on their activities.

Alternative approaches

259. It would be possible to continue to regulate sexual entertainment venues through existing alcohol licensing arrangements. As discussed above, however, this no longer offers an effective means of regulation. Licensing Boards are too circumscribed in their ability to set conditions or to refuse licence applications where they deem it necessary.

Effects on equal opportunities, human rights, island communities, and sustainable development etc. of the sexual entertainment provisions in the Bill

260. The provisions on licensing of sexual entertainment are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion.

261. The Scottish Government considers that the Bill does not impact on the human rights of those who operate sexual entertainment venues. Although current owners of sexual entertainment venues may believe that there human rights are infringed by the introduction of a specific entertainment venue licence. Where a local authority decides that the licensing of sexual entertainment venues should apply to their area, the continued ability to carry on the business of a sexual entertainment venue will still be permitted if the conditions set out in the legislation are met.

262. There is however a possibility that a local authority will decide that whilst licensing of sexual entertainment venues should apply to their area, they may also determine that the appropriate number of said venues for their area is less than the number present (or zero). In such circumstances, an existing venue may not be granted a licence. The Scottish Government
considers that sexual entertainment venue legislative provisions are capable of being compliant with the convention rights on the basis of being legitimate means of reducing serious criminality. However, the local authority in implementing the provisions shall have to ensure that they give effect to the provisions in a manner likewise complaint with the convention rights and do not put in place a blanket ban or rigid policies which take no consideration of the merits of each case.

263. The Bill does not discriminate against individuals and the policy seeks to balance the rights of the individual with public interest of reducing serious organised crime.

264. The regime has no specific implications for island communities and the important elements of local flexibility are maintained within the licensing regime. There are no effects on sustainable development. Whilst the proposals are not discriminatory per se there is a clear gender based impact given the overwhelming majority of those employed in the industry are female.

MISCELLANEOUS AND GENERAL

Background

265. In addition to the amendments to specific regimes within the 1982 Act, there are additional provisions that will have effect across the licensing Parts of the 1982 Act and aim to create greater consistency and clarity in the licensing regime.

Policy objectives

Creating greater consistency

266. The Bill includes the power for the Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings. This power will provide Ministers with the ability, if considered necessary and appropriate, to bring a level of consistency in the way hearings are conducted both across local licensing authorities and across civic and alcohol regimes. There are some similarities in the needs of participants in hearing processes across alcohol and civic regimes. If any issues are being resolved in relation to hearings under alcohol licensing, using the similar power, it would be helpful to be able to transfer any useful practice across to the civic regimes.

267. The Bill creates a new role of ‘Civic Licensing Standards Officer’ (CLSO). The purpose of this is to provide a mandatory element of capacity to check compliance and provide guidance within the civic regimes. The provisions introduce a statutory requirement for a new role with the same powers and duties as an ‘authorised officer’ within the 1982 Act but with specific functions in relation to providing information and guidance, checking compliance, providing mediation and taking appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act. This is modelled on the successful Licensing Standards Officer (LSO) role within the 2005 Act. The Scottish Government is aware that many local licensing authorities already have in place high quality support of this kind and it is not intended to not disrupt good practice where it is happening.
Providing clarity

268. Where it has not already been provided for, the Bill will provide for the deemed granting of a licence where the Local Authority has not either decided on an application or sought an extension from the sheriff within a set period. It is already the case that civic licensing decisions need to be reached within a period of nine months, with three months being allowed for a licensing authority to consider an application and a further 6 months being allowed for a final decision to be reached. If a decision is not reached then the application is deemed to have been granted. This procedure enables an applicant to be confident that a decision making process cannot be allowed to drag on indefinitely. The Bill proposes extending the deemed authorisation procedure beyond applications to other matter such as applications for variations and temporary licences.

269. The Scottish Government believes that businesses and individuals should be able to interact with licensing authorities in the way that is most efficient and convenient. For most people, that means being able to submit applications and other communications electronically. Whilst many licensing authorities already accept applications in that fashion, the Bill takes the opportunity to make clear that electronic applications are acceptable.

Consultation

270. Questions were asked in relation to the provisions on hearings and CLSOs in the consultation to proposed changes to the licensing regime for taxi and private hire cars. Additionally, the Scottish Government has had informal discussion with stakeholders, primarily with representatives from local licensing authorities in order to refine our understanding of the impact these provisions may have.

Alternative approaches

271. There were some proposals consulted on that either did not receive a great deal of support and/or were not considered to have a sufficiently significant impact to justify legislative change. These include: the introduction of licensing objectives to the 1982 Act; a change to the structure of the consideration of ‘fit and proper’ in a licence application; and the introduction of a time limit within which police should provide information in relation to an application.

272. An alternative approach to the selected provisions would be to do nothing and make no changes to the primary legislation. The 1982 Act provides a broad framework and local licensing authorities have a relatively high degree of flexibility in how they administer their local licensing regime. This is a key feature of the 1982 Act. However, this would mean the Scottish Government would be unable to bring any consistency or clarity to significant elements of the Act where it has received representation that this would be beneficial or indeed necessary in order to ensure compliance with the EU Services Directive. In relation to hearings, it is seen as a proportionate response to provide an order-making power to enable us to make regulations at an appropriate time after further engagement rather than provide detailed prescription at this point.

273. Another alternative approach would be to provide more prescriptive requirements e.g. in relation to the CLSO role. However, the Scottish Government recognises that, in the case of
This document relates to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

CLSOs, local authorities require a reasonable degree of flexibility to ensure they can respond in a way that best suits their circumstances.

Effects on equal opportunities, human rights, island communities, sustainable development etc. of miscellaneous and general provisions in the Bill

274. The provisions are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion.

275. The Scottish Government considers that the introduction of CLSOs in the Bill does not infringe on the human rights of those who operate in the areas subject to a licensing regime provided in Part 2 & 3 of the 1982 Act. The powers of entry, inspection, testing of vehicles, search, seizure and forfeiture conferred on CLSOs, are already conferred on authorised officers of the licensing authority in the 1982 Act.

276. The Scottish Government considers that the addition of CLSOs to exercise these existing functions does not raise any additional questions regarding an interference in the possessions or right to respect for private and family life of those who operate in the areas subject to a licensing regime provided in Part 2 & 3 of the 1982 Act. The Bill does not discriminate against individuals and the policy seeks to balance the rights of the individual with the public interest argument of ensuring that all those who work in the areas subject to a licensing regime provided in Part 2 & 3 of the 1982 Act, would be subject to the enforcement provisions provided by existing authorised officers and by the new CLSOs.

277. The regime has no specific implications for island communities and the important elements of local flexibility are maintained within the licensing regime. There are no effects on sustainable development.
This document relates to the Air Weapons and Licensing Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

AIR WEAPONS AND LICENSING (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Air Weapons and Licensing (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of the Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by Parliament.

Outline of Bill provisions

3. The purpose of Part 1 of the Air Weapons and Licensing (Scotland) Bill is to protect public safety by creating a new licensing regime for air weapons. Parts 2 and 3 of the Bill aim to strengthen and 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. A number of the provisions in Parts 2 and 3 are directed at improving the efficiency of the operation of the licensing regimes contributing to the creation of a better regulatory environment for business.

4. 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 key provisions include:

- Giving local authorities the power to regulate sexual entertainment venues in their areas so that both performers and customers benefit from a safe, regulated environment;

- Closing a loophole allowing adults to supply under-18s with alcohol for consumption in a public place;

- Extending the breadth of information available to Licensing Boards to enable them to make better alcohol licensing decisions;
This document relates to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

- 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 overprovision 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.

**Rationale for subordinate legislation**

5. In deciding whether provision should be set out in subordinate legislation rather than on the face of the Bill, the Scottish Government has considered the need to:

- Strike the right balance between the importance of the issue and providing sufficient flexibility to respond to changing circumstances without the need for primary legislation;

- Anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament;

- Make proper use of valuable parliamentary time;

- Allow detailed administrative arrangements to be kept up to date within the basic structures set out in the Bill; and

- Take account of the likely frequency of amendment.

6. The relevant provisions are described in detail below. For each provision, the memorandum sets out:

- The person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;

- Why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and

- The parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.
DELEGATED POWERS

Part 1 – Air Weapons

Section 2(4) – Power to add or modify exemptions

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative Procedure

Provision

7. Section 2 makes it an offence for a person to use, possess, purchase or acquire an air weapon (as defined in section 1) without holding a valid air weapon certificate. Subsection (3) introduces schedule 1, which sets out a number of exemptions from the requirement to hold an air weapon certificate, and certain other offences created by the Part.

8. Subsection (4) provides the Scottish Ministers with the power to add, remove or modify exemptions in schedule 1 by regulations.

Reason for Taking Power

9. The list of exemptions from the requirement to hold an air weapon certificate (as well as certain other offences) in schedule 1 is drawn from a number of sources, primarily existing UK firearms legislation, as well as views put forward by members of the Scottish Firearms Consultative Panel and consultation respondents regarding suitable air weapon use. The Scottish Government considers that the schedule currently captures all of the detailed situations where air weapon possession and use without a certificate should be permissible. However, it is possible that the list may require to be amended in the future, for example to reflect changing practices, new technologies or events in general. It is considered appropriate to have the flexibility to make any such changes – which are likely to be detailed in nature and could be needed quickly – by subordinate legislation, rather than requiring further primary legislation.

Reason for Choice of Procedure

10. Amending the schedule of exemptions would change the provisions of the Act as agreed by Parliament and, separately, might potentially have significant impacts on certain individuals or businesses (for example, by criminalising certain activities if an air weapon certificate is not held). The Scottish Government therefore considers it appropriate that changes be subject to the affirmative procedure, to ensure that full consideration can be given by Parliament to them and their potential impact.
Section 8(3) – Power to modify duration of air weapon certificate

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by Scottish Statutory Instrument  
Parliamentary procedure: Affirmative Procedure

Provision

11. Section 8, subsection (1)(b) sets the normal duration of air weapon certificates at 5 years, except in the case of a certificate issued to a 14-17 year old, where subsection (1)(a) provides that the certificate expires on the holder’s 18th birthday.

12. Subsection (3) provides Scottish Ministers with the power to change the 5 year duration of air weapon certificates in subsection (1)(b).

Reason for Taking Power

13. The 5 year duration for most air weapon certificates matches current arrangements for firearm and shotgun certificates issued under the 1968 Act, which remain reserved to Westminster. It is considered appropriate to have the flexibility to change this duration to mirror future changes to the arrangements for firearm or shotgun certificates by the Westminster Government or to reflect changing policy, for example following devolution of all firearms powers to the Scottish Parliament. This would ensure that all types of certificate can continue to be issued co-terminously.

Reason for Choice of Procedure

14. It is considered appropriate that such an amendment be subject to the affirmative procedure, to ensure that full consideration can be given to the potential impact and because any change would amend the text of the Act directly.

Section 20(3) – Power to modify duration of approval of an air weapon club

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by Scottish Statutory Instrument  
Parliamentary procedure: Affirmative Procedure

Provision

15. Section 20, subsection (1) sets the duration of air weapon club approvals at 6 years. The Chief Constable may approve an air weapon club and in doing so impose conditions. Such approval allows members of these clubs to benefit from the exemption in paragraph 1 of schedule 1 and allow them to put forward approved club membership as evidence that they meet the good reason test in section 5(1)(c).
16. Subsection (3) provides Scottish Ministers with the power to amend subsection (1) to specify a different period.

**Reason for Taking Power**

17. As with certificate durations set out above, the 6 year duration for air weapon club approvals matches current arrangements for rifle club approvals under the Firearms (Amendment) Act 1988, which remain reserved to Westminster. Again, the Scottish Government considers it is appropriate to have the flexibility to mirror changes made by the Westminster Government, or to reflect changing policy, for example following devolution of all firearms powers to the Scottish Parliament. This would ensure that approvals for rifle clubs and air weapon clubs can continue to be issued co-terminously.

**Reason for Choice of Procedure**

18. It is considered appropriate that such an amendment be subject to the affirmative procedure, to ensure that full consideration can be given to the potential impact and because any change would amend the text of the Act directly.

**Section 36(1) – Power to prescribe fees**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations made by Scottish Statutory Instrument  
**Parliamentary procedure:** Negative Procedure

**Provision**

19. Section 36 allows Scottish Ministers to set out fees for various aspects of the air weapon licensing regime in secondary legislation.

**Reason for Taking Power**

20. The Chief Constable will be able to charge a fee for a wide range of functions relating to the administration of the air weapon licensing regime, including considering an application for an air weapon certificate or permit, varying or renewing a certificate that has previously been granted, and replacing lost or damaged certificates. Fees will also be different depending on individual circumstances: for example, a reduced fee for an air weapon certificate that is co-terminous with a firearm or shotgun certificate; or a reduced fee for a short-term air weapon certificate granted to an under-18 that expires on their 18th birthday. In order to allow sufficient flexibility to take account of future changes in practice and cost, it is considered appropriate that the detailed tariff of fees be set out in secondary legislation, rather than on the face of the Bill.

21. Separately, it will be necessary from time to time to adjust this tariff of fees, for example in line with inflation, to maintain consistency with wider firearm and shotgun licensing fees (which are currently set by the Westminster Government), or to reflect other changes to the air weapon licensing regime such as the adoption of new licensing processes.
Reason for Choice of Procedure

22. The setting and adjustment of fees in relation to the air weapon licensing regime is likely to reflect, directly, practical factors such as inflation and police operational costs. The fees are also likely to be detailed and technical in subject-matter. Regulations setting fees are typically made by negative procedure, e.g. fees under section 25 of the Marine (Scotland) Act 2010, section 136 of the Licensing (Scotland) Act 2005, Schedule 10 to the Gambling Act 2005 and section 43 of the Firearms Act 1968. It is therefore considered appropriate that the negative procedure be used, to allow for speed and flexibility and to provide the balance required between scrutiny and the use of valuable parliamentary resources.

Section 37(1) – Power to make further provision

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

Provision

23. Section 37 allows Scottish Ministers to make regulations for the purposes of the Part and in particular for setting out detailed provisions regarding the application and grant process for air weapon certificates, police permits, visitor permits, event permits, or club approvals.

Reason for Taking Power

24. This is a broadly framed power to allow the administrative minutiae of the air weapons licensing regime to be set out in secondary legislation. This will include, for example, setting out application forms for air weapon certificates, permits, and air weapon club approvals, as well as setting out the standard format that these certificates, permits and approvals must take if granted. Regulations may also set out details such as mandatory conditions to be attached to all air weapon certificates, permits and club approvals, and information that must accompany applications (e.g. photographs).

25. Because these regulations will contain a considerable level of administrative detail, it is considered appropriate that they be dealt with through secondary legislation rather than on the face of the Bill. It may also be necessary to amend the administrative arrangements set out in the regulations from time to time, which is more efficiently achieved through secondary legislation.

Choice of Procedure

26. As with delegated powers for air weapon licensing fees, air weapon licensing regulations are likely to be detailed and administrative in nature, and may require to be amended periodically and potentially at short notice. It is therefore considered appropriate that the negative procedure be used so as to achieve the best balance between use of parliamentary time on the one hand and the nature of the content of the regulations on the other.
Part 2 – Alcohol

Section 55 – Power to make provision about annual financial reports

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative procedure - where regulations contain provisions which amend section 9A(3). Negative procedure – where the regulations do not amend the primary legislation.

Provision

27. Section 55 inserts section 9A into the 2005 Act requiring Licensing Boards to produce an annual financial report on their alcohol licensing activities.

28. Section 9A(6) gives Scottish Ministers a regulation making power to make further provision about reports under this section, including provision about the form and content of reports; further details on what constitutes relevant income and relevant expenditure; and the publication of reports.

Reason for Taking Power

29. Rather than set out a definitive list of what can be included in the annual financial report on the face of the Bill, it is considered appropriate to provide such detail in subordinate legislation. This will allow Scottish Ministers the flexibility to modify the details of such financial reports without amending primary legislation. However, it is also recognised that there might be situations where it is appropriate to adjust the definitions in section 9A itself and accordingly the provision caters for that possibility.

Choice of Procedure

30. Where the regulations will amend the text of primary legislation it is considered appropriate to allow Parliament to have a greater level of scrutiny as afforded by affirmative procedure. However where the regulations are merely technical requiring publication of the report or specifying the format of such, then it is considered that such will be of limited effect and impact and therefore negative procedure would provide the appropriate balance between scrutiny and the use of valuable parliamentary resources.

Section 59 – Extension of powers to make provision about forms of applications etc.

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

Provision

31. Section 59 slightly expands the regulation making power already provided for at section 134 of the 2005 Act in relation to the form etc. of applications, proposals and notices to also
include other communications. For example, Scottish Ministers may make regulations expressly facilitating the use of email or other internet based systems for any type of application, notice, proposal or communication required under the 2005 Act.

Reason for Taking Power

32. Section 134 of the 2005 Act allows the Scottish Ministers to make regulations in respect of applications, proposals and notices under the Act. This has been broadened slightly to also include ‘other communications required’ to enable the Scottish Ministers to make regulations to provide explicit compliance with the requirements of the EU Services Directive in relation to the EU Services Directive, Article 8, ‘Procedures by electronic means’, namely that all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means.

Choice of Procedure

33. This regulation making power is subject to negative procedure as per section 146(4) of the 2005 Act. The changes made to its breadth are not such that the procedure needs to be revisited. As these regulations relate to practical and administrative matters, the negative procedure continues to provide the appropriate balance of scrutiny and use of parliamentary resource.

Part 3 – Civic Licensing

Taxis and Private Hire Cars

Section 62 – Power to specify exemptions to the licensing regime for taxis and private hire cars

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

Provision

34. Section 62 amends section 22 of the 1982 Act to remove the exemption currently provided in paragraph (c) which applies to ‘any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours’. This amendment brings vehicles that are being used on contract in this manner into the licensing regime for taxis and private hire cars.

35. Subsection (4) inserts section 22(2) into the 1982 Act to provide the Scottish Ministers with the power to specify by regulations further exemptions from taxi and private hire car licensing regime.
Reason for Taking Power

36. By removing the ‘contract exemption’ from taxi and private hire car licensing, the Bill is widening the scope of types of operation that could be covered by taxi and private hire car licensing. England and Wales repealed a similar exemption in 2008 and a review of that process highlighted as one of the unintended consequences a degree of confusion in what should be covered by the licensing regime (following the repeal). The Scottish Government intends to address this prior to commencement with clear guidance. However, if it transpires that types of service not intended to be covered are routinely being swept up in taxi and private hire car licensing (with the removal of this exemption), this regulation making power will be used to specifically exempt them.

37. An example would be where a service is providing some kind of transport as an ancillary part of the wider service where the transport aspect is not the main focus. It is considered appropriate to have the flexibility to make any such additional exemptions by subordinate legislation, rather than requiring further primary legislation. Additional exemptions may require to be made quickly in order to provide that individuals or businesses not intended to be covered by the licensing regime are not inadvertently faced with the requirements of complying with the licensing regime.

Choice of Procedure

38. The regulations are subject to negative procedure which is considered appropriate. It is not intended that the regulations will change the provisions of the Act. Instead they will provide the flexibility to provide additional exemptions to the taxi and private hire car licensing regime as a need to do so is identified. It is anticipated that further exemptions from licensing which may be provided by this regulation making power are unlikely to be disputed and consequently it should not be necessary to require a debate on each occasion that it is used. As such, it is considered that the use of negative procedure would be appropriate here bearing in mind the balance required between scrutiny and the use of valuable parliamentary resources.

Metal Dealers

Section 65 – Power to make provision about acceptable forms of payment for metal

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative Procedure

Provision

39. Section 65 creates a new section 33A in the 1982 Act. This specifies acceptable forms of payment that may be accepted by a metal dealer or itinerant metal dealer. The acceptable forms of payment are a cheque or electronic transfer.

40. Section 33A(7) provides Scottish Ministers the power by regulation to add, amend or remove forms of payment that are acceptable. It also enables the Scottish Ministers to make appropriate consequential modifications to the record keeping requirements specified in section 33B(3).

Reason for Taking Power

41. The purpose of section 33A is to specify the types of payment methods permitted for the purchase of metal in order to make metal transactions more traceable and provide an effective audit trail. The overall intention is to combat instances of metal theft. However, methods of payment are subject to change due to rapidly changing technology and consumer habits. It is considered appropriate to have the flexibility to add to, amend or remove the specified payment methods by subordinate legislation, rather than requiring further primary legislation. There may be a need to respond quickly if currently specified methods of payment no longer achieve the overall intention of section 33A and/or where new methods of payment provide the appropriate level of traceability and audit. This will ensure the legislation can keep pace with these types of change and ensures metal dealers and itinerant metal dealers can keep pace with appropriate new technology.

Choice of Procedure

42. Amending the new section 33A(2) would change the provisions of the Act as agreed by Parliament and, separately, might potentially have significant impacts on certain individuals or businesses. The Scottish Government therefore considers it appropriate that changes be subject to the affirmative procedure, to ensure that full consideration can be given by Parliament to them and their potential impact.

Section 66 – Power to make provision about metal dealers’ records

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

 Provision

43. Section 66 amends the record keeping requirements for metal dealers and itinerant metal dealers. A new section 33B is inserted into the 1982 Act and provides the details that must be recorded by a dealer when metal is acquired or disposed of and supports the separate provisions stipulating acceptable forms of payment by requiring dealers to keep copies of documentation evidencing the form of payment used.

44. Subsection (6) of section 33B provides the Scottish Ministers with the power to amend the record keeping requirement by regulations.
Reason for Taking Power

45. The power allows for the requirement of additional information to be recorded by metal dealers or itinerant metal dealers. This could be used, for example, to specify particular forms of identification as being acceptable. It is considered appropriate to have the flexibility to make any such additional requirements by subordinate legislation, rather than requiring further primary legislation.

Choice of Procedure

46. The regulations are subject to negative procedure which is considered appropriate. It is not intended that the regulations will change the provisions of the Act. Instead they will provide the flexibility to require additional information to be recorded by metal dealers and itinerant metal dealers. It is not anticipated that this additional information, such as specification for acceptable forms of identification, will be controversial and consequently it should not be necessary to require a debate on each occasion that it is used. As such, it is considered that the use of negative procedure would be appropriate here bearing in mind the balance required between scrutiny and the use of valuable parliamentary resources.

Sexual Entertainment Venues

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

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative Procedure

Provision

47. Section 68 creates a new licensing regime for sexual entertainment venues by inserting section 45A into the 1982 Act. Section 45A establishes what is meant by a sexual entertainment venue and provides definitions of ‘audience’, ‘financial gain’, ‘organiser’, ‘premises’, ’sexual entertainment’ itself and ‘display of nudity’.

48. Sex shops are specifically identified as not being sexual entertainment venues at section 45A(7)(a). A power is provided at section 45A(7)(b) to allow Scottish Ministers to prescribe other types of premises that are not sexual entertainment venues.

Reason for Taking Power

49. The inclusion of this power allows the Scottish Ministers to respond quickly and flexibly in circumstances where venues are inadvertently caught under the legislation and it was not intended that such venues would be subject to this licensing regime.
Choice of Procedure

50. It is considered that this power has a very narrow focus and will be used in very limited circumstances. Accordingly it is considered that negative procedure would be appropriate to provide the balance required between scrutiny and the use of valuable parliamentary resources, particularly given that the Scottish Government would like to be able to act swiftly to avoid inappropriate venues being required to apply for licences.

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

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative Procedure

Provision

51. A further power is provided for in section 45A(11) of the 1982 Act to allow Scottish Ministers to prescribe descriptions of performances or displays of nudity that are not to be treated as sexual entertainment for the purposes of the legislation.

Reason for Taking Power

52. This power allows the Scottish Ministers to respond quickly and flexibly if types of performance are being inadvertently included within the sexual entertainment venue licensing regime that were not intended to be covered.

Choice of Procedure

53. Again, as in paragraph 50, it is anticipated that the use of this power will have a very narrow focus and be utilised only in very limited circumstances. It is to be used swiftly to avoid the unnecessary licensing of certain performances which were not intended to be caught under the regime and therefore it is considered that negative procedure is appropriate here to provide the balance required between scrutiny and the use of valuable parliamentary resources.

Miscellaneous and general

Section 70 – Power to make provision about hearings of licensing authorities

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

Provision

54. Section 70 amends the 1982 Act by inserting paragraph 18A, in Schedule 1 and inserting paragraph 24A in Schedule 2. The new paragraphs create regulation making powers to allow the
Scottish Ministers to make provision about hearings in relation to activities licensed under Parts 1 to 3 of the 1982 Act. The regulations may cover notice of hearings, rules of evidence, representation, timescales for steps in the procedure, and liability for expenses. The regulations may differentiate between different purposes, for example, different types of licence.

Reason for Taking Power

55. These powers will provide Ministers with the ability, if considered necessary and appropriate, to bring a level of consistency in the way hearings are conducted. There is a similar power in the 2005 Act to cover alcohol licensing. There are some similarities in the needs of participants in hearing processes under alcohol and civic regimes. If any issues are being resolved in relation to hearings under alcohol licensing, using the similar power, it would be helpful to be able to transfer any useful practice across to the civic regimes.

Choice of Procedure

56. It is anticipated that the making of regulations in relation to hearings is unlikely to be controversial. They will primarily be used for regulating and standardising procedure. The detailed preparation of the regulations will be done in consultation with relevant bodies, including local authorities and consequently it is considered that the use of negative procedure would be appropriate here bearing in mind the balance between scrutiny and the use of valuable parliamentary resources.

Section 71 – Power to prescribe mandatory conditions

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative Procedure

Provision

57. This section allows Ministers to set mandatory conditions that would apply to all licences issued under Part 3 of the 1982 Act, including the regime for sexual entertainment venues (inserted by section 69). The condition setting power is broad, would be specified by order and could encompass different licences and particular purposes and sets of circumstances or cases.

Reason for Taking Power

58. This recreates powers that already exist in respect of other activities licensed under Part 2 of the 1982 Act. The ability to set conditions is a core element of most licensing regimes. This will allow Scottish Ministers to set mandatory conditions to ensure that licensing is able to achieve objectives such as ensuring public safety.

Choice of Procedure

59. A similar power in respect of Part 2 licences is subject to affirmative procedure. It is considered that such procedure would also be appropriate here as the power may have a fairly
significant impact on licence holders and as such full consideration of it should be available to Parliament.

**Part 4 – General Provision**

**Section 76 – Ancillary provision**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations made by Scottish Statutory Instrument**  
**Parliamentary procedure: Affirmative procedure - where regulations amend primary legislation. Negative procedure - where the regulations do not amend primary legislation.**

**Provision**

60. Section 76 confers on the Scottish Ministers a power to make incidental, supplementary, consequential, transitional, transitory or saving provision for the purposes of, or in consequence of, or for giving full effect to, any provision of this Act or any provision made under it.

**Reason for Taking Power**

61. Any body of new law or regulatory regime may give rise to a need for a range of ancillary provisions. Without the power to make incidental, supplementary and consequential provision it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with minor matters which require to be dealt with to give full effect to the original Bill. That would not be an effective use of either the Parliament’s or the Government’s resources. The power itself is circumscribed by being entirely ancillary to the provisions of the Bill and any such provision must be for the purposes of the Bill or in consequence of it or for giving full effect to it. In addition, with the introduction of new regulatory regimes and the adjustment of several existing licensing regimes, it is considered possible that significant transitional, transitory or savings provision may be required to ensure that the regimes are introduced (or continue to function) smoothly with the minimum of disruption to both the licensing authorities and the licensees. It is appropriate for significant transitional, transitory or saving provision (as opposed to routine provision connected to commencement) to be subject to parliamentary procedure.

**Choice of Procedure**

62. Section 75(3) of the Bill provides that any regulations made under section 76 will be subject to affirmative procedure if it contains provisions which make textual changes to an Act. Otherwise, it will be subject to negative procedure. This provides the appropriate level of parliamentary scrutiny for the textual amendment of primary legislation while ensuring that other ancillary provision is still subject to appropriate scrutiny by Parliament.
Section 78 – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Scottish Statutory Instrument
Parliamentary procedure: No parliamentary procedure

Provision

63. This section provides that all of the provisions of the Bill, except certain provisions in Part 4 containing definitions and subordinate legislation making powers, shall come into force on a day specified by the Scottish Ministers by order.

Reason for Taking Power

64. In a Bill of this nature which makes a number of reforms, the decision on when and to what extent the Bill is commenced is best determined by the Scottish Ministers, particularly as Ministers may wish (or find it appropriate) to commence provisions at different times. Transitional, transitory and saving provision may be made by a commencement order and the Scottish Government considers that those ancillary powers are required to ensure that, for example, pre-existing situations may be dealt with appropriately when Bill provisions are commenced.

Choice of Procedure

65. Section 78 has the effect that any such commencement order will not be subject to parliamentary procedure. This is typical of commencement powers and is justified having regard to the administrative nature of commencement of the Bill provisions which have been agreed to by the Scottish Parliament.
Dear Quentin

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

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

As part of its approach, the Committee has agreed I write to you seeking clarification on a number of issues relating to the Policy Memorandum (“PM”) which accompanies the Bill (see annex). The questions are designed to seek elaboration on the information contains in the PM to inform the Committee scrutiny, and make it easier to meet the challenging parliamentary timetable for consideration. Full responses should significantly reduce the information the Committee will require to gather during the Stage 1 process.

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

Yours sincerely

David Cullum
Clerk to the Committee

CC: Joe FitzPatrick MSP – Minister for Parliamentary Business
    David McGill – Head of Chamber Office, Scottish Parliament
    Susan Duffy – Head of Committees and Outreach, Scottish Parliament
    Tracey White – Head of Legislation Team, Scottish Government
    Jim Johnstone – Clerk to the Finance Committee, Scottish Parliament
    Euan Donald – Clerk to the Delegated Powers and Law Reform Committee, Scottish Parliament.
In general, whenever there is reference to guidance and regulations it would be helpful if an indication can be given of what is to be contained in each. In addition, in each instance please indicate whether and when drafts of such guidance and regulations will be available for the Committee to consider in support of Stage 1 scrutiny.

**Part 1 Air Weapons**

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

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

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

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

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

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

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

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

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

**Q9.** How will the public be able to make arrangements for weapons to be disposed of before the licensing regime comes into force.
Q10. Paragraph 64 of the PM states “shooting at properly operated and approved air weapon clubs will be encouraged as a matter of policy, and specific provision is made in the Bill to approve air weapons clubs in future.” Can you provide clarity on the number and location of shooting clubs which exist in Scotland, and what variations in regulations would apply to ‘air weapon only’ shooting clubs over and above existing firearms clubs?

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

**Part 2 Alcohol Licensing**

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

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

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

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

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

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

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

Q19. Paragraph 131 of the PM mentions alternative approaches were considered in relation to the offence of supplying children with alcohol in a public place. What were these alternatives and why were they rejected?
Q20. Please elaborate the policy thinking set out in paragraph 136 of the PM which seems to suggest that police intelligence and associations are now to be considered as seriously as previous convictions. Given intelligence will not have led to conviction, please explain how that is consistent with ECHR and what recourse applicants have to challenge what may be unsubstantiated “intelligence”. Can you also point to other pieces of legislation which adopt a similar approach.

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

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

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

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

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

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

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

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

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

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

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

Q32. In paragraph 161 of the PM please provide detail of the majority and also information from the minority views.
Q33. Paragraph 161 of the PM suggests various suggestions were considered unduly onerous. Please indicate in what way each of these undermines the economic interests of the alcohol trade as specified in paragraph 121.

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

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

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

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

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

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

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

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

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

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

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

Part 3 Civic Licensing
Taxis and Private Hire Cars

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

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

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

- variations in the way in which the current legislation is interpreted and implemented;
- areas in which a more consistent approach would be beneficial and areas where local flexibility is still more appropriate;
- the unfair challenges and abuse referred to in the first bullet-point of paragraph 193 (and also say what effects these have had on public safety).

In addition, please describe—

- the recent changes to the market for hire car service (including the significant distinctions that remain between taxis and private hire cars, as referred to in paragraph 198);
- current compliance checking measures.

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

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

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

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

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

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

Metal dealers

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

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

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

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

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

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

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

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

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

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

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

**Sexual Entertainment Venues**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Miscellaneous and General**

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

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

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

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

Q82. Please also indicate with relevant examples the thinking behind the final sentence which seems to suggest that “practices” will be covered by the order making powers.
Q83. Paragraph 267 of the PM relates to section 72 of the Bill. Please provide detailed background information covering the powers and duties of the Civil Licensing Standards Officers (“CLSO”). The information should also indicate what reviews have been taken of current practices of the authorised officer and LSO both of whom appear to be the model. Please also indicate the extent etc. of consultation and views received etc. on this provision (para 270).

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

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

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

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

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

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

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

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

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

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

In your letter you specifically ask about the details of guidance or regulations. Details of the purpose of secondary legislation are provided in the Delegated Powers Memorandum. We do not anticipate drafts of guidance or regulations being available during Stage 1. These will be developed with the participation of stakeholders following the passage of the Bill through Parliament. This will allow us to take account of comments made at Stage 1 and any amendments made to the Bill during Stages 2 and 3.
The Bill covers a number of topics and, as one might expect, your questions range over all of these. We have attempted to provide the information requested in as straightforward a format as possible, cross referencing where necessary. We would welcome further comment from the Committee and from stakeholders during the process of Stage 1.

Yours sincerely

Quentin Fisher
Air Weapons and Licensing (Scotland) Bill Team Leader
Part 1 Air Weapons

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

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

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

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

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

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

Q3. Paragraph 52 on the PM suggests that “consistently” more than 45% of recorded crimes involving air weapons are committed by persons aged 20 and under. However the source provided refers to 2012/13. Please confirm the statistics also record historical information.
Table 13 of *Recorded Crimes and Offences Involving Firearms, Scotland, 2012-13* sets out detailed information on offences by type of firearm and age of the main accused. There are equivalent tables in each previous year of the annually published statistics.

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012/13</td>
<td>45</td>
</tr>
<tr>
<td>2011/12</td>
<td>49</td>
</tr>
<tr>
<td>2010/11</td>
<td>48</td>
</tr>
<tr>
<td>2009/10</td>
<td>57</td>
</tr>
<tr>
<td>2008/09</td>
<td>50</td>
</tr>
<tr>
<td>2007/08</td>
<td>63</td>
</tr>
</tbody>
</table>

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


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

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

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

The EQIA accompanying the Bill was published on 15 May 2014 and can be found here: [http://www.scotland.gov.uk/Publications/2014/05/3617](http://www.scotland.gov.uk/Publications/2014/05/3617)
Q7. From the point the system comes into force (commencement), how will the initial system operate in relation to a first certificate linked to the commission of an offence. What transitional measures are intended and how will they operate.

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

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

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

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

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

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

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

- surrendering the weapon to Police Scotland, either by visiting a police station or making arrangements with their local police firearms licensing department;
- selling the weapon either privately or via a registered firearms dealer;
transferring the weapon to an individual who intends to apply for an air
weapon certificate;
• selling the weapon for destruction by a scrap metal dealer.

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

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

<table>
<thead>
<tr>
<th>Legacy Police Force Area</th>
<th>No. of Rifle Clubs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central</td>
<td>5</td>
</tr>
<tr>
<td>Dumfries &amp; Galloway</td>
<td>2</td>
</tr>
<tr>
<td>Fife</td>
<td>12</td>
</tr>
<tr>
<td>Grampian</td>
<td>21</td>
</tr>
<tr>
<td>Lothian &amp; Borders</td>
<td>26</td>
</tr>
<tr>
<td>Northern</td>
<td>24</td>
</tr>
<tr>
<td>Strathclyde</td>
<td>28</td>
</tr>
<tr>
<td>Tayside</td>
<td>20</td>
</tr>
<tr>
<td><strong>Scotland total</strong></td>
<td><strong>138</strong></td>
</tr>
</tbody>
</table>

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

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

The Bill outlines a licensing system for air weapon clubs, as well as an exemption to
allow members to shoot at an approved club without requiring their own certificate,
which is very similar to the position which currently exists for rifle clubs. As with
other elements of the Bill, detailed regulations and guidance on how the police
should process applications for club approval and the conditions under which club
approvals will be granted will be developed in the coming months, taking into
account discussions with and advice from stakeholders. We would expect
regulations that apply to ‘air weapon only’ shooting clubs to be very closely aligned with those which apply to existing rifle clubs.
Q11. Can you provide clarity on what transitional provisions, if any, will be made to allow for the alignment of the current 5-year cycle of expiration of existing firearms and shotgun licenses with applications for air weapons licenses?

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

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

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

We believe that these arrangements, combined with the interim period between the commencement of the licensing regime and its related offences described at question 7, will help to smooth the introduction of air weapon licensing.
Part 2 Alcohol Licensing

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

Sections 44 to 48 – fit and proper

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

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

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

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

This broad based approach allows Licensing Boards to consider whether premises or personal licence holders/applicants are ‘fit and proper’ at the appropriate stages. It is envisaged that this will provide Licensing Boards with greater powers to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information including police intelligence and any associations with those deemed to be unsuitable.
Section 56 – interested parties

See the response to question 13.

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

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

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

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

“Those who argued that the duty was currently unworkable, agreed with the arguments put forward in the consultation, and also cited the cumbersome nature of the proposals, the overly wide definition of interested parties, difficulties around enforcement, and concerns over whether anyone would actually notify the Board of inappropriate persons. Some also argued that as currently drafted it would be too complicated and onerous for many licence holders to understand.”
“Finally a number of respondents suggested that this entire approach was flawed, and that it would be better to start again from scratch to achieve the desired policy goal, or that the reintroduction of the ‘fit and proper’ test would address the underlying concerns.”

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

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

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

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

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

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

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

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

Consequently, under the current licensing regime, while they cannot buy alcohol on behalf of a child or young person, adults can legally supply alcohol to someone under the age of 18 out with licensed premises. This facilitates outdoor drinking dens
of young people where those in the group who are over 18 buy alcohol for younger members. The police are currently able to confiscate alcohol from children and young people drinking in public places, as well as from adults who are supplying alcohol to children and young people for consumption in public places. However the Police feel they are powerless to stop those over-18s repeating their behaviour. Consequently a continuing cycle of confiscation and purchasing can develop.

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

Providing Boards with powers to consider a broader range of information

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

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

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

The ‘fit and proper’ test

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

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

Spent convictions

Under the Rehabilitation of Offenders Act 1974, spent convictions are defined as convictions where a specified period of time has elapsed which allows an individual not to have to tell people about their previous criminal activity. For example, someone receiving a fine from a court conviction will be required to advise potential employers about their court fine for 5 years (an unspent conviction). Once 5 years
have passed, this conviction becomes spent and it is no longer required to be disclosed.

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

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

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

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

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

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

See response to question 14

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

See response to question 14

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

The new offences in section 52 of the Bill, inserting section 104A and section 104B into the 2005 Act, should be read in conjunction with section 105 of the 2005 Act.
Under section 105 of the existing licensing legislation, it is already an offence for children and young people to buy alcohol whether for themselves or for others. A child or young person guilty of this offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale (currently £200).

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

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

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

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

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

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

In future the Board will continue to reach its decision on the basis of the material before it. If the Board is presented with police intelligence or spent convictions then
they will have to determine whether they are relevant and what reliance should be placed upon them.

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

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

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

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

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

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

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

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

The lack of a ‘fit and proper’ test has been much criticised by the police, Licensing Boards and those within the alcohol trade. The Criminal Justice and Licensing (Scotland) Act 2010 went some way to address these concerns by removing the limit on the chief constable to only make comments / reports with regards to merely the
crime prevention objective, to allowing comments/ reports on all of the licensing objectives. This has sometimes not been sufficient to allow the Licensing Boards to consider a broader range of matters, in order to ensure that only those that are suitable are involved in the sale of alcohol in Scotland.

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

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

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

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

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

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

The relevant offences referred to in the 2005 Act are provided in the **Licensing (Relevant Offences) (Scotland) Regulations 2007**

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

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

Currently Boards cannot consider spent convictions for two reasons:
1. They are specifically forbidden from doing so by section 129(4) of the 2005 Act.

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

Exclusions and Exceptions to protection under the 1974 Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Early drinking age linked to risk of alcoholism:
  http://alcoholism.about.com/od/tipsforparents/a/early_age.htm

- Predictors of risky alcohol consumption in schoolchildren and their implications for preventing alcohol-related harm:
  http://www.substanceabusepolicy.com/content/2/1/15

- Alcohol and adolescence briefing by SHAAP:

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

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

The broadening out of the objective would give Licensing Boards greater scope when considering the wider implications of young persons’ access to alcohol. Despite the wide ranging role of the licensing objectives, it is not envisaged that
expanding this particular licensing objective will create unintended consequences, or adversely affect the considerations that Boards undertake

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

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

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

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

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

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

- **Reducing off-sales hours**

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

- **Introduction of alcohol only checkouts**

  This proposal from the joint AFS/SHAAP report was not included within the Further Options for Alcohol licensing consultation. Similarly it was felt that the impact on the public and trade would be to create considerable inconvenience to the responsible
trade and responsible drinkers, without strong evidence that it would reduce alcohol misuse.

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

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

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

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

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

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

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

Similarly the majority of consultation responses were opposed to the proposal that a national licensing policy statement be developed which local Licensing Boards would be required to have regard to when drawing up their own policies. This was considered likely to be too general to be of any great value to Boards.
Q36. Can you confirm if the detail on fee income to be reported will require to be subdivided by category (paragraph 174 of the PM).

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

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

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

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

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

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

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

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

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

The steering group consisted of

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


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

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

No

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

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

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

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

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

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

The provision at section 41, to add young persons to the licensing objective protecting children from harm, makes it clear that Boards should consider the interests of sixteen and seventeen year olds. While the word discrimination can relate to the act of making any distinction, we were using it in the other sense of
making a distinction that is contrary to a person’s interest, such as racial or sexual discrimination.

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

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

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

We agree that the reference to public safety in this paragraph is potentially confusing, and a reference to the licensing objectives that underpin the Act might have been more appropriate.
Part 3 Civic Licensing

Taxis and Private Hire Cars

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

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

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

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

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

Similarities
- If a licensing authority makes a resolution to introduce taxi licensing, then they must also licence private hire cars. Both taxis and private hire cars are required to have vehicle licences. Both types of vehicles must be suitable in
type, size and design for use as a taxi or private hire car. Both drivers of private hire cars and taxis have to be licensed, as do booking offices where there are four or more cars. Both taxis and private hire car drivers may have to undergo a medical examination. A taxi driver may use their taxi driver licence to operate a hire car however the reverse does not apply.

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

**Differences**

- A taxi can be hailed in public, or use a taxi rank, whereas a private hire car must be pre-booked.

- The 1982 Act allows that the grant of a taxi licence may be refused by a licensing authority for the purpose of limiting the number of taxis if they are satisfied that there is no significant unmet demand for the services of taxis in their area. This does not currently apply to private hire cars.

- A licensing authority can charge separate fees for taxi and private hire car licences and should ensure the fees are sufficient to cover their expenses.

- A licensing authority can require a taxi driver applicant to take a test of his or her knowledge of an area to which the licence relates, of the layout of roads and other matters relating to the operation of a taxi as the authority may consider desirable. This does not currently apply to private hire car drivers.

- A private hire car cannot display a word, sign, notice, mark, illumination or other feature which may suggest that the vehicle is available for hire as a taxi.

- Licensing authorities fix maximum fares in relation to taxis, but this does not apply to private hire cars.

- Licensing authorities can appoint taxi stances (or ranks) but there is no similar provision for private hire cars.

- Offences are similar in that to pick up a passenger where a licence is required, without either taxi or private hire licence, where the statutory exemptions do not apply, is an offence. Permitting an unlicensed driver to use a taxi or private hire car is an offence. However, there are also offences specific to a category, for example if a vehicle other than a taxi waits at a taxi stance it is an offence. It is an offence for a private hire car to pick up a passenger without a pre-booking.

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

- **Refusal to grant private hire car licence on grounds of overprovision** – This will enable the licensing authority to refuse a private hire car licence application on the grounds of overprovision of private hire cars in a given locality or localities:

- **Testing of private hire car drivers** – Allows licensing authority to require testing of applicants for a private hire car driver licence, as per the current ability to do so for taxi driver licences:

- **Removal of contract hire exemption** – bringing hire cars used for contracts into the taxi and private hire car licensing regime.

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

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

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

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

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

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

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

However we understand that not all local authorities apply these conditions, and that there is variation in the licence conditions that they do apply. Much of the actual detail resides in the licence conditions that are applied to individual licences, rather
than in the legislation itself. This means local licensing authorities have a very wide discretion on the setting of licence conditions.

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

- The minimum requirements in application processes for driver and vehicle licences. Some authorities will request completed application form, fees and certificates of insurance, roadworthiness and registration in case of vehicle licences, whilst others will require vehicle inspection at their premises prior to issuing a licence. There are differences in how authorities choose to do initial checks. These can vary from underlying checks to both the driver and vehicle. All will have police check, criminal record check and a vehicle standard check but some authorities will also require an occupational health check as well.

- Duration of licences issued can vary, as per the provisions in Schedule 1 of the 1982 Act.

- Grounds for refusal – there are variations in the reasons for refusing a licence, e.g. failure to respond to requests for information, not presenting a vehicle for inspections, objections from medical report etc.

- Some authorities, particularly in the cities, will limit the number of taxi licences they award if they consider there to be an excess in that locality.

- Some local authorities have a policy that of their taxi vehicles, a certain number at the very least must be wheelchair accessible vehicles. Other local authorities do not have any requirements over set numbers of wheelchair accessible vehicles.

- The fees charged vary between local authorities. Some will charge different fees for a taxi driver licence compared to a private hire car licence, whilst others will charge a set fee for both.

- Some local authorities will require their drivers to undertake topographical knowledge tests before issuing a taxi driver licence, whilst others do not require this test.

- Standards and procedures for the testing of vehicles also vary greatly throughout the country.

- Some licensing authorities bring vehicles such as chauffeur driven businesses, vehicles used for airport transfers, stretch limousines and ‘novelty’ vehicles within the taxi and private hire regime using the discretion available to them to determine the size, type and design of such vehicles that can operate in their area.
Q47. It is extremely difficult to understand the proposals in the Bill with reference to the existing regimes. To assist understanding please provide examples of—

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

See response to question 46.

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

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

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

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

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

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

The overall impact of this is that individuals and businesses that are not properly regulated are transporting members of the public potentially in vehicles that are not properly checked. Some of these vehicles may be transporting vulnerable people, including children.
• In addition, please describe—the recent changes to the market for hire car service (including the significant distinctions that remain between taxis and private hire cars, as referred to in paragraph 198);

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

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

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

• current compliance checking measures.

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

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

A range of compliance checking takes place including:

- roadside safety inspections
- licence status checks
- investigation of complaints
- scrutiny of licence applications and inspection records
- Inter-authority working group
Q48. It would enable members to follow the proposed changes if you would state which of the changes listed in the summary provided in responses to the first question in this set of questions on taxis and private car hires contribute to each of the points mentioned in the bullet-points in paragraphs 192 and 193.

Addressing issues with the variability in how legislation is interpreted and implemented;
- Removal of contract exemption

Encouraging a consistent approach to local authority practice where this is beneficial, while maintaining appropriate local flexibility;
- Removal of contract exemption
- Overprovision of private hire cars

Amending legislation to take account of the changes to the current market for hire car services.
- Overprovision of private hire cars
- Testing of private hire car drivers
- Removal of contract exemption
- Testing of private hire car drivers

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

Improving compliance checking within the regime.
- Testing of private hire car drivers

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

It is our intention to convene a working group to consider the creation of updated licensing conditions for taxi and private hire car drivers, vehicles and booking offices. Part of this work will explore whether booking office regulations should be extended to all booking offices, rather than just those with four cars or more. There will also be scope to see if the booking office licence would benefit from expanded mandatory conditions. This could cover for example more detailed record-keeping. As well as secondary legislation to tighten up the regulation of booking offices we will explore creation of further mandatory conditions, and updated guidance to share and encourage best practice.
The use of mandatory conditions could be used to clarify expectations in the way private hire cars can operate. Issues that may be covered by mandatory conditions are standards for vulnerable people, duty to assess and respond to needs of those with disabilities (not just wheelchair users), accessibility requirements for vehicles, vehicle inspection, cross border hiring etc, training in equalities and diversity, customer care, passenger safety, road safety, awareness of licensing requirements, communication skills, health and safety, and driving skills.

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

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

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

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

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

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

The Scottish Government intends to provide updated guidance to local licensing authorities to share best practice in developing relevant policies. However, as the
power is discretionary it will allow authorities to decide when local circumstances best suit the cap on private hire cars being applied. The overprovision limit for taxis, already in the 1982 Act, is discretionary therefore the new provision is in line with this.

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

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

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

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

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

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

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

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

Booking Office
Also see response to question 49.
The main concerns with extending the provisions of the booking office order were: over-burdening small businesses particularly sole traders, difficulty and cost of enforcement (particularly around extending to non-premises based booking systems), lack of need for this in rural areas where issues of criminality are not considered so relevant. The booking office regime is currently mandatory so it would be difficult to give discretion to local authorities over what booking offices they licence.

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

Mandatory Conditions
Also see response to question 49.

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

Contract Exemption
See response to question 52.

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

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

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

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

<table>
<thead>
<tr>
<th>Force Area</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central</td>
<td>28</td>
</tr>
<tr>
<td>Dumfries &amp; Galloway</td>
<td>15</td>
</tr>
<tr>
<td>Fife</td>
<td>18</td>
</tr>
<tr>
<td>Grampian</td>
<td>34</td>
</tr>
<tr>
<td>Lothian &amp; Borders</td>
<td>50</td>
</tr>
<tr>
<td>Northern</td>
<td>20</td>
</tr>
<tr>
<td>Strathclyde</td>
<td>95</td>
</tr>
<tr>
<td>Total</td>
<td>285</td>
</tr>
</tbody>
</table>

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

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

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

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

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

These arrangements are already set out in the Civic Government (Scotland) Act 1982. The Bill will not change these arrangements. Under section 5 of the 1982 Act an authorised officer of the licensing authority or a constable can enter and inspect
premises and records. There is no guidance on how often records should be inspected but licensing authorities and the Police have long experience of this type of activity. Intelligence or evidence of problems (either with a specific premises or in a locality generally) may give rise to a heightened level of inspection for certain premises. Other premises which are regarded as well run and operated to a high standard may not require the same level of scrutiny.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Spectator Entertainment

Performances

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

Exhibitions

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

Public Shows

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

Exemption for Spectator Based Entertainment

A Public Entertainment Licence shall not be required for spectator based entertainment events that satisfy all of the following conditions:
a) the event is provided to an audience of less than 500 persons at any one time and the organiser of the event takes appropriate steps to monitor and control capacity during the event; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Underpinning the definitions provided for in the Bill is the intent that we should licence what we intend to licence and avoid licensing that which we don’t. The
definitions are therefore crafted to capture what would be understood to be sexual entertainment and to avoid inadvertently capturing any other activity.

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

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

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

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

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

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

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

Q69. In relation to enforcement explain how it will be possible to determine whether sexual entertainment has happened on 4 or more occasions – will a licence be needed under another regime for those occasions? Is there a penalty for breach of this condition?
A licensing authority will use enforcement and sanctions proportionately. A premises that hosts sexual entertainment events on more than 4 occasions without a licence will be committing an offence under section 7 of the 1982 Act. Clearly the risk of detection rises with the frequency with which sexual entertainment is taking place.

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

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

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

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

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

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

We believe that the proposed legislation will ensure that the 1982 Act is compliant with the Directive. It is therefore for local licensing authorities to ensure that their local practices are also compliant. In practice this means, for example, that local licensing authorities should ensure that the fee levels are appropriate and decisions are fully reasoned.
Q72. Paragraphs 256 to 258 of the PM repeat paragraphs 25 to 27 but neither indicate who was consulted or details around the number of responses received. Please provide that information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The regulations may make provision for:

- notice of the hearings to be given to such persons as may be prescribed by the regulations;
- the rules of evidence which are to apply for the purposes of the hearing;
• the representation of any party at the hearing;
• the times by which any step in the procedure must be taken;
• liability for expenses.

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

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

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

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

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

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

See response to question 81 in relation to standard conditions.

In relation to hearings, we understand that there is considerable variation in local authority practice. There was majority support for further Scottish Government regulation or guidance in relation to hearings. Concerns were expressed about practices such as the treatment of some witnesses, notice periods for hearings, and standards of evidence. However concern was also expressed that the regime should not become unduly formal.
Q83. Paragraph 267 of the PM relates to section 72 of the Bill. Please provide detailed background information covering the powers and duties of the Civil Licensing Standards Officers (“CLSO”). The information should also indicate what reviews have been taken of current practices of the authorised officer and LSO both of whom appear to be the model. Please also indicate the extent etc. of consultation and views received etc. on this provision (para 270).

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

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

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

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

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

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

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

There is already a ‘deemed grant’ procedure for most licences covered by the Civic Government (Scotland) Act 1982. Paragraph 268 refers to the small number of licences that do not already have such a procedure. These are the new licensing regime for sexual entertainment venues introduced by this Bill and the existing regime for sex shops.
Q86. Paragraph 271 of the PM suggests other proposals were not “sufficiently significant” to warrant action. Please explain this further, providing detail of the main proposals rejected and the areas within your paragraph 2 of the PM which they did not meet.

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

- **Refocus the role of the police within the 1982 Act** – The Act already provides that the police have 28 days to respond to an application. The general view amongst those responding was that the existing arrangements seemed to be working well; that they offered the police reasonable flexibility and the licensing authorities generally reported that their relationship with the police was effective. Therefore it was not apparent that such changes would strengthen or improve the existing regime.

- **Introduce licensing objectives to the 1982 Act** – the consultation attracted mixed views on the proposal to introduce licensing objectives to the 1982 Act. It was argued that this was unnecessary as the purpose of the Act was already clearly stated in the preamble to the Act. On balance it was not clear that such changes, in themselves, would strengthen or improve the existing regime.

- **Require the applicant to prove they are fit and proper** – this proposal is covered in more detail below.

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

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

On balance it was decided not to proceed with this proposal.
Q88. Please provide the policy thinking behind the lack of a time limit for police information, particularly given the time-limits being introduced and the effect of section 69 of the Bill. Perhaps this is an example of grounds for extension of overall time to consider?

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

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

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

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

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

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

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

August 2014
Air Weapons and Licensing Bill Team
Local Government and Regeneration Committee

3rd Report, 2015 (Session 4)

Stage 1 Report on the Air Weapons and Licensing (Scotland) Bill
Local Government and Regeneration Committee
3rd Report, 2015 (Session 4)

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Local Government and Regeneration Committee

Remit and membership

Remit:

To consider and report on a) the financing and delivery of local government and local services, and b) planning, and c) matters relating to regeneration falling within the responsibility of the Cabinet Secretary for Infrastructure and Capital Investment.

Membership:

Clare Adamson (from 3rd December 2014)
Cameron Buchanan
Willie Coffey (from 3rd December 2014)
Cara Hilton (from 14th January 2015)
Mark McDonald (until 27th November 2014)
Stuart McMillan (until 27th November 2014)
Anne McTaggart (until 8th January 2015)
Alex Rowley
Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
David Cullum

Senior Assistant Clerk
Claire Menzies Smith

Assistant Clerk
Seán Wixted

Committee Assistant
Ross Fairbairn
The Committee reports to the Parliament as follows—

INTRODUCTION

Introductory chapter

1. This report covers the scrutiny of the Air Weapons and Licensing (Scotland) Bill (“the Bill”) by the Local Government and Regeneration (LGR) Committee.

2. The Bill\(^1\) was introduced in the Parliament on 14 May 2014 and the Parliamentary Bureau referred the Bill to the LGR Committee to consider and report on the general principles. No secondary committee was appointed to scrutinise the Bill.

3. Prior to introduction the Scottish Government undertook a number of consultations on the constituent parts of the Bill (apart from public entertainment licensing) these were published between November 2012 and September 2013 on its website.\(^2\)

Parliamentary scrutiny

4. We agreed our approach to consideration of the Bill at Stage 1 at our meeting on 19 June 2014. A call for views\(^3\) on the general principles of the proposed Bill was subsequently issued and closed on 29 September 2014. As part of our approach, we agreed to write to the Scottish Government seeking clarification on a number of issues relating to the Policy Memorandum.\(^4\)

5. During the summer to autumn period of 2014 we arranged for one-off meetings with academics, legal and industry representatives to provide us with sufficient background understanding of the main issues to assist us with undertaking the scrutinising task before us. We would like to express our gratitude to all those who spoke to us. These informal sessions assisted in our early engagement with the issues in what is a technical and diverse Bill.

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\(^1\) [Air Weapons and Licensing (Scotland) Bill](https://www.scottish.parliament.uk/bills/sb39/session4), as introduced (SP Bill 39, Session 4 (2014)).

\(^2\) Scottish Government. [Written submission](https://www.scottish.parliament.uk/evidessionalists/20140929/164), 1 September 2014.

\(^3\) Local Government and Regeneration Committee. [Call for written evidence](https://www.scottish.parliament.uk/evidessionalists/20140929/165).

\(^4\) Scottish Government. Written submission, 27 June 2014.
Witnesses
6. We held nine evidence sessions with a wide range of stakeholders, on a themed basis, based on the parts of the Bill (air weapons; alcohol licensing; metal dealers; taxi and private hire cars; public entertainment venues and sexual entertainment venues; and civic licensing).

7. Minutes of all the meetings at which the Bill was considered can be found online and links to the *Official Report* of the relevant meetings can also be found online. Along with links to all written submissions, including supplementary written submissions and correspondence.

8. We extend our thanks to all those who gave evidence on the Bill. The detailed and wide-ranging submissions have enabled us to properly appreciate and understand the issues involved and to report to Parliament our views on the Bill.

Background to and purpose of the bill
9. The purpose of a licensing system is to regulate activities which although legal and legitimate, are considered to have the potential to be harmful or disruptive to society. Licensing protects various aspects of the public interest, such as public order and safety; public health or reducing the risk of criminality.

10. The pre-existing licensing regimes are set out in the Civic Government (Scotland) Act 1982 ("the 1982 Act"), and the Licensing (Scotland) Act 2005 ("the 2005 Act"). In the accompanying documents to the Bill, the Scottish Government states that the current licensing system works well, allowing local authority councillors direct responsibility for making key decisions in relation to licensing in their communities.

11. There are a range of bodies responsible for licensing under the Bill. These are: Police Scotland, for Air Weapons under Part 1 of the Bill; Licensing Boards for Alcohol Licensing under Part 2; and Licensing Committees (or other local authority entities) in relation to the various civic licensing covered in Part 3.

*Difference between Licensing Boards and Licensing Committees*
12. In order to understand the Report more fully, we set out some background to the latter two licensing authorities.

*Licensing Boards*
13. Licensing boards are constituted under section 5 of the Licensing (Scotland) Act 2005. A local authority can have one licensing board covering its whole area, or it can choose to sub-divide its area into divisions and have a licensing board for each division. Licensing boards carry out various functions in relation to alcohol licensing. They also have a role in the gambling licensing process, although their discretion is

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6 Local Government and Regeneration Committee. *Air Weapons and Licensing (Scotland) Bill Committee web page*.
7 *Air Weapons and Licensing (Scotland) Bill, Policy Memorandum* (SP Bill 49, Session 4 (2014)), paragraph 12.
very limited. Importantly, a licensing board has a separate legal identity to the local authority: it therefore sues and is sued in its own name.

Licensing Committees

14. Many local authorities have licensing committees which deal with applications for licences under the 1982 Act although there is no requirement to establish such a committee.

15. Local authorities have broader powers under the Local Government (Scotland) Act 1973 (section 56) to arrange for any of their functions to be carried out by a committee, sub-committee, officer of the authority or, indeed, another local authority. There are some specific exceptions to this (for example, setting the council tax rate). However, broadly, local authorities are able to arrange their administrative affairs as they see fit.

16. Thus, many local authorities have decided to delegate their licensing functions under the 1982 Act to a committee. Indeed, it is common for the licensing function to be delegated even further – to council officers – where there is perceived to be nothing controversial about the application, or where the situation is catered for in council policy on the matter.

17. Licensing committees in Scottish local authorities are different to licensing committees in English local authorities. In England, licensing committees deal with alcohol licensing under the Licensing Act 2003.

18. The Policy Memorandum which accompanies the Bill states the primary policy objective of the Bill is to—

“[...] strengthen and 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. This is being achieved through reforms to the existing systems to alcohol licensing, taxi and private hire car licensing, metal dealer licensing and; giving local communities a new power to regulate sexual entertainment venues in their areas. The Bill will also protect public safety by creating a new licensing regime for air weapons.”

19. The Bill establishes two new licensing regimes—

- a new licensing regime for owing and using an air weapon in Scotland, and
- a new separate licensing regime for the operation of sexual entertainment venues in Scotland.

20. The Bill also amends the current licensing regime in relation to the sale of alcohol under the 2005 Act. The Bill proposes to make it an offence to supply alcohol to people under 18 for consumption in a public place. The Bill also takes forward a number of technical changes to the licensing system for alcohol sales.

21. Finally, the Bill amends the existing civil licensing regime in relation to the licensing of taxis and private car hires; scrap metal dealerships and public entertainment venues.

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8 Air Weapons and Licensing (Scotland) Bill, Policy Memorandum (SP Bill 49, Session 4 (2014))
22. In addition the Bill addresses some general and miscellaneous provisions, such as to provide for greater consistency across civic licensing regimes in relation to issues such as hearings. The Bill also establishes a new role of Civil Licensing Standards Officers (“CLSO”), modelled on the Licensing Standards Officers (LSO) created under the 2005 Act.

Contents of the Bill

23. The Bill is presented in 3 parts as follows—

- Part 1 – Air Weapons
- Part 2 – Alcohol licensing
- Part 3 – Civic Licensing (including taxis and private hire cars, metal dealers, public entertainment venues, sexual entertainment venues, and miscellaneous and general)

24. Our report mirrors for ease of reference the structure of the Bill as detailed above.

25. Each part of the Bill is comparatively self-contained and we considered them and report upon them individually, extending this approach to the four discreet civic licensing regimes within Part 3 of the Bill. We have included an additional section looking at general issues germane to the civic licensing regimes covered by Part 3. Notwithstanding this approach we also ensured we did not lose focus on common strands and enquired about these whenever they arose.

26. Before moving to the general principles of the Bill and our detailed consideration of issues we report upon the common themes which arose during our scrutiny.

Common themes

27. In spite of the wide ranging subject matter, the differing licensing authorities or the activity or premises to be licensed, a number of thematic issues emerged from our deliberations.

The Brightcrew decision

28. What could be described as the most important impetus for change to licensing in recent years is the Brightcrew decision⁹. This case cast significant doubt on the ability of licensing boards’ to control sexual entertainment through alcohol licensing. The Court of Session held that a licensing board is only permitted to consider the licensing objectives as they relate to the sale of alcohol rather than in relation to more general considerations. This has left sexual entertainment venues unregulated which has necessitated the new regime proposed under this Bill.

29. We also learned the court decision has made some Licensing Boards take a more cautious approach to other factors which are considered as being not directly concerned with the sale of alcohol. Matters such as noise complaints, fights, and other disturbances occurring in or around venues holding or seeking alcohol licences.

30. The consequences of the Brightcrew decision underpinned many of the submissions we have received and are considered in detail at Part 2 Alcohol Licensing, and at Part 3 Sexual Entertainment Venues, of this Report.

**Review of civic licensing**

31. The Bill is what could be described as a ‘pick and mix’; including within it new licensing regimes, amendment of a relatively recent licensing regime, and further changes to various existing civic licensing regimes.

32. This latter category gave rise to many discussions during the examination of the Bill. A number of witnesses suggested that a wider review of the licensing regime was required to ensure it remains fit-for-purpose and reflects modern circumstances.

33. SOLAR Licensing Group said—

“We would re-iterate that the Act is now over 30 years old and it is becoming increasingly difficult to address modern business activity within the structure of the Act. In addition, penalties for civic offences are not generally commensurate with other licensing regimes e.g. liquor, private landlord registration, HMO licensing.”

34. Many submissions which commented on the detail of the civic licensing regimes also took the opportunity to advise the Act was both out-dated and piecemeal having been amended a number of times. City of Edinburgh Council commented “continued amendment of the Act is not helpful”.

35. Two of the largest councils in Scotland went further stating the 1982 Act was not fit for purpose. Peter Smith of Glasgow City Council said “consolidation or revision of the Act is required to improve the licensing service that is delivered to businesses and communities we serve”. Andrew Mitchell of the City of Edinburgh Council had a similar view stating “the 1982 Act has probably passed its sell-by date”.

36. The Minister told us he had no plans to fundamentally review the 1982 Act as it was “reviewed only some 10 years ago and found fit for purpose”.

**Interaction between the licensing regimes**

37. Also worthy of note is the interaction between the various licensing regimes. Some regimes provided exemptions where licences had been granted for other purposes, a case being the exemption for a public entertainment licence where an alcohol licence is in place and the activity is included in a venue’s operating plan. On the other hand, a venue might need dual licences to cover its activities, for example if a venue sells alcohol and provides sexual entertainment then two licences will be required. These subtleties make it difficult for the public to engage with the various licensing regimes; it also makes it problematic achieving consistency across licensing

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10 SOLAR. Written submissions 33-38.
11 City of Edinburgh Council. Written submission 49.
regimes, which in turn makes enforcement more difficult. To further complicate the situation other licensing regimes can apply, e.g. planning in relation to signage.

Opportunity to future proof legislation

38. One of the key reasons presented to us for change to the 1982 Act was to keep pace with modern business activity. Peter Smith of Glasgow City Council advised the 1982 Act regulates “obvious things such as taxis and private hire cars to more obscure things such as window cleaners and boat hire licences”. Andrew Mitchell expanded on this saying Edinburgh Council use the street-trading provisions to license pedicabs explaining there is an issue with the volume of pedicabs which causes significant community concern. He told us “we are struggling to use the powers in the 1982 Act to control the collective impact of those licences.” Glasgow City Council on the other hand took the view there was no power under the 1982 Act which could be used to license such an activity.

39. This was not the only matter raised with us regarding modernising licensing law. In relation to the licensing of taxi and private hire cars we were made aware of the implications of new smartphone “apps” which could be used to book transport. We were reassured by the Cabinet Secretary this did not pose a problem in terms of the Act, as drivers would still have to comply with the legislation and, if they did not, they would be subject to enforcement action. This does however illustrate how quickly new business models and developments in technology can impact on licensing authorities’ ability to regulate activities.

40. Nor was future proofing the sole domain of the 1982 Act. Issues were also raised with regard to the Licensing (Scotland) 2005. We heard concerns around home delivery services from police witnesses. While alcohol for home delivery must be purchased during licensing hours it can be delivered out-with these hours by licence holders. “Dial-a-booze” it was suggested is becoming a significant problem which requires legislation to be tightened.

41. The Bill provided an opportunity for the Scottish Government to bring forward more comprehensive provisions which seek to address developments in the business environment; we consider this opportunity has not been taken.

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

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

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

Accompanying Documents

Policy Memorandum

45. It was necessary to seek additional detail to supplement that supplied in the Policy Memorandum ("PM"). We wrote to the Scottish Government on 27 June\(^\text{18}\) seeking elaboration on the information contained in the PM to inform the Committee’s scrutiny, and make it easier to meet the challenging Parliamentary timetable for consideration. Full responses would also assist those who wished to provide us with written evidence to the Committee. The Scottish Government responded\(^\text{19}\) on 1 September providing full responses on each of the questions posed.

Financial Memorandum

46. Standing Orders Rule 9.6, require us, as the lead committee at Stage 1, to consider and report on the Bill’s Financial Memorandum ("FM"). In doing so we are required to consider any views submitted by the Finance Committee. That Committee reported to us on 18 February 2015.\(^\text{20}\)

47. The FM sets out the costs associated with each Part of the Bill (including for the individual civic licensing regimes covered under Part 3 of the Bill) and after page 84 includes a table summarising the additional costs expected to arise as a result of the Bill’s provisions.

48. The Finance Committee came to a number of conclusions throughout their report, and invited us to seek clarification, confirmation and detail from the Minister on some aspects of the FM and costs arising from them. These points are addressed under the appropriate part of our Report.

Delegated Powers Memorandum

49. The remit of the Delegated Powers and Law Reform Committee (DPLR Committee) includes “to consider and report on proposed powers to make subordinate powers in legislation including whether any proposed powers are appropriate”. DPLR Committee considered the proposed powers in the Bill and reported to us on 20 January 2015.\(^\text{21}\)

50. The Committee brought to our attention concerns about the powers under section 36 and 37 relating to Part 1 Air Weapons and new sections 45A and new section 45B of the 1982 Act which relate to sexual entertainment venues. We note the issues raised by the DPLR Committee in its report and we have sought to reflect these in this report.

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\(^{18}\) Scottish Government. Written submission, 27 June 2014.

\(^{19}\) Scottish Government. Written submission, 1 September 2015.

\(^{20}\) Finance Committee. Report on Air Weapons and Licensing (Scotland) Bill.

\(^{21}\) Delegated Powers and Law Reform Committee. 5th Report, 2015 (Session 4). Air Weapons and Licensing (Scotland) Bill at stage 1.
THE GENERAL PRINCIPLES OF THE BILL

51. The Committee reports to Parliament it is content with the general principles of the Bill although asks Parliament to note the comments made throughout this report.

52. Having provided this overview, the remainder of this report considers each Part of the Bill in turn.
PART 1: AIR WEAPONS

Background

Legislative competence

53. Section 10 of the Scotland Act 2012 transferred to the Scottish Parliament the legislative competence to make law relating to the use and regulation of most air weapons in Scotland.\(^\text{22}\)

Air weapons

54. For the purpose of Part 1 of the Bill, the owner of an air weapon classified as 'specially dangerous' will be subject to a certificate system. The Bill defines such weapons as—

“…any air weapon is “specially dangerous” if it is capable of discharging a missile so that the missile has, on being discharged from the muzzle of the weapon, kinetic energy in excess, in the case of an air pistol, of 6 foot pounds or, in the case of an air weapon other than an air pistol, 12 foot pounds”.\(^\text{23}\)

55. In 2011 the Scottish Government established the Scottish Firearms Consultative Panel ("the SFC Panel") to advise the Scottish Ministers on firearms policy.\(^\text{24}\) The SFC Panel consisted of representatives from the police, prosecution services, shooting organisations, campaign groups for gun safety as well as representatives of the gun trade industry. The proposals in the Bill follow on from the recommendations of the SFC Panel.

56. Based on the work of the SFC Panel, the Scottish Government has estimated that there are approximately 500,000 air weapons currently owned by people living in Scotland.

57. Part 1 would allow the Chief Constable to attach such conditions to an air weapons certificate as seem appropriate to him for the operation and use of an air weapon. This could cover aspects such as where an air weapon could be used, how it should be carried or transported (e.g. in a case or other covering) and how it should be stored by the owner. The accompanying documents to the Bill recognise there are many valid reasons why an individual may own and use an air weapon. The Bill seeks to regulate the ownership and use of air weapons in by way of an air weapons certificate system operated by Police Scotland. In this way the Bill treats the ownership and use of air weapons in a similar way to the ownership and use of other forms of firearms.

Scrutiny of Part 1

58. Following our call for written evidence on the Bill the Committee received 144 written submissions. Of these, 50 made specific reference to Part 1 of the Bill. In addition during the policy development of the Bill, the Scottish Government undertook

\(^{22}\) Scotland Act 2012, Section 10.
\(^{23}\) Scottish Parliament Information Centre. 2014 Air Weapons and Licensing (Scotland) Bill: Air Weapons. SPICe briefing SB14-84 (page 5).
an extensive consultation on the air weapons provisions. The Government received 1,101 written responses.\textsuperscript{25}

59. We have carefully considered all of the formal and informal submissions we have received from witnesses and members of the public. This body of information has helped shape our recommendations on Part 1 as set out in paragraphs 135 to 140 of this report.

**Bill proposals**

60. Part 1 of the Bill proposes a certificate system for the ownership and use of air weapons in Scotland.

61. The Policy Memorandum states the Scottish Government’s overarching policy objective is not to ban air weapons, but to ensure only those people who have a legitimate reason for owning and using an air weapon should have access to them. Such persons are to be properly licensed. The principles underpinning the proposed certificate system, as set out by the Government, are to—

- clearly define the air weapons to be subject to licensing;
- broadly follow the principles and practices of existing firearms legislation;
- set out the main principles of the Scottish regime in primary legislation, with detailed provisions — for example, on fees, procedures, forms, conditions, etc. — being provided for in future secondary legislation supported by detailed guidance;
- enable a fit person to obtain a licence to own, possess and shoot an air weapon in a regulated way, without compromising public safety;
- prevent those persons who are unfit, or who have no legitimate reason for holding an air weapon, from obtaining a licence;
- have as its objective the removal of unwanted, unused or forgotten air weapons from circulation;
- ensure appropriate enforcement of the new regime with suitable offences and penalties available within the justice system to deal with any person who contravenes the new regime.

**The case for introducing air weapons certificates**

*Rationale*

62. The Scottish Government’s rationale is principally based on the issue of preventing crime, ensuring public safety and preventing fear and alarm. This position the Government states, is grounded on two key elements, which can be summed up as follows—

- regulating the ownership and use of a specific category of firearm which can cause serious or fatal injuries, but which is not currently provided for in existing regulations;
- preventing public fear and alarm which may be caused by the use, or misuse, of air weapons.

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\textsuperscript{25} Scottish Government. (2013) *Air weapons consultation.*
63. Various stakeholders opposed to the introduction of an air weapons certificate system have questioned this rationale, and whether introducing a compulsory certificate system is a proportional response to the number of incidents of fatal or serious harm which have been caused by air weapons in Scotland in recent years.

64. All of the main representative organisations from the shooting community in Scotland have opposed the Government’s decision to introduce this legislation.

Reducing crime and the misuse of air weapons

65. The public debate on the use of guns and other firearms in British society, and the way in which this drives the policy response from government has been shaped, in part, by various incidents where members of the public have been killed or injured as a result of firearms misuse.

66. Instances of firearms misuse which have resulted in mass casualties are, thankfully, extremely rare in the UK. However, there have been four high profile incidents over the last 30 years in which large numbers of people were either killed or injured as a result of firearms misuse: Hungerford in Berkshire in 1987; Whitley Bay in North Yorkshire in 1989, Dunblane in Perthshire in 1996, and most recently in Cumbria in 2010. All of these instances involved the use of firearms or shotguns for which licensing provisions already existed in law.

67. Police Scotland highlighted the murder of Andrew Morton to us as a key point in the debate around the use of air weapons in Scotland—

“As far as Police Scotland is concerned, the bill is about ensuring that inappropriate people do not get access to lethal barrelled weapons that can, by definition, kill. The case of Andrew Morton, who was a two-year-old toddler when he was shot in the head by a man with an airgun in 2005, is a tragic example of what can happen when the wrong people have access to lethal barrelled weapons. Thankfully, such tragic incidents are very rare, but on most days the police and animal welfare groups have to deal with the results of air weapons being misused. Legislation that allows for responsible ownership of air weapons is to be welcomed. Air weapons in irresponsible hands are dangerous, and keeping people safe is the priority for Police Scotland.”

Opposing view

68. Several witnesses pointed to the fact that firearms related crime is currently falling in Scotland and that to introduce a dedicated certificate for air weapons ownership is an unnecessarily burdensome step for the Government to take. Generally, they expressed the view that the Bill will not serve to reduce crime or increase public safety.

69. The view that the Bill will do little to reduce criminality was widely held by witnesses representing the shooting community. For example, Graham Ellis of the Scottish Air Rifle and Pistol Association (“SARPA”) told us that his members were “concerned that [the Bill] does little or nothing to address the criminal element who

would misuse airguns.”

David John Penn of the British Shooting Sports Council agreed, cautioning that the Bill would do little to tackle the misuse of air weapons—

“…plenty of law exists now to prosecute effectively people who misuse air weapons. The licensing of air weapons would not help very much. It would provide another stick to beat people with, but a raft of sticks is already available.”

70. All of the witnesses we heard from acknowledged the vast majority of air gun and firearms users are responsible and law abiding citizens. Dr Colin Shedden of the British Association of Shooting and Conversation (“BASC”) stated “the only people who will submit themselves to the licensing system will be those who are already law-abiding.”

71. We also received numerous submissions from private individuals. Many argued the introduction of an air weapons certificate scheme would have no effect on those who chose to misuse such weapons and would simply penalise law-abiding owners who would almost certainly comply with the legislation.

Supporting view
72. Groups supporting the proposals took a differing view of its potential to reduce the level of misuse of air weapons.

73. Dr Mick North of the Gun Control Network (“the GCN”), spoke of what he saw as an underlying causal effect to many of the incidents of air weapons misuse which has led to serious or fatal injury as being “the casual way in which air weapons are treated” in Scotland. He told us—

“A number of the more serious incidents, particularly those involving young people, have occurred when someone has come across an airgun in the house that has been kept rather casually by the owner, who may be a parent, and has been playing around with it. We believe that, if the owner had to have a licence for that weapon, they would think seriously about whether it ought to be there.”

He continued—

“…one of the problems has been a rather lax and casual attitude towards air weapons, and we feel strongly that registration will send out the right message and will reflect the degree of dangerousness of air weapons. We believe that a licensing system will make anyone who wants to use an air weapon think seriously about their need to have one, which will lead to a subsequent reduction in the number of weapons and, therefore, the number of serious incidents.”

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29 BASC. Written submission 76, page 6.
30 Amongst others, Callum Chesshire, Morag and Tim Liddon, Alex Pearson and Steven Wolf.
31 As above.
Both the League Against Cruel Sports ("the LACS") and the Scottish Society for the Prevention of Cruelty to Animals ("the SSPCA") spoke of the level of air weapon misuse directed towards both domestic animals and wildlife. The LACS noted that Police Scotland recorded 68 air weapons attacks on animals between 2010 - 2012, and the SSPCA recorded 178 attacks in a single year. Both organisations believed the true level of air weapons attacks on animals in Scotland is underreported. Cats Protection also welcomed a certificate scheme and expressed hope the scheme would result in fewer crimes being committed against animals.

While the SSPCA accepted there are lawful purposes for individuals to own and use air weapons, they said a certificate system should ensure that such individuals have a legitimate reason for using an air weapon and a lawful place to use it, be that a gun club or on land with landowners’ permission.

Speaking about the use of air weapons in criminal activity in Scotland, Assistant Chief Constable (ACC) Wayne Mawson of Police Scotland told us—

“We have identified that recorded offences in Scotland involving all firearms fell in 2012-13 by 32 per cent to 365, compared with 535 offences in 2011-12. Of those 365 offences, almost half—171 offences—involving air weapons. That is the lowest figure that has been recorded in Scotland since comparable records began in 1980.”

He added that between April and July 2014, police records show that—

“…there were 84 offences specifically involving air weapons: 75 of those offences were in public places, six involved injuries to animals, nine involved injuries to humans—one of which was an attempted murder, when a man was shot in the head—nine were in a private dwelling or a garden, and so on.”

Police Scotland spoke about the potential value Part 1 of the Bill could add in further reducing the risk of harm to the public, as well as members of Police Scotland, as about half of all recent firearms incidents involved air weapons.

Scottish Government

We heard from the Cabinet Secretary for Justice, Michael Matheson, on 25 February 2015. He set out the view of the Government that the certificate system would provide new powers to assist in reducing crime.—

“…as a result of creating the licensing provision, we require individuals who wish to have, or have, an air weapon to have a licence for it […] It is clear that there will be people who will choose not to have a licence. If they choose not to have a licence, they will be committing an offence […] the police will have
powers to take action if an individual holds a licence and uses the air weapon inappropriately or in an unsuitable way.\(^{40}\)

80. While scrutinising Part 1 of the Bill, we noted recent media reports relating to the serious criminal misuse of air weapons. One case occurred in Shetland in September 2014,\(^{41}\) another in County Durham in England in November 2014,\(^{42}\) and most recently an attack on a rail worker in High Bonnybridge near Falkirk on 22 February 2015.\(^{43}\) This latter incident was referred to by the Cabinet Secretary in his oral evidence to us.\(^{44}\)

81. We find it reasonable and justifiable for the Scottish Government to legislate for the ownership and use of air weapons in Scotland.

The application process

Background

82. Police Scotland stated there are currently about 53,000 firearms certificate holders in Scotland under the current UK legislation. The firearms certificate system is administered through an ICT system called Shogun.\(^{45}\) It is intended Shogun will also be used to administer the air weapons certificate system. Police Scotland also confirmed Shogun will interlink with their new integrated national ICT system for key policing functions\(^{46}\), called i6, which is currently under development.

83. While police officers in Scotland have long and detailed experience in administering and operating firearms legislation in Scotland, this Bill will see the first occasion on which police in Scotland will be administering two different firearms certificate systems.

84. Inevitably, a major question is how these separate systems will interact with each other, and what the implications will be for Police Scotland, firearms and air weapons owners, and other associated stakeholders (such as the gun trade sector).

Resourcing and smoothing

85. A key topic which emerged during scrutiny concerns the administrative and resource issues Police Scotland may face. This is as a result of the cyclical nature of firearms and air weapons certificate application/renewal process, as well as the varying verification processes and conditions which must be carried out for each regime. Ways in which difficulties or pinch-points in the operation and administration of these two certificate regimes could be alleviated has been referred to as smoothing.

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\(^{41}\) BBC Scotland online, 4 February 2015. *Three years in custody for teen after Shetland firearms incident*.

\(^{42}\) Sky News, 17 November 2014. *An 11-year-old boy was shot in the head with an air weapon as he waited to play football in Chester-le-Street*.

\(^{43}\) BBC News, 23 February 2015. *A railway worker has been shot in the leg with an air gun in an unprovoked attack*.


\(^{46}\) The i6 project is intended to deliver a national integrated IT system for Police Scotland for 6 key policing areas: crime, custody, case reporting, vulnerable persons, missing persons and productions/property management.
86. Police Scotland highlighted the need for smoothing provisions to be provided in order to facilitate the efficient introduction of the new air weapons certificate system—

“...It is vitally important, from a processing perspective to balance the monthly demand of applications on the police [...] the Bill states that an [air weapons certificate] shall last for five years [...] the proposed legislation allows for a certificate holder to align their [air weapons certificate] to conclude with their Firearm or Shot Gun Certificate, which may be of a period of less than five years. In order to smooth the demand, Police Scotland would wish, that for the first [air weapons certificate] only, that the Chief Constable can decide the length of the Certificate. Accepting that there will be a wave of new applications when the legislation is enacted, the current proposals would mean that the same wave is replicated at five year intervals thereafter, causing undue pressure on the police to manage the resources to satisfy the demand.”

87. Police Scotland also suggested an alternative option to this proposal would be to allow “the Chief Constable to have the ability to vary the length of the first certificate” for a period less than five years, so as to stagger the impact of the introduction of the air weapons certificate system vis-à-vis the current firearms licensing system. Following this, Police Scotland suggest, “the renewal of the first certificates would revert to five years.”

88. The Scottish Police Federation (“SPF”) also expressed concerns about the workload and resource implications for their members in terms of the new air weapons certificate system. Calum Steele, referred to what he saw as the lack of evidence in the Financial Memorandum to support the belief that about 40,000 air weapons in Scotland may be owned by existing firearms or shotgun certificate holders. He questioned this as a basis for estimating the potential workload in terms of initial air weapons certificate applications—

“Given our experience and the number of [police] staff who undertake such activities on a day-to-day basis, we have real difficulty in understanding how that translates into a limited number of inquiries based on there being a small number of individuals, when no guidance has been prepared on what will be required by way of background checks and supporting evidence before an air weapon certificate is granted [...]The impact of adding the burden of potentially having to deal with up to 500,000 air weapons—although it is questionable whether that number would ever fall under the licensing regime—needs to be properly understood.”

89. The BASC also flagged concerns around the impact the new air weapons certificate system will have on the way in which Police Scotland will administer the work to be carried out. They told us—

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48 As above.
“Police Scotland will provide the resource for administering a licensing scheme but will not prioritise resources for identifying those who illegally possess airguns. If resources and police numbers were not an issue, it would be ideal if we could have licensing and police investigation into those who were committing an offence by illegally possessing an air weapon. However, we are not in that position.”

90. Other witnesses, such as the GCN, also recognised the need for smoothing.

Scottish Government

91. The Cabinet Secretary acknowledged the cyclical nature of the workload for Police Scotland in managing applications for shotguns and firearms under the existing certificate system, which are renewed on a 5-year basis. This, he said had “significant peaks and troughs in firearms and shotgun registrations” which impact on the ability of Police Scotland to manage workloads. The Cabinet Secretary recognised the potential timing of this Bill might exacerbate this effect as “the 2015 to 2017 period is when there is a peak in the re-registration of firearms” under the current certificate system. He informed us—

“We have discussed with the police how we can shift much of the air weapons stuff to the periods when they are quieter, and part of the work that we are doing with them is looking at how we will commence implementation of the bill, including the lead-in time for people needing a certificate. We want to move the registrations to a quieter period for the police in order to level out their workload […] Some of the provisions on the commencement of different aspects of the bill can assist us in achieving that as well, through setting a lead-in time. I am open to working with the police on that.”

92. The Cabinet Secretary highlighted the need to ensure a comprehensive public information campaign is put in place to inform air gun owners of the forthcoming air weapons certificate system. This, he said, would be important in ensuring—

“…the owners of the potentially half a million air weapons […] are aware that they have a responsibility to have their weapons licensed—and, if they do not, that they could be committing an offence and could find themselves prosecuted.”

The application fee for a certificate

Background

93. The Financial Memorandum to the Bill provides estimates of potential fees for air weapons certificates. It suggests a fee of around £50 which is close to the current firearms/shotgun application fee. It also suggests an indicative level of £85, if it were based on estimates of the full cost of processing each type of air weapon application.
Current fees for firearms applications

94. The 1968 Act forms the basis of the statutory regime for the regulation of firearms. This also sets out the mechanism by which the UK Government sets the fees charged to those who wish to obtain a certificate to own and use a firearm. Currently, the UK Home Office has responsibility for setting the fees payable for anyone wishing to seek a firearms certificate. Since 2001, the fee for a firearms certificate is £50 per application. The standard period for which a certificate is valid is five years. Therefore, in essence, it costs £10 per year.

95. Between 27 November and 29 December 2014, the UK Home Office undertook a public consultation on a proposed increase in the firearms licensing fees. There is currently no indication when outcomes from this consultation will be available. Following the launch of the consultation, we asked Police Scotland for its views. In response they told us—

“It is the position of Police Scotland that a fee increase is well overdue, the last increase being in 2001. Police Scotland welcome an increase, but recognise that the proposed fees for Firearm and Shot Gun Certificates and other associated certificates remain under the true cost of firearms licensing to the police at this time […] using an activity based costing approach, suggested that the true cost to the police of a grant of a Firearm or Shot Gun Certificate was £189. The increase in fees is a step in the right direction, and it should remain under review until the fees reflect a full cost recovery basis.”

96. Part 1 of the Bill proposes to replicate the existing firearms certificate system for the application, processing, granting and monitoring of air weapons certificates. As it is the person making the application who is being certified, and not the air weapon (or weapons) they own, a single certificate may cover the ownership of multiple air weapons.

97. Two key themes emerged in terms of the fee level set at for an air weapons certificate—

- whether the fee to the applicant should be sufficient to fully cover the costs to the police in terms of administering the system, or whether the public should bear some part of the cost in recognition that having a safe and regulated air weapons certificate system benefits all;
- whether any disparity between the fee for an air weapon certificate (set by the Scottish Ministers), and a lower fee for a certificate for a more powerful firearm, such as shotgun or rifles (set by UK Ministers) may encourage people to opt for more powerful firearms, referred to as ‘trading up’.

Fees for air weapons certificates

98. Discussing the role of the certificate fee in the potential success of the air weapons certificate system, the Gun Trade Association ("GTA") told us—

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54 Policy Memorandum, paragraph 94.
55 A proposal to increase firearms licensing fees administered by the police, UK Home Office consultation.
56 Police Scotland, Written submission, 9 January 2015.
57 SPICe briefing SB14-84, page 11.
“We must take into account the fact that a considerable proportion of the air weapons that are held in Scotland are probably worth less than £100. If the certificate is enormously expensive and security requirements are more than described in the bill, there will perhaps be a temptation for some people not to register voluntarily at the start of the scheme. The cost will have an influence on how many people register.”

99. The BASC argued—

“As has been the case with firearm and shotgun certificates in the past, a proportion of the cost that the police face will be paid for by the applicant and the rest should be paid for by society because society benefits in relation to safety.”

100. This view was, however, rejected by Police Scotland. ACC Mawson stated—

“If people want to own a firearm of any kind, whether it is a shotgun, a rifle or an air weapon, they should pay the costs that are associated with that. We are not out to make any kind of profit from it; we just want the costs to be recovered.”

101. This opinion was shared by the SSPCA, who said, “In this country, we do not have a right to bear arms. If someone wants something that can potentially kill, they should be willing to pay for it.”

102. When asked if the current £50 fee fails to cover the costs of administering the firearms certificate system, ACC Mawson stated—

“In short, yes it does, at the moment. We do a lot of work to ensure that only fit and proper people receive firearms or shotgun licences. A huge amount of work is involved in that, including visits, follow-up visits and checking gun cabinets. To be frank, the cost of that work is not covered by the existing fees.”

103. In December 2013 Police Scotland stated “the cost to Police Scotland in carrying out proportionate checks in respect of air weapon certification would be approximately £85 per application.”

Trading up

104. Another issue raised is the risk that if an air weapons fee is set at a higher value than the fee for a more powerful firearms or shotguns (currently £50), people may be tempted to opt for owning a more powerful firearm as the lower certificate fee would act as an economic incentive.

63 Police Scotland. Written submission, 9 January 2015.
105. Referring to this point, the BASC pointed out that—

“…people who have in the past had air weapons because they were unlicensed and who would now be exposed to a licensing regime may think to themselves, “I have a low-powered air weapon but if I need to get a licence I might as well get a licence for a more powerful rifle or a shotgun.” A number of people may move from unlicensed air weapon shooting into licensed firearm and shotgun shooting.”

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106. The BASC stated they believed ‘trading up’ would be a welcome by-product of the legislation as it would, in their view, encourage more people to move to more regulated shooting activities, which carry a higher level of scrutiny and regulation. This, in turn, would serve the interest of ensuring public safety.

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107. The GCN were sceptical of this view, believing those involved in shooting have overestimated the degree of interest airguns only users actually have in shooting.

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Scottish Government
108. The Cabinet Secretary confirmed that Scottish Ministers were making the case to the UK Home Office for a significant increase in the fees for shotgun and firearms certificates. The Cabinet Secretary said it would not be desirable to have a major disparity between the air weapons certificate applications fee, and the revised fees for shotgun and firearms certificates.

109. Speaking about the Government’s intention for the air weapon fee to fully fund the air weapons certificate system, the Cabinet Secretary told us—

“…we would like to get as close to full cost recovery as we can, but we have to wait to see how far we can pursue that, as it will be dependent on the approach that the Home Office takes to setting fees for firearms and shotguns.”

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110. However, he informed us—

“The checks that will be undertaken for the purposes of licensing an air weapon will not be of the same degree as those for the licensing of a firearm. The work that the police will do will not be as onerous as it is when someone applies for a firearms certificate […] The process is unlikely to involve to any great extent home visits, inspection of the device’s location and so on […] Therefore, it is reasonable to expect that the cost will be significantly less as a result.”

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Other issues

Age restrictions in relation to air weapons

111. The Bill allows anyone who is aged 18 or over to apply for a certificate to own an air weapon. The Bill includes special requirements and conditions for people aged 14 to 17 who wish to acquire an air weapons certificate. Currently, 14 is the minimum age where a young person can shoot an air weapon on private land unsupervised under the 1968 Act. Fourteen is also the minimum age at which a young person can be granted a section 1 firearms certificate under the 1968 Act.\(^{70}\)

112. There is currently no minimum age for the grant of a shotgun certificate in the UK, although a person must be aged 18 years or over to purchase a shotgun. Anyone aged 14 or younger must be supervised by someone aged 21 or over to be in possession of an assembled shotgun in a public place.

113. Under the Bill, a certificate granted to a young person between the ages of 14 and 17 would expire when that person became 18. A certificate application made by a young person must be counter-signed by a parent or guardian, and any certificate issued would specify the types of shooting which the young person may undertake. The Policy Memorandum stated this would include—

- target shooting on suitable private land or at an approved club;
- pest control;
- protection of crops or livestock;
- participation in events and competitions.

114. The BASC considered the provision for 14 to 17 year olds may effectively make a certificate for a young person proportionately more expensive than one for an adult. The requirements may also, in their view, lead to delays in making applications.\(^{71}\)

115. SARPA also raised concern over the potential impact of the variations in age restrictions in Part 1 of the Bill—

“There are a number of issues around youth shooting [such as] Scottish tetrathlon, but there is also the Pony Club, the air training corps and the scouts. A whole plethora of youth organisations use shooting as a pastime or a sport. The regulation of facilities is fine where a dedicated facility is used, but a lot of events—for example, the tetrathlon—take place over various places.”\(^{72}\)

116. Commenting along similar lines, Police Scotland raised the issue of potential restrictions on under 18 year olds, and the difficulties which may arise—

“...the proposed conditions under which someone under 18 will be able to use an air weapon, one of which is that the person is employed to carry out pest control. That means that an individual under 18 who wanted legitimately to

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\(^{70}\) SPICe briefing SB14-84, page 15-16.

\(^{71}\) BASC. Written submission 76.

engage in pest control in an area where they were allowed to shoot would not be able to do so unless they were employed”.

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

117. The GTA pointed out what they saw as an anomaly in the drafting of the Bill in relation to people living in other parts of the UK—

“A particular complication that we deal with in Scotland relates to what we call remote sales or, in other words, those in which a registered firearms dealer in Scotland sells an air weapon to somebody who is a visitor to Scotland and who has neither a certificate nor a visitors permit. The Bill as it is drafted says that the dealer in Scotland may send that air weapon “outwith Great Britain”. The way in which that is written means that the dealer will not be able to send it to someone in England; they will have to send it elsewhere.”

**Unique weapons identification mark**

118. Some discussion took place around the benefits, and practical feasibility, of placing a unique identifying mark, such as a sticker or label on an air weapon as part of the certificate process. Such a system would have the advantage of replicating some of the benefits of the unique serial number which all firearms and shotguns must carry, such as linking the weapons to a specific certified owner.

119. Discussing the effectiveness of the Bill in meeting the stated aim of addressing criminality in Scotland, the BASC pointed out that the lack of serial numbers on air weapons could pose a problem for the operation of a certificate system—

“We are faced with the problem that there is an estimated minimum of 500,000 airguns in Scotland. The vast majority of them do not have a serial number, unlike the vast majority of shotguns and other firearms. Consequently, introducing a licensing regime from scratch is unlikely to be successful because the only people who would submit themselves to it would be law-abiding people who wish to remain law-abiding.”

120. Responding to the suggestion that a unique identifier system might be advantageous, Police Scotland stated—

“As far as we understand the bill, there would not be a mechanism for identifying, for instance, that the weapon is a .22 air rifle. As you say, a lot of the [air] weapons do not have identification numbers on them, so we would not be able to identify them.”

**Scottish Government**

121. The Cabinet Secretary acknowledged various issues around the use of air weapons for people aged 14 to 17, and various activities in which they may be legitimately required to use and air weapons, such as activities with pony clubs triathlons or tetrathlons etc. The Cabinet Secretary and his officials confirmed they

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are discussing these issues with relevant stakeholders in order to ensure the Bill does not impede young people from undertaking such activities.\textsuperscript{77}

122. On developing a unique identifier for specific weapons, the Cabinet Secretary was more circumspect—

“The challenge is to create [an identifier] system that does not lend itself to being misused […] It would be a much wider issue for us to try to deal with air weapons by having serial numbers embedded into them. That would go well beyond Scotland and would probably have to be taken forward on a Europe-wide basis, because there are also European regulations on firearms.”\textsuperscript{78}

Financial Memorandum

123. The Finance Committee’s report to us on the Financial Memorandum asked us 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”;\textsuperscript{79}
- “invite the Cabinet Secretary to confirm whether the Government intends to revisit the issue of possible costs arising from appeals”.\textsuperscript{80}

124. Police Scotland said it had no budgetary provision to deal with the proposed legislation and that costs would be incurred in the handing in of air weapons. This includes any home visits Police Scotland carry out to assess the circumstances where the reason for seeking a certificate includes informal target shooting within the bounds of their own domestic residence, referred to as plinking.

125. Referring to the detail set out in the Financial Memorandum, Calum Steele of the SPF told us—

“…there is a suggestion that [Police Scotland] should not pursue air weapons as a significant priority but deal with issues as and when they occur. Costs should be broken down into three areas: the financial cost; the human cost, in terms of the impact on communities and individuals; and, of course, the cost of the time that police officers spend dealing with such cases […] what will inevitably contribute to that cost will be the increase in the number of licensing offences identified and, undoubtedly, reported to the Crown Office and Procurator Fiscal Service.”\textsuperscript{81}

126. The BASC told us of difficulties which, in their view, the effective restriction of informal target shooting, or plinking, may cause—

“…the British Shooting Sports Council has identified that the vast majority of people who use air weapons in Scotland and the rest of the UK use them for

\textsuperscript{79} Finance Committee \textit{Report}, paragraph 37.
\textsuperscript{80} Finance Committee \textit{Report}, paragraph 44.
informal target shooting in gardens, otherwise known as plinking. Although the bill does not prohibit plinking, the policy memorandum states that ministers would not normally accept shooting in domestic gardens as a good reason to grant a licence. It concerns us enormously that a significant number of owners of air weapons could be prohibited from getting a licence because they cannot provide a good reason, they do not have access to a large area of ground or they are not members of clubs.  

127. It is clear the Government does not wish informal target shooting, or plinking to be considered as the sole valid reason for a certificate to be granted. This being the case, the only way to assess whether it is suitable to grant a certificate to an applicant who states that they wish to use an air weapons for informal target shooting on their property would be to visit the premises in question and assess the physical circumstances for target shooting. Such checks will add substantially to the costs incurred in processing air weapons certificate applications.

128. We accept it may be difficult to assess the potential costs of the certificate system at this stage, in the absence of information on the number of people undertaking informal target shooting at their place of residence, who may go on to seek an air weapons certificate on that basis. Nevertheless, we suggest the Scottish Government keep these costs under review and, if required, make appropriate adjustment to the fee payable by applicants to cover any additional costs to the police.

129. We note the views expressed by the Scottish Government Bill Team to the Finance Committee who recognised it was difficult to estimate the number of possible appeals on refusals to grant an air weapons certificate. They suggested the proposed “light-touch system” along with the “very small” number of refusals under the existing firearms regime led the Government to expect there would not be many appeals.

Delegated Powers

130. In its report to us on delegated powers in respect of Part 1 of the Bill, the Delegated Powers and Law Reform Committee (“DPLR”) highlighted two specific areas. Firstly, in relation to the powers conferred by Section 37(1) regarding 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.

131. The DPLR Committee felt the powers set out in 37(1) went beyond the aim of the section as explained in the Delegated Powers Memorandum, namely to enable the “administrative minutiae” of those processes to be set out in regulations. The DPLR Committee called for such provisions to be set out in the Bill without the need for the “broad power” provided by 37(1).

132. Secondly, the DPLR Committee expressed concern in relation to Section 76 of Part 4 of the Bill (on general provisions). This section confers powers on the Scottish Ministers to make ancillary provisions in standalone regulations for any provision of

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the Act or any provision made under it. As such this relates to all Parts of the Bill, including Part 1 on air weapons.

133. The DPLR Committee expressed concern at the use of the words “or any provision made under it” as a highly unusual power. They considered this to be too broad. The response from the Scottish Government did not, in the DPLR Committee’s view, justify the use of such broad wording in Section 76. It recommended the section be amended at Stage 2 to remove this wording.

134. We support the view of the Delegated Powers and Law Reform Committee in relation to both provisions.

Recommendations

The application process

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

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

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

The fee for the application process

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

Sale of air weapons to people who reside outside Scotland

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

Unique weapons identification mark

140. The Scottish Government consider whether it might be feasible to include some form of identifier mark as part of the design of the air weapons certificate system. The Government should also take the opportunity to engage the UK
Government and the European Commission, on the possibility of introducing suitable EU regulations in this area.
PART 2: ALCOHOL LICENSING

Background

141. Part 2 of the Bill contains provisions which are intended to improve the effectiveness of the alcohol licensing regime laid out in the Licensing (Scotland) Act 2005. That Act only came into force 4 years ago and according to the Policy Memorandum “the regime is still settling in. Many aspects of it are working well. However, there are areas that are not working as effectively as they should be. Therefore, rather than proposing radical overhauls of the regime, the Scottish Government has looked at these areas to find ways to improve the existing system.”

142. The 2005 Act contained a number of policy innovations, including:

- **licensing objectives** – section 4 of the 2005 Act sets down five specific objectives which are intended to guide all licensing decisions

- **licensing policy statements** – licensing boards are required to consult on and publish statements detailing their approach to their functions under the 2005 Act

- **mandatory conditions** – the Scottish Government can set mandatory conditions which apply to all alcohol licenses. These can be used to take forward national policy priorities – for example, tackling irresponsible drinks promotions

- **overprovision** – licensing boards are required to assess whether there is “overprovision” of licensed premises in their areas. A finding of overprovision creates a presumption against issuing new licenses

- **licensing standards officers** – this role is responsible for supervising compliance with the alcohol licensing regime and providing support to resolve complaints

143. The Bill proposes to make a number of changes to the current regime with the policy objectives of “preserving public order, reducing crime and advancing public health”. Following consultation, a range of suggestions were made in relation to the licensing regimes. This Bill amends the existing legislation to take forward those suggestions which were considered to be most effective and practical. The Scottish Government has suggested that people do not want a root and branch review of licensing legislation and restricted proposed changes in the Bill to ones designed to improve the existing system.

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83 Licensing (Scotland) Act 2005.
84 Policy memorandum, paragraph 24.
85 Scottish Government. Further Options for Alcohol Licensing - Consultation Paper.
86 Policy Memorandum, paragraph 13.
Bill proposals

144. The main proposals in Part 2 are:

- The creation of a new offence of supplying alcohol to children or young people for consumption in a public place and amendment of the licensing objective in relation to children to also include young persons;
- Amendment of the duration of a licensing policy statement to be more aligned with the term of Licensing Boards;
- Re-inserting a fit and proper person test in relation to the issue for continued holding of a premises or a personal licence;
- Amendment of the definition of relevant offences and foreign offences to no longer disregard a matter that is spent for the purposes of the Rehabilitation of Offenders Act 1974;
- Clarification that for an overprovision assessment, the whole Board area may be considered as an area of overprovision, and to allow Boards to take account of licensed hours, among other things;
- Imposition of a duty on Boards to prepare an annual financial report;
- Removal of the requirement for a premises licence holder to notify a change in interested parties and creation of vicarious liability for a premises manager for various offences;
- Removal of the five year restriction on re-applying for a licence revoked on grounds of failing to undertake refresher training and other changes to the personal licence holder requirements;
- Provision for the automatic grant of a licence (or its variation) where a Licensing Board has not either decided on an application or sought an extension from the sheriff within a set period. This will enable compliance with the EU Services Directive.

Committee submissions

145. In addition to the above areas submissions suggested a number of others which should be legislated upon. The principal additional areas covered in submissions were:

- Occasional licenses
- Members clubs
- Transfer of licenses
- Surrender of licenses
- “Site only” licenses
- Variations of conditions on premises licenses
- Home deliveries

146. Each of the areas covered by the main proposals and the additional areas above are considered in turn.

147. We sought to consider submissions against the statement in paragraph 123 of the Policy Memorandum—

“all provisions in the Bill need to be tested against the following themes:
Reducing crime and preserving public order and safety;
Providing Boards with powers to consider a broader range of information;
Advancing public health;
Improvements to the existing system and reducing burdens on trade and Licensing Boards.”

148. We also considered the contribution the licensing system and licensing policy makes to supporting community planning in preventing and reducing harm.

Section 52 - Supplying alcohol to children or young people

149. While it is illegal to buy alcohol on behalf of a child, it is currently legal to buy alcohol to share with a child. The Bill proposes to close this loophole by making it an offence for a person aged 18 or over to share alcohol with a person under 18 in a public place (including private property which the drinkers have accessed illegally).

150. The proposal is designed to tackle outdoor drinking by groups of children and young people. However, it would also criminalise behaviour which some respondents to the Scottish Government’s consultation characterised as “responsible”, such as parents introducing children to alcohol at a family picnic. Other respondents called for the supply of alcohol to children to be illegal in any circumstances.

Section 57 – Personal licences: grant, duration and renewal

151. Section 57 of the Bill amends the 2005 act by removing the five year restriction on re-applying for a personal licence revoked on grounds of failing to undertake refresher training and other changes to the personal licence holder requirements.

152. At present when a personal licence is revoked for any reason, the person who held the licence may not apply for another one for five years. Thus, for example, some personal licence holders who fail to submit evidence of the refresher training within the time limit, for example as a result of forgetting about the deadline, will have their licences revoked.

153. The Bill amends the legislation so that if a personal licence is revoked under section 87(3) of the 2005 Act (for failure to comply with the training requirement), the licence holder will not have to wait 5 years to reapply for a personal licence. They will still have to go through the cost and inconvenience of applying for a new licence, thus serving as a deterrent to those who may consider not undergoing the refresher training.

Section 58 Processing and deemed grant of applications

154. Section 58 of the Bill makes provision for the automatic grant of a licence (or its variation) where a Licensing Board has not either decided on an application or sought an extension from the sheriff within a set period.

155. This provision is designed to ensure applications to the Licensing Board for licences are processed more efficiently and seeks to bring timescales in line with the 1982 Act.
156. The provision requires the Licensing Board to determine every application within nine months of the date of receipt, unless this period has been extended by the Board applying to the sheriff for an extension. If the Board fails to determine the application within the permissible period then it will automatically be deemed to have been granted and the Board will be obliged to issue the licence/appropriate authorisation.

157. Notwithstanding comments to the Scottish Government consultation respondents to us indicated general agreement on the addition of the above three provisions. Having considered the submissions received and the information contained in the Accompanying Documents, including written exchanges thereon with the Scottish Government we are content with each of the above three provisions.

Section 56 – Interested parties

158. This section removes the requirement for a premises licence holder to notify a change in interested parties and the creation of vicarious liability for a premises manager for various offences.

159. The Criminal Justice and Licensing (Scotland) Act 2010, at section 184, proposed that a premises licence holder be under a duty to notify their Licensing Board if a person becomes or ceases to be a connected person or interested party. This was to respond to concerns that the holders of premises licences were failing to advise Boards of connections with, for example, organised crime.

160. However the Law Society of Scotland raised concerns the provision was too vague and too broad to be practical. For example, if the premises licence is held by a tenant of large chain and there is a change on the parent board of directors they suggested notification might be required.

161. Other concerns were raised by the Association of Chief Police Officers in Scotland (ACPOS) that the provision would have the unintended consequence of a premises manager no longer having vicarious liability for the offences committed by employees. Others suggested the re-introduction of the ‘fit and proper’ test would address these concerns.

162. The Bill therefore revokes the provisions in section 184 of the 2010 Act, which have never been commenced, as far as they refer to requirements on premises licence holders to notify information about ‘interested parties’. The definition of “interested parties” would also be amended to include premises managers.

163. Police Scotland however wished to see section 184, which inserted new section 40A into the 2005 Act, commenced to provide them with “greater opportunities …to identify and disrupt serious and organized crime’s involvement in the licensed trade.”87 This would apply only in relation to persons tenanting premises.

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Section 42 - Statements of licensing policy: licensing policy periods

164. This section deals with the duration of licensing policy statements, bringing them more in alignment with the term of Licensing Boards.

165. A Licensing Board is a quasi-judicial body consisting of locally elected councillors, with support from local authority staff, including a qualified solicitor who provides legal advice. A Board is an entirely separate legal entity from a local authority and its responsibilities are set out in the 2005 Act.

166. To ensure their independence Boards do not formally report to local authorities or Scottish Ministers on the exercise of their functions, although their decisions are subject to review by the courts. Decisions made by Boards on individual licence applications are made within the context of their licensing policy statement and overprovision assessments.

167. The 2005 Act introduced a duty on Licensing Boards to issue a statement of licensing policy, before the beginning of each three year period. The report is required to set out the Board’s general approach to licensing decisions and outline how it intends to promote the five licensing objectives.

168. The Bill amends the legislation to provide that a new Board has to prepare a new policy statement within eighteen months of being appointed. Once agreed the policy has a duration of up to five years, although Boards will retain the ability to make changes by way of a supplementary statement.

169. Responses from Alcohol Focus, the Wine and Spirit Trade Association and the Scottish Retail Consortium, COSLA and Midlothian Licensing Forum all agreed this was an appropriate approach to take. The Institute of Licensing said “it was helpful that the term of the policy will be linked to council terms instead of being triennial”.

170. However Dumfries and Galloway Council while noting an immediate attraction set out a couple of concerns. It wondered whether a 5 year statement covered too long a period during which the views of community stakeholders and the trade would not be taken. They noted the period mirrored the political cycle of local authority elections and wondered whether by so doing it gave an impression the Board could reflect on the Board’s quasi-judicial status and if it could be considered as not being politically neutral.

Sections 43-48 – Fit and proper person test

171. These sections re-insert a fit and proper person test in relation to the continued holding of a premises or a personal licence.

172. The Bill would allow Licensing Boards to consider if an applicant, or those connected with an organisation, were “fit and proper” persons to hold an alcohol licence. The Policy Memorandum envisages that this would allow Boards to take into account a wider range of information about an applicant’s character when reaching a
decision, including police intelligence. The proposals would also allow the consideration of spent convictions.

173. There was a general welcome for the reintroduction of this test although with reservations. The Co-operative Retail Trading Group\(^90\) were against it seeing no particular need to re-introduce.

174. Renfrewshire Licensing Board,\(^91\) amongst a number of others had a concern around the linkage of the test to the licensing objectives and were worried this would be subject to litigation to clarify its meaning.

175. Part of the reservations from both the Law Society of Scotland\(^92\) and the Institute of Licensing\(^93\) centred on the proposals around spent convictions and the use of police intelligence. These are covered in a later section of this report. The Institute of Licensing had a further concern referring to a decision in the case of Brightcrew\(^94\) by the Inner House of the Court of Session which according to the Glasgow Licensing Board\(^95\) had placed “limitations and constraints” on them.

176. Glasgow Licensing Board indicated they routinely received submissions that criminal conduct by applicants unconnected to the sale of alcohol should not be considered by them and noted their concern such submissions “have found favour in the courts”. They went on to suggest that—

“if the Board is not explicitly given the ability to deal with issues it considers to be of relevance to one or more of the licensing objectives but do not necessarily flow directly from the sale of alcohol, the Board considers that it will be unable to fully tackle issues relating to crime and public disorder, and therefore always unable able to act in the public interest.”\(^96\)

177. Police Scotland expressed similar concerns noting a frustration in both their and Licensing Boards’ ability to tackle issues not directly related to the sale and supply of alcohol in licensed premises.\(^97\)

178. The Law Society of Scotland were concerned the reintroduced test would lead to an increase in objections being made without admitted facts and/or proof although they accepted re-introduction could “strengthen the Board’s ability to exclude unsuitable persons from becoming holders of premises or personal licences”\(^98\)

179. We note the subject of the Brightcrew decision was covered in the Scottish Government consultation.\(^99\) The case having “potentially important implications for the operation of the licensing system.” However it has been argued the decision does not apply to alcohol provisions as it centred on the ability of the Board to refuse

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\(^90\) Consultation submission number 79.
\(^91\) Consultation submission number 103.
\(^92\) Consultation submission number 114.
\(^93\) Consultation submission number 99.
\(^94\) Brightcrew -v- City of Glasgow Licensing Board [2011] CSIH 46.
\(^95\) Consultation submission number 131.
\(^96\) As above.
\(^98\) Consultation submission number 114.
an application for a premises licence from a lap dancing club and did not relate to the sale of alcohol.

180. The Scottish Government consultation stated the implications of the Brightcrew decision—

“are open to dispute, and further court judgements would be required to provide greater clarity of interpretation of the existing legislation. Some argue that Brightcrew does not have profound implications as long as Boards have clear and evidenced licensing policy statements.”

181. The Cabinet Secretary in evidence went further stating—

“Our general view about the Brightcrew decision was that it confirmed the purpose of an alcohol licence for premises. There was clearly an issue about the way in which the case was conducted and about how the licensing board of Glasgow City Council sought to use the licence for other entertainment that was taking place within the establishment.”

182. However, it was clear in submissions that some Boards are now cautious about taking cognisance of factors such as noise complaints, fights, and other disturbances because they are not directly concerned with the sale of alcohol.

183. Glasgow Licensing Board also wished to see the test applied to the transfer of licence provisions as well as to anybody benefiting from the business or being involved in the management of the business.

Section 54 - Overprovision

184. Licensing policy statements must contain a statement as to whether there is overprovision of licensed premises in any locality within the Licensing Board’s area. The Bill would change the definition of overprovision to enable Licensing Boards to take into consideration licensed hours as well as the number and capacity of licensed premises. It would also clarify that the whole of a board’s area can be classed as a “locality” for the purposes of carrying out the assessment.

185. There was a clear split on this aspect with trade bodies firmly opposing these changes and questioning their proportionality, and Health Boards along with Alcohol and Drug Partnerships being strongly supportive. Submissions highlighted a fundamental difference in approach with health organisations highlighting a clear link between access to alcohol and poor health outcomes.

186. Trade bodies considered the assessment of overprovision should be linked to specific licensed premises. This was a particular problem for the health boards who pointed out data covering health outcomes tended to only be available at board wide level. We noted the guidance on overprovision indicated the point is only to establish a general link between a concentration of licensed premises and disruption. In

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100 See footnote 99.
Glasgow we heard policy on overprovision is based on where there is most harm not where there are most premises. Glasgow has specified some eight or nine areas as being overprovided.\(^{103}\)

187. The Co-operative Retail Trading Group and the Scottish Grocers Federation were particularly concerned about the proposal allowing the whole of a board area to be classified. We heard how this could impact on investment with consequential stifling of job creation and competition. It was suggested that outlets should be subdivided into further categories including large supermarkets and convenience stores separately.

188. The Scottish Licensed Trade Association suggested this would exacerbate a current situation which saw inaction in relation to overprovision by boards for fear of being challenged through the courts. This it was suggested by some was a particular concern when considering applications by large retail outlets which had led to a two tier approach with smaller, less resourced applicants being more liable to have their applications refused.

189. The trade bodies were also concerned about boards considering trading hours when considering overprovision. Their fear was of potential unintended consequences to the detriment of more rural or outlying areas when any overprovision problems that might actually exist would be concentrated in conurbations.

190. A number of respondents observed that members clubs were not included in overprovision calculations, some observing that in the Borders 22% of all licensed premises held members club licenses. Similarly occasional licences were not included. We look more widely at members clubs and the granting of occasional licenses later in this report.

191. We heard suggestions local residents and communities were handicapped in lodging objections to applications with Licensing Boards on the grounds of overprovision as a consequence of there not being publicly available data showing the density and locality of licenced outlets.\(^{104}\) Similar issues arose in relation to the proposal to include trading hours, a concern echoed by Society Of Local Authority Lawyers and Administrators in Scotland (SOLAR) “because not every premises trades to the full hours that they have on their licence”.\(^{105}\) A point echoed by Jack Cummins along with concerns around measuring the storage capacity and shelf space within premises.\(^{106}\)

192. John Lee from the Scottish Grocers Federation thought the provision “could inhibit trade and be anti-competitive” particularly for more independent operators. He suggested any proposal to take account of sales areas could affect expansion and investment plans. Paul Waterson from the Scottish Licensed Trade Association thought there was an existing two tier system in effect in operation—

“Licensing boards are also under great pressure from the bigger operators and


they certainly operate a two-tier decision-making system in relation to overprovision. They are very worried about the financial problems that would occur if a decision was appealed. They know that the bigger companies will appeal and that the independent trade perhaps does not have the finance to appeal, so they look upon the bigger developments more favourably than they do on others.”

193. We also heard similar concerns from Paul Waterson about Licensing Boards endeavouring to secure jobs and employment and how objectors can suffer from exhaustion as applications are withdraw and re-lodged over a period of time. And we were told one Board considered the health benefits from employment as a significant factor in considering applications.

194. Equally we heard how some Licensing Boards (Highland, East and West Dunbartonshire in particular were mentioned) had taken considerable evidence on overprovision from a range of interests including Health Boards in formulating policy. We asked all Health Boards about their relationships with Licensing Boards as we wanted to understand the extent of their involvement in providing evidence to Boards.

195. Health practitioners suggested Licensing Boards struggle with the concept of overprovision and what information should be taken into account. While Audrey Watson, managing solicitor West Lothian Licensing Board, advised her board had difficulty in getting evidence including from NHS Lothian. The absence of evidence precluded them from taking health issues into account.

196. The responses we received from Health Boards were mixed. Some set out the detail of their involvement in depth while others provided minimal information. There were clearly different approaches being followed across Health Boards and Licensing Boards and while the quasi-judicial nature of the Licensing Board means they are free to set their own policies (subject to the provisions in the Act and the guidance) some Health Boards suggested their submissions were routinely ignored. Others commented favourably on relationships.

197. The Cabinet Secretary noted the variable approach by Licensing Boards and suggested the Bill provided greater scope and flexibility for Licensing Boards to “consider a wide range of issues relating to overprovision.” He added—

“…..I would like to see more progress being made. Some licensing boards have been enlightened and much more proactive than others; I would like to

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111 Local Government and Regeneration Committee. Air Weapons and Licensing (Scotland) Bill Committee web page, correspondence section.
112 Refer to footnote 110: See for example Greater Glasgow and Clyde re Renfrewshire.
113 Refer to footnote 110: See for example NHS Lothian re Edinburgh City, NHS Tayside re Dundee and Greater Glasgow and Clyde re Glasgow City, Inverclyde and West Dunbartonshire.
see more of them being proactive. It is important to make sure that local licensing policies are more reflective of public health.”

198. In relation to the role of Health Boards he indicated a desire to—

“ensure that local territorial health boards are proactive in the local licensing forum and in responding to the new applications or major variations that they must be consulted on. They should make their positions very clear and respond appropriately in order to inform licensing boards.”

Licensing Objectives
199. Section 41 of the Bill amends one of the licensing objectives to add “young persons” to the existing Board objective “to protect children from harm”. This change was welcomed by all who commented on it. We also heard the licensing objectives do not require the policy of boards to include the reduction of consumption. It was also suggested each of the five objectives could be viewed as contributing to wellbeing with a specific objective of “protecting and improving public health”.

Section 51 – Relevant offences and foreign offences: spent convictions
200. The effect of this section is that certain criminal convictions will in future no longer be regarded as spent for the purposes of the Rehabilitation of Offenders Act 1974 and can thus be considered by Licensing Boards. It also allows for the consideration of police intelligence by Licensing Boards.

201. Section 51 of the Bill proposes to remove the restriction on licensing boards considering spent relevant or foreign convictions when deciding on licence applications. The Policy Memorandum states such a change is necessary in order to prevent unsuitable people from working in licensed premises.

Spent convictions
202. Currently, a licensing board is only able to consider relevant or foreign convictions which are not “spent” for the purposes of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). Under the 1974 Act, convictions can be considered spent after a certain amount of time has passed since conviction. More serious offences (those where an individual was sentenced a term exceeding two and half years in prison) are never spent. Where a conviction is spent, a person would not usually have to reveal it if asked about their criminal record.

203. Certain professions covering for example lawyers, police, healthcare workers and teachers, are exempt from the provisions of the 1974 Act, meaning that people applying for those roles do have to declare convictions which would otherwise be considered spent. Applicants for taxi, private hire car and gambling licenses are also exempt from the provisions of the 1974 Act.

117 Policy Memorandum, paragraph 140.
204. Relevant offences are specific offences prescribed in subordinate legislation and generally require violent or dishonest behaviour, foreign offences and similarly grave offences committed in foreign countries.

205. The Scottish Licensed Trade Association suggested these were matters for the Licensing Board and police to determine and thought “whether the 1974 Act should apply depends on the severity of the crime”\textsuperscript{118}

206. City of Edinburgh Council supported this section indicating “it was important public confidence in the system was maintained” and noting other applications already required such disclosure. Glasgow Licensing Board also welcomed this section as allowing them to “come to an informed view” although they sought clarification as they considered they were bound by a judicial decision stating they could only do this if it were in the interests of justice.\textsuperscript{119}

207. The Law Society of Scotland questioned this approach while recognising each case would require to be considered in its merits by Licensing Boards. In relation to the Rehabilitation of Offenders provisions they noted that Act was passed “in order to allow people to move on with their lives and not have to disclose what may be a relatively minor offence from some stage in their past”.\textsuperscript{120}

208. The Institute of Licensing suggested there was no evidence “the licensed trade had fallen into disrepute as a result of boards not being able to consider spent convictions.”\textsuperscript{121}

\textit{Police intelligence}

209. The provisions also propose to introduce new sources of information which a licensing board can consider when deciding whether an applicant for a licence is fit and proper. At present, a Licensing Board is able to look at “relevant” and “foreign” convictions when considering an application. The board can also consider whether granting the application would be consistent with the licensing objectives.

210. Under the Bill’s proposals, a Licensing Board will also be able to consider information which “the chief constable considers may be relevant to consideration by the Board of the application”. The Policy Memorandum\textsuperscript{122} envisages this may include police intelligence and information on associations with people deemed to be unsuitable. Unlike convictions, such allegations may not have been evidenced to a standard accepted by the courts.

211. We asked the Scottish Government to explain this provision further\textsuperscript{123} and it indicated it became a matter for boards to determine whether the material is “relevant and what reliance to place upon it.” While our concerns about ECHR issues were not addressed in the Scottish Government’s response a number of witnesses expressed concerns centred on the concept of natural justice. The Institute of Licensing stated—

\textsuperscript{119} O'Docherty v Renfrewshire Council 1998 SLT 327.
\textsuperscript{120} Consultation submission number 114.
\textsuperscript{122} Policy Memorandum, paragraph 136.
\textsuperscript{123} Scottish Government. \textit{Written submission}, 27 June 2014, Q&A 20.
“The proposal that the police may be able to produce "intelligence evidence" without specifying what that evidence is seems to the Institute to be at odds with principals of natural justice and convention rights such as the right to a fair trial.”

212. Stephen McGowan on behalf of the Institute of Licensing amplified the concern that “unknown and unseen evidence as to whether a person is unfit” would be presented to Licensing Boards. His contention was that such evidence could be presented by the police but it would be difficult for the Licensing Board to legitimately take it into account unless there is full disclosure to the applicant and the opportunity to challenge. He added—

“We do not believe that it is correct for an applicant to be faced with an allegation that is not substantiated or evidenced and to have their prospective livelihood held in the balance at a hearing without knowing what the evidence is.”

213. Finally he noted recent circumstances which had led to a recent case being overturned on appeal by the sheriff because of a lack of “sufficiency and probativity of the evidence”

Section 55 - Duty on Boards to prepare an annual financial report

214. Section 55 of the Bill requires all Licensing Boards to produce an annual report detailing their expenditure on alcohol licensing functions as well as the income raised from licensing fees.

215. The provision was generally welcomed although some respondents wanted further financial information to be produced.

216. We also heard suggestions that the accountability of Licensing Boards should be increased. These included that the annual report should also include outcomes data including Boards measuring themselves against their policy statements and objectives. We note proposed new section 9A(4) allows for the report to include “such other information about the exercise of the Licensing Board’s functions as they consider appropriate.”

217. We are aware the Scottish Government consulted on such a proposal in response to which licensing boards were unanimously against and Alcohol and Drug Partnerships (“ADP”) were unanimously supportive. Reasons for opposing were given as “needless duplication of existing reports” and “an additional burden on Boards.” It was also suggested reporting could “skew Board actions and decisions to allow them to provide a more favourable report on their performance.”

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124 Institute of Licensing. Written response 99.
125 Official Report 10 December 2014 column 23
126 Official Report 10 December 2014 column 26
127 Official Report 10 December 2014 column 26
128 Official Report 10 December 2014 column 16
218. Alcohol Focus Scotland were particularly keen to improve the accountability of Boards—

“A requirement to produce an annual report would bring licensing boards in line with other bodies undertaking public functions, such as regulators, judicial and quasijudicial bodies, and with the local planning process.”

219. We were also told boards are not all publishing the reports, policies, data and statements currently required by them—

“We know that licensing boards are required to produce a policy, an overprovision statement and a public register of licensing data. Six months after the deadline, 11 of the 40 licensing boards still had not published statements and 17 had not published overprovision statements. More recently, using standard online searching mechanisms, we found 13 public registers of licensing data out of a possible 40.”

220. A number of submissions also sought increased transparency from Boards particularly to show the extent to which they are following their policy statements and the licensing objectives. Borders ADP were among those seeking this.

221. The following aspects are not covered by the Bill but are matters raised with us through submissions.

**Occasional licenses**

222. It is necessary for a venue to apply for an occasional licence if there is an intention to sell alcohol for a particular event (e.g. a wedding, or a fair) and the venue is not otherwise licensed. The application process is quick and cheap as it is envisaged it will mainly be used by community groups and non-traditional venues.

223. Several respondents to our call for evidence expressed concern that this process is being abused by professional organisers putting on large scale events, such as music festivals. This is because, if an occasional licence to sell alcohol is in place, then any other activity is exempt from the requirement to have a public entertainment licence. The process is also significantly cheaper than applying for a public entertainment licence, although local authorities may incur large costs in dealing with the application.

224. A range of concerns were raised about the use of occasional licences. It was suggested “the current rules create a loophole enabling legal requirements of fully licensed premises to be bypassed.”

225. Specific concerns were that:

- The exemption from the requirement to obtain a Public Entertainment Licence if an alcohol licence is in place should be removed as occasional liquor

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130 Alcohol Focus Scotland. Written submission 119.
132 Borders Drug and Alcohol Partnership. Written submission 63.
133 SHAAP. Written submission 65.
licences are increasing being used to licence events which would otherwise be licensed under the 1982 Act. For example large music events. This issue is exacerbated by the fact that Boards cannot enforce any conditions upon an occasional licence that are not connected to the sale of alcohol.

- An occasional licence allows groups to compete on an unfair basis with mainstream licensed premises where the same legal regulations are not required e.g. staff having completed basic training.
- Application of the fit and proper person test does not apply to applications for occasional licenses.
- The absence of a restriction on the number of occasional licences which can be granted for any premises in any 12 month period (unless the application relates to a voluntary organisation). Premises which would not be able to obtain the required Section 50 certificates are operating with occasional licences almost on a weekly basis. It was suggested some premises are utilising in excess of 70 occasional licences per year, meaning that while alcohol is sold in these premises on a regular basis they remain unlicensed premises.
- Large scale public events may take place under an occasional licence to sell alcohol because this removes the need to have a public entertainment licence too. This could mean such events are not properly regulated and the cost of an occasional licence (£10) can be a long way short of covering the licensing authority's costs in considering it.

226. Others were concerned that occasional licences can add to the provision of alcohol in an area and should be included in assessments of overprovision.

227. In relation to members clubs it was noted that a voluntary organisation can apply for an occasional licence for its premises. The effect of that is to circumvent the requirement for guests to be signed in thus allowing members of the public access to such premises.

228. It was suggested a more restricted definition of occasional licence should be provided to ensure that such licences are only available for specific “occasions”. Also the exemption from the requirement to obtain a Public Entertainment Licence if an alcohol licence is in place should be removed where the sale of alcohol is ancillary to the public entertainment taking place.

229. The Cabinet Secretary was clear “There is absolutely no reason why local licensing boards cannot take action if they believe that occasional licences are being
he added that the purpose of the occasional license “was to provide flexibility for local licensing boards.” He indicated that if clear evidence of misuse was presented the Scottish Government would consider whether further guidance was required.

Members clubs

230. Submissions highlighted a variety of concerns relating to members clubs. In particular, concerns some are operating in direct competition with local licensed premises. The other main complaints were that some clubs are acting commercially by allowing entry to non-members, selling to the underage and not applying for occasional licenses for public events. It general it was thought they have an advantage over the mainstream licensed trade.

231. Boards also expressed concern that the 2005 Act prevents them from dealing effectively with the minority of members’ clubs that appear to be abusing the system.

232. The Scottish Government’s consultation on further options for alcohol licensing at proposal 12 asked a series of questions around concerns raised about members’ clubs.

233. The summary of responses suggested the reasons clubs have special arrangements under the 2005 Act remain valid. They exist principally for the benefit of their members and are not commercial enterprises are open to members of the public. They also play a valuable part in community life in providing a range of sports and social activities.

234. One Local Authority Licensing Standards team’s submission summarised most of the concerns that exist around clubs:

"Current legislation has been shown to be ineffective in dealing with some aspects of the operation of members' clubs. Some clubs appear to operate on a commercial basis in direct competition to licensed businesses. This is particularly in relation to members' clubs admitting non members. Clubs pay less annual fees, rates and have no requirement for a trained manager (License holder) saving all that expense which trade members have to comply with. A club must not operate for profit, however, a club has overheads and needs to modernise. This is financed by their takings, so when does that become profit?"

235. The summary further noted the absence of any sanction for clubs operating in what would appear to be a commercial nature and that there are no grounds upon which to call for a review of the premises' licence. The majority of respondents agreed with the above concerns, with the only main dissent coming from clubs themselves.

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141 Scottish Government. Further Options for Alcohol Licensing Consultation Paper, proposal 12.
142 Scottish Government. Further Options for Alcohol Licensing – Summary of Consultation Responses.
143 As above.
236. It was suggested in the consultation that minor changes to legislation might allow Boards to discharge their duty more effectively. This could be done by incorporating the constitution into the main operating plan or making adherence to the constitution a mandatory condition in terms of the mandatory club’s provisions. Any breach of the relevant provisions within the constitution relating to the sale of alcohol would then be a breach of licence and subject to review. Whilst this would in effect make clubs more accountable it was noted it would also generate more work for Boards.

237. In the event no provisions in this area have been brought forward in the Bill as introduced.

238. We received submissions raising issues broadly in-line with those to the Scottish Government consultation. Renfrewshire Licensing Board thought the provisions surrounding club licensing are open to abuse and argued for additional restrictions on the operation of members’ clubs. They suggested a breach of the provisions of a club constitution should become a breach of licence allowing a Board to review the licence.144

239. Edinburgh Licensing Board made similar points noting the operation of clubs enjoy less restrictions than other premises. They also wished to see amendments to their constitutions being notified to prevent amendments that breach the Regulations.145 They were concerned to ensure clubs were not becoming primarily commercial operations.146

240. Both Borders Licensing Board and Alcohol Focus Scotland were concerned about the exclusion of members clubs from overprovision assessments observing that in the Borders some 22% of all licensed premises are members clubs.147

241. Paul Waterson from the Scottish Licensed Trades Association was clear “Many clubs simply run as pubs”148 while Stephen McGowan from the Institute of Licensing suggested—

“...a number of club premises have varied their licences, in effect to make them full public-access pub premises, albeit that they have a constitution and appear on the face of it to be members’ clubs. Because they have changed the conditions of their licence, they are allowed full public access. A number of premises in Edinburgh and throughout the country, which were historically club premises that were open to members and bona fide guests, have varied their licences and are allowed public access without those rules applying.”149

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144 Renfrewshire Licensing Board. Submission 103.
145 Licensing (Clubs) (Scotland) Regulations 2007/76.
146 City of Edinburgh Licensing Board. Submission 116.
147 Borders Alcohol and Drugs Partnership. Written submission 63 and Alcohol Focus Scotland. Written submission 119.
242. Police Scotland had no issues with the operation of club licences\textsuperscript{150} although in later correspondence they suggested they be included within overprovision assessments.\textsuperscript{151}

243. The Cabinet Secretary while recognising some issues existed, noted the earlier views of Parliament when passing the 2005 Act that members’ clubs should be given some exemptions. He indicated care was required to avoid unintended consequences if changes were made.\textsuperscript{152}

**Transfer of licences (sections 33 and 34 2005 Act)**

244. The Law Society of Scotland expressed concern on the provisions in the 2005 Act covering the transfer of licences\textsuperscript{153} and the Institute of Licensing after commenting on this matter in response to the Scottish Government consultation\textsuperscript{154} made a supplementary submission\textsuperscript{155} in relation to difficulties practitioners have been experiencing with the provisions for transfers of licence:

- **The Act does not deal with dissolution of companies.** It may well be the case that company "A" holds the licence but company "B" is trading the venue. In such circumstances company B or the individual is left without a livelihood in the event that company “A” is dissolved as a licence held by a dissolved company cannot, on the face of it, be transferred at all. They wished to see a mechanism to deal with this.

- **The Act does not reflect common practice such as the completion of sales taking place dependent on the grant of a transfer of a licence.** The purchase and sale or leasing of licensed premises can involve a large number of premises where transfer processing times vary across Scotland and it is impossible to agree on one “date” for the sale to complete. These difficulties can be more complicated when deals relate to properties in England as well as Scotland, such as a company buying pubs on both sides of the border.

- **The Act does not provide for an interim or deemed grant.** This creates problems in relation to new buildings which might be commercially relying on a licence such as a supermarket or club. (The position under the Licensing (Scotland) Act 1976 (“the 1976 Act”) where there was a two-stage "temporary" and "permanent" transfer; allowing the temporary transfer to take effect immediately whilst the permanent was considered was not included in the 2005 Act. This was previously the position prior to the 2005 Act and is the position in the English Licensing Act 2003.)

- **Difficulties over who can apply for a transfer of licence:** the 2005 Act sets out certain circumstances where only certain parties can make an application. This includes where a "business" is to transfer (section 34(3)(d)). However, if the premises are not trading for whatever reason, there is doubt as to whether

\textsuperscript{151} Police Scotland. *Written submission*, 23 February 2015.
\textsuperscript{153} Consultation submission number 114.
\textsuperscript{155} Institute of Licensing. *Supplementary written submission*, 22 December 2014.
there is a "business" to transfer with some licensing boards refusing to accept transfers where the business is not a "going concern".

- **The 28 day deadline for transfers under certain circumstances is overly prescriptive**: the Act imposes a 28 day deadline for lodging certain transfer requests i.e. when the licence holder dies, becomes mentally incapable or declared insolvent. This time period is too short particularly in the case of insolvency. This quite often can result in a trading business and the jobs and livelihoods that the business represents being closed because the licence is "lost".

- **The Act does not deal with certain types of insolvency**.

- **The Act does not make it clear who is liable for licensing offences where a transfer of licence is pending**: The Act does not deal with this. The outgoing owner may still be on the licence and therefore liable yet no longer involved in the premises.

245. We asked the Scottish Government for their views on teach of the above issues and they said they "continued to consider the concerns raised".

**Surrender of licences**

246. The Institute of Licensing following their appearance on 10 December 2014 made a supplementary submission in relation to difficulties practitioners have been experiencing with the provisions for surrender of licences. This was similar to the points made by the Law Society of Scotland in their written submission. Section 28 of the 2005 Act says that a licence which has been surrendered "ceases to have effect".

247. It was suggested licences can be surrendered out of spite. There are numerous examples of this across Scotland where in a landlord/tenant relationship the tenant holds the licence and surrenders the licence to spite the landlord following a fall-out over unpaid rent or any other dispute they may be having. This leaves the landlord with a public house or other type of premises with no licence and the only way back is to apply for a new one.

248. The premises would be subject to modern building regulations and in some cases might not be capable of getting a licence back due to the exorbitant cost of works. Examples were given of a Scottish castle or large country house. It may now be very difficult for such premises to meet current regulations and therefore no new licence could be granted.

249. Under the 1976 Act the licences could be brought back to life by way of a transfer application. It was, the Institute of Licensing suggested necessary to clarify whether surrendered licenses continue to exist or not and whether they can be restarted or reactivated in some way.

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157 Consultation submission number 114.
250. We asked the Scottish Government for their views on this issue and they said the proposal had the “potential to undermine facets of the existing regime”. They considered the proposal would not be widely supported by others.\(^\text{159}\)

“Site only” licences

251. The 2005 Act does not allow for provisional licences where premises are yet to be built or under construction. The Institute of Licensing having discussed this with us on 10 December 2014 when they indicated “the current system puts off investment” \(^\text{160}\) made a supplementary submission in relation to difficulties practitioners have been experiencing with the provisions for “site only” licences. This was similar to points made by the Law Society of Scotland in their written submission.\(^\text{161}\)

252. This issue arises because applicants and developers need the commercial certainty of knowing a licence will be granted before a multi-million pound investment can be finalised and premises built. Applications are generally lodged very early in the process to secure the commercial certainty of the licence with the same level of detail for a provisional licence being required as for a full licence. This, it was suggested, causes difficulties because applicants have to lodge layout plans for premises which may not even be built resulting in applicants “lodging fictitious plans just to get the application in the system”.

253. The suggestion was to re-introduce the old ‘site only’ provisional licence route which would allow a new licence application to be lodged without the full detail of layout. It was suggested this would not jeopardise consideration because planning permission needs to be in place even where a provisional licence application is lodged. The Licensing Board would still see the general location of the premises, they would still see the operating plan detailing matters such as trading hours, activities, description of the premise. The only thing they would not see is a plan of the premises.

254. We asked the Scottish Government for their views on this issue and they indicated the proposal had the “potential to undermine facets of the existing regime”. They considered they would not be widely supported by others.

Major v Minor variations

255. Under the alcohol licensing regime the premises licence includes a large volume of information. This includes the application form, as well as the operating plan and layout plan. It is an offence to trade not in accordance with the premises licence. If the licence holder wants to operate in a manner which differs from the details originally approved, a variation is required. Variations are classed as either minor or major variations.

\(^{159}\) The Scottish Government. Written submission, 23 January 2015.


\(^{161}\) Consultation submission number 114.
256. Variations which are considered minor are set out at section 29(6) of the 2005 Act, and further minor variations are provided for in regulations. Minor variations must be granted by the Licensing Board for a small fee. If a variation is not a minor variation then it will be a major variation. Major variations are subject to requirements to notify neighbours, health board and police, with it being open to anyone to lodge an objection. All major variations must be considered by the Board at a hearing.

257. West Lothian Licensing Board raised concerns with us about types of variations classified as minor about which members of local communities have no opportunity to object. They gave a practical example of the effect of the rules on what amounts to a minor variation. A variation to on-sales premises wishing to extend premises and increase the size of their outside area is treated as a minor variation. This is because the application stipulates no increase in capacity and as they are operating in the same manner as the information contained in their operating plan they are able to apply for a minor variation, which must be granted.162

258. Another example related to an off-sales premises which has maximum trading hours for the sale of alcohol from 10 am until 10 pm and store opening hours of 8 am until 10 pm. To increase store opening hours from 7 am until 10 pm they have to make a major variation application to open although it has no effect on the hours they can sell alcohol. This is a change to information contained in the operating plan and is considered to be major.

Home deliveries and the licensing hours

259. We heard concerns around home delivery services from police witnesses. While alcohol for home delivery must be purchased during licensing hours it can be delivered out-with these hours by license holders. Known as “Dial a booze” it was suggested this is becoming a significant problem which requires the legislation to be tightened.163

Additional enforcement powers - gambling premises

260. CoSLA suggested the Bill could be amended to close a loophole in the current law. The Gambling Commission submission explained the Gambling Act 2005 ("the Gambling Act") has three licensing objectives:

- preventing gambling being a source of crime and disorder
- ensuring gambling is conducted in an open and fair way
- protecting children and vulnerable people from being harmed or exploited by gambling

Currently, section 304(2) of the Gambling Act, (a section which empowers licensing officers in England and Wales), refers to ‘officers’ of licensing authorities. Scottish Licensing Boards do not have employees or officers as such. Consequently the

Commission’s understanding, is that the enforcement powers under the Gambling Act cannot be exercised ‘as of right’ by a Licensing Standards Officers (LSOs).\textsuperscript{164}

**Recommendations**

**Duration of policy statement**

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

**Fit and Proper Person Test**

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

**Whole Board areas for overprovision determinations.**

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

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

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

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

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

**Licensing Objectives**

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

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

\textsuperscript{164} The Gambling Commission. Written submission 144.
Spent convictions and police intelligence

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

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

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

Duty on Boards to prepare an annual financial report

273. We welcome this provision and also recommend Boards, in order to become more accountable to the public prepare annual reports. We draw to the attention of the Scottish Government the suggestions in this regard contained in the letter to us from Alcohol Focus dated 15 January 2015.165 As a minimum we expect to see the report containing information on how the board has delivered in relation to the licensing objectives and its policy statements including overprovision. We also expect a sufficient amount of data to be contained showing the number and type of each licensed premises within the Board area along with details of the number of occasional licenses granted during the period. We would expect the Bill to set out as a minimum the above along with a requirement to report within 6 months of the end of each reporting year.

Occasional Licenses

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

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

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

Members Clubs

277. The Scottish Government requires to satisfy us the existing legislation is adequate to prevent the abuses of club licences identified during our evidence sessions. Failing which we recommend appropriate provision is made to incorporate the club’s constitution into the main operating plan.

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

Surrender of Licenses

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

165 Alcohol Focus Scotland. Supplementary written submission, 15 January 2015.
Site Only Licenses
280. We do not support the suggestions made for change in this area. We consider greater clarity within overprovision statements and procedures thereunder should provide the necessary information required by developers. We note for example the effect of recent business decisions made by large retail groups not to develop sites. They could under these proposals hold these types of licenses for a considerable period before trading commences. This could impact on other businesses seeking licences during the interim period between a grant and sales commencing.

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

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

Additional enforcement powers - gambling premises
283. We recommend the Scottish Government amend the Bill to close a loophole which prevents Licensing Standards Officers from undertaking an important public protection role in gambling which they currently fulfil in relation to alcohol.
PART 3: CIVIC LICENSING: TAXIS AND PRIVATE CAR HIRE

Background

284. Sections 60-61 of the Bill cover taxis and private hire vehicles. They seek in part to provide greater consistency within the licensing regime while tightening regulation.\textsuperscript{166} The proposals follow a consultation carried out by the Scottish Government at the end of 2012.

285. A framework of licensing of taxis and private hire cars by local authorities is set out in sections 10 to 23 of the 1982 Act. This regime although optional has been adopted by all local authorities in Scotland.

286. The framework provides for the issue of taxi licences and private hire car licences (which relate to a particular vehicle) and for the issue of taxi drivers’ licences and private hire car drivers’ licences (which relate to drivers). The regime is essentially a two-tier system, with different rules applying in certain respects in relation to taxis and private hire cars. Some principal differences are:

- taxis can be hailed on the street or use a taxi rank or be pre-booked, whereas private hire cars must be pre-booked;
- local authorities are able (but not required) to limit the number of taxi licences that they grant (on the ground of there being no significant unmet demand), but not the number of private hire car licences;
- local authorities are able (but not required) to require applicants for taxi drivers’ licences, but not applicants for private hire car drivers’ licences, to undergo a knowledge test and other training;
- local authorities are required to fix maximum fares that may be charged by taxis, but are not able (or required) to specify fares for private hire cars.

287. Some vehicles fall outwith the licensing regime. For example, vehicles that are exclusively hired for a period of not less than 24 hours do not require to be licensed (nor do their drivers require a taxi driver’s licence or a private hire car driver’s licence). The types of service that fall within this “contract exemption” vary widely, from chauffeur driven cars hired for business purposes or for sightseeing to cars contracted by local authorities or health boards to transport school pupils or patients.

288. In addition to the above, regulations have been made under the 1982 Act requiring licensing authorities to license the use of premises used for the taking of bookings for taxis and private hire cars.\textsuperscript{167} These were made “in the interests of public safety and crime prevention”.\textsuperscript{168} We comment on the appropriateness of this provision in its current form, standing the development and use of mobile technology, later in this section.

289. The changes to the 1982 Act proposed in the Bill bring the two tiers of licensing closer together in term of local authorities’ ability to impose quantity restrictions and testing of drivers.

\textsuperscript{166} Policy Memorandum, paragraphs 192-4.
\textsuperscript{167} The Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009.
Bill Proposals

290. The Bill proposes three changes in the licensing regime:

- section 60 introduces a power (not a requirement) for local authorities to limit the number of private hire car licences granted. In contrast to that for taxis (see above) the grounds under this section are that there is (or would be) overprovision of private hire car services in the localities in which the private hire car would operate;
- section 61 introduces a power (not a requirement) for local authorities to require applicants for private hire car drivers’ licences to undergo a knowledge test and other training (which may or may not be the same as any knowledge test that the local authority requires applicants for taxi drivers’ licences to undergo);
- section 62 removes the “contract exemption” in relation to vehicles exclusively hired for a period of not less than 24 hours, with the effect that vehicles used to provide such services will require to be licensed, as will their drivers. Section 62(4) introduces a new power for the Scottish Ministers to specify in regulations circumstances in which licences will not be required.

291. In many places in the world, the market in which taxis and private hire cars operate has been significantly changed by recent technological developments, mainly through the use of smartphone “Apps” to book vehicles. In addition to the three changes above we heard from Dr James Cooper that parts of Scotland at least are on the brink of entering this “transformed market”. In view of these global changes, we also considered the rationale behind taxi and private hire car licensing from first principles and asked in our call for evidence for views on what benefits licensing should deliver for consumers.

Committee Submissions

292. We received 16 submissions on this aspect of the Bill. Following the release of our video, and its publicity on social media, in which we asked the public for their views on taxi and private hire car licensing, we received a number of responses from the general public as well as the taxi and private hire car trade.

Reasons for regulation

293. The submissions gave a number of reasons why regulation is necessary. A particularly common advantage cited was safety standards. West Lothian Council commented—

“The benefits which hire car licensing should deliver for customers are a system of public transportation within taxis and private hire cars which offers high standards of safety, accessibility, comfort, reliability and customer service.”

294. Renfrewshire Council saw the power to determine the type of vehicles used, as way of enabling the promotion of equality via accessible cars, and to encourage the

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169 West Lothian Council. Written submission 51.
use of greener vehicles.\textsuperscript{170} Police Scotland considered another main advantage of regulation to be it ensured “legitimate business thrives and provides opportunity to prevent organised crime groups from gaining a foothold in this industry”.\textsuperscript{171}

\textbf{Is the current two-tier licensing system such a framework?}

295. We considered the appropriateness of maintaining a two-tier system. Dr Cooper, an international academic expert on taxi licensing was pessimistic, contending that “the Bill fails to address the needs of the transformed market that is likely to emerge in the very near future.”\textsuperscript{172}

296. The issue, he pointed out, is not that the current two-tier system is without justification or has not served its purpose well in the current market, but that the tiers may become irrelevant if new business models ignore the tiers altogether.

297. Taxi and private hire car operators were more sanguine about possible changes in the market. Les McVay of City Cabs stated “it is up to us to pull up our socks and be on our toes to provide a better service”\textsuperscript{173}, while Kevin Woodburn of Edinburgh City Private Hire said “the public will decide what they want.”\textsuperscript{174}

298. Overall it was argued, in submissions from the licensing authorities and taxi companies, that the two tier system both delivers and increases choice (especially re accessibility) and reliability for consumers. It also provides safety for passengers, value for money, the ability for the authorities to target regulation where needed (i.e. public hire), competition and overall a better quality service.

299. Two licensing authorities disagreed about the continuation of a two tier system arguing there would be long term advantages from a single regime including savings to the authorities from the streamlining of processes.\textsuperscript{175}

300. The taxi and private hire car industry has also been the subject of investigation by the Office of Fair Trading which made a number of recommendations, particularly around the power to issue licences on the basis it was a restraint of trade. Both the Scottish Government and the Westminster Government rejected the proposal to deregulate in relation to the setting of numbers of licences.\textsuperscript{176}

301. According to the Policy Memorandum, the aim of a licensing regime is the preservation of public safety and order and the prevention of crime.\textsuperscript{177} It is against this objective we have considered the proposals in the Bill and the existing regimes that apply.

302. We believe it is important to take a long-term view when considering how to ensure the main policy objective underlying the licensing of taxis and private hire cars is achieved. Choice can be an important contributor, along with licensing, towards

\begin{flushleft}
\textsuperscript{170} Renfrewshire Council. Written submission 101.
\textsuperscript{171} Police Scotland. Written submission 135.
\textsuperscript{172} As above.
\textsuperscript{175} Aberdeen City Council, written submission 84 and East Lothian Council, written submission 112.
\textsuperscript{176} Office of Fair Trading (2003) The regulation of licensed taxi and PHV services in the UK.
\textsuperscript{177} Policy Memorandum, paragraph 189.
\end{flushleft}
guaranteeing quality of service at a reasonable price and so innovation in the market is to be welcomed. But a situation where a near-monopoly emerges due, for example, to existing operators being unable to compete on price against new market entrants, might lower quality of service and threaten passenger safety in the longer term. We therefore welcome the level of awareness amongst operators, and potential operators, of the need to provide a quality service and note the widespread views that the current two-tier licensing system contributes to choice and quality of service, particularly in relation to the accessibility of vehicles.

Section 60 power to limit the number of private hire car licences granted

303. There were mixed views in submissions with some arguing for local flexibility on numbers and others for consistency across the country. The difference between the approach proposed for private hire car drivers (over provision), to that existing for taxis (unmet demand), was commented upon. Bill McIntosh, Scottish Taxi Federation, wondered how this could operate “because there is no measurement of which I am aware that councils can use to ascertain whether there is an appropriate number of private hire cars or not.”

304. We heard about surveys to ascertain demand and were told West Lothian had done away with any limits on taxis to allow the market to work. In particular they were seeking to address disabled access and a shortage of vehicles while also addressing the creation of a market in taxi licences which can happen when a cap is in place. We note such a market exists in other areas in relation to black cab licence plates.

Section 61 power to require applicants for private hire car drivers’ licences to undergo a knowledge test

305. In general this provision was welcomed by those who responded to us. The City of Edinburgh Council welcomed the ability to set a minimum standard of training for drivers and Aberdeen City Council considered all should be treated equally. West Lothian Council referred to the use of existing training modules covering customer service, accessibility, pricing and the law, which the Council helped to develop with the Scottish Government and could be rolled-out to other authorities.

306. We received some suggestions as to the differences with private hire vehicle drivers, who are pre-booked, having the ability to prepare for journeys in advance and utilise satellite navigation facilities. Set against that we are aware of limitations in such systems particularly in urban areas and the need for a degree of flexibility in routes to take account of ongoing conditions and traffic problems.

Section 62 removal of the “contract exemption” for vehicles exclusively hired for a period over 24 hours.

307. Almost all local authority respondents welcomed this provision suggesting it created a level playing field and would make enforcement easier. However, COSLA noted a division between urban and rural authorities, with the latter concerned the need to be licensed might cause operators to withdraw from the market, reducing services and increasing costs for activities like cars to take children to school.

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308. Highland Licensing Board suggested the exemption be removed for services to the general public but kept for public authority contracted services as they are able to enforce contract terms for the latter.\(^{181}\)

309. Others were concerned the removal might bring a large number of services within the licensing regime, pointing to England and Wales where removal had resulted in services as diverse as ambulances and child minders requiring to be licensed. Some called for specific licences for stretch limousines and “party” buses although some already license such vehicles.

310. The Cabinet Secretary indicated he was alive to issues surrounding public authority contracted services and before commencing this provision the Scottish Government “will take forward some aspects [of concerns] that will allow local authorities to provide exemptions as they see fit.”\(^{182}\)

**Booking Offices**

311. A taxi or private hire company with more than 3 cars, requires a booking office licence to operate. We heard from taxi companies and a local authority solicitor who disagreed the need for a booking office to be physically located in every local authority area in which a company operates. It was suggested to us by Audrey Watson of West Lothian Licensing Board, that no booking office need be situated in Scotland.\(^{183}\) In Renfrewshire a local condition exists preventing the control office being out-with the local authority area.\(^{184}\)

312. Scottish Government officials confirmed the need for a booking office to be “licensed where the order was taken.”\(^{185}\) Officials recognised the existing approach “does not translate quite so well to a smartphone app existing in the ether.”\(^{186}\)

313. We are content the requirement for booking offices is not a barrier to technological advances and therefore recommend no change to this aspect of the licensing regime.

**Cross-authority licensing co-operation**

314. We also considered a recent example of complaints against a licence holder not being available or considered by a neighbouring authority. We wondered how such information could be better shared between licensing boards. While boards have a great deal of discretion in the questions they ask of applicants there are opportunities for greater information sharing across boundaries. The existence of a national police force should assist to a degree in this respect.

**Technological advances**

315. We heard a lot of evidence around the changes that have taken place and will take place in the way the industry operates. Dr Cooper in particular gave us considerable background and international detail around the use of smartphones and
Apps in relation to booking and the hiring of taxis and private hire vehicles.\(^{187}\) We heard about difficulties in other countries and the ways operators had sought to evade licensing regimes.

316. We heard how the market was changing in London and other cities with price being more linked to demand and the opportunities for differentiation in the level of the service focussing on the luxury of the vehicle provided. We heard from taxi operators\(^ {188}\) about forthcoming applications which allow users to receive detailed information about the vehicle, driver and time of arrival in advance. We also heard about the technology allowing others to monitor the journey of passengers linked to the use of satellites. The safety advantages of the latter were self-evident to us.

317. After hearing from witnesses we received a submission from UBER\(^{189}\) explaining how its approach provided more choice for consumers and drivers and also advised of its focus on safety.

318. Maximum fares vary across the country and are fixed locally. We understand in some countries the price of a fare can be linked by new technological functions to the demand being experienced by the operator. This, we learned, has varied at different times of the day by up to seven fold. We further observed that section 17 of the Civic Government (Scotland) Act 1982 (on taxi fares) does not prevent fares being set at a lower level than the maximum and understand some companies currently offer discounted rates to corporate users. We heard about attempts in Edinburgh to match demand with supply with one operator referring to a tariff review and indicating “At a time of year when our customers most need us, we are overpricing.”\(^{190}\)

**Recommendations**

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

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

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\(^{187}\) Local Government and Regeneration Committee. *Official Report, 21 January 2015* and Dr James Cooper, Edinburgh Napier University, written submission 146.


\(^{189}\) UBER is a smartphone app allowing customers to book taxis and private hire cars at the touch of a button currently operating in London, Manchester and Leeds as well as other cities around the world. Link to submission.

taxi and private car licensing and report back to this Committee within this Parliamentary term; see our recommendation at paragraph 42.

321. We have discrimination concerns around two aspects of the existing regime. With the advent of the smartphone technology the difference between taxis and private hire cars, at least in the minds of the user, has been significantly eroded. Provided the service is safe, responses to our video suggested users saw little difference between the two types. However, for those who do not own, or those who cannot operate a smartphone the benefit could be limited. Equally, for reasons of infirmity or disability, some people may be more restricted in their use of modern technology and some private hire cars may not be accessible for their needs. Secondly on price, in the event demand sees price rise, as has been the case in other countries, there will be an adverse impact on the less well off. We therefore ask the Scottish Government to address both of these concerns at stage 2.

322. On section 60 we are unclear why the overprovision test for private hire vehicles should be different or how that “creates greater consistency within the regime”\(^{191}\) to an extent which would be recognised by users. We ask the Scottish Government to reassess their approach here and unless this can be achieved through guidance amend accordingly at stage 2.

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

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

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

\(^{191}\) Policy Memorandum, paragraph 196.
PART 3: CIVIC LICENSING: METAL DEALERS

Background

326. Sections 63 to 66 of the Bill cover metal dealer licensing. They seek to modernise and improve the existing licensing regime for metal dealers as set out in the Civic Government (Scotland) Act 1982 (the 1982 Act). The aim is to “ensure more effective regulation of the [metal dealing] industry and to make it more difficult for metal thieves to dispose of stolen metal”\(^\text{192}\). Ultimately, the Scottish Government hopes the proposals will help to reduce metal crime across Scotland.

Bill Proposals

327. Specifically, the Bill proposes the following reforms—

- removing the exemption warrant system (currently metal dealers with over £1m annual turnover are exempt from the licensing regime);
- removing the requirement that dealers should not process metal within 48 hours of receiving it;
- banning cash payments for metal; and
- improving standards for identification of customers and record keeping.

328. These proposals are consistent with recent legislative reforms\(^\text{193}\) and non-legislative measures (including the launch of the National Metal Theft Taskforce\(^\text{194}\) and Operation Tornado\(^\text{195}\)) aimed at targeting metal theft in England and Wales.

329. The British Transport Police (BTP), which has lead responsibility for metal crime in the UK and leads the National Metal Theft Taskforce, told us that the results of the suite of measures introduced in England and Wales speak for themselves: in 2012-13, England and Wales saw an overall 43 per cent reduction in metal theft.\(^\text{196}\) A recent Home Office study (January 2015) analysed the data in more detail and concluded: “the interventions themselves can be credited with a fall [in metal theft incidents] of around 30 per cent, with the rest being attributable to falling prices and other downward pressures on acquisitive crime.”\(^\text{197}\).

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\(^{192}\) Policy Memorandum, paragraph 9.

\(^{193}\) Cashless payments were introduced in England and Wales by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, in December 2012. The Scrap Metal Dealers Act 2013, which came into force from October to December 2013, established a licensing regime administered by local authorities.

\(^{194}\) The National Metal Theft Taskforce, established in January 2012, is a multi-agency group that develops intelligence, coordinates activity and targets and disrupts criminal networks.

\(^{195}\) Operation Tornado required participating scrap metal dealers in England and Wales to request identification documentation for every cash sale and retain copies for 12 months. It was piloted in the police forces in North East England in January 2012 before being rolled out on a phased basis across England and Wales by September 2012.


\(^{197}\) Home Office. An evaluation of government and law enforcement interventions aimed at reducing metal theft (January 2015), page 18.
Committee Submissions

330. We received 28 written submissions on this aspect of the Bill. Respondents included licensing authorities, the metal dealing industry, enforcement agencies and victims of metal theft.

Compliance and enforcement

331. The significant success of the interventions in England and Wales was reflected in the widespread support for the proposals for Scotland. In particular, the proposals to remove the exemption warrants system, ban cash payments and enhance record keeping requirements were regarded as central to the success of the Bill. These are discussed later.

332. While the metal dealing industry supported the measures in the Bill, it called for them to be further strengthened. The British Metals Recycling Association (BMRA) – the representative body for the metal dealing industry – told us its members actively supported the intentions and principles in the Bill, but believed it could be made clearer and more practical to implement and enforce.198 These comments are also discussed in more detail later.

333. Of particular concern to many was that the licensing regime in Scotland needed to be consistent with the standards already set in England and Wales. Many felt that a weaker regime in Scotland would simply attract criminals to take advantage of the system here, referred to as ‘regime shopping’.

334. This concern was borne out, to some extent, in the Home Office study. Over the period when the interventions were made in England and Wales, the study found “tentative evidence of some displacement of offences to Scotland”199. The graph below shows metal theft incidents in Scotland began to increase from around the time when the ban on cash payments was introduced in England and Wales in late 2012. This trend contrasts with a steady decline in such incidents in England and Wales.

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199 See footnote 197.
335. The BTP described the legislative measures in England and Wales as “hugely important”, but said they were only part of the activity undertaken. As part of Operation Tornado and through the National Metal Theft Taskforce, the BTP worked closely with the metal dealing industry to ensure activity to combat metal theft was joined up between the Home Office and other agencies such as the Environment Agency and local authorities.

336. The importance of non-legislative interventions was highlighted by the Motor Vehicle Dismantlers’ Association, which stated “legislation on its own is not sufficient to drive compliance, and it is absolutely essential that a robust compliance and enforcement programme is implemented”.

337. We strongly support the Scottish Government’s intention to strengthen the licensing regime for metal dealers in Scotland to combat metal crime. Similar legislation in England and Wales has been effective in helping to reduce metal crime south of the border. This view reflects the support for the Bill from enforcement agencies, victims of metal crime and the metal dealing industry.

338. Also, we believe it is important that the licensing system in Scotland is similarly robust to that in England and Wales. This consistency is important because we do not want Scotland to be seen as an easy option for criminals who deal in stolen metal.

**Removal of exemption warrant system**

339. Under current licensing arrangements, a metal dealer with an annual turnover of more than £1m is eligible to receive an exemption warrant. This excuses the metal dealer from the requirement to hold a metal dealers’ licence and, therefore, the existing requirements placed on metal dealers in the 1982 Act, such as record keeping.

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340. We understand that the vast majority of metal dealers that currently operate from fixed premises hold an exemption warrant. So, the proposal to revoke the warrant system is a significant move and will ensure the same high standards apply industry-wide.

341. There was universal support for the proposal to remove the system of exemptions and require all metal dealers to hold a licence irrespective of their size. The BMRA supported taking such a consistent approach across the whole industry, and the BTP and Police Scotland said the proposals would afford greater scrutiny and regulatory oversight.

342. It was also welcomed by licensing authorities. For example, Highland Council said it would result in an “unambiguous system”. A number of other councils noted the proposal in the Bill would allow them to charge all metal dealers a licence fee (the cost of issuing an exemption warrant is non-recoverable).

343. We support the proposal to remove the exemption warrant system, which will rightly ensure all metal dealers require a licence. All metal dealers will, therefore, have to comply with the other proposals in the Bill that will together help to strengthen the licensing regime.

**Banning cash payments for metal**

344. In line with the licensing regime in England and Wales, the Bill seeks to ban cash payments for metal. The Bill proposes that payment should be limited to either bank transfer or cheque. The intention is to ensure transactions for scrap metal are “traceable and auditable with a proper paper trail, thus deterring theft and increasing chances of detection”.

345. Cashless trading for metal was introduced in England and Wales in December 2012, which has been shown to have played a part in reducing metal theft. The BTP and Police Scotland supported a similar ban in Scotland and argued it was crucial to removing the incentives for metal theft by requiring traceable transactions. Others, such as Glasgow City Council, wanted to see a similarly robust system in place in Scotland to stop metal thieves being attracted north of the border to take advantage of cash payments.

346. Apart from Stephen Dalton Scrap Metal Merchants, which considered that everybody had the right to be paid in cash if they wanted, the metal dealing industry was generally supportive of the proposal. Metal dealers told us that banning cash payments would remove some of the incentive for metal crime and expected the ban to stop 95 per cent of metal thefts.

347. However, metal dealers also raised some concerns about how the ban would operate. Rosefield Salvage Ltd was concerned that banning cash payments from

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202 Highland Council. Written submission 70.
203 Renfrewshire Council, written submission 101 and North Ayrshire Council, written submission 118.
204 Policy Memorandum, paragraph 225.
206 Glasgow City Council. Written submission 132.
Metal dealers would simply mean people would go elsewhere to get cash for their scrap metal, such as going to a garage to sell a catalytic converter. This, it said, would mean the “properly licensed scrapyard will be hurt, but people will still be being paid cash”. To resolve this, John R Adam & Sons Ltd suggested that the definition of a metal dealer needed to be “tightened up dramatically” (this is discussed in more detail later in this Part).

348. Metal dealers also expressed concern that a cash ban would impact on their business by discouraging private householders from scrapping metal and could result in increased fly-tipping. However, we heard from the BTP that the experience of implementing the measure in England and Wales had shown such fears to be “unfounded” and that, since the introduction of the Scrap Metal Dealers Act 2013 (2013 Act), there had been “no complaints”. The BTP also told us – although it does not have a completely definitive picture - it had approached a number of local authorities to ascertain whether there was any anecdotal, historical or statistical data linking a cash-ban with fly-tipping and reported none had any evidence of this.

349. The BMRA, along with Scottish Power Energy Networks, considered the payment methods permitted by the Bill were poorly defined and unclear. For example, they were critical that the Bill did not appear to restrict the person to whom a cheque may be made out; it did not need to be the seller or any person whose identity had been verified.

350. A number of others suggested steps should be taken to prevent cheque cashing facilities being opened at metal dealers’ premises to circumvent the cash ban. However, the BTP did not appear to be concerned about this issue. It said that the ‘know your customer’ regulations and requirements in place at such businesses tended to be much more stringent than those imposed on the metal dealing industry.

351. We also invited comments on whether an alternative approach that allowed small cash payments below a certain threshold could be effective. It was felt that allowing some cash into the system would create a loophole and leave the system open to exploitation by criminals. Calor, for example, was concerned that gas cylinders could potentially fall within a definition of a small transaction and felt such an allowance would do nothing to deter the theft of such items. The National Metal Theft Taskforce argued a blanket ban would relieve metal dealers of any pressure from unscrupulous customers to make a series of payments under a threshold.

352. The Cabinet Secretary acknowledged the cash ban in England and Wales had appeared to have made a significant impact in reducing metal crime. Removing the

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210 British Transport Police. Written submission 94.
211 British Transport Police. Supplementary written submission, 3 February 2015.
212 British Metals Recycling Association, written submission 85 and Scottish Power Energy Networks, written submission 75.
213 National Metal Theft Taskforce, written submission 81 and SSE, written submission 134.
215 Calor Scotland. Written submission 67.
216 National Metal Theft Taskforce. Written submission 81.
Local Government and Regeneration Committee, 3rd Report, 2015 (Session 4)

cash element, he said, made it much more difficult for people to dispose of metal that had been received illegally.217

353. We welcome the proposal to ban cash payments for metal. However, we are concerned about suggestions it could encourage traders to obtain cash for selling metal to, for example, vehicle dismantlers. We discuss the issue of defining a metal dealer later in this report, at paragraphs 377 to 382.

Improved standards of record keeping and customer identification
354. The Bill seeks to improve the standards of record keeping by metal dealers, and to create a universal system for itinerant dealers and metal dealers that operate from fixed premises.

355. The Bill proposes that a metal dealer must verify the name and address of a person from whom they have acquired metal or to whom they have disposed of metal. In each case, a metal dealer would have to record the means by which they verified the name and address of the person, and to keep a copy of the relevant document. A copy of the document showing payment would also have to be kept, which is connected to the proposal to ban cash payments for metal.

356. Metal dealers would be required to retain these records in either hard copy or electronic format for three, rather than the current two, years.

357. There was wide support for these measures, which were regarded as proportionate and pragmatic. There was particular support for standardising record keeping across the industry, which the BTP reported had been successful in England and Wales in terms of deterring low level criminality.218 The National Metal Theft Taskforce referred to the requirement to verify a customer’s name and address as “one of the key tenets of the legislation”, removing the opportunity for thieves to dispose of stolen metal anonymously.219

358. However, several organisations felt there needed to be greater clarity about the types of ID that would be deemed acceptable for verification purposes. Police Scotland220 wanted photo ID and proof of address, such as a utility or council tax bill, to be specified in the Bill itself, while others said they would be content with a suitable definition included in regulations. Aberdeen City Council pointed to existing requirements in section 102 of the 2005 Act as a suitable example that could be reproduced for metal dealers.221

359. While metal dealers supported strengthening the record keeping requirements, they had a specific concern about the requirement to record the date that metal was processed. This was due to the fact that metal is sorted and consolidated with other similar material.222 We note that while this is not a new requirement (it is currently included in the 1982 Act), most metal dealers that operate from a fixed premises are

218 British Transport Police. Written submission 94.
219 National Metal Theft Taskforce. Written submission 81.
220 Police Scotland. Written submission 135.
221 Aberdeen City Council. Written submission 84.
222 British Metals Recycling Association. Written submission 85.
currently exempt from holding a licence. Many metal dealers have, therefore, been unaffected by this requirement to date.

360. We put this view to the Scottish Government, which replied that it saw the “force of these arguments” and that it would consider amending the Bill at Stage 2.  

361. Other suggestions to strengthen the Bill related to electronic record keeping. Police Scotland felt this type of record keeping could lend itself to data manipulation and concealment and wanted metal dealers to be required to retain hard copy duplicates. Aberdeen Council suggested the Bill should require metal dealers to have appropriate means to back up their electronic records.

362. We support the enhanced record keeping requirements and, particularly, the move to impose the new conditions on itinerant metal dealers. These measures will establish an audit trail, making it easier to investigate metal crime and acting as a deterrent to criminals.

Removing the requirement to retain metal
363. The Bill proposes the removal of the mandatory requirement that metal dealers should not process metal for 48 hours after receiving it (known as tag-and-hold). The Scottish Government considers such a requirement to be “impractical for many dealers”.

364. There were contrasting views on this proposal. Metal dealers strongly supported the Scottish Government’s view that retaining the tag-and-hold provision would be impractical. Rosefield Salvage Ltd suggested a metal dealer with an acre-sized yard would run out of space by the end of a working day if it had to keep the material and not move it for 48 hours. John R Adam & Sons Ltd agreed and said SEPA – the national regulator for waste management licensing – would have huge issues with the amount of metal being left unprocessed. We saw, first hand, some of the practical issues to do with storage limits and space constraints that a metal dealer would face if the Bill did not remove tag-and-hold when we visited William Waugh Ltd scrap metal yard in Edinburgh.

365. We asked SEPA about this issue and it acknowledged that on many metal dealers’ sites space was constrained. SEPA explained that for environmental protection reasons, it often imposed conditions, such as maximum quantity and storage limits and storage conditions. It recognised tag-and-hold could result in a potential conflict with waste management licensing conditions, which could cause metal dealers “some difficulties”. SEPA said it was “comfortable with the current proposal in the Bill”.

366. However, others saw the benefits of the tag-and-hold provision and felt it should be kept. The National Metal Theft Taskforce said it had seen “no convincing
commercial argument for not retaining metal for 48 hours”\textsuperscript{229}. To keep the requirement, it said, would assist the identification of stolen metal and deter metal dealers from accepting metal that they thought may have been stolen.

367. The Police was also against removing the provision, but appeared to recognise there needed to be a balance between the needs of enforcement agencies and what is practical for metal dealers.\textsuperscript{230}

368. The BTP said “in an ideal world, we as enforcement agencies would have everything in place that we possibly could ... the 48-hour rule would help considerably”.

369. However, it also said it understood the business objections from metal dealers and recognised that, in addition to the environmental regulations imposed by SEPA, the 48-hour requirement “could prove very onerous” for metal dealers. The BTP also acknowledged there would be ways in which metal dealers could, if they wanted, get round the 48-hour rule “by not having the 48-hour stock in the 48-hour pile”.

370. BTP also accepted that other measures in the Bill – such as enhanced record keeping and verification of customers – would strengthen the licensing regime and help enforcement agencies trace stolen metal.

371. The Cabinet Secretary stated the Bill seeks to balance the burden on metal dealers with the need to ensure a reasonable enforcement regime. He recognised the possibility that requiring metal dealers to retain metal for 48 hours could “push the burden so far that, for many metal dealers, it would become unsustainable”.\textsuperscript{231}

372. We agree with the balanced approach taken by the Cabinet Secretary in the Bill. While we accept that the requirement for metal dealers to retain metal for 48 hours would benefit enforcement to some degree, we believe the Bill strikes the right balance between tightening up the licensing regime and minimising the burden placed on legitimate metal dealers. We recognise that the other measures in the Bill – cashless trading and enhanced record keeping – should lead to significant improvements in enforcement.

373. We also received a number of comments about whether the tag-and-hold requirement would be available as a condition that licensing authorities could impose on a case by case basis. Although the Policy Memorandum\textsuperscript{232} states that licensing authorities would be able to impose such a condition if they wanted, Police Scotland\textsuperscript{233} suggested that, if the requirement was removed at a national level, it may not be possible to impose it at a local level.

374. Renfrewshire Council appeared to make a similar point and suggested licence holders could potentially challenge discretionary conditions as onerous, leaving the courts to decide on such matters.\textsuperscript{234} While the Council was specifically referring to

\textsuperscript{229} National Metal Theft Taskforce. Written submission 81.
\textsuperscript{232} Policy Memorandum, paragraph 225.
\textsuperscript{233} Police Scotland. Written submission 135.
\textsuperscript{234} Renfrewshire Council. Written submission 101.
CCTV requirements, it suggested that by including conditions in the Bill as voluntary conditions would enable licensing authorities to adopt them, or not, at a local level.

375. Although we do not regard the tag-and-hold requirement as an appropriate mandatory requirement for licensees, we would want licensing authorities to have the freedom to impose the condition locally.

Further strengthening and new measures

376. While there was strong support for the intention of the Bill, we heard that new measures could be added that would make the Bill more effective at reducing metal theft.

Definition of a metal dealer

377. A large number of bodies raised concerns about the definition of a metal dealer under the 1982 Act.

378. Section 37 of the 1982 Act states that a metal dealer is a person who “carries on a business which consists wholly or partly of buying and selling [metal]”. Along with the metal dealing industry, the Police called for this definition to be amended to specify persons who ‘buy or sell’ metal. The BTP suggested such a change would allow it to catch itinerant dealers who often uplift scrap metal (without paying for it) and then sell it. There was considerable evidence, the BTP said, that an element of itinerant dealers was to blame for stolen metal entering the trade chain.

379. In addition, it was suggested that skip hire operators, demolition contractors and car breakers would also escape the licensing regime. The BMRA told us that “a clear and comprehensive” definition of metal dealer, which included vehicle dismantlers and other businesses generating a significant proportion of their income from sale of scrap metal, was “essential”.

380. We asked the Scottish Government to respond to these suggestions. It told us that the aim of the Bill was to “modernise and strengthen the regulatory regime of those currently defined as metal dealers or itinerant metal dealers”. However, the Government also said it was aware of the arguments that expanding the definition of a dealer to include those at the periphery of the industry may assist enforcement, and was considering the implications of widening the definition in this way.

381. When they gave evidence to us, Scottish Government officials confirmed that people who were on the margins, such as itinerant dealers who collected metal without paying for it and sold it, were not currently covered by the licensing regime. They said they would consider whether the definition could be changed without capturing people who were “very peripheral”, such as a plumber.

382. We are concerned that the current definition of a metal dealer may not extend far enough and we welcome the Scottish Government’s offer to consider how it could be widened.

236 Scottish Government. Written submission, 6 February 2015.
National regulation of itinerant metal dealers

383. The regulation of itinerant dealers was of particular concern to many who submitted their views on the Bill. This is reflected in the specific call to widen the definition of a metal dealer to include itinerant dealers who collect metal for free and then sell it. It is further illustrated by the views of the Police, SEPA and the metal dealing industry by calling for the introduction of a national register that would provide oversight of itinerant dealers who can operate Scotland-wide. These specific issues are covered later, at paragraphs 391 to 398.

384. Currently, in Scotland, people can apply to any licensing authority for an itinerant metal dealer’s licence, which would allow them to operate as an itinerant metal dealer anywhere in Scotland. The Bill does not propose any changes to this arrangement. The position in England and Wales is slightly different, as itinerant metal dealers (or collectors, as they are termed) are required to hold a licence for each local authority in which they operate.

385. We discussed with Glasgow City Council how it oversaw the activities of its licensees who could be operating as itinerant dealers across Scotland. Speaking hypothetically, the Council explained that it would not always know what the itinerant dealer was doing in other parts of the country and would rely on Police Scotland to be the enforcement agency and to take action. If, the Council said, a breach of the licensing conditions was found to have taken place then Police Scotland would be able to bring a complaint to the Glasgow licensing committee.

386. Given the obvious difficulties licensing authorities faced in overseeing itinerant dealers, we were interested to know whether a national licensing system would make enforcement easier. SEPA said it recognised the benefits of local decision making for local licensing considerations. It was, however, open-minded about what the best option would be: “itinerant dealers could be registered with a local authority, if that system could be made to work, or directly with a national body, such as SEPA”. Overall, SEPA considered a full options appraisal of the various options would be necessary.

387. Police Scotland drew a comparison with the way in which the peddler’s certificate system operated. These certificates, which are issued by the Police, allow a peddler to operate throughout Scotland. Police Scotland keeps records of those who have been issued with certificates.

388. We asked the Scottish Government to comment on the matter and it replied as follows:

“Any licensing system balances effective regulation against disproportionate administrative burden. In the case of itinerant metal dealers, the Parliament, in passing the Civic Government (Scotland) Act 1982, felt that the balance fell in allowing an itinerant dealer to work nationally as opposed to having to seek up to 32 different licences to operate across local authority boundaries."

238 Civic Government (Scotland) Act 1982. Section 32.
239 Scrap Metal Dealers Act 2013. Section 2.
We accept that enforcement may be strengthened by limiting the scope of a licence. That said, we would not regard it as an insuperable problem. If an individual comes to the attention of either a licensing authority or the Police then they can check the position with the issuing authority."

389. We also raised this issue with the Cabinet Secretary when he gave oral evidence to us. While the Cabinet Secretary stated it would be possible to set up such a national licensing system, he did not think the problem was particularly extensive and emphasised the importance of taking a proportionate approach. He also felt that, rather than a move to a national licensing scheme, the regime in the Bill would allow local authorities to be able to take things forward in a way that best fits their areas.

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

391. There were also calls for the Bill to be strengthened by requiring a public register of metal dealers in Scotland. Equivalent registers for England and Wales were introduced by the Scrap Metal Dealers Act 2013.

392. Again, this was an issue on which there was general agreement from the enforcement agencies and the metal dealing industry.

393. The BTP said such a register would be “really helpful” from the point of view of the general public “if they were able to identify recognised, bona fide scrap metal dealers”. It also considered that, from an enforcement point of view, a register would assist sharing information and intelligence among the key agencies (Police, local authorities and SEPA) on a business-by-business basis. It would also be “very useful to have clarity and visibility around who has registration and licensing in which local authority areas”.

394. The BMRA highlighted that metal trading was far from a localised activity – metal dealers may well be buying from businesses or suppliers from all over Scotland and they will be selling all over Scotland and beyond. The BMRA saw particular benefit in having a national register of itinerant dealers who, it said, were highly mobile and worked in multiple authority areas.

395. From a business perspective, Scottish Power Energy Networks suggested it would be helpful as it could require its contractors to work within the register and to go to registered scrap dealers. It also considered there had been problems establishing the register in England and emphasised the importance of ensuring that responsibilities for managing the register were “absolutely clear”.

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244 The Environment Agency manages the register in England and Natural Resources Wales has responsibility for the register in Wales.
396. Given the role of the Environment Agency, which manages the register in England, we asked SEPA to comment on whether it thought a Scottish register would be of benefit and if it could host such a register. SEPA’s view was that a national register could deliver benefits and improvements:

“That is the kind of system that we operate. That would allow better co-ordination and multi-agency efforts to tackle metal theft, and it could improve information sharing between the authorities, Police Scotland and the British Transport Police. It could also help to address some of the concerns around the control and oversight of itinerant metal dealers.”

397. However, SEPA emphasised that any move to a national register would require a thorough evaluation of options, costs and benefits, and would need to be considered alongside the licensing process. There were, it said, a range of potential options that would need to be explored.

398. We acknowledge the licensing regime in England and Wales places a duty on relevant bodies to maintain a public register of metal dealers in their particular area. We heard there is a lot of support for an equivalent Scottish register. We believe such a register would promote transparency and assist businesses and members of the public to find legitimate metal dealers, as well as allowing enforcement agencies to maintain closer oversight of itinerant dealers.

Requirement to display a licence

399. The BTP suggested the Bill could be strengthened to require a metal dealer to clearly display a copy of its licence at its premises, or in the case of an itinerant dealer, from inside its vehicle. Current legislation, the BTP said, allowed five days for the production of a licence, which could hinder police investigations.

400. A similar requirement had been seen as important enough to be inserted in the Scrap Metal Dealers Bill at the amending stage and is now in force in England and Wales.

401. The BMRA supported BTP’s suggestion, which it described as a “useful measure to assist enforcement agencies in identifying illegal dealers”.

402. We asked the Scottish Government whether it would consider including the provision in the Bill. The Government said it was considering the merits of the suggestion, and that its current view was such a requirement could be delivered by existing secondary powers and did not require provision to be made in the Bill.

Penalties

403. A number of organisations called for the maximum penalty for an offence under the legislation to be increased. For example, Scottish Power Energy Networks felt the maximum penalty of £5,000 was “disproportionate given the implications that the

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249 British Transport police. Written submission 94.
250 Scrap Metal Dealers Act 2013 – see amendment paper for 9 November 2012
251 British Metals Recycling Association. Written submission 85.
252 Scottish Government. Written submission, 6 February 2015.
theft of metal can cause‖, and suggested an increase was required to have any "meaningful impact". 253

404. We asked SEPA how the fine level compared with environmental offences. It said the proposed penalty provisions in the Bill were the same as the penalties for ‘duty of care’ offences, which included failing to adhere to certain record keeping requirements 254. By contrast, the penalties for failing to obtain a waste management licence 255 were much higher, at up to £40,000. 256

405. When the Scottish Government gave oral evidence to us on the Bill, officials stated the fine level was “probably inadequate” and was something that they “may seek to address at Stage 2”. 257

Recommendations

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

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

Improved standards of record keeping and customer identification
408. We welcome the commitment from the Scottish Government to consider amending the Bill to remove the need for metal dealers to record the date on which metal was processed.

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

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

Definition of a metal dealer
411. We welcome the Scottish Government’s commitment to consider expanding the definition of a metal dealer. The Bill represents a good

253 Scottish Power Energy Networks. Written submission 75.
254 Environmental Protection Act 1990. Section 34.
255 Environmental Protection Act 1990. Section 33.
256 SEPA. Supplementary written submission.
opportunity to modernise the definitions in the 1982 Act and we urge the Government to work with the metal dealing industry and enforcement bodies to find a suitable form of words that captures the industry as a whole and has limited unintended consequences.

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

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

Penalties
414. We believe the maximum penalty liable under the legislation for breaching any of the licensing conditions should be uprated to take account of the substantial impact metal theft can have in terms of disruption to services and risk to life. Such a move would emphasise the seriousness of metal theft and act as a deterrent to criminals. We recommend that the Scottish Government consider bringing forward amendments at Stage 2 to increase the scale of fines liable under the legislation.
PART 3: CIVIC LICENSING: PUBLIC ENTERTAINMENT

Background

416. The Bill contains additional proposals which would impact on the way the 1982 Act operates. The Scottish Government argues “licensing arrangements should be proportionate and appropriate to what is being regulated. In light of that the Scottish Government believes that less onerous licensing requirements for theatres may in some circumstances be appropriate”.258

417. Theatres are currently licensed under the Theatres Act 1968 (“the 1968 Act”). This is a mandatory licence that is required by all premises where a public performance of a play is to be held. No allowance is made for the size of the premises or potential audience, or if the performance is free.

418. “Play” is defined in the 1968 Act as “any dramatic piece, whether involving improvisation or not, which is given wholly or in part by one or more persons actually present and performing and in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role”.259 The performance of ballet also requires a theatre licence.

419. Currently, theatre cannot be separately licensed under the public entertainment provisions of the 1982 Act.

Bill proposals

420. The Bill proposes to abolish the requirement for a theatre licence instead allowing theatres to be licensed under the public entertainment provisions of the 1982 Act.

421. The Bill intends to allow greater flexibility by moving theatre licensing from a mandatory to an optional regime. It would therefore be up to licensing authorities to decide whether or how to license theatres.

422. The Scottish Government also states that consistency will be enhanced as theatre licensing will be brought into the same regime as other forms of public entertainment. The licensing requirements of the 1968 Act will be repealed, with other parts, for example dealing with obscenity offences and public records of scripts, remaining in force.

423. The Scottish Government has not consulted on proposals contained in the Bill.

Committee submissions

424. We received 12 submissions relating to public entertainment licensing. Of these, the majority came from local authorities.

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258 Policy Memorandum, paragraph 232.
259 Theatres Act 1968.
425. Respondents to the call for submissions were largely non-committal on the issue of moving theatre licensing into the regime for public entertainment licences. A number of local authorities stated that as public entertainment licensing was part of the ‘optional’ licensing regime in the 1982 Act, it would be local authorities’ decision whether to licence theatres.

**Impacts during transitional period**

426. Authorities that decide to licence theatres with a public entertainment licence would have to pass a new resolution or amend existing resolutions to cover theatres as a form of public entertainment. Under section 9 of the 1982 Act, they are required to allow at least nine months between the passing of a resolution and the coming into force of any new licensing requirements.

427. The vast majority of submissions echoed the need for a suitable transition period to allow these changes to take place. The Federation of Scottish Theatre stated—

“…we would ask that all licensing authorities and licensed premises are given sufficient time and guidance in advance of the transition to make any necessary adjustments in order to comply with the change in licensing arrangements.”²⁶⁰

428. Renfrewshire Council suggested that, for local authorities that will require a change in resolution “it would be useful to those authorities where this is an issue for there to be transitional provisions put in place, so that such premises can remain licensed between the adoption of a new public entertainment resolution and the acceptance and processing of new applications²⁶¹.” They further suggest a resolution to incorporate theatres would require consultation along with a nine month period for introducing that resolution.

429. An issue was highlighted by the City of Edinburgh Council that the proposal to licence theatres under public entertainment makes the assumption that local authorities will make the necessary amendments to their Public Entertainment resolution.

“There is a risk that Theatres will be unlicensed if a particular licensing authority does not include these premises within its public entertainment resolution.”²⁶²

**Cost implications**

430. In written evidence we received mixed views on the issue of additional costs. Where venues hold both a Theatre Licence and Public Entertainment Licence, owing to their nature of operation, it was suggested that these venues would expect to see a reduction in cost.

²⁶⁰ Federation of Scottish Theatre. Written submission 86.
²⁶² City of Edinburgh Council. Written submission 49.
431. SOLAR Licensing Group suggested there would be “conversions costs to theatres in obtaining new licences and costs associated with updating resolutions for licensing authorities.”

432. The cost of Public Entertainment Licences varies across the country. Jon Morgan from Federation of Scottish Theatre told the Committee—

“In one local authority area, it will cost £140 for a year if the venue is up to 5,000 seats and, in another, it will cost £1,855 for the same size of venue. There is a huge discrepancy.”

Alcohol licensing

433. Premises that have a licence to sell alcohol do not require a public entertainment licence where entertainment takes place during licensed hours. However, currently for theatres, a theatre licence is required regardless of an alcohol licence being in place at the venue.

434. It was brought to our attention that licensing authorities’ ability to exert control over theatre venues which held alcohol licences would be minimal due to the Brightcrew decision.

Recommendations

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

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

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263 SOLAR Licensing Group. Written submission 33-38.
PART 3: CIVIC LICENSING: SEXUAL ENTERTAINMENT VENUES

Background

437. The Bill will introduce a licensing regime for sexual entertainment venues (SEVs) based on the current system in place for sex shops. This is achieved by amending the existing licensing scheme for sex shops found in Part 3 and Schedule 2 of the 1982 Act, so it applies to sexual entertainment venues also, with modifications as necessary.

438. Currently, live sexual entertainment is not an activity which is licensed of its own accord. Conditions attached to alcohol licences issued under the 2005 Act were deemed sufficient to regulate this type of business because all known live sexual entertainment venues had an alcohol licence.

439. The Policy Memorandum\(^{265}\) indicates around 20 SEVs exist in Scotland. In response to our letter, the Scottish Government advised these venues are located in Edinburgh, Dundee, Glasgow and Aberdeen and are lap dancing clubs, with the greatest concentrations to be found in Edinburgh and Glasgow.

Adult Entertainment Working Group

440. In March 2005, Scottish Ministers set up a Working Group on Adult Entertainment to review the scope and impact of adult entertainment activity and make recommendations to Ministers on the way forward. This followed concerns expressed about the lack of controls on adult entertainment activity. The report of the Adult Entertainment Working Group\(^{266}\) recommended sexual entertainment should be regulated regardless of where it occurred, which necessitated a specific regime. Regulation was not taken forward at that time.

441. The Working Group also made other recommendations, including a requirement for all performances to take place in public and improved conditions for performers. A number of licensing boards incorporated the recommendations into conditions which they applied to premises’ licences of venues offering sexual entertainment.

Proposed amendments to Criminal Justice and Licensing (Scotland) Act 2010

442. In response to the lack of a specific licensing regime for sexual entertainment venues Sandra White MSP proposed an amendment to the Criminal Justice and Licensing (Scotland) Bill (which became the 2010 Act). This is in the same terms as the system proposed in the Bill. Her amendment was supported by the Scottish Government at Stage 3 but was not agreed to by the Parliament. The reasons for opposing her amendment were broadly, dual licensing was undesirable and, insufficient consideration had been given to the proposal to rule out unintended consequences.

Need for a specific licensing regime for sexual entertainment venues

443. A 2011 court case cast significant doubt on licensing boards’ ability to control sexual entertainment through alcohol licensing. In the case of Brightcrew Ltd. v The

\(^{265}\) Policy Memorandum, Paragraph 250.

City of Glasgow Licensing Board\textsuperscript{267}, the Court of Session held that a Licensing Board is only permitted to consider the licensing objectives as they relate to the sale of alcohol rather than in relation to more general considerations. The case involved Glasgow Licensing Board’s refusal to renew an alcohol licence on the basis of evidence that the licensing conditions it had applied to the venue had been breached. The venue was used for sexual entertainment. The breaches included contact between customers and performers. The court held that it was beyond the Licensing Board’s powers to try to regulate matters which did not relate to the sale of alcohol.

\textit{Approach in England and Wales}

444. The Policing and Crime Act 2009 introduced SEV licensing in England and Wales. The arrangements are very similar to those proposed in this Bill with one key exception, in England and Wales venues can host sexual entertainment up to 11 times in one year without requiring a licence.

\textit{Bill proposals}

445. Section 68 of the Bill sets out a new licensing system for SEVs to be administered by local authorities.

446. A licensing authority can grant a licence unconditionally, refuse it, or grant it subject to conditions. Conditions must be reasonable and may include (non-exhaustively) matters such as hours of operating, window displays and visibility from the street. The Scottish Government expects Licensing Boards will focus on the sale of alcohol and Licensing Committees would licence sexual entertainment.\textsuperscript{268}

447. Enforcement is a matter for the licensing authority and the police, both of whom have rights of entry and inspection. If a matter is brought to the attention of the police then they would determine what action to take. Actions could include reporting the matter to the Fiscal for possible prosecution or referring the matter to the licensing authority for potential action such as revocation of the licence or the imposition of additional conditions.

448. Public notice (either electronically or in a local newspaper) of any applications for a SEV is required no later than 7 days after the application is received. Objections and representations can be made by any member of the public prior to the licensing authority taking its final decision. There is no process for transferring a licence. A right of appeal to the Sheriff exists for applicants unhappy at a decision of a licensing authority.

449. A licence will run for one year or for a shorter period determined by the licensing authority. There is no requirement for a licensing policy statement, however a local authority may choose to prepare one.

\textit{Committee submissions}

450. We received 49 submissions on this aspect of the Bill, mainly from those who worked in the industry or licensing authorities, but also from businesses, equality bodies, health organisations and an arts group.

\textsuperscript{267} Brightcrew \textit{-v-} City of Glasgow Licensing Board [2011] CSIH 46.

\textsuperscript{268} Scottish Government. \textit{Written submission on Policy Memorandum}, 1 September 2014.
Licensing of the sexual entertainment industry

451. A new licensing regime was welcomed by those responding to our call for evidence. It was generally recognised the Brightcrew decision had created uncertainty about the regulation of sexual entertainment and therefore a specific regime would be required going forward. On the merits of licensing SEVs, and in response to Sandra White MSP comments on the need for premises to be licensed, Mairi Millar from Glasgow City Council said—

“It strikes me that we have licensing legislation and regulations to cover everything from window cleaning to selling burgers from a van or selling chewing gum at 3 o’clock in the morning under late hours catering regulations, but adult entertainment activity is currently not regulated.” 269

452. ACC Telfer of Police Scotland said the Bill “will provide the police and the local authority with greater scope to ensure compliance in this business area” he went on to say it would also better enable “the police and partners to ensure the safety and wellbeing of those who work in such premises”. 270 The focus of the responses we received was around the detail of the proposed licensing regime and how it impacted on owners of sexual entertainment businesses, those working in the sexual entertainment industry, and licensing and enforcement authorities tasked with implementing and enforcing the scheme. Issues raised centred around seven main areas:

- Definition of a sexual entertainment venue
- Exemption for venues holding no more than four performances a year
- Power to set an “appropriate” number of sexual entertainment venues for an area
- Appropriateness of a discretionary regime
- Responsibility for licensing sexual entertainment venues
- Location and advertising of sexual entertainment venues
- Young people working in sexual entertainment venues

453. In many ways, the differing attitudes towards sexual entertainment, is fundamental to considering the policy approach taken by the Scottish Government, and the views presented to us by stakeholders.

454. It is therefore worthwhile exploring briefly the import of these views before considering the detailed issues associated with the creation of a specific licensing regime.

455. Some respondents who had worked in the sexual entertainment industry advised they did not view the entertainment on offer as sexual. A few respondents, including Grant Murray Architects Ltd 271, considered sexual entertainment a necessary facility for attracting business conventions etc. to a city. While Kelvin Smith Insurance Brokers Limited said these venues were “merely light hearted entertainment and a far cry from anything underground or seedy”. 272 A number of

271 Grant Murray Architects. Written submission 24.
272 Kelvin Smith Insurance Brokers Ltd. Written Submission 71.
performers commented on the fact that they had always felt safe and respected; that performing gives them a flexible way to make money; and that venues (at least the ones they’ve experienced) were well run.

456. While others such as Zero Tolerance, a charity working to tackle the causes of men’s violence against women, made a specific link, on the basis of academic research, between sexual entertainment, prostitution and, in both cases, women who are vulnerable to violence. In their view, sexual entertainment harmed all women and controls therefore benefitted society. Zero Tolerance said—

“In a civilised society in which ‘our people and communities support and respect each other’ (SG Strategy for Justice in Scotland, 2012) some choices are curtailed in the interests of all. It is interesting and disappointing that men’s choices to watch women perform in a sexualised manner are being protected here.”

457. The Scottish Government’s policy on violence against women defines stripping, lap dancing and pole dancing as commercial sexual exploitation and therefore violence against women. This is because “these activities have been shown to be harmful for the individual women involved and have a negative impact on the position of all women through the objectification of women’s bodies.”

458. When the Cabinet Secretary was asked why sexual entertainment venues had not been banned by the Scottish Government given the harm caused by commercial sexual exploitation of women, he said—

“What we are doing is giving local authorities the power to license the venues and to determine what the number of them should be. If a local authority believes that the desirable number is zero, there is a process that it can go through in order to achieve that.”

Definition of a Sexual Entertainment Venue

459. The Bill proposes a number of fairly complicated definitions in order to capture the sort of activities which it is intended to license, such as lap dancing, strip shows, peep shows, live sex shows, but to avoid licensing, for example, artistic performances. The main definitions are:

- sexual entertainment venue – “any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser”
- sexual entertainment – “any live performance or 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)”

460. The Bill’s proposals only license sexual entertainment taking place on premises. This leaves out sexual entertainment taking place in private property and may also

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273 Zero Tolerance. Written submission 68.
exclude other types of performance. In addition, sexual entertainment must be provided by or on behalf of the “organiser” (the controller of the venue or the sexual entertainment). This means that sexual entertainment provided without the knowledge of the organiser (e.g. a strip-o-gram booked to attend a group in a pub) is not included.

461. A number of those who had worked in the sexual entertainment industry objected to the term ‘sexual entertainment’. In their view, the performances were not necessarily sexual, and there was also concern that the term led to an assumption that other sexual services were on offer.

462. Equality groups, were also critical of the term, for example, Highland Violence Against Women Partnership criticised the term as a euphemism for commercial sexual exploitation and saw it as legitimising violence against women. Most equality groups did support further regulation of sexual entertainment – although reluctantly – as a way of reducing harm. Zero Tolerance was disappointed about the emphasis on licensing law in the proposals, and felt the focus should have been on gender equality and community safety issues. It stated:

“The current Bill appears to have been written with a view to ironing out legal technicalities in the regulation of sexual entertainment and alcohol, rather than with a consideration of the more important themes of gender equality, women’s safety, child protection and the rights and safety of communities. The final Bill must cohere clearly with Scottish Government policies on gender equality, child protection and violence against women and girls, including Equally Safe.”

463. Local authorities noted various technical issues about the definitions. One area of concern was that the requirement for an ‘organiser’ and/or ‘financial gain’ may allow venues to circumvent regulation. City of Edinburgh Council explained a venue could argue the entertainment is provided for the financial benefit of any self-employed entertainer as opposed to the organiser. The Scottish Government provided us with reassurance the definition was robust and the same principle of ‘indirect gain’ would apply to someone facilitating self-employed performers. The Scottish Government shared the view of Professor Hubbard of the University of Kent given to us in evidence—

“The provisions clearly refer to direct or indirect financial gain. There has been no case in England in which anybody has challenged the idea that somebody providing free striptease entertainment may not be benefiting indirectly from increased patronage, which results in increased alcohol sales. I think that the definition is adequate in that sense.”

464. Several local authorities wanted private clubs to be specifically covered and one local authority suggest temporary structures should also be included. We also heard from the Association of Licensed Adult Entertainment Venues Scotland (“the ALAEVS”). Its particular concern was about unregulated sexual entertainment, Janet

276 Zero Tolerance. Written submission 68.
277 City of Edinburgh Council. Written submission 49.
278 Scottish Government. Written submission, 6 February 2015.
Hood representing ALAEVS told us groups of young men could engage the services of a stripper to come to their house or hotel room without the woman being accompanied by a chaperone, she said “those are the people who are being seriously exploited in Scotland”.\footnote{Local Government and Regeneration Committee, \textit{Official Report}, 14 January 2015, Col 13.}

465. Another area of concern was a lack of clarity about what forms of sexual entertainment would be covered. Edinburgh Council highlighted that venues which charged an entrance fee and then allowed customers to engage in sexual activity among themselves (e.g. fetish clubs or swingers’ clubs) may be covered. Professor Hubbard suggested that massage parlours (where massages were given by naked or partially dressed staff) and gay saunas (where men stripped off for the titillation of others) could also be covered. Although Scottish Government officials advised us—

“if they meet the licensing definition in terms of the activities conducted on the premises and the need for financial gain, then the Scottish Government is content for them to be licensed. We note that nothing in the licensing regime would serve to permit or mitigate illegal activity if offences are being committed e.g. brothel keeping, trading in prostitution or use of premises for unlawful intercourse.”\footnote{Scottish Government. \textit{Written submission}, 6 February 2015.}

466. Jon Morgan of the Scottish Federation of Theatres wanted the Bill’s definition to be reconsidered on three counts, firstly “the potential misinterpretation or misapplication of sexual entertainment venue licensing to restrict unreasonably their legitimate artistic performances”, secondly “the potential for individual members of the public to make vexatious complaints, perhaps on the ground of taste or decency rather than on the ground of a performance being an example of sexual entertainment” and lastly, “self-censorship by our own sector: out of fear of falling foul of the legislation, people may simply choose not to put on a particular performance or production.”\footnote{Local Government and Regeneration Committee, \textit{Official Report}, 14 January 2015, Cols 23-24.} He went on to suggest a solution would be to create an exemption for those venues which hold a Public Entertainment Licence\footnote{Local Government and Regeneration Committee, \textit{Official Report}, 14 January 2015, Col 26.} and also to look to the 1968 Act which contains a definition of “play” which would cover legitimate theatrical performances.\footnote{Local Government and Regeneration Committee, \textit{Official Report}, 14 January 2015, Col 26.} Aberdeen City Council believed that exotic or burlesque dancing might also be caught in the definition.

467. The Scottish Government believed these fears were unfounded since the definition of sexual entertainment would exclude activity that isn’t intended for sexual stimulation.\footnote{Scottish Government. \textit{Written submission on Policy Memorandum}, 1 September 2014.}

468. The Minister did however acknowledge concerns in this area and sought to provide reassurance on the matter. To this end he advised the Scottish Government would “produce guidance to give specific direction about the premises and productions that would be exempt”.\footnote{Local Government and Regeneration Committee, \textit{Official Report}, 25 February 2015, Col 34.}
Exemption for venues holding no more than four performances a year

469. The vast majority of those responding to the call for evidence did not support this proposal. It was generally considered, if an activity needed to be licensed, it needed to be licensed every time it occurred.

470. According to the Policy Memorandum, “frequency makes a qualitative difference and to not allow a de minimis level would significantly increase the scope of the scheme”. It was also considered the level is set “so as not to allow a loophole to emerge whereby frequent activity is unlicensed”. 287 Eric Anderson, Aberdeen City Council however argued the provision did create a loophole—

“Instead of having a permanent premises with a licence and proper facilities for performers, they could simply transfer the activity to different venues where there are no such facilities or protection. Such an exemption could therefore mean defeating the aims and purposes of the amendments to the 1982 Act.” 288

471. Those who had worked as performers in the sexual entertainment industry commented that they would rather work in properly licensed premises. Scottish Women’s Convention considered “an organiser using several venues throughout a Local Authority to provide sexual entertainment, with each venue being used no more than three times, and all the while avoiding being subject to specific sexual entertainment licensing”. 289

472. Police Scotland and several local authorities also noted that allowing an exemption would make enforcement tricky as it would be very difficult to demonstrate how many times a venue had hosted sexual entertainment in the past year. Aberdeen City Council believed this could be an issue, Eric Anderson commented “itinerant type of entertainment, which moves from place to place—here one day and gone the next—that makes monitoring, control and keeping tabs very difficult”. 290 Mairi Miller, Glasgow City Council, considered it almost impossible to enforce, she stated—

“Licensing boards or licensing standards authorities simply would not know how many times it had happened, because there would be no requirement for them to know.” 291

473. Highland Council drew our attention to the potential anomalous position whereby if a local authority had resolved to have no venues in its area, this would not prevent sexual entertainment taking place under the exemption. 292

474. In its letter to the Committee, the Scottish Government advised the alcohol licensing system already regulates, to a limited extent, sexual entertainment through, for example, the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007. It anticipated that some amendment would be required to

287 Policy Memorandum, paragraph 255.
289 Scottish Women’s Convention. Written submission 77.
292 Highland Council. Written submission 70.
secondary legislation to ensure consistency of definitions and to avoid overlap in regulation. These controls would continue to be necessary for premises which offer sexual entertainment on fewer than four occasions per year and therefore will not be licensed under the new sexual entertainment venue licensing arrangements.\textsuperscript{293}

475. The Cabinet Secretary explained why an exemption had been created under the Bill’s SEV provisions—

“The exemption was included largely to reflect the fact that there could be unintended occasions on which a venue finds that it might have required an additional licence. It would be difficult for us to regulate such situations or to understand the full extent of that activity, and the exemption provision is an attempt to strike a balance.”\textsuperscript{294}

\textit{Power to set an “appropriate” number of sexual entertainment venues for an area}

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

477. This aspect of the licensing of SEVs policy was the most contentious. Local authorities and COSLA generally welcomed this power, however, concerns were expressed, both about the impact on existing businesses if the limit was set at zero and about technical issues with assessing an appropriate number.

478. Siobhan Murphy, who had worked in a lap dancing club had concerns if Glasgow’s licensing authority set the number of venues at zero then “dancers would be forced to travel to Edinburgh or Newcastle to work, perhaps even further afield”.\textsuperscript{295} Andrew Cox also told us of his employment concerns, “if there is a ban or zero licences in Glasgow. I will get put out of a job”.\textsuperscript{296}

479. Mairi Millar of Glasgow City Council clarified although local authorities should have the power to set the number of venues in their area she explained before setting the number at zero “each local authority would have to gather a significant amount of research evidence to determine the appropriate number in its area. It is not my position, on behalf of my local authority, that the number would automatically be zero. Such a decision would have to be based on wide-ranging consultation and evidence gathering.”\textsuperscript{297} Licensing authorities would welcome guidance from Scottish Ministers in making these decisions.

480. Professor Hubbard argued strongly that a nil limit should be removed from the legislation, saying it “is legally unreasonable and indefensible” and urged the Bill is

\textsuperscript{293} Scottish Government. \textit{Written submission on the Policy Memorandum}, 1 September 2014.


\textsuperscript{295} Siobhan Murphy. Written submission 14.


amended to “make it clear that every case should be decided on its merits and in relation to the facts of the case”.  

481. In addition, a number of local authorities called for clarity in the Bill on the treatment of businesses already operating as SEVs. The ALAEVS called for ‘grandfather’ rights (in other words, legal protection for those venues which are already operating). Other business respondents, such as the Federation of Small Businesses felt it was unfair that local authorities could shut down overnight “hitherto legitimate businesses” and suggested either grandfather rights or a transitional period be provided. Several local authorities called for Scottish Government guidance on the treatment of existing clubs in order to head off protracted legal battles.

482. Equality groups (which usually favoured a zero limit) also called for clarity.

483. The Cabinet Secretary highlighted licensing authorities must go through a number of stages before they set a limit and they must consider a range of factors. He gave a commitment to provide guidance which will assist local authorities in their interpretation of this provision.

484. In relation to grandfather rights, the Cabinet Secretary confirmed licensing authorities would need to go through the proper process to set the level at nil, otherwise “they will find themselves the subject of a legal challenge for applying a measure for no rational reason or for not considering the issue proportionately”.

**Appropriateness of a discretionary regime**

485. Several local authorities noted that a resolution was necessary before sexual entertainment could be licensed. They feared that this would create cost and administration, as well as attracting adverse publicity. This seemed unnecessary if the chance of a venue offering sexual entertainment opening was not high. North Ayrshire Council and North Ayrshire Licensing Board suggested that it would make more sense for the law to require sexual entertainment to be outlawed unless the council had passed a resolution to licence it.

486. Professor Hubbard believed lessons could be learned from the implementation of similar legislation in England and Wales. He explained to us how one local authority adopted a licensing regime while a neighbouring authority did not. There was also disparity in the fees charged by licensing authorities, these ranged from £300 to £26,000. What was permitted under the regime also varied with some authorities banning nudity and others not. His concern for Scotland was—

“This situation had given rise to a range of appeal cases and litigation in which legal unreasonableness and inconsistency have been raised as valid concerns. Some of those appeals have been upheld”.

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299 Association of Licensed Adult Entertainment Venues Scotland. Written submission 105.
300 Federation of Small Businesses Scotland. Written submission 124.
487. Police Scotland also felt licensing should be a mandatory requirement on local authorities. ACC Telfer said a discretionary approach “would encourage regime shopping whereby there might be a disproportionate presence of sexual entertainment venues in an area where they are not a licensed activity”.

Laura Tomson from Zero Tolerance considered a discretionary approach would allow local authorities to ignore important issues such as child protection, saying “it should not be up to local authorities to decide whether those issues are relevant to them”.

488. The Cabinet Secretary however advised—

   We were trying to strike a balance. In our approach to licensing sexual entertainment venues, we recognise that such facilities operate in only a handful of local authority areas—about four or five. We want to take an approach that will allow them to develop policy in a way that best reflects their local circumstances. That is why we have made the provision discretionary rather than mandatory."

Responsibility for licensing of SEVs

489. We also received calls to address the interplay between alcohol licensing and sexual entertainment venue licensing. Several local authorities highlighted it was not clear how venues currently licensed to provide sexual entertainment under an alcohol licence should be treated. Police Scotland was concerned a situation might arise where a liquor licence is revoked and an SEV licence remains in effect. The need to co-ordinate, for example, the conditions attached to both licences, was also highlighted. ACC Telfer also emphasised the need for conditions to drive up standards in the industry and some should be mandatory to promote a consistent approach across Scotland. Laura Tomson of Zero Tolerance believed having a multitude of planning or licensing authorities made it confusing for people and suggested everything concerned with SEVs should be dealt with under the new proposed regime to make it easier for communities to complain or object to planning or advertising issues.

490. The Law Society of Scotland, the Institute of Licensing, the ALAEVS Scotland and Edinburgh Licensing Board believed Licensing Boards would be more appropriate bodies to license SEVs. It was argued that they had experience already in this area and could deal with potential conflicts between the two forms of licence. Janet Hood from the Association of Licensed Adult Entertainment Venues Scotland told us “the licensing board is undoubtedly the appropriate place to deal with such venues” because “dual licensing will confuse the issue and make it harder for the public to know where to bring their complaints”.

491. A number of witnesses who attended our roundtable session were also concerned under the current system there was insufficient control over the advertising of SEVs. Laura Tomson explained “if you walk down Lothian Road—

what is called the pubic triangle by locals—in Edinburgh, you will see that it is very clear that very sexualised, very obvious signage is being used”, she went on to say “the signage is within one or two streets of at least three schools”. Professor Hubbard told us there was significant evidence that people were anxious about venues being located close to homes, places of worship, schools and other community facilities. Janet Hood advised the 2005 Act took account of the location, character and condition of the proposed venue and therefore local government, either the licensing board or the planning committee could comment on its unsuitability.

492. In relation to advertising, Professor Hubbard considered moving control of advertising under the new regime “would have flexibility through annual renewal to look at what had been happening and to impose new conditions on signage and advertising in, on, or in the vicinity of particular premises”.

493. When asked about bringing together all the aspects of sexual entertainment licensing and advertising under the remit of one body so that the public knew where to go if they have a complaint about a venue, the Cabinet Secretary replied—

“I am inclined to retain the current approach, although that is not to say that there is no scope for improving how the system operates. When an individual wants to complain to a local authority—whether about alcohol or some form of entertainment—they should be put through to the relevant officer, who will pursue that for them. That applies to any matter in a local authority. I do not think that having one committee or board to deal with all the issues would necessarily improve that process.”

494. The Cabinet Secretary further argued—

“We would have to go right back and redo licensing for alcohol and for civic purposes if the idea was that we should move to a single unified piece of legislation for both aspects. That would be a significant piece of work and a significant undertaking, and it would be well outwith the scope of the bill that we are considering.”

Young People
495. According to the Explanatory Notes, unlike sex shops, it will be permissible for a person under 18 to enter a sexual entertainment venue or be employed by such a venue but only at times when sexual entertainment is not taking place.

496. Zero Tolerance and Spittal Street Women’s Clinic called into question this approach; they argued that this could lead to the further sexualisation of children and may risk their exposure to pornographic images. Laura Tomson said “There is an issue with the images in such premises and, I would argue, with the attitudes and

317 Explanatory Notes, paragraph 204.
daily work of most of the people who work in them. It is not appropriate for under-18s to be in such premises.” Janet Hood of the ALAEVS confirmed her clients do not have anyone under the age of 18 working in the premises.\(^{318}\)

497. In response to this issue, the Cabinet Secretary advised the suggestion amounted to “banning under-18s from being cleaners in venues that are used for sexual entertainment” and “given the nature and intended purpose of such a provision, we would have to consult more widely on what the implications would be” as such he did not think it was something that could be addressed within the scope of the Bill.\(^{319}\)

**Delegated Powers**

498. The DPLR Committee highlighted two specific areas. Firstly in relation to powers conferred at 45A(7)(b) which enables Ministers to prescribe other types of premises, that are not SEVs (apart from sex shops which are separately regulated), and also, new section 45A(11) of the 1982 Act which 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.

499. The Committee asked the Scottish Government 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.

500. The Scottish Government explained the number of premises that are expected to be subject to the new licensing regime is very limited – around 20 across Scotland. It was not expected that the power to exempt particular types of premises would either be extensively used or required beyond “very limited circumstances”. It was considered the exact circumstances where an exemption might arise in future would be hard to define, in advance of the scheme becoming fully operational. It also advised of its concern if theatrical and other forms of artistic performance were caught by the provisions.

501. We note the Scottish Government’s response to the DPLR Committee, but consider the definition should be refined to explicitly exclude plays from the definition (see our recommendation at paragraph 503).

502. Secondly, in relation to section 45B which provides that local authorities (in carrying out functions conferred by the section), must have regard to any guidance issued by the Ministers. The DPLR Committee considered, 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.

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

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Recommendations

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

Exemption for venues holding no more than four performances a year
505. It is clear from the evidence we have received from all quarters a provision to exempt four occasions from the SEV licensing regime creates a loophole whereby those who wish to circumvent the licensing regime could move from venue to venue avoiding regulation. We believe all SEVs should be regulated to safeguard the performers and therefore we recommend the exemption provision should be removed from the Bill.

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

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

Responsibility for licensing sexual entertainment venues
It was clear from the evidence we took from those who are pro-sexual entertainment, and those who are anti-sexual entertainment, it would be more appropriate to bring all the elements of licensing SEVs (including advertising and alcohol) under the control of a single body. This would allow dual licensing issues to be dealt with more easily and simplify the complaints route for the public. We recommend The Scottish Government should identify the most appropriate body to carry out this role in light of the experience of the previous regime and, taking into account the need to have oversight to deal with any dual licensing issues, bring forward amendments at Stage 2.
PART 3: CIVIC LICENSING: CIVIC LICENSING GENERAL

Background

508. The Bill contains additional proposals which would impact on the way the 1982 Act operates. The Scottish Government argues these proposals will provide greater consistency and clarity across the licensing regime. They could also be argued to improve the regulatory environment for businesses.

Bill proposals

509. The proposals include:

- deemed grant of licences and variation requests where the licensing authority has failed to process the application within nine months. The licensing authority can apply to the sheriff for an extension to this time period. The proposals apply to general licences under the 1982 Act as well as licences issued under the specific regime for sexual entertainment venues and sex shops (section 69)
- regulation-making powers for Scottish Ministers to set standard requirements, if considered necessary, for licensing hearings under the 1982 Act (section 70)
- the ability for Scottish Ministers to set mandatory conditions applying to sexual entertainment venue or sex shop licences. Such conditions can apply to all such licences or specific types of licence (section 71)
- the ability for licensing authorities to set standard conditions applying to sexual entertainment venue or sex shop licences. As above, such conditions can apply to all such licences or specific types of licence (section 71)
- the creation of a mandatory job of civic licensing standards officer, modelled on licensing standards officers under the Licensing (Scotland) Act 2005 (section 72). This is discussed in more detail below
- clarification of the law to ensure that applications can be made and dealt with using electronic means (section 73)

Committee Submissions

510. Responses concerning these sections of the Bill were primarily from local authorities as the body tasked with operating licensing activities under the 1982 Act.

511. The main areas of discussion focussed on:

- the proposals in the Bill to create a new role of civil licensing standards officer; and
- the effectiveness of the 1982 Act.

Requirement to appointment a civil licensing standards office

512. One of the main proposals which gave rise to discussion was the proposal to require local authorities to appoint a civil licensing standards office (“CLSO”).

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320 Policy Memorandum, paragraph 265.
513. Section 72 of the Bill proposes to create a new local authority role of civil CLSO. The Bill would require each local authority to appoint at least one CLSO (although local authorities can also share a CLSO). The job would include the following functions:

- to provide information and advice on the operation of licensing regimes created by the 1982 Act
- to supervise compliance with the requirements of the 1982 Act by licence holders
- to provide mediation in disputes between licence holders and other parties (eg. neighbours or customers)

514. The CLSO would be a new role, created by the Bill. It is modelled on the job of the “licensing standards officer”, who performs a similar function in relation to alcohol licensing under the 2005 Act.

515. The licensing standards officer is generally considered to be one of the success stories of the Licensing (Scotland) Act 2005. Research commissioned by NHS Scotland (2013)\(^{321}\) into the implementation of the 2005 Act found that the role was viewed positively by all stakeholders. The key strengths of the role were considered to be in building up good working relationships with stakeholders – including the licensed trade and licensing boards – and in taking a proactive approach to resolving issues. However, licensing standards officers themselves reported a desire for greater support. They also noted that their perceived association with the licensing board could make relationships with the trade difficult.

516. Advantages of the new post proposed under the Bill were seen to be the creation of a single point of contact for communities, Peter Smith of Glasgow City Council said “at the moment, officers in councils are spread across different teams, such as trading standards and environmental health, and they deal with aspects of activities that are regulated under the Act”, however he was not confident all authorities would create a role and may instead split responsibility across other licensing roles.\(^{322}\)

517. On disadvantages, CoSLA suggested in its response to us that the creation of CLSO posts should be discretionary for local authorities. This was due to concerns around costs, especially for local authorities where enforcement was carried out across a number of different departments.\(^{323}\) In terms of costs, the Financial Memorandum notes\(^{324}\) local authorities which require to recruit CLSOs will face additional costs. However, in some cases, staff will already be in place in similar roles, so there will be no need for new recruitment. The Financial Memorandum\(^{325}\) also highlights local authorities are able to recoup their costs under the 1982 Act by way of licence fees.

\(^{321}\) MacGregor, A. et al. (2013) An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2004: Final Report

\(^{322}\) Local Government and Regeneration Committee, Official Report, 18 February 2015, Col 3.

\(^{323}\) COSLA. Written submission 133.

\(^{324}\) Financial Memorandum, paragraphs 210-211.

\(^{325}\) Financial Memorandum, paragraph 213.
518. Another perceived disadvantage was there would be an expectation that CLSOs could deal with ongoing issues between licence holders and communities – eg. public nuisance matters. Whereas, Peter Smith explained actually they would only be able to take enforcement action if there was a breach of licence conditions.  

326 However, Andrew Mitchell of City of Edinburgh Council welcomed the introduction of mediation as a means for CLSOs to resolve issues.  

Effectiveness of the 1982 Act
519. Most of those who responded about specific civic licensing regimes also raised overarching concerns about the 1982 Act, this central theme is dealt within the introduction to this report.

520. In recognising a review of the 1982 Act is a time intensive process and not an option for the Bill currently being considered, licensing authorities drew our attention to a few specific issues, which impeded licensing officers from carrying out their roles. The following matters were singled out as needing to be addressed in the short-term:

- the setting of licensing objectives for the 1982 Act;
- the introduction of neighbourhood notification; and
- the power to review and revoke a licence, based on an assessment of its contribution to the licensing objectives as mentioned above.

521. Concerns were raised that, without aims clearly articulated in legislation, it was not possible for officers to review licence holders’ performance or impact. They could only take action when a condition was breached, even though it might be obvious the licensed activity was causing a problem in the community.

522. Peter Smith provided an example to assist us in understanding the impact—

“For example, with scrap metal dealers, we might be given the power to condition a licence for non-cash payments, but that is not backed by a requirement for the licence holder to meet objectives such as preventing crime and disorder and securing public safety.”

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523. He explained the disadvantage was if a business was creating a public nuisance licensing authorities could only deal with a breach of a specific condition as there was no overriding objective to which businesses had to adhere.

524. In relation to creating licensing objectives for the 1982 Act, the Cabinet Secretary questioned what the existence of objectives would lead licensing authorities to do differently.

525. For Andrew Mitchell, one of the flaws of the current licensing system under the 1982 Act was the lack of any requirement to notify neighbours of a licence application. He explained the 2005 Act, and planning legislation, had “quite a
sophisticated system for neighbour notification” adding one of the most common complaints from the public was they have very little chance to engage in the licensing process before the premises opened.331 A statutory requirement for neighbourhood notification was also welcomed by Peter Smith as it would improve engagement which would in turn help the application process.332 When asked why legislation was required to enable notification, Peter Smith advised “we run the risk of seeking objections and overstepping boundaries” He explained—

“There is legislation that instructs licensing authorities on what they should do. If an authority goes beyond what it should do, an assessment has to be made about whether that authority is seeking objections.”333

526. On the suggestion of a neighbour notification process, Scottish Government officials recognised the current system was “quite archaic and the requirement is currently met by publishing a notice in the local library or something like that. It is not terribly fit for purpose in the modern world.” A commitment was given to look at any proposal put forward. The Minister however added, “there is nothing to prevent local authorities from being more proactive in the way in which they engage with local communities that are affected.”334

527. Another aspect of the licensing system which we were told needed to be addressed in the short term was the need for a power to review and revoke licences, Andrew Mitchell said—

“We can revoke a licence under liquor legislation, we can revoke a house in multiple occupation licence and we can even revoke a sex shop licence, but there is no power to revoke a licence under the 1982 Act. A council can suspend a licence for the unexpired portion but, even if someone can say that there is a problem or that there has been serious misconduct by the applicant, there is no power under the act to revoke a licence, which is fairly fundamental. That shows how far that act has drifted behind other pieces of legislation.”335

528. Peter Smith considered communities should have the right, where a business is causing a definable public nuisance, to bring the issue to the licensing authority, in much the same way as with licensed premises under the 2005 Act.336 He went on to say a review process would have the ability to deal with frivolous or vexatious complaints.337

529. In response to this proposal, the Cabinet Secretary reminded us that “although a local authority cannot revoke someone’s licence, it can suspend it, which can have the same effect”. He did however consider further measures could be taken in

331 Local Government and Regeneration Committee, Official Report, 18 February 2015, Col 3.
relation to revoking licences, and advised he would consider suggestions for improvement of the system.  

Recommendations

Effectiveness of the 1982 Act

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

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

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE

EXTRACTS FROM THE MINUTES

19th Meeting, 2014 (Session 4)

Wednesday 18 June 2014

Present:
Cameron Buchanan
Anne McTaggart
Stewart Stevenson (Committee Substitute)
John Wilson (Deputy Convener)

Mark McDonald
Alex Rowley
Kevin Stewart (Convener)

Apologies were received from Stuart McMillan.

Air Weapons and Licensing (Scotland) Bill: The Committee considered its approach to the forthcoming Air Weapons and Licensing (Scotland) Bill and agreed the following—

- its general approach to scrutiny of the Bill;
- to write to the Scottish Government Bill Team seeking further information on the Policy Memorandum on the Bill, seeking a written response by end of the public call for written evidence period, to make this exchange public and to consider the response as part of a scene setting round-table session at the start of oral evidence;
- a public engagement protocol for handling representations made to members about the Bill;
- a timetable for scrutiny of the Bill;
- an online call for written evidence, to run for 14 weeks, with agreed questions;
- to issue a targeted call for written and oral evidence from specific key stakeholders;
- to consider what witnesses its wishes to take oral evidence from after the conclusion of the public call for written evidence;
- to request SPICe provide suitable analysis, briefing and advice on the various policy sections of the Bill;
- to utilise any external meetings, or fact-findings visits, undertaken by the Committee for the purposes of engaging with community groups and others on the Bill;
to delegate to the Convener and the clerks responsibility for formulating a media strategy on the Committee scrutiny of the Bill;

to delegate to the Convener and the clerks responsibility for agreeing any claims made under the SPCB’s witnesses expenses policy;

to hold discussions on oral evidence, in private, at future meetings, and

to consider any further approach to scrutiny of the Bill, along with all drafts of the Stage 1 report to the Parliament, in private, at future meetings.

29th Meeting, 2014 (Session 4)

Wednesday 19 November 2014

Present:
Cameron Buchanan    Mark McDonald
Stuart McMillan     Anne McTaggart
Alex Rowley      Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Air Weapons and Licensing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

    Dr Graham Wightman, Operations Leader, School of Science, Engineering and Technology, Abertay University;

    Dr Niamh Shortt, Institute of Geography and the Lived Environment, Edinburgh University;

    Jack Cummins, Member of the Licensing Law sub-committee, Law Society of Scotland;

    Sandra White MSP, Member for Glasgow Kelvin;

    Calum Steele, General Secretary, Scottish Police Federation;

    Fiona Stewart, Acting Convenor, SOLAR Licensing Working Group, SOLAR;

    Dr Colin Shedden, Chair, British Association for Shooting and Conservation;

    John Batley, Director, Gun Trade Association;

    David John Penn, British Shooting Sports Council;

    Graham Ellis, Chair, Scottish Air Rifle and Pistol Association.
Air Weapons and Licensing (Scotland) Bill (in private): The Committee considered the evidence received at the meeting.

32nd Meeting, 2014 (Session 4)

Wednesday 3 December 2014

Present:
Clare Adamson Cameron Buchanan
Willie Coffey Anne McTaggart
Kevin Stewart (Convener) John Wilson (Deputy Convener)

Apologies were received from Alex Rowley.

Air Weapons and Licensing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr Michael North, Gun Control Network;

Jennifer Dunn, Senior Public Affairs Officer, League Against Cruel Sports;

Chief Superintendent Michael Flynn, Scottish SPCA;

Assistant Chief Constable Wayne Mawson, Head of Policing, West of Scotland, Superintendent Alick Irvine, Licensing and Violence Reduction Division, and Chief Inspector Fraser Lamb, Firearms and Explosives Licensing, Police Scotland.

Air Weapons and Licensing (Scotland) Bill (in private): The Committee considered the evidence received at the meeting.

33rd Meeting, 2014 (Session 4)

Wednesday 10 December 2014

Present:
Clare Adamson Cameron Buchanan
Willie Coffey Anne McTaggart
Alex Rowley Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Air Weapons and Licensing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

John Lee, Public Affairs Manager, Scottish Grocers' Federation;
Stephen McGowan, Head of Licensing Scotland, Institute of Licensing;
Paul Waterson, Chief Executive, Scottish Licensed Trade Association.

**Air Weapons and Licensing (Scotland) Bill (in private):** The Committee considered the evidence received at the meeting.

### 34th Meeting, 2014 (Session 4)
**Wednesday 17 December 2014**

Present:
- Clare Adamson
- Willie Coffey
- Alex Rowley
- John Wilson (Deputy Convener)
- Cameron Buchanan
- Anne McTaggart
- Kevin Stewart (Convener)

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

- Dr Deborah Shipton, Programme Lead, Alcohol Focus Scotland;
- Dr Sonya Scott, Consultant in Public Health Medicine, NHS Ayrshire and Arran;
- Janice Thomson, Alcohol and Drug Partnership Co-ordinator, East Renfrewshire Drug and Alcohol Partnership;
- Audrey Watson, Managing Solicitor, West Lothian Licensing Board;
- Jake Adams, Director, J R Adam Ltd;
- Ivor Williamson, Managing Director, Rosefield Salvage Ltd;
- Ian Hetherington, Director General, British Metal Recycling Association;
- Joe McCann, Site Manager, Stephen Dalton Scrap Metal Merchant.

**Air Weapons and Licensing (Scotland) Bill (in private):** The Committee considered the evidence received at the meeting.
2nd Meeting, 2015 (Session 4)

Wednesday 14 January 2015

Present:
Cameron Buchanan  Willie Coffey
Cara Hilton        Alex Rowley
Stewart Stevenson (Committee Substitute)  Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Also present: Sandra White.

Apologies were received from Clare Adamson.

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

- Janet Hood, Associations Licensing Specialist, Association of Licensed Adult Entertainment Venues Scotland;
- Andrew Cox;
- Professor Phil Hubbard, University of Kent;
- Mairi Millar, Legal Manager Licensing, Glasgow City Council;
- Jon Morgan, Director, Federation of Scottish Theatre;
- Eric Anderson, Depute Clerk to the Licensing Board, Aberdeen City Council;
- Laura Tomson, Co-Director, Zero Tolerance;
- Michael McDougall, Solicitor, Glasgow City Council;
- Gary Walker, Principal Policy Officer, Waste Unit, National Operations, Scottish Environmental Protection Agency;
- Guy Jefferson, Director, SP Distribution, Scottish Power.

**Air Weapons and Licensing (Scotland) Bill (in private):** The Committee considered the evidence received.
3rd Meeting, 2015 (Session 4)

Wednesday 21 January 2015

Present:
Clare Adamson            Cameron Buchanan
Willie Coffey             Cara Hilton
Alex Rowley              Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Air Weapons and Licensing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr James Cooper, Edinburgh Napier University;

Kevin Woodburn, Edinburgh City Private Hire;

Les McVay, CityCabs;

Bill McIntosh, Scottish Taxi Federation;

Audrey Watson, Managing Solicitor, West Lothian Council;

Douglas Campbell, Assistant Managing Solicitor (Licensing), Renfrewshire Council;

Tom Berney, Chair, Scottish Older Persons Assembly.

Air Weapons and Licensing (Scotland) Bill (in private): The Committee considered the evidence received.

4th Meeting, 2015 (Session 4)

Wednesday 28 January 2015

Present:
Clare Adamson            Cameron Buchanan
Willie Coffey             Cara Hilton
Alex Rowley              Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Air Weapons and Licensing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Assistant Chief Constable Nelson Telfer, Head of Policing, West of Scotland, and Chief Inspector Morag Stewart, Liquor and Civic Licensing Policy, Police Scotland;


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

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**5th Meeting, 2015 (Session 4)**

**Wednesday 4 February 2015**

Present:
- Clare Adamson
- Cameron Buchanan
- Willie Coffey
- Alex Rowley
- Kevin Stewart (Convener)
- John Wilson (Deputy Convener)

Apologies were received from Cara Hilton.

**Air Weapons and Licensing (Scotland) Bill (in private):** The Committee considered its approach to the scrutiny of the Bill at Stage 1, as well as discussing themes emerging which will form part of its Stage 1 report.

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**6th Meeting, 2015 (Session 4)**

**Wednesday 18 February 2015**

Present:
- Clare Adamson
- Cameron Buchanan
- Willie Coffey
- Cara Hilton
- Alex Rowley
- Kevin Stewart (Convener)
- John Wilson (Deputy Convener)

**Air Weapons and Licensing (Scotland) Bill:** The Committee took 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.

**Air Weapons and Licensing (Scotland) Bill (in private):** The Committee considered the evidence received.
7th Meeting, 2015 (Session 4)

Wednesday 25 February 2015

Present:
Clare Adamson
Willie Coffey
Kevin Stewart (Convener)

Cameron Buchanan
Cara Hilton
John Wilson (Deputy Convener)

Apologies were received from Alex Rowley.

Air Weapons and Licensing (Scotland) Bill: The Committee took 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.

Air Weapons and Licensing (Scotland) Bill (in private): The Committee considered the evidence received.

9th Meeting, 2015 (Session 4)

Wednesday 11 March 2015

Present:
Clare Adamson
Willie Coffey
Alex Rowley

Cameron Buchanan
Margaret McCulloch (Committee Substitute)
John Wilson (Deputy Convener)

Kevin Stewart (Convener)

Apologies were received from Cara Hilton.

Air Weapons and Licensing (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to and the Committee agreed to consider a revised draft report, in private, at its next meeting.
10th Meeting, 2015 (Session 4)

Wednesday 18 March 2015

Present:
Cameron Buchanan Willie Coffey
Cara Hilton Alex Rowley
Stewart Stevenson (Committee Substitute) Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Apologies were received from Clare Adamson.

**Air Weapons and Licensing (Scotland) Bill (in private):** The Committee considered a draft Stage 1 report. Various amendments were agreed to and the Committee agreed the draft report.
ORAL EVIDENCE TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

19 November 2014, 29th meeting 2014 (Session 4)
3 December 2014, 32nd meeting 2014 (Session 4)
10 December 2014, 33rd meeting 2014 (Session 4)
17 December 2014, 34th meeting 2014 (Session 4)
14 January 2015, 2nd meeting 2015 (Session 4)
21 January 2015, 3rd meeting 2015 (Session 4)
28 January 2015, 4th meeting 2015 (Session 4)
18 February 2015, 6th meeting 2015 (Session 4)
25 February 2015, 7th meeting 2015 (Session 4)
Scottish Parliament
Local Government and Regeneration Committee
Wednesday 19 November 2014

[The Convener opened the meeting at 09:30]

Air Weapons and Licensing (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the 29th meeting in 2014 of the Local Government and Regeneration Committee. I ask everyone present to switch off mobile phones and other electronic equipment because they affect the broadcasting system. Some committee members will use tablets during the meeting because we provide the meeting papers in digital form.

Our first item of business is our first oral evidence session in our stage 1 scrutiny of the Air Weapons and Licensing (Scotland) Bill. We are starting the process by holding a round-table session with key stakeholders to set the scene for that work.

We appreciate that some of the groups that are represented today may have an interest in only certain aspects of the bill, but the witnesses should feel free, please, to talk about the other parts of the bill as they come up during the discussion, because the discussion is intended to consider how licensing impacts on communities in general.

I invite the witnesses and members to introduce themselves; we will then discuss the bill.

I am the convener of the committee.

John Wilson (Central Scotland) (Ind): I am the deputy convener of the committee.

Cameron Buchanan (Lothian) (Con): I am an MSP for Lothian.

Dr Graham Wightman (Abertay University): I am from Abertay University.

Alex Rowley (Cowdenbeath) (Lab): I am the MSP for the Cowdenbeath constituency.

Jack Cummins (Law Society of Scotland): I am representing the Law Society of Scotland’s licensing law committee.

Anne McTaggart (Glasgow) (Lab): I am an MSP for Glasgow.

Fiona Stewart (Society of Local Authority Lawyers and Administrators in Scotland): I am representing the Society of Local Authority Lawyers and Administrators in Scotland licensing working group.

Stuart McMillan (West Scotland) (SNP): I am a Scottish National Party MSP for West Scotland.

Calum Steele (Scottish Police Federation): I am the general secretary of the Scottish Police Federation.

Mark McDonald (Aberdeen Donside) (SNP): I am the MSP for the Aberdeen Donside constituency.

Sandra White (Glasgow Kelvin) (SNP): I am the MSP for Glasgow Kelvin.

Dr Niamh Shortt (University of Edinburgh): I am a senior lecturer in human geography at the University of Edinburgh.

The Convener: Thank you all very much.

I would like to start with Dr Wightman. I understand that your main interest is in air weapons, Dr Wightman. Can you give us an overview of how you think the bill is, as it stands?

Dr Wightman: I probably cannot make much of a contribution on the legal aspects of the bill, although I comment in my submission that the bill ought, in order to make them clear, state the current limits—12 foot pounds and 6 foot pounds—for air weapons, and state which weapons a certificate would cover and which would still need to be licensed.

My interest comes from work that we did with honours students on the damage that air weapons can cause. We fired air weapon pellets into ballistic gel, which is used as a simulant for flesh, and examined how far they penetrated. We embedded organs from animals from an abattoir in ballistic gel and saw that the pellets would penetrate them.

Obviously, things are much more complicated in real life; there is clothing, skin and bone. We have looked at the effects of clothing on the impact of pellets in ballistic gel, the impact of air rifle pellets on bone, and how the pellets can fragment. My interest is in the damage that can be caused.

As a consequence, I have taken an interest in the statistics for injuries from air weapons in the United Kingdom and other countries. Although the numbers are falling, there is still a significant number of injuries. One was reported in the news yesterday: an 11-year-old who had been at a football match in County Durham had an air rifle pellet embedded in his temple.

I am interested in the consequences that air weapons can have.
The Law Society's concern is that the bill does not address a number of non-policy-related matters in licensing law that are ripe for change. They are matters that affect the workability of the legislation and the ability of businesses to operate efficiently.

The key area is the transfer of licences. Ever since the Licensing (Scotland) Act 2005 came into force, there have been lots of unnecessary practical problems with the transfer of licences. There was a much simpler system under the previous legislation. The raw detail is set out in the society's full written submission, so I will not trouble you with that at the moment. Suffice it to say that the 2005 act makes the transfer of licensed businesses much more complicated than it needs to be. That is a purely technical matter that could be addressed without any policy implications.

There is also a problem—again, it sounds like a dry and dusty technical problem, but it is a serious one—with a lack of clarity in the 2005 act about licences ceasing to have effect in certain circumstances. Neither private practitioners nor their clerks know exactly what the act means in that situation.

There are problems with the surrender of licences by spiteful tenants who own them, and there is a continuing problem with the ability to make what we would call a site-only application for a licence, as was possible under the Licensing (Scotland) Act 1976.

That is all in the Law Society's written submission. It sounds arid and not terribly interesting but, nevertheless, the Scottish Government has long been aware of those matters and knows that the fix is pretty simple. It would certainly help lawyers, those whom they advise and—dare I say it?—those who advise licensing boards, if they could be addressed.

The committee will have noted that the Scottish Government has taken the trouble to make us sleep safer at night knowing that Angostura bitters will no longer be treated as alcohol. It strikes me that, if we can get down to that kind of technical level, we can get down to the technical level that the Law Society would like.

The Convener: Pink gins and long vodkas, eh?

Dr Shortt, your expertise, too, is in alcohol licensing, I believe. Do you have any comments on the bill?

Dr Shortt: Yes, I do. My interest in the bill concerns overprovision. In particular, my interest is in objective 4 of the licensing objectives in the 2005 act, which states that “protecting and improving public health” is a licensing objective. In the documentation that was sent through, it was stated that it is difficult for licensing boards to use their powers on overprovision in any meaningful way. I am not sure that the bill helps that.

I will put the matter in perspective. I am interested in overprovision because Scotland has one of the highest alcohol-related harm rates in western Europe. It has the highest alcohol-related death rate in the UK, and recent research that we carried out shows that alcohol-related death rates in areas that have the most outlets are more than double those in areas that have the fewest outlets. I want the bill to contain more on overprovision, types of premises and capacity within them.

The Convener: Have you done any research on whether provision is greater in areas of deprivation than it is in other areas?

Dr Shortt: Yes. I have a paper that is currently under review that considers density by deprivation. However, the study that we carried out on death rates controlled for deprivation. Those of you who are aware of statistical models will understand what I mean when I say that we hold deprivation constant. Our research found that across all areas—not just the most deprived—death rates are higher in areas with the highest number of outlets regardless of the level of poverty.

The Convener: Does Fiona Stewart have any comments to make from the SOLAR perspective?

Fiona Stewart: We share many of the Law Society’s concerns about transfers, variations and the lack of clarity in the 2005 act. The Government guidance that goes alongside the act is well out of date. We have had two further acts since that guidance was written—the Alcohol etc (Scotland) Act 2010 and the Criminal Justice and Licensing (Scotland) Act 2010—so the guidance needs to be brought up to date. We definitely share the Law Society’s concerns about transfers, although we may differ slightly in some of our views on the solutions.

We welcome the fact that the Civic Government (Scotland) Act 1982 will be updated electronically, but we suggest that it is time to overhaul that act.
completely. It consolidated several codices, but life has moved on considerably since 1982 and the act’s provisions may no longer meet the requirements of today’s society.

The Convener: I turn to Sandra White, whose interest is in sexual entertainment venue licences.

Sandra White: It is, convener. Before I touch on some of the issues that have been raised, I thank the committee for allowing me to be here. I must admit that it is much more daunting being a witness on this side of the table than it is asking the questions as a member. I have the greatest respect for all the witnesses who turn up at committee.

I agree that a look at the Civic Government (Scotland) Act 1982 is long overdue—it is a reason why I started my work on a sexual entertainment venue licensing member’s bill. Under that act, councils would refuse an application for licence; invariably, that decision would be appealed. The matter would then go to the Court of Session here in Edinburgh, where the appeal would be lost. The process resulted in councils having to spend a lot of taxpayers’ money, while having a number of constituents who were very unhappy not only about the sexual entertainment venue licences, but about overprovision of such licences.

I will touch on the transfer of licences—what I call grandfather rights—that Mr Cummins and Ms Stewart mentioned, and what happens when someone who has had premises licensed is refused a new licence. Proposed new section 45B(6)(e)(iii) of the Civic Government (Scotland) Act 1982 says:

“(6A) A local authority may refuse an application for the grant or renewal of a licence despite the fact that a premises licence under Part 3 of the Licensing (Scotland) Act 2005 is in effect in relation to the premises, vehicle, vessel or stall to which the application relates.”

That covers part of the grandfather rights issue.

Transfer of licences was also raised—not by the panellists, but by others—in regard to European legislation; EU legislation is also being satisfied in the bill. In addition, a precedent has been set in England and Wales, where local authorities have the choice whether to have zero tolerance to entertainment venue licences, but about overprovision of such licences.

I am happy to take questions on sexual entertainment venue licences.

The Convener: I am sure that we will get a number of those. First, Calum Steele will give us the Scottish Police Federation’s view on the bill.

Calum Steele: We have concentrated our comments largely on the air weapons licensing element of the bill. It is only right and proper that I advise the committee that I have been a participant in field sports for more than 25 years and I hold shooting insurance with the British Association for Shooting and Conservation.

Our comments are heavily informed by our members’ work experience, as well as by any personal experience that we may be able to bring to the table. We have some concerns that are not principally about the bill’s provisions, but are more about the capacity of the police to deliver on the expectations that would be placed on us. That said, there are some apparent inconsistencies between the current licensing regime, particularly for firearms and shotguns and the conditions that may be particularly applied to firearms but not shotgun certificates, and the question of applying specific conditions to an air weapons certificate.

More likely than not there will be a significant number of licensing offences created as a consequence of the legislation. It is unclear whether there is any evidence to support the view that the legislation in its own right will reduce the criminal use of air weapons, which everyone recognises is a problem. That is, in a nutshell, the middle and both ends of it.

The Convener: Thank you very much. I should probably declare that, many moons ago and very much in the yesteryear, I managed to achieve various marksman badges in the air training corps.

Anne, do you want to come back in?

Anne McTaggart: No, I am okay for now.

The Convener: If any of the witnesses wants to contribute at any point, just indicate that. The meeting is informal in that respect.

09:45

Sandra White: When I started looking at the licensing of sexual entertainment venues I was overwhelmed by the submissions not just from organisations but from individuals, and not just from Scotland but from London and other areas of Britain. I am concerned that women are being accosted on their way home from work by men who frequent such clubs—there is proof of that. I was also surprised to find that a body of professional women feel that they are unable to get promotion because part of their job is to entertain clients, which means taking them out to clubs such as lap-dancing clubs—I will not give the name of the particular club in London, as I am sure that you will know which one it is—and they have refused to do that. It is not just that women are being accosted; some women are being denied promotion for not engaging with that aspect of society.

Cameron Buchanan: What do you think about the use of the word “appropriate” in relation to the
number of sexual entertainment clubs? They are going to exist, but how do you define “appropriate” in terms of areas or numbers?

Sandra White: We are allowing for zero tolerance rather than saying that we do not want any such clubs because we want to give the choice to local authorities. The bill will not make licensing of such clubs mandatory; it will be up to each local authority to fit into the legislation. On what is appropriate, if Glasgow City Council, for instance, thought that it would be appropriate to license no clubs, the bill will allow it to determine that. Personally, I would like none of these clubs to exist because they are demeaning to women. Women have contacted me after having been accosted on their way home from work going up the stairs in their close, which is next door to such a club. I see zero clubs as being the appropriate number.

Cameron Buchanan: I do not disagree with that, but I think that it is unrealistic to say that the number is going to be zero. Realistically, the choice must be left to local authorities, must it not?

Sandra White: That is why I decided not to make licensing mandatory. Under the bill, a local authority could choose to have two clubs if it wished, and it would be up to that local authority to explain to its electorate why it had chosen that number.

The Convener: I could play devil’s advocate and say that such clubs would be driven underground and would be unlicensed if there was a complete ban. What is SOLAR’s view on the issue?

Fiona Stewart: It is quite a difficult issue for SOLAR because we are the officers in local authorities and do not have any political clout. Our councillors would, ultimately, make the decision and, as officers, we would regulate any licensing scheme that came to us. The difficulty that we see in regulation is that the definitions in the provisions that are proposed for inclusion in the Civic Government (Scotland) Act 1982 are different from the provisions on adult entertainment in the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007. As officers, we would have to regulate and administer both systems, but who would be the regulator—the licensing board or the local authority? The different definitions would make it difficult for officers.

The Convener: Could you give us a flavour of those different definitions, please? That would be useful.

Fiona Stewart: The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 talk about “adult entertainment”—I cannot put my finger on the place where that phrase appears in the regulations—whereas “sexual entertainment” is more strictly and widely defined. The ruling in the recent case of Brightcrew Ltd v City of Glasgow Licensing Board stipulated that a licensing board cannot regulate anything that does not relate to the sale of alcohol. Therefore, it might be better to remove “adult entertainment” from the 2007 regulations and leave it in the Civic Government (Scotland) Act 1982, or vice versa.

From an officers’ perspective, something would have to be done about enforcement.

John Wilson: Good morning. I have a question for Ms Stewart, but Sandra White might also want to comment on it.

Sandra White has proposed that this type of entertainment be banned altogether by local government, or that we give each local authority the power to ban it from taking place in its area. Do you perceive a problem in that regard? If, for example, Glasgow took the decision to introduce a blanket ban while Edinburgh and Aberdeen decided to allow such clubs to exist, would that lead to legal action being taken against Glasgow for interpreting the legislation differently from other authorities in Scotland?

Fiona Stewart: I am not sure that I know the answer to that question.

Sandra White: John Wilson has raised an interesting point. Having looked through all the submissions with regard to that particular part of the legislation, I note that all the local authorities—Edinburgh and Glasgow in particular—are very keen to have it in place. I do not think that any legal concerns about the legislation would be raised.

In response to Ms Stewart’s comments about officers, I note that, in its submission, the Convention of Scottish Local Authorities welcomes the creation of a separate licensing regime for sexual entertainment venues and states that the legislation “gives local authorities proper powers”.

COSLA, which is obviously the umbrella body for all local authorities, very much welcomes that particular part of the legislation as a way forward that will make it easier for councils to differentiate between sexual entertainment, adult entertainment and alcohol licensing. Looking at its submission, I do not think that there would be a problem, but I am not an officer, so—

John Wilson: I am just trying to get some clarification on whether the Scottish Government should be leaving it to local authorities to license sexual entertainment. My fear is that we could end up with the same companies operating in Glasgow, Edinburgh and Aberdeen and then challenging a local authority and taking it to court on the basis that if such activity is permissible in
Aberdeen and Edinburgh, it should be permissible in Glasgow. I just want to avoid lengthy legal wrangles in the courts, and the courts, rather than this Parliament, deciding on the appropriate use of the legislation.

Sandra White: Given that, as currently proposed, the legislation goes as far as zero tolerance, I would assume that if it became law, that would be the letter of the law. This is only my view, but I cannot see all those entertainment venues moving to one particular place.

As I have said, I have read the submission from the local authorities. They want some form of tightening up and, as COSLA has stated, they look forward to the legislation being implemented as they believe that it is the way forward. If the legislation is there and it goes as far as zero tolerance, each local authority will have the choice whether or not to implement it. I do not think that it would be possible to challenge a decision in court as it would be provided for in the legislation.

Cameron Buchanan: What about underage girls or boys? Is there any way that we can legislate with regard to under-18s or over-18s? Surely that is part of the problem, too.

Sandra White: I do not know whether Calum Steele wants to come in on that point. The police make regular visits to these sorts of clubs, and most of them have proof-of-age rules and that type of thing. I am talking only about entertainment licensing, but the same problems will exist in any pub or club. These places usually operate a system of tolerance that applies to the over-25 age group.

Given the concerns that were raised with me, I visited a number of these clubs in a purely professional role to see the situation for myself, and I certainly saw no underage girls or boys in there, either as customers or otherwise. The police and the licensing regulations would certainly look at the issue of underage people, and we would expect them to check anything in that regard. In any case, it is already against the law for underage people to go into licensed premises and consume a drink.

Cameron Buchanan: Can I raise another brief point, convener?

The Convener: Quickly, please.

Cameron Buchanan: In Austria, this kind of entertainment is licensed in some areas and not in others, and people can choose to go to those areas. The same could happen in Scotland. If Glasgow did not want such clubs but East Renfrewshire did, would people just go there?

Sandra White: I do not think that that would happen. People talk about the red light district in Amsterdam, for example, but it is closing down. It is not part of the economy, and it is no longer seen as a good thing for Amsterdam. That system has fallen apart, and I certainly do not think that the same set-up would happen in Scotland.

The Convener: I wonder whether Calum Steele could tell us about his members’ perspective on the policing of sexual entertainment licences. Does it cause a huge amount of difficulty?

Calum Steele: Thank you, convener. I am glad that you phrased the question in the way that you did, because I cannot speak for Police Scotland and would not presume to do so.

Sandra White’s point about the age of those who frequent such premises is certainly in keeping with the experience of our members, or at least those who have made any comments on the issue. It is probably of large significance that the matter does not feature regularly in Scottish Police Federation discussions, as it suggests that the issue of age is not a problem for us.

The Convener: Would a complete ban cause difficulties for your members as it might mean their having to deal with an industry that has gone underground?

Calum Steele: Many things—prostitution, for example—are illegal, and we deal with them day and daily. The question is whether this is the right thing to do, and ultimately the legislators will take a particular view.

Police officers are very adept at finding out where illegal activity takes place, but that does not necessarily mean that it is equally easy to enforce the law in such circumstances. It would be almost unusual for local police officers not to know, for example, where prostitution—I appreciate that I am drifting off on to prostitution again—was taking place in domestic dwellings, or underground, to use the terminology that would apply.

Similarly, given our exposure to such knowledge, we could identify premises where illegal adult entertainment was taking place. It would not take long for that information to come to our attention. Of course, having the knowledge and intelligence does not necessarily translate into having the information to bring a case to court, but the intelligence systems that are available to the police service mean that, if the industry was to prevail in an illegal manner, we would almost certainly have the capability to identify where such activity was happening and ultimately to work on developing the resource to enforce the legislation.

Jack Cummins: With regard to Sandra White’s comments about grandfather rights in relation to sexual entertainment venues, the Law Society notes a paradox in that respect. Some premises are licensed to sell alcohol under the Licensing (Scotland) Act 2005, and are authorised in their
operating plan to provide adult entertainment—which, as Ms Stewart has pointed out, is rather different from sexual entertainment.

The Convener: What is the difference in the definition?

Fiona Stewart: You will not be able to find a definition in the 2005 act.

Jack Cummins: Indeed. Strangely enough, there is no definition of “adult entertainment” in the 2005 act, but the term is defined in the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007. The definition of “sexual entertainment” proposed in the bill is very detailed, and I do not think that there is any room for doubt about what it means.

I think that adult entertainment is at, shall we say, a lesser level than sexual entertainment, if I can put it that generally. However, a situation—

The Convener: I am sorry to interrupt, Mr Cummins. Perhaps I am being a little naive, but I do not know what “a lesser level” means.

Jack Cummins: I am sure that you have looked at the definition of “sexual entertainment”. There is, if you like, more sexuality involved in sexual entertainment than in adult entertainment. In relation to the definition of “adult entertainment”, it is slightly frustrating that we cannot lay our hands on one of the 30 sets of regulations that have been published under the 2005 act. I am trying to think what it might amount to from a licensing board perspective.

Fiona Stewart: It would cover, say, Ann Summers parties, or a stag or hen night where a stripper is invited along, which could take place in any pub or hotel rather than in the sort of establishment in Glasgow, Edinburgh or Aberdeen that we have been discussing. It would be at that sort of level.

Jack Cummins: That is right; it might be, for example, a “Full Monty”-type event. The Law Society’s concern is that premises that have been granted a licence by the licensing board to sell alcohol and which are permitted to provide adult entertainment might end up being refused a licence to operate as a sexual entertainment venue by a separate licensing authority.

As it has said in its submission, the Law Society thinks it better for the licensing of sexual entertainment venues to be placed with the licensing board to ensure that the sale of alcohol and the regulation of sexual entertainment are dealt with by one body. After all, the licensing board will have experience and know the history of the premises in question, and will therefore know whether there have been problems with the premises and whether they have been well conducted.

10:00

The Convener: Or you hope the licensing board will have all of those things.

Jack Cummins: I beg your pardon?

The Convener: You hope that the licensing board will have all that knowledge.

Jack Cummins: I have always had every faith in licensing boards.

There is also the possibility that some premises that have not given the police or the licensing board any cause for concern will find themselves either out of business or having to reinvent themselves with some other form of entertainment that is not sexual entertainment.

Mark McDonald: Mr Cummins has suggested that a potential paradox is being set up, but I have to say that I do not see any problem. If we accept that a licence for sexual entertainment is for something that is a level beyond adult entertainment, it must follow that if a local authority takes the view that it is comfortable with the provision of adult entertainment as defined in the regulations but less comfortable with sexual entertainment as defined in the legislation, it is perfectly acceptable for it to refuse a licence for sexual entertainment, irrespective of whether the venue in question has an alcohol licence or the ability to provide adult entertainment. I am not sure that I would accept that that is either a paradox or, essentially, a bad thing.

Jack Cummins: This might be too simplistic an answer, but at the moment licensing boards are licensing premises that provide both adult and sexual entertainment because the lesser level is included in the greater level. The point that I was trying to make is that the licensing board will know about and have experience of these premises, because they will have been before the board on various occasions. The board will have a track record for premises that the licensing authority will not have. To put it crudely, I think that people who have not given the authorities any grief could go out of business as a result of what is being proposed. That is a policy matter and is therefore not for the Law Society, but it is certainly the paradox that I am referring to.

Mark McDonald: That is true, but by the same token, as Sandra White has pointed out, a number of venues have exploited a loophole in the 2005 act to offer entertainment of the type that the local authority does not wish to see being provided. Because the stipulations that will now be introduced have not existed before, venues have been able to circumvent the local authority’s wishes through legal challenges. Some premises might have been operating for some time, but they
have been doing so as a consequence of a loophole rather than through any policy intention.

The Convener: I will bring Ms Stewart and then Mr Cummins back in.

Fiona Stewart: I have been handed a note of the definition in the 2007 regulations of “adult entertainment", which

“means any form of entertainment which—

(a) involves a person performing an act of an erotic or sexually explicit nature; and

(b) is provided wholly or mainly for the sexual gratification or titillation of the audience.”

Jack Cummins: An important issue is the presence of a so-called regulatory gap that means that licensing boards supposedly do not have power to regulate sexual entertainment. Ms Stewart adverted earlier to the Brightcrew case. The Law Society committee does not have a unanimous view on the import of that case, but one view—which is obviously the view that the Scottish Government has taken—is that licensing boards can regulate only the sale of alcohol and cannot regulate other matters. That is one interpretation of the Brightcrew case, but in my view that is a misreading.

That said, I perfectly understand Mark McDonald’s point, as it is the point on which this part of the bill is proceeding.

The Convener: In my experience, some parts of Scotland have licensing boards that deal with alcohol provision and licensing committees that deal with aspects of the various civic acts. Are you basically saying that the licensing board would deal with alcohol? If so, would the licensing committee deal with the sexual entertainment aspects?

Jack Cummins: That is how matters are going to be structured.

The Convener: I am talking about the current situation. I see Ms Stewart shaking her head.

Fiona Stewart: At the moment, unless a licensing authority has resolved that a public entertainment licence requirement should apply to such venues, there will be no civic government licensing of sexual entertainment premises. In many parts of the country, they will have only a liquor licence at the moment.

The Convener: That makes things a bit clearer. I will call Sandra White next, but I should make it clear that I want to move on to other things instead of just sticking to this subject.

Sandra White: Ms Stewart is right—and that is where the problem lies. Mark McDonald has explained the issue very well. I take it from the complaints and concerns that local authorities have expressed in their submissions that they are powerless with regard to sexual entertainment licences. The bill’s provisions would give them the powers to deal with sexual entertainment, which would not necessarily have to be dealt with in conjunction with alcohol licences.

I take a bit of issue with regard to the point about Ann Summers parties. People would not apply to the local authority for a licence for an Ann Summers party, and I would take that out of the equation as far as this type of entertainment—if that is what people want to call it—is concerned.

I thank members for their comments. We will certainly look into the points that have been raised.

The Convener: I just want to get down to the nitty-gritty of some of these things. People can hold events in their own homes; after all, that is where most Ann Summers parties and that kind of thing take place—not that I have ever had one. However, there are also some quite big corporate events, are there not? I would imagine that they would have to be covered.

Fiona Stewart: It depends on the part of the country. In the rural authority area I come from, many of the licensed premises are community venues, and charity groups hold these kinds of functions in licensed premises rather than in people’s homes. I cited that particular example purely to highlight the difference between what could be classed as adult entertainment and what would be classed as sexual entertainment under the bill.

The Convener: So there is a lack of consistency across the country, which, hopefully, the bill will deal with. Is that right?

Fiona Stewart: I agree, but SOLAR still has concerns. Regulation is welcome, and it is possible to regulate the premises concerned, but who is regulating what? Adult entertainment is regulated by the licensing boards, and sexual entertainment is regulated by the local authority. Where do we draw the line? Enforcement officers would be going into premises under both regimes. What would they be looking for? Would venues be caught out under the liquor legislation or under the civic government legislation? That is where the different definitions give officers problems.

Alex Rowley: Are you saying that there needs to be further clarity?

Fiona Stewart: I would say so. Where does the role of the licensing board stop and the role of the local authority begin?

The Convener: That is useful—thank you.

I wish to move on. A lot of research has highlighted the fact that boards find the concepts...
of overprovision and capacity difficult to define and measure. Like many others round the table, I come from a local authority background and I recall that licensing boards often decided not to grant a licence because of overprovision. Such decisions were almost immediately overturned by courts.

Will the provisions in the bill help in that regard? Will they give local authorities a bit more power such that, hopefully, the courts will not move in and overturn decisions that are made locally?

**Dr Shortt:** One of the most striking things in the documentation that you sent out was the very small number of applications that were refused. In 2011-12, only 21 licences were refused, whereas 347 were granted. In 2012-13, 12 were refused and 332 were granted. That shows the difficulties for local authorities in looking at the licensing objectives. The issue with overprovision is that nobody has defined what overprovision means, which is problematic for licensing boards and for local people.

Another problem in assessing overprovision is that local communities do not have the evidence available to them. For the study that we have just completed, it took us nine months to gather the data on the locations of alcohol outlets throughout Scotland. That information is not available in a central repository. If we look at the tobacco retailers register, we can easily get data on the location of tobacco retailers throughout Scotland. However, we do not have such a data set for alcohol outlets, so we had to contact each individual licensing board to gather that data and it took nine months of data gathering and data cleaning.

It is not made easy for local communities to go along to licensing boards and put across their side on overprovision because they simply do not have the data available. If anything could be done to make that data more readily available, it would help the licensing boards to meet that objective.

I would welcome the bill providing the ability to define an entire board area as an area of overprovision. That is because, in the health statistics that we work with to look at objective 4—the objective in section 1(4)(d) of the 2005 act—of “protecting and improving public health”, the data is not available at very small local area level. Often, we are asked, “If this pub opens in this area, what will happen?” That data is not released because it is confidential data. In addition, there is a statistical error if we work with very small numbers. If we can look at the data at a whole board level, we might be able to break it down a little bit, but I would be very happy if the bill gave us the ability to look at whole area levels with regard to overprovision.

**The Convener:** Previously, if there were difficulties with the amount of social housing, local authorities could put in pressured area status and stop sales of social housing in that patch. Are you suggesting that there could be provision in the bill to have a blanket ban on any new licences in particular areas or even in entire local authority areas?

**Dr Shortt:** I am sorry—I am not sure what you meant when you referenced social housing.

**The Convener:** It was just an example of how authorities have managed to control policy issues by having blanket bans on something happening in particular places. Could there be an argument for an overprovision blanket ban in communities or in entire local authority areas?

**Dr Shortt:** Yes, because I think that the concept of overprovision is not being used at the moment. Even if licensing boards refuse licences based on overprovision, the decisions are being overturned.

I am very passionate about the idea that, as residents, it should be easy for us to access data on the number of licensed premises in our areas that we can use when we go along to licensing boards.

**Mark McDonald:** I have a couple of points. First, I am very interested to know when your research is likely to become available. In the research, there will obviously be an aggregation around licensed premises. There are off-licences, pubs, nightclubs and hotels. Is that disaggregation covered as well? I can think of a community in my constituency where there are a number of hotels, a couple of community pubs and some off-licences. To all intents and purposes, if you were to look simply at the number of licensed premises in that area without looking at what those licensed premises were, it might give a misleading impression of overprovision in that community, although there are undoubtedly communities—I am sure that the convener, as somebody who represents a city centre area, will understand this—where there are a significant number of licensed premises in concentrated areas.

**The Convener:** I will try not to start talking about my constituency. Dr Shortt?

**Dr Shortt:** The report is available now. I can send it to you after the meeting. We were able to disaggregate the data by on-sales and off-sales premises and we found that the greatest effect was from off-sales premises. We think that that is because there are cheaper products available, the products could be accessible to people who are under age and there is no control over who the final recipient of the off-sales product is. The strong effect from off-sales premises is not unique to Scotland. This is the first time that such work has been done in Scotland, and there is evidence
of such an effect elsewhere, particularly in North America and Australia.

What we were not able to do was look at capacity, which you mentioned, so we could not consider whether we were talking about village pubs or large, multifloor premises in the Grassmarket, for example. The data on that are simply not available, which is why I would like there to be a retailers register, much like the tobacco retailers register. If Scotland is to think about overprovision, we need the data so that we can ascertain what constitutes overprovision. That has been a problem for licensing boards, in that the information is often not available.

10:15

Mark McDonald: It would be useful to see the data that you collected and to have a look at your report. You made an interesting point, which I am sure that we can pick up at a later stage of our evidence gathering.

Stuart McMillan: Dr Shortt, you mentioned off-sales. Do you have information about the types of facility that sell alcohol? Is there a propensity for more alcohol to be sold by supermarkets as opposed to traditional off-sales premises?

Dr Shortt: Again, we need the data, so that we can find out whether we are talking about large supermarkets or small corner shops. We need to know the capacity of the off-sales retail units as well as the capacity of the on-sales retail units—we need to know how much floor space is given over to alcohol products. That is information that we will seek and build on in further work, but so far we have looked at on-sales and off-sales.

Jack Cummins: I think that the research to which Dr Shortt referred is the research that was presented to Alcohol Focus Scotland’s national licensing conference on 7 October.

Dr Shortt: Yes.

Jack Cummins: That postdates the Law Society’s submissions, so I am perhaps flying by the seat of my pants and expressing a personal view. As I understand it, the study was cross-sectional and further analysis is needed. I am not taking anything away from the report, which is interesting and highlights statistical anomalies. However, on page 10 you say that you cannot positively say that there is a correlation—a causal link, if you like—between the density of licensed premises and alcohol harm. You are no doubt aware that Cardiff University is involved in research that has £416,000-worth of funding from the National Institute for Health Research, which will—over three years, I think—look at the impact of changing alcohol outlet density on health-related harm.

You have done an important piece of work, Dr Shortt, but, with respect, a lot of things are happening in academia to seek answers on the link between health harms and outlet density, so it is important that a broad spectrum of academic research is examined.

The Convener: I assure you that we will be looking at a lot of things, Mr Cummins.

Dr Shortt: At the end of the report we noted our limitations, as is done in any good academic research. We noted that we had found correlation, not causation and that we need to look at the data through time if we are to identify causation. The statistics in the documentation show very little change in the granting of licences in Scotland, so we need to consider the data over a long period. A register would help us to do that.

I point you to an article that Campbell published in 2009 in the American Journal of Preventive Medicine, which was a systematic review of studies of alcohol licensing through time. The authors found nine time-series studies, seven of which found that increases in alcohol outlet density were linked causally, through time, with increases in alcohol consumption and related harms, particularly interpersonal violence. They also noted that their study—like ours—was cross-sectional, but of the 47 outcomes that were looked at by cross-sectional studies, positive associations were found in 41. It is important to say that, although we may find causation through time, in order to find causation we first need to find correlation, and that whenever there is correlation we may find causation.

The Convener: Stuart, do you want to come back in on that point?

Stuart McMillan: Yes, just briefly. As a consequence of the 2005 act, different regulations came in from 2007 onwards regarding the floor space available in facilities that sell alcohol. Do the research that you have undertaken and the information that you have gathered up to now show any change in the total amount of alcohol sold compared with pre-2005?

Dr Shortt: We do not have sales data.

The Convener: Mr Steele, do your members have a view on the overprovision of alcohol licences? I think that your members in my patch have a view, but is there a general view from the Scottish Police Federation?

Calum Steele: That is not something that we have considered in any great detail. However, the discussion is exposing the fact that the issue of overprovision is difficult to nail down. If you look at the capacity in many licensed venues between 10 o’clock at night and 3 o’clock in the morning, you will see that they are all full to the gunwales, and I
dare say that many people would argue that if there were more such venues, more space could be contained within them, so it would be difficult to say that there is overprovision in that sense. However, the self-same venues will be largely empty from 11 o’clock in the morning until 3 o’clock in the afternoon, so measuring provision and capacity for provision is not easy, although it is universally accepted that protecting licensed premises that have on-sale capacity results in considerable additional demand on police time and resource outwith the premises when they eventually spill out.

**John Wilson:** I know that Dr Shortt’s study has been limited so far, but one of the big problems in many communities is not, as Mark McDonald indicated, the hotel or bar trade, but the off-licence trade and the small corner shops that sell the well-known tonic wine, particularly in areas such as the one that I live in—Lanarkshire—which have real problems.

How do you propose to measure that type of sale? Floor space does not come into the equation, given that I could take you to a small off-licence that will sell anything in excess of 200 bottles of that well-known tonic wine on a Friday night. How do we get to a position in which we can make an assessment of the situation in which, as well as a supermarket having an off-licence, a proliferation of small corner shops insist that they must have an off-licence in order to trade, although what they are trading in is a type of alcoholic beverage that is problematic in communities throughout Lanarkshire and central Scotland?

**Dr Shortt:** It is important that future research looks at types of outlets and at the products sold in different types of outlets. It is important to recognise that there are different pathways through which overprovision or a high density of outlets in an area can affect health and wellbeing. We often think only about the availability of those products or the ease of access to them and the fact that, because more of them are sold in our neighbourhoods, it is easier to get them, but there is also the idea that if premises are in close proximity to one another, there will be a reduction in prices because of competition and that the availability of such products can reinforce and shape our social norms and our attitudes towards alcohol. If we live in a society that is swimming with alcohol, that will shape the ideas and attitudes of teenagers in Scotland.

**Fiona Stewart:** Capacity is a vexed issue, not just for health and for the trade but for licensing boards. The total capacity cited for on-sale premises is virtually meaningless, because it changes from hour to hour, depending on the layout of a function room, how many tables and chairs are in it, how big the dance floor is and so on.

Even in relation to off-sales, capacity is not straightforward: sometimes it is measured in cubic metres and sometimes it is measured in square metres; sometimes it is the floor space that has shelves on it and sometimes it is just the shelves. From the beginning, there has been no clear steer for licensing boards on what capacity means in either on-sales or off-sales.

Officers in SOLAR are concerned about the proposals in the bill to bring licensed hours into the equation, because not every premises trades to the full hours that they have on their licence. Sometimes they are open for shorter hours, perhaps because they close during quiet times, so what meaningful information would licensed hours bring to the table?

As licensing boards and licensing board clerks, we are as vexed as everybody else is about how to deal with overprovision, but some clarification is needed on how capacity is to be taken into account in determining whether there is overprovision. It is not as straightforward as you might think, because of all the technical issues that we have to deal with.

**John Wilson:** Ms Stewart said that capacity can be measured in cubic metres, in square metres and so on, and she mentioned the situation with floor space in off-sales. Is any account taken of the amount of storage space that premises have? The restriction is on what is in front of customers when they walk in. I gave the example of tonic wine. There might be only one shelf full of tonic wine on display, but there might be 20 cases sitting in a store room. The shelf might be replenished every time somebody buys two bottles.

**Fiona Stewart:** Generally speaking, storage is not taken into account at the current time. It is purely the alcohol displays within the store that are considered.

**Jack Cummins:** That point is often overlooked. The real capacity is not what is on the shelf. Under the legislation, capacity is the amount of space on the premises that is given over to the display of alcohol for sale on the premises, but the length and height is not the capacity. It is just a two-dimensional measurement. Again, this is not the Law Society’s position, but my personal view has always been that the real capacity is what is in the back shop that can be used to refill the shelves whenever what is in the authorised space starts to run down.

I entirely agree with Ms Stewart about licensed hours being part of the assessment of whether there is overprovision, because they may or may not be used. I do not think that they contribute
anything—nor does the Law Society—to a better understanding of what would constitute overprovision, so we are agreed on that.

Mark McDonald: I have two points. First, I am interested in the issue of storage space. In the dim and distant past, I worked for a major supermarket chain, which shall go unnamed, and all the alcohol had to be stored in a locked cage at the back of the warehouse. I do not know whether that was the result of regulation or whether it just was a choice that was made—

The Convener: Warehouses were normally open in those circumstances, in my experience of working in the same kind of stores.

Mark McDonald: My second point follows on from an interesting point that Mr Steele made about the pressures that are caused by large numbers of venues in a concentrated area spilling out at the same time. When I was a local authority councillor, I floated a suggestion that local authority licensing boards should look at implementing what I would call cool-down periods, with differentiation between the time period for the sale of alcohol and the closing time of premises, or differentiation between the closing times of premises in a certain area.

Neither of those ideas is necessarily a perfect solution, but are they already available to licensing boards? Would there be legal implications if they were to implement such proposals? I would be interested to learn a bit more about those things, because I am by no means an expert.

Jack Cummins: The policies that licensing boards implement usually provide for different terminal hours depending on the type of premises. For example, in Glasgow city centre, the terminal hour for pubs is 12 o’clock, for restaurants that meet certain criteria it is 1 o’clock and for nightclubs it is 3 o’clock. The situation is different throughout the country.

Your point about a large burst of people going on to the streets at the same time and the stress that that causes is one of the reasons why capacity became a feature of licensing legislation for the first time in 2005. As you probably know, the Nicholson committee reviewed licensing law in the run-up to the 2005 act. It noted that a licence was a licence and that, although a superpub might have much more trading space than a small, traditional pub, it was still counted as one licence.

From the Nicholson point of view, overprovision was linked to stress levels caused by a large number of people coming on to the street in a concentrated area late at night, which of course has police resource implications. Nicholson differentiated between different types of premises. Closing times are staggered throughout Scotland.

10:30

Mark McDonald: Let us go slightly further than that. For example, Justice Mill Lane in Aberdeen has a large concentration of premises that empty at 3 o’clock in the morning. I floated the suggestion that licences could be differentiated across those venues by changing the closing time of the premises or the time at which alcohol ceases to be sold. Can such local variations be made by licensing boards or would there be legal difficulty for them in taking that step?

The Convener: Before I let you answer, Mr Cummins, I want to add to that. When that has happened in certain places, I understand that rival premises owners have made challenges in court about who should close earlier and who should open later.

Jack Cummins: Let us look at West Dunbartonshire licensing board as a model. It was the first board to declare almost all of its area as overprovided. It was split into data zones and I think that I am right in saying that 15 out of 17 of those data zones were overprovided. However, overprovision only exists in relation to what might be called vertical drinking establishments and off-sales, so hotels and restaurants would not be caught by the overprovision policy and would be looked at in the normal way. Importantly, that policy was revised a couple of years ago and it now allows the licensing board to look at the benefits from inward investment for the economy and the health improvements that might come about from putting people into work.

The short answer is that there can be differentiation. For example, an area can say that it is not having any more off-sales. Highland licensing board recently said that it was not having any more off-sales with a display capacity in excess of 40m². That is quite an innovative step. All sorts of refinements are possible.

The Convener: Boards often face difficulties when owners challenge their decisions in court by saying, “The boy up the road is allowed to open until 1 o’clock in the morning, so why am I not allowed to do so?” That is where difficulties have arisen on my patch in the past. Does the bill help in that regard or are we still going to have sheriffs overruling licensing boards every day?

Jack Cummins: If the licensing board has a policy that certain premises should be able to be open until a certain time and the disgruntled licence holder that you describe tries to bring themselves within that policy, they will have to have a large chequebook and lots of money to challenge it, because litigating on licensing is phenomenally expensive.

I do not want to put her on the spot but, unless I misremember, I happen to know that Ms Stewart...
has some experience of litigations from nightclubs, so she might be able to assist us.

Fiona Stewart: I think that you are misremembering.

The problem that licensing boards face is that the trade wants a level playing field and pubs and nightclubs want to operate the same hours across the board, whatever the licensing board has said those hours might be. For differentiation, it would be difficult to pick the establishments that would lose their hours. We would have to look at new premises coming in, but they would say that they ticked all the boxes and would ask why they were not getting to open for the same hours as the pub next door. Unless there was a specific problem with an individual premises that meant that the board could review whether its hours or capacity were causing a problem and take action if that was found to be the case, boards would be put into a difficult position, especially when the overwhelming evidence that has been coming before boards for a long time is that premises want to be treated the same and want a fair shot at the market.

That is why we see policies that say that pubs can open until 1 and nightclubs until 3. I know that some boards previously had curfews in place to try to control disorder, but Highland is the latest board to lift its curfew because the reasons for it are simply no longer there.

Alex Rowley: It would be useful to get the research that Dr Shortt talked about and to find out about any links to other research. It would also be useful to find out about experiences in other European countries, in some of which it is not possible to go to the corner shop to buy alcohol.

I want to switch subject and ask about air weapons. My question is for Calum Steele. In the financial memorandum to the bill, the Scottish Government states:

“The main costs falling to Police Scotland will arise from the initial certification of air weapons holders, and ongoing checks and renewals of certificates once the main regime is in place.”

However, it goes on to state:

“To a great extent all of the main elements of the regime are already in place”.

Therefore, the Government does not consider that there will be major costs involved. You seem to have a different position.

The Convener: Calum, can you answer that from a federation perspective?

Calum Steele: I can certainly give my view from a federation perspective. We find that, regardless of their hue, Governments traditionally underestimate the cost of any measure that they introduce, with the result that it is not uncommon for the costs to end up being borne largely by the service that has responsibility for the relevant area, whether we are talking about the licensing service, which has responsibility for alcohol licensing, or the police service, which has responsibility for firearms licensing.

The difficulty that the federation has with the financial memorandum is that it contains many suggestions but no evidence for how those conclusions have been reached. For example, there is no indication of why the statement that 40,000 air weapons might be held by firearms or shotgun certificate holders, many of whom will own more than one such weapon, has been made or what evidence supports it.

Given our experience and the number of staff who undertake such activities on a day-to-day basis, we have real difficulty in understanding how that translates into a limited number of inquiries based on there being a small number of individuals, when no guidance has been prepared on what will be required by way of background checks and supporting evidence before an air weapon certificate is granted.

I suspect that others will express a similar view; just because statements are made, that does not mean that they are true. Some evidence should be provided to support them. At a time when everyone in the public sector is under considerable pressure and—whether people admit it or not—a conversation is undoubtedly taking place about whether there should be fewer police officers in Scotland, it seems to me that the proposals in the bill cannot be glibly dismissed as having little impact on the police service. Any police officer who is involved in day-to-day response policing—those who answer calls and attend incidents—will tell you that they are stretched. The impact of adding the burden of potentially having to deal with up to 500,000 air weapons—although it is questionable whether that number would ever fall under the licensing regime—needs to be properly understood, and my organisation’s view is that that has not happened. All that we have had are bland statements.

The Convener: Dr Wightman, do you want to come in on that point?

Dr Wightman: I cannot add much on licensing. I would be interested to know where the figure of 500,000 air weapons comes from.

Alex Rowley: Do we have any idea of how many air weapons are out there? Is there a best guess?

Dr Wightman: I am afraid that I do not know.

Alex Rowley: There is also an assumption that, were licensing for air weapons to be introduced,
people would surrender them. Are there many people who have air weapons that are just lying about and who, if they had to get them licensed, would just hand them back?

The Convener: You are talking about an amnesty.

Calum Steele: Every time there is an amnesty, a number of different weapons are surrendered. That would apply even now: if there was to be an amnesty tomorrow, unlicensed shotguns and unlicensed firearms would be handed in. It happens time and again: the same thing occurs as standard across most police services in the United Kingdom, and it would undoubtedly happen again. My experience, and I stress that this is just my own experience, suggests that there probably are instances of people who have weapons just lying around or sitting in a dusty garage. I suspect that there are as many people who hold and use air weapons properly and competently as there are people who bought them once upon a time and have forgotten that they still have them.

The Convener: I now have three members on my list—

Alex Rowley: Could I just finish, convener?

The Convener: Yes—if you are brief.

Alex Rowley: There is a stringent process in place, which includes background checks and so on, for people who hold or apply for shotgun licences. The financial memorandum seems to suggest that such extensive, detailed background checks will not be necessary for airgun licensing. What is your take on that?

Calum Steele: That is what the memorandum suggests. There is indeed a question about whether there needs to be additional consideration given to licensing in relation to people who currently hold firearm or shotgun certificates. It seems to the Scottish Police Federation, and it seems to me personally, that that would be an unusual step.

Levels of danger are difficult to quantify. If something is lethal, it is lethal regardless. It does not matter whether someone is bludgeoned to death or blitzed out of the air with a rocket-propelled grenade—they are still dead. The issue of how lethal or otherwise any particular weapon is needs to be properly understood.

Given that a very detailed approach is taken to the licensing system, particularly for shotguns and firearms, there would seem—if legislation proceeds in relation to this particular element—to be an easy win in providing the capacity for an existing firearm or shotgun certificate simply to cover an air weapon or air weapons.

However, your question particularly focuses on those people who do not fall into that category, and how much examination would be required in that regard. If the requirement was for something akin to the old-fashioned game licence—when people could go to the post office, pay for it, pick it up and walk out the door—that would be as meaningless as the game licence itself was. Other than that individual applications would be assessed in their own right, it is not clear what or who would or would not be subject to a detailed process of application and consideration.

Mark McDonald: The motivation behind licensing in this area is obviously related to both actual and perceived harm. I am interested in the study that you have done, Dr Wightman, and in what you have concluded from it with regard to the harm that can be caused by air weapon pellets. Can you give us a bit more detail on that?

Dr Wightman: Are you asking about the actual damage that air weapons can do, or the statistics?

Mark McDonald: Both, if you wish to offer that.

Dr Wightman: Initially, we looked at firing into ballistic gel, to simulate the damage to fleshy organs. We then looked at embedding animal organs from an abattoir into the gel and compared that with firing into the gel on its own. The ballistic gel is a reasonable model for the various soft tissues in the body. There is obviously a bit of variation between the organs—a lung is penetrated more readily than heart material—but the gel still provides a reasonable approximation. The fact that the pellet will go 10 cm to 15 cm in if there is no bone or anything else to prevent that means that there is a potential for serious injury within the body.

We have also looked at the effect of clothing, which can reduce penetration. Sometimes, clothing reduces penetration significantly; at other times, it does not seem to have so much effect. We have a project running this year that will examine why that is the case.

10:45

Although we have tried simulating skin, we have had difficulty in getting reproducible results. As I said in my introductory comments, we are talking about a complex system involving, for example, clothing, skin and fleshy organs, and perhaps bone behind all that. We have been trying to simplify the model but, from the work that we have done, it appears that pellets can penetrate quite a distance into the body.

Looking at the literature in medical journals, I would say that most of the work on the effect of air weapons has come from medical doctors examining the injuries and fatalities that have been
caused by such weapons. That complements what we have been doing. There have been cases of quite serious injuries and fatalities as a result of air weapons; the number might be declining in the UK—the same is true of other firearms—but it is still significant.

John Wilson: In your submission, Mr Steele, you suggest that the costs of implementing the licensing regime for air weapons might have been underestimated. What might it cost to enforce the legislation with regard to individuals who decide not to get an air weapons licence? Would the police have to put on a major exercise to get as many unlicensed weapons off the streets as possible? Is it the case that the only time the police really come into contact or interact with air weapons is when illegal activities or perceived illegal activities take place?

Calum Steele: The issue of compliance costs is detailed in paragraph 76 of the financial memorandum, and there is a suggestion that the Police Service of Scotland should not pursue air weapons as a significant priority but deal with issues as and when they occur.

Costs should be broken down into three areas: the financial cost; the human cost, in terms of the impact on communities and individuals; and, of course, the cost of the time that police officers spend dealing with such cases. It might help to spend a bit of time on each area. As the financial cost will be identified only once the process has been worked through to the end, it will be really difficult to answer that question. However, what will inevitably contribute to that cost will be the increase in the number of licensing offences identified and, undoubtedly, reported to the Crown Office and Procurator Fiscal Service. That will impact on the time that the service dedicates to dealing with such matters, which might, ultimately, translate into court time. The reporting time, the time that will be spent by the procurator fiscal and court time are all a considerable drain on police time, and I do not think that it will be acceptable either to the legislators or to our communities for the police to take an inconsistent approach where Joe Soap is deemed to be forgetful but someone else whose jib people do not like the look of gets reported. That is problematic.

The human cost will, of course, be the impact on individuals. I suspect that many tens of hundreds or possibly thousands—which is obviously the same thing; I meant tens of thousands—of individuals out there might well find themselves falling foul of the criminal justice system because of licensing offences. That has not been a feature before, and, because consideration has not been given to the movement of air weapons across borders, the issue applies not just to individuals who are domiciled in Scotland but to individuals who come to Scotland from elsewhere in the United Kingdom.

Although I consider that, in the early days, a potential prosecution, a recorded prosecution or a fixed-penalty disposal being brought against someone will be regarded as a relatively minor thing, the impact on individuals later in their lives could be great. A young person of, say, 18 or 19 years old could fall foul of the criminal justice system and, later in life, when they are going for employment or trying to get a job overseas—the global marketplace changes so quickly and competition for jobs is so vehement—they could find that that has a devastating impact on their future life chances. That needs to be properly understood.

It is suggested that there will be a long intervening period of non-active pursuance, if you like, when there may be enormous quantities of air weapons handed in for surrender. It is really difficult to make estimates about the transportation, physical seizure, recording and holding of those weapons until such time as they are taken away—if indeed they are to be taken away—by a scrap metal dealer.

As I said, the statements that have been made seem to be based on no evidence other than just a finger in the air and the feeling that this seems about right. Until such time as we have a reasonable grasp of what is out there—a reasonable gauge of how many current certificate holders would fall within the ambit of consideration—and how long it is going to take, it is going to be really difficult to accurately predict whether the cost on the service will be negligible. That is the case for time on its own, particularly in more rural areas and in the Highlands. There is a reference in our submission—

John Wilson: I have a supplementary question, convener.

The Convener: It has to be very brief, with a very brief answer.

John Wilson: It will be. Earlier, Mr Steele said that, when there is a weapons amnesty, a number of unregistered shotguns and firearms are submitted. Could he give the committee—perhaps not today—an indication of how many unregistered shotguns and firearms have been submitted in weapons amnesties in the past?

The Convener: I think that that would be difficult for Mr Steele to do, but we will get that information from Police Scotland.

Calum Steele: Yes.

Anne McTaggart: On the same note, Mr Steele, your submission mentions the information and communication technology system and its ability to absorb the additional data that may be
created by the introduction of the licensing system for air weapons. Can you explain what you meant by that?

**The Convener:** Mr Steele, can you be quite brief, please?

**Calum Steele:** I will try to be brief; I am not renowned for that, but I will give it a go.

As everybody knows, our IT systems are not the best and whether they can deal with the potential increase in database entries that will be required has not been tested. As a consequence, it would be difficult to predict accurately how much an IT provider—recognising that the service is a hostage to fortune—would charge the service to make sure that the system has the capacity to deal with the additional data that it would be required to hold.

**Stuart McMillan:** I have heard everything that has been said up to now, but I want to go back to some of the other evidence that we have received. In the submission from the Scottish Society for the Prevention of Cruelty to Animals Michael Flynn states that, in the UK, “There are many activities that require to be licensed from driving to watching a television in your own home. UK citizens do not have a ‘right to bear arms’.”

In the UK at the moment, having a television without a TV licence is a criminal offence that can lead to a court appearance and a fine of up to £1,000.

This is day 1 of our consideration of the bill. Many people outside the Parliament might consider it quite strange that although they can be charged for not having a TV licence, there is no similar scheme in operation for air weapons.

**Calum Steele:** That goes back to the very essence of what this particular element of the bill is trying to deal with. Is it trying to create a licensing regime for air weapons, or is it trying to deal with the criminal use of air weapons?

If it is the former, the Parliament can by all means introduce a bill and create offences, so that people who breach the licensing provisions are regularly brought before the court—I suspect that that will happen regularly. However, if it is the latter and the intention is to deal with the criminal use of air weapons, I rather fear that people who are criminally inclined to use air weapons, much like those who are criminally inclined to use firearms and shotguns, will continue to be criminally inclined to use them, regardless of the licensing regime.

If the intention is to manage the availability of air weapons through a licensing system, we can introduce a licensing system, just as we have done in the context of driving a car or watching television. If the intention is to deal with criminality, that is a different thing altogether. Let us not forget that although there is a licensing requirement in relation to watching television or driving a car, many people do not have licences, because they are criminally inclined not to get them.

**The Convener:** Ms Stewart, members get quite a lot of complaints about the taxi licensing regime. The proposals in the bill arose from the need to tighten regulations and reduce the opportunities for circumventing the licensing regime. Does the bill tackle companies such as Uber that pick folk up, or will we have to rethink that?

**Fiona Stewart:** I was in a meeting recently with Scottish Government representatives, at which we discussed Uber and similar applications. To some extent we might have to rethink. In some parts of the country, unlicensed operators are not prevalent, although there has always been tension between the taxi trade and the private hire trade.

The law makes it a criminal offence not to have a licence, and the majority of taxi firms are licensed. Uber opens up a whole different world, but it does not take away anything from the current legislation, whereby anyone who operates a taxi or private hire car needs a licence to do so. I am not sure that we have reached a stage at which we can resolve the problem that Uber and similar applications present.

**The Convener:** Is SOLAR’s licensing working group satisfied with the bill’s provisions on taxis and private hire cars? Do we need to do anything else?

**Fiona Stewart:** We are concerned about the proposed limits on private hire cars and the different approaches to restricting numbers. Currently there is provision to assess unmet demand for taxis, and the bill will allow local authorities to consider overprovision of private hire cars. We are concerned that that approach might lead to an issue of plate value, just as some taxi plates have a value, and might not achieve the desired result.

**Cameron Buchanan:** Do you think that Uber has been banned in some countries because taxi drivers are afraid of the competition? There is a temporary ban in Germany, for example.

**Fiona Stewart:** I do not know the reasons why Germany banned Uber, although I am aware of the concerns of London taxi cab drivers. At our meeting with Scottish Government officials we did not go into such detail. The issue is how we deal with operators who give quotations online for a car to pick someone up. It appears that such operators are self-employed and are not employed by Uber. The person who books the car does not know whether the vehicle is licensed, and no one is taking responsibility for the ones that do not have licences.
Cameron Buchanan: I presume that there is also a problem with third-party insurance.

Fiona Stewart: Yes, and there are implications if there is an incident.

The Convener: I have been told that the ban was only in Berlin and has been overturned by the court.

The difficulty that Fiona Stewart has identified is that many folks who use such services do not realise that they are unlicensed. There have been serious incidents in Scotland after folk entered cars thinking that they were taxis or private hire cars, only to find that they were not. We have to get this absolutely right.

Thank you all for your evidence. We have had a fairly lengthy session and your input is very much appreciated. The clerks might well get back to you to clarify various points and seek further information.

11:00
Meeting suspended.

11:09
On resuming—

The Convener: I welcome our second panel of witnesses: Dr Colin Shedden, who is the chair of the British Association for Shooting and Conservation; John Batley, who is director of the Gun Trade Association; David John Penn from the British Shooting Sports Council; and Graham Ellis, who is chair of the Scottish Air Rifle and Pistol Association. I invite them to make a brief opening statement.

John Batley (Gun Trade Association): We were all together on the firearms consultative panel, and the minutes of all those deliberations are on record. We have worked consistently with the Scottish Government over the past three years on the aspects of the bill and have all made submissions on its provisions.

The Convener: We already have a licensing regime for shotguns and other firearms. Why should air weapons be treated any differently?

Dr Colin Shedden (British Association for Shooting and Conservation): Over a considerable number of decades, we have built up a system of licensing for firearms and shotguns, as you rightly identified. We have not had licensing for airguns at all.

We are faced with the problem that there is an estimated minimum of 500,000 airguns in Scotland. The vast majority of them do not have a serial number, unlike the vast majority of shotguns and other firearms. Consequently, introducing a licensing regime from scratch is unlikely to be successful because the only people who would submit themselves to it would be law-abiding people who wish to remain law-abiding.

Previous witnesses identified the existence of a criminal element who might not put themselves forward for licensing, so the question must be whether a licensing system will address criminal misuse of airguns or basically operate for its own sake.

David John Penn (British Shooting Sports Council): One must remember that there is widespread continuing use of air weapons in pony clubs, the boy scouts and cadet units as well as individual use. We never hear about that because nothing is going wrong. There is a huge use of air weapons and very little misuse in comparison.

Most other countries do not see the need to license air weapons. For instance, the European directive on weapons control excludes air weapons from its remit. We have to remember that weapons of the sort that we are talking about, which have a power threshold of less than 12 foot pounds and more than 1 joule, are designed for urban use—they are designed for use in the garden or in the home—because they are not powerful.

Graham Ellis (Scottish Air Rifle and Pistol Association): To reiterate what Colin Shedden said, there is little or no criminal element in our membership and the people who shoot airguns. The introduction of a licensing system will force people to go down that route and, probably, to migrate on to other sports. We are concerned that it does little or nothing to address the criminal element who would misuse airguns.

John Batley: Since 1969, when the rules setting the power of air weapons were introduced, England and Wales—leaving out Northern Ireland—and, up to this point, Scotland have had no licensing system for the presumed and, I believe, correct reason that there was no need for the licensing of low-powered air weapons.

The Convener: I will make a small admission—I should say that there was no criminality involved. When I was a young boy, I was in the air cadets and enjoyed shooting a fair bit. I had a friend whose father was also a shooter and had a variety of firearms, none of which we could ever have gained access to because he was always careful about that. However, there was also an air rifle in the house and we managed to get hold of that quite easily and go out and shoot a bit.

As I said, there was no criminality involved but there seems to be a difference in the level of responsibility. The man held a firearms licence and was very careful about the weaponry that he held under that, but he was less bothered about
the air rifle. Would a licensing regime ensure that people were more responsible about safeguarding such weapons?

I should say that we were 13 and 14 at the time. We were probably more responsible than many who were about then.

11:15

Dr Shedden: Licensing is unnecessary in the kind of context that you have just described because current legislation states that it is an offence to allow anyone under the age of 18 unauthorised access to an air weapon. Those who have an air weapon in their house have an obligation to secure it under lock and key or otherwise keep it out of reach of young people. Inevitably, that has had an impact on the number of offences committed by young people, because technically they should now not be able to access air weapons in the home.

The Convener: If nobody else wants to comment on that, we will move on to Mark McDonald.

Mark McDonald: The point has been made a couple of times that there will always be an element who will circumvent the legislation. Surely the point about introducing certain legislation is that it allows us to differentiate easily between the law-abiding and the lawbreaking; otherwise, there would be no point to the legislation. Saying that a tiny minority will always circumvent the legislation is not an argument for not legislating. Surely the point is that we allow ourselves to differentiate between the law-abiding and the lawbreaking by introducing legislation.

John Batley: I agree, but the bill is a new departure. It is the first time that a bill has been introduced in the UK to license air weapons. For the 4 million owners of the roughly 7 million air weapons in the UK, the bill is a new departure. We are in uncharted waters and the bill that you have prepared sets out to deal with that. I do not think that I need go any further than that.

The Convener: It is not a bill that we have prepared; it is a bill from the Government.

John Batley: I beg your pardon.

Graham Ellis: As far as criminality goes, a raft of legislation is used day in and day out to prosecute those who would use air weapons criminally. Those who currently use an air weapon for sport, as a pastime or for vermin control would not have a major issue with the bill, but they would have an issue with its proportionality and the potential criminalisation of what is currently a perfectly legitimate pastime.

David John Penn: I think that one has to remember the point made by the Scottish Police Federation that a licensing system per se will not be very likely immediately to flush out those who are criminally inclined, because they will just stay quiet and not be licensed. They will come across only when they commit a criminal act, and then they will be prosecuted. However, plenty of law exists now to prosecute effectively people who misuse air weapons. The licensing of air weapons would not help very much. It would provide another stick to beat people with, but a raft of sticks is already available.

Dr Shedden: In an ideal world the suggestion of licensing would be very sensible, but the proposal in front of us in the bill is that Police Scotland will provide the resource for administering a licensing scheme but will not prioritise resources for identifying those who illegally possess airguns. If resources and police numbers were not an issue, it would be ideal if we could have licensing and police investigation into those who were committing an offence by illegally possessing an air weapon. However, we are not in that position.

Another point is that the number of offences involving air weapons has declined considerably over the past six years. The strategy that has been in place, which is a joint strategy between the Scottish Government, Police Scotland and the shooting organisations, is one of education and enforcement of existing legislation. I noted that the Cabinet Secretary for Justice used those very words—education and enforcement of existing legislation—when he supported a new strategy on knife crime in the west of Scotland.

The Convener: Mark McDonald wants to respond.

Mark McDonald: I have looked through the written submissions, which refer to the range of uses for air weapons, from pastime to pest control. Where do you perceive the issues arising in terms of people being prevented from using air weapons as a result of a licensing scheme? In fact, is it your main concern that a licensing regime will prevent people from using air weapons as a pastime? That is not my interpretation of the bill’s intention.

Dr Shedden: A number of good reasons are given for the granting of an air weapons certificate. They seem quite comprehensive, but the British Shooting Sports Council has identified that the vast majority of people who use air weapons in Scotland and the rest of the UK use them for informal target shooting in gardens, otherwise known as plinking. Although the bill does not prohibit plinking, the policy memorandum states that ministers would not normally accept shooting in domestic gardens as a good reason to grant a licence.
It concerns us enormously that a significant number of owners of air weapons could be prohibited from getting a licence because they cannot provide a good reason, they do not have access to a large area of ground or they are not members of clubs.

The Convener: Does anyone else want to comment on that?

John Batley: I think that we all support that view.

Mark McDonald: I want to check that I have understood the Gun Trade Association’s submission correctly. It appears to suggest that, if somebody who is below the age for a licence comes to Scotland from elsewhere, an exemption should be made for them because they can have an air weapon in their country at that age but they cannot have one under the licensing regime here. Have I picked that up correctly?

John Batley: Yes—absolutely.

Mark McDonald: Okay. It strikes me that age differentiation occurs in a range of areas, one of the most obvious being the purchase of alcohol. The logical extension of that argument would be that, if a young person comes to Scotland from elsewhere, we should allow them to be served in pubs because they can be served there at home. The suggestion strikes me as inconsistent.

John Batley: I believe there is a slight difference here. Let us assume that a young person below the age of 18 who can purchase an air weapon at 16 in his country comes to Scotland. He says that he cannot receive that air weapon while he is in Scotland—it has to be sent to him in his home country. In other words, he cannot take possession of the air weapon while he is in Scotland.

If he is allowed to buy an air weapon in his country but he just happens to be in Scotland and he is not going to take possession of it—if it is going to be sent to his country, which it would be, under the bill—I see no reason why he should not be allowed to purchase it. If he was seeking to take it away and take possession of it, I agree with what the bill says, but I believe that he should be allowed to purchase it.

Cameron Buchanan: Sporting activities are affected, and we have received an interesting submission from Scottish tetrathlon, which states:

“The majority of our members are under 17 and as such the air weapons licensing systems would have a huge effect on them. If however we were allowed to become an approved air weapon club and therefore exempt from individual licences this would work for our organisation.”

I think that most of its members are between 14 and 17. Are you in favour of amending the bill to allow what it suggests?

Graham Ellis: There are a number of issues around youth shooting. You mentioned Scottish tetrathlon, but there is also the Pony Club, the air training corps and the scouts. A whole plethora of youth organisations use shooting as a pastime or a sport. The regulation of facilities is fine where a dedicated facility is used, but a lot of events—for example, the tetrathlon—take place over various places.

The licensing of clubs would bring in certain concerns. Would it apply to private clubs where membership is limited to licensed individuals? Are we trying to cater for the general public or for specific groups? The licensing of clubs might be beneficial, but there are a bunch of pitfalls around it.

Cameron Buchanan: Would it not be a compromise if air weapons clubs, Pony Club branches or whatever could be licensed for sporting activities? The licence and the weapons would be held by the club rather than individually.

Graham Ellis: Our concern was that the licences that the bill mentions are for facilities as opposed to clubs. The licensing of a club in itself is not a major problem, but the provision may impact on those who do not belong to a club but still compete in sports such as tetrathlon or Pony Club activities. They may hold air weapons and will still require a licence. There is a trade-off on benefits.

David John Penn: What we are asking for effectively mirrors the existing situation with regard to approved rifle clubs for cartridge firearms. A club can hold a club certificate and its members may shoot the rifles without having a firearms certificate themselves. That is already a well-established practice in club shooting and causes no problems.

Cameron Buchanan: But shooting would have to take place on licensed premises. People could not practise in their gardens, for example—they would have to practise on the premises of a particular group or Pony Club branch.

David John Penn: Not necessarily—the existing approved club system allows for a club to exist without having its own range, so its members use other people’s premises or Ministry of Defence ranges.

Cameron Buchanan: That is understood. Obviously a club would not necessarily have its own premises, but if its members went on sporting events such as trap shooting for the Olympics, they could presumably use the premises of the society or club that they are at.

David John Penn: Indeed.
Stuart McMillan: Good morning, gentlemen. I had a question for Dr Shedden on his earlier comments, but it has gone from my mind. I will come back to that one in a moment.

My other question is on plinking taking place in Scotland and whether there is a clear divide between rural and urban areas in that respect. I grew up on a housing scheme and I was not aware of plinking taking place in my area.

Dr Shedden: Plinking does occur. It may not occur in areas where gardens are relatively small, but it is relatively common where gardens are large. What concerns me is that a sizeist element is creeping into the debate, and probably a financial element too. If someone lives in a large leafy suburb with a large garden, the police will inevitably think that that is a suitable place to use an air rifle for controlling rabbits, pigeons, squirrels or rats, or for informal target shooting. However, if someone has a relatively small garden, it may be deemed unsuitable. That is certainly what the policy memorandum states.

The advantage of air weapons, as we have already discussed, is that they are relatively low-powered and can be used in confined spaces for pest control and target shooting. In many situations, someone can safely set up a small range in a small garden and safely use an air rifle for their own informal target shooting. As I said, that is probably what the majority of people with air rifles in Scotland, and in the rest of the United Kingdom, actually do.

The Convener: I hope that you are referring to grey squirrels only.

Dr Shedden: Indeed.

John Batley: Under most circumstances, young people start their informal target shooting in the confines of their own premises, and most often they are supervised by a guardian or a parent.

We introduce people to shooting through airguns, which, as Colin Shedden said, are relatively low-powered items. Those people have good discipline and they are taught good safety. There does not seem to be a problem with the actual size of the place where someone is using the airgun, provided that there is a supervisor. That supervisor will have a certificate, as there is with firearms and shotguns, we require that young people cannot access the air weapons without supervision. Our code of practice has always advocated that. Although there is no legal requirement for air weapons to be stored in a steel box, as there is with firearms and shotguns, we have always advised owners of air weapons to ensure that those under age could not access them. Our code of practice has always been concerned with the fact that we will lose that introduction to airgun shooting if the legislation is too draconian.

Stuart McMillan: You say that you feel that you would lose that introduction. Are you suggesting that there will be an adverse effect on the sport of shooting if we are to go ahead with the legislation?

John Batley: Quite possibly—if we are not clear about where air weapons can be used.

If the bill is too restrictive, we will restrict people to joining clubs—as far as I understand it, there are not a great number of clubs in Scotland. Not everybody has access to private land, so they probably have to start their shooting and their airgun shooting within the confines of their own premises. There could well be a restriction and we could lose people to shooting.

11:30

The Convener: Is it possible that you would increase the number of people who came to shooting if there were more clubs in Scotland?

John Batley: Yes.

Stuart McMillan: Dr Shedden, you highlighted the current regulations about looking after weapons. Did your organisation support those regulations when they were introduced?

Dr Shedden: The legislation that I referred to was that which compelled the owners of air weapons to ensure that those under age could not access them. Our code of practice has always advocated that. Although there is no legal requirement for air weapons to be stored in a steel box, as there is with firearms and shotguns, we have always advised owners of air weapons to ensure that young people cannot access the air weapons without supervision.

Stuart McMillan: Did you support those regulations?

Dr Shedden: That was Westminster legislation; I tend to deal with Scottish legislation. However, I do not remember us opposing it. I am sure that David Penn will be able to confirm that.

David John Penn: I can confirm that the measures that we recommended were discussed at length with the Home Office and agreed by the shooting organisations.

Anne McTaggart: Mr Batley mentioned the sale of air weapons to people from abroad. Have you considered the financial impact of the bill on gun traders in that respect?

John Batley: Yes. It is difficult to calculate, but we believe that there will be an effect. However, that effect will be determined only when we know how many licences or certificates have been
issued and how many people have handed in weapons. We will then be able to recalculate what trade is left. At the moment, for us to say, "There will be this number of people with air weapon certificates and this is how it will affect trade," would be pure guesswork.

There will be complications because of the fact that there is no border. There will be complications with visitors permits, which we would like to be addressed. A particular complication that we deal with in Scotland relates to what we call remote sales or, in other words, those in which a registered firearms dealer in Scotland sells an air weapon to somebody who is a visitor to Scotland and who has neither a certificate nor a visitors permit. The bill as it is drafted says that the dealer in Scotland may send that air weapon “outwith Great Britain”. The way in which that is written means that the dealer will not be able to send it to someone in England; they will have to send it elsewhere. The wording is “outwith Great Britain” and England is most certainly in Great Britain. We have picked up that anomaly in the bill.

The Convener: You talked about the possibility of an increase in the number of clubs if the legislation is passed. Does that mean, to use a well-known phrase, that the market may go up as well as down, in your trade?

John Batley: I wish that I knew the answer but I am afraid that I do not.

The Convener: Mr Penn, you wanted to comment.

David John Penn: John Batley covered the point that I was going to raise.

Anne McTaggart: Do the witnesses foresee any positive outcomes from the bill?

Dr Shedden: One of the unintended consequences, which could affect an organisation such as the BASC, is that people who have in the past had air weapons because they were unlicensed and who would now be exposed to a licensing regime may think to themselves, “I have a low-powered air weapon but if I need to get a licence I might as well get a licence for a more powerful rifle or a shotgun.” A number of people may move from unlicensed air weapon shooting into licensed firearm and shotgun shooting. From my perspective, that would be quite rewarding because I monitor how influential we are by the number of people in Scotland who have firearm or shotgun certificates. We may see an increase in “serious” shooting in Scotland as a consequence of the legislation.

David John Penn: I concur with Colin Shedden. I am afraid that I cannot see any other benefits arising from the bill.

Graham Ellis: The feedback from our membership is that, should a heavy licensing system come in, they will migrate to what Colin Shedden called proper shooting and move away from low-powered air weapons.

John Batley: The cost of the certificate will be an important issue. We must take into account the fact that a considerable proportion of the air weapons that are held in Scotland are probably worth less than £100. If the certificate is enormously expensive and security requirements are more than described in the bill, there will perhaps be a temptation for some people not to register voluntarily at the start of the scheme. The cost will have an influence on how many people register.

Anne McTaggart: I am not sure whether that is a positive or not. My question has raised even greater concerns.

John Wilson: Good morning, gentlemen. By way of disclosure, I should say that I used to plink as a child. I received a visit from the police when I was plinking out in my back garden. Although the police were satisfied that what I was doing was safe and within the limits, they suggested that I cease carrying out the activity because of the alarm and distress that could be caused to the neighbours.

One problem is that alarm and distress are perceived to be caused by such activities but the bill is about public safety. Is there sufficient reason for the introduction of legislation in relation to public safety, particularly in terms of plinking? As you said, many young adults and children get into the sport through that activity, but they may be subject to a visit by the police—as I was 40 years ago—because neighbours are concerned, despite the fact that their activities are causing no harm or serious danger to anyone else.

The Convener: I never had a visit from the police.

John Batley: The succinct answer to John Wilson’s question is that public safety forms the background of all firearms legislation and public safety is paramount for anything to do with firearms. Public safety has to be maintained and all the shooting organisations that I am aware of and am part of are very keen on public safety.

Graham Ellis: Licensing probably would not have done anything to resolve the situation that John Wilson describes. If someone were licensed to shoot in their backyard, the neighbours’ concern would probably still have arisen and the police would probably still have turned up. That example highlights a lack of public education: members of the public do not understand what airgun shooting is or the obligations and responsibilities that it involves. It also highlights a lack of communication.
between the shooting community and the general public.

**The Convener:** You mentioned that folk do not know their obligations. If they were licensed, would they have more idea of their obligations?

**John Batley:** It depends very much on the shooting organisations—Dr Shedden will be able to answer that question. Shooting organisations are very keen on codes of practice, on explaining and on training and education.

**David John Penn:** I can only come back to the large number of air weapons that are out there in the hands of private individuals in Great Britain and, relatively speaking, the very small number of incidents that occur and the low levels of complaint, so far as we are aware. There is an awful lot of shooting going on, which is not causing very much of a problem. I agree with Graham Ellis that it is a question of better education of the public at large.

**Dr Shedden:** Public safety is very important. We spend a considerable amount of time on education, whether with young people or adults. In addition, we have, on occasion, been able to get along to schools to provide information and practical advice on the use of airguns. That points out to me the fact that there are probably people out there who could, if they took their airgun into their garden, cause some public concern. It would be wonderful if publicly funded facilities could be made available in certain situations—in urban areas, for instance—that could help to educate people and to facilitate safe air-rifle shooting.

**The Convener:** It was suggested that you might be better placed to talk about obligations. Would a licensing regime not ensure that folk knew what their obligations were?

**Dr Shedden:** I think that those who come forward voluntarily to submit themselves for a licence probably understand what their obligations are and what the law actually states. Over the past 10 or 20 years, we have found that the law is complex—in Scotland, there are about 30 pieces of legislation that cover air weapons. It has been a challenge to put that into simple codes of practice so that parents, in particular, can understand it, but we have achieved that. It is important that we get a simple message across. The message from the Scottish Government and us has been that air weapons are not toys and should not be treated as toys, but they can be used safely and responsibly in many situations.

**John Wilson:** Despite what you have said, we have been provided with a report by the Association of Chief Police Officers south of the border that says that airsoft weapons now have a capacity that is greater than that of some of the air weapons that will be licensed in Scotland. Do you think that weapons such as paintball weapons and airsoft weapons should be considered for inclusion in the bill? In following guidance and research from elsewhere and putting in limits regarding the air weapons that have to be licensed, should we go for a wider licensing regime that might include airsoft weapons and paintball weapons?

**Dr Shedden:** I defer to John Batley, who has much more knowledge of that.

**John Batley:** In introducing a lower limit of 1 joule, I think that the bill covers that quite adequately. There are many conflicting medical reports on the level of lethality. By utilising the term “air weapon”, the bill has neatly created a band of weapons that have a muzzle energy of between 1 joule and 6 or 12 foot pounds. We know that weapons above that level are licensable. For weapons that are below the 1 joule level that the bill introduces, the medical evidence that we have seen—we have looked into it in considerable depth—confirms that weapons such as the airsoft weapons to which you have referred are not lethal, provided that they are properly used.

**John Wilson:** But it could be said that air weapons are not lethal, if they are properly used.

**John Batley:** No—an air weapon as defined in section 1(3)(b) of the Firearms Act 1968 is always lethal; it is a lethal barrelled firearm. There is no question about that. A weapon that has a muzzle energy of less than 1 joule should not be lethal, so we do not consider it to be a firearm.

**John Wilson:** Right. I wanted to find out about the technical aspects of the lethality of air weapons, so it is useful to get that on the record.

Earlier, a question was asked about the number of clubs that exist. What is the average annual membership fee to be a member of an air weapons club in Scotland?

**Graham Ellis:** It varies marginally from club to club but, on average, an annual membership will cost from about £75 for an individual membership up to about £115 for a family membership. Above and beyond that, there are range fees for the use of facilities, competitions and so on. It is an entry-level sport, and it is relatively low cost.

**John Wilson:** But the annual membership fee can cost more than an air weapon.

**Graham Ellis:** Yes, but we find that once people enter a club shooting environment, they soon want to upgrade their equipment so that they can take part in whatever events, competitions and disciplines they choose to participate in. Therefore, although it might well cost less than £100 for an entry-level airgun such as a home plinker, a target shooter or a domestic shooter, it
could cost anything from £2,000 up to £7,000 for a competition air rifle.

11:45

**John Wilson:** Can you give us an indication of how many clubs exist in Scotland?

**Graham Ellis:** In Scotland, under our regime, there are 13 clubs. Their membership varies from about 40 members through to about 120 members, so on average there are about 80 to 90 members per club. We are struggling to set up additional clubs because securing facilities and getting planning approval is exceedingly time consuming and complex.

**John Wilson:** You said that there are 13 clubs under your regime.

**Graham Ellis:** Yes. Obviously, there are the National Small-bore Rifle Association clubs, which also support air weapon shooting. I think that someone already mentioned this morning that there are about 150 NSRA clubs.

**John Wilson:** In Scotland?

**Graham Ellis:** In Scotland. However, those are predominantly for full-bore and rimfire rifles rather than air rifles, and the air rifle representation within those clubs is very small.

**John Wilson:** Thank you very much.

**Alex Rowley:** On the question of plinking, from what I can see in the policy memorandum, the Scottish Government seems to be saying that if an individual applies to have a licence for an air weapon and the police judge that where the individual wants to use that weapon—in a built-up area or in an urban garden next to other gardens, with children running about, for example—could cause a difficult hazard for others, they would refuse the licence. Does that not seem reasonable enough? Someone mentioned earlier that it could come down to whether someone has a big garden or a small garden, but is it not about the police judging whether it is safe for someone to use an air weapon that could be a threat to others in a built-up area?

**Dr Shedden:** Yes, it is reasonable that the good reason is investigated. The unfortunate thing is that the paperwork indicates that the average amount of time spent on 98 per cent of applications would be 1.2 hours, which does not give enough time for consideration or even for a site visit. Based on Police Scotland’s notification, I do not think that the police will have the ability to take each case on its merit. Basically, the police would look at someone in a suburban or urban area and decide that granting a licence would not be suitable.

Firearm and shotgun certificate applications usually require five hours of licensing officer time, so if each application were to be looked at in that way, that would significantly increase the cost. I think that that is what Calum Steele was trying to indicate. Some of the figures seem to have been plucked out of the air without real consideration of what happens on the ground. There would be a blanket ban against informal shooting in a garden. That is what concerns us.

**Graham Ellis:** We have competition shooters who shoot a pistol or a 10m rifle at the 6 foot pound level within their own houses. They do not need to go outside to the garden. That is happening within the safe bounds of their home, within concrete walls, but how would you differentiate between a built-up area and a controlled environment? The complexity of the issue is that it is not just about a zone, a house, or a garden; it is about the facilities that people have constructed.

**Alex Rowley:** To get to the crux of this, the Scottish Government seems to be saying in the policy memorandum that it is a question of whether somebody can have an air weapon and use that air weapon in a built-up area when it could be perceived to be a threat to others. It seems to be saying that it would come down to the judgment of the police in that regard. It seems to me—and you seem to agree—that it is not unreasonable to be able to introduce a law that would include that point.

It then comes back to the question of cost—that is another matter, which we tried to probe earlier. Do you have any views on the cost of the licence? Should the taxpayer bear any of that cost or should the licence applicant bear the cost? Should the cost of the licence resemble what the cost is of processing it?

**The Convener:** Who will go for that one?

**Dr Shedden:** Very briefly, the certificate holder obviously has to pay a proportion of the cost but we would also expect the taxpayer to pay a proportion of the cost because the whole process is designed to ensure public safety—it is not just about the certificate holder. As has been the case with firearm and shotgun certificates in the past, a proportion of the cost that the police face will be paid for by the applicant and the rest should be paid for by society because society benefits in relation to safety.

**The Convener:** I see from the nodding of heads that all the panel members agree with that statement from Dr Shedden, so the panel members believe that the taxpayer should pick up a proportion of the cost.

As there are no further questions from the committee, I thank you very much for your
evidence this morning, gentlemen. We move into private session.
Air Weapons and Licensing (Scotland) Bill: Stage 1

09:31

The Convener: Item 3 is our second oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We will hear from two panels of witnesses: representatives of groups that support a licensing system for air weapons and witnesses from Police Scotland.

I welcome our first panel. Dr Michael North is from the Gun Control Network; Jennifer Dunn is the senior public affairs officer at the League Against Cruel Sports; and Mike Flynn is the chief superintendent of the Scottish Society for the Prevention of Cruelty to Animals.

I invite the witnesses to make opening statements, if they want to do so. Do you want to go first, Ms Dunn?

Jennifer Dunn (League Against Cruel Sports): I am happy to do so. I thank the committee for having me along today.

We support licensing because, as well as helping to reduce airgun attacks on people, it will help to reduce airgun attacks on animals. We think that the vast majority of airgun attacks on animals are not reported to the police. Our figures show that, from 2010 to 2012, the then police forces recorded 68 attacks on animals, whereas the SSPCA recorded 178 attacks in a single year. I asked Police Scotland for an updated figure, but I was told that it was not able to provide a figure for more recent years.

We think that the true figure is higher still. For example, the anatomy of domestic cats is such that, when they are shot with an airgun, the injury is often not apparent straight away. The cat makes its way home and then, in some cases, develops signs of illness. Only later, when it is taken to the vet, does it become apparent that the illness is due to an airgun injury, by which time the owner or vet might think that there is little point in reporting the incident.

Because there are so many airguns in circulation, we think that the only way to halt airgun attacks on animals is to implement some form of licensing.

Dr Michael North (Gun Control Network): I represent the Gun Control Network. Since GCN was founded, in 1996, we have had concerns about air weapons. Why it is felt necessary to differentiate between guns on the basis of their mechanisms has always been a major concern for us. We think that anything that is potentially lethal and that can maim or injure should be licensed.

We therefore welcome the Scottish Government's moves to license air weapons in Scotland.

In the 18 years for which GCN has been in existence, a number of fatalities have occurred as a result of airgun incidents, and some of our members have lost children or have had children injured. We feel that one of the problems has been a rather lax and casual attitude towards air weapons, and we feel strongly that registration will send out the right message and will reflect the degree of dangerousness of air weapons. We believe that a licensing system will make anyone who wants to use an air weapon think seriously about their need to have one, which will lead to a subsequent reduction in the number of weapons and, therefore, the number of serious incidents.

Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals): The Scottish SSPCA fully supports the Scottish Government's proposal. Our support is based solely on the work that we do. The 178 reports that Jennifer Dunn mentioned were reports made to us. We do not have people going out and trying to find animals, so those were cases in which vets or owners phoned us to let us know what had happened. Surprisingly, since the measure was first announced earlier this year, the number of cases that have been reported to us, which mainly involve cats and wildlife, has actually risen. Given that, under the bill, anyone who has a lawful purpose to have an air weapon will be allowed to have one, we see no reason why licensing is not a sensible solution.

The Convener: Some of the written submissions and some witnesses have suggested that the introduction of a licensing regime for air weapons will do nothing to reduce criminality or increase public safety, as those who choose to misuse such weapons will not bother to get a licence. What is your response to those suggestions?

Dr North: Although the reporting of incidents in the media leads to an underestimating of the extent of the problem, as we say in our submission, those reports show that the people who are responsible for such incidents are often not hardened criminals. Very often, the incidents involve casual use by people who would otherwise not undertake criminal activity, such as teenagers messing around with guns or someone who just happens to have an airgun and decides on the spur of the moment to use it to threaten somebody. The idea that we can divide society into criminals and non-criminals is simplistic and does not help.

Our reading of the various incidents is that many of them occur simply because people do not take their ownership of air weapons seriously and they
misbehave with them, rather than because they go out to conduct criminal activity.

The Convener: Ms Dunn, do you have a view on that?

Jennifer Dunn: Yes, I agree. At the moment, it is easy to buy an air weapon. Virtually anyone who is over the required age can go into a shop and buy one. Although a licensing scheme will not solve the problem by itself, as there will also need to be an amnesty and publicity to let people know that the licensing is going to be introduced, at the moment, the situation with attacks on animals and people is unacceptable and licensing is the only way to address that.

Mike Flynn: The Government estimates that there are up to 500,000 air weapons out there, and I firmly believe that a lot of them will be handed in if a licensing scheme is introduced. That will take many weapons out of circulation. We have no idea how many of those weapons are used by the proper owner or by a relative or a youngster who is in the house.

Many of the attacks, particularly on cats, happen in housing estates, which is where the fit-and-proper person test comes in. We have always argued that people should have the landowner's permission if they are carrying out pest control and stuff like that, but nobody has the landowner's permission to shoot in places such as the Union canal in Edinburgh or Linlithgow loch. Under the fit-and-proper person test, somebody who is a fit and proper person will be allowed to have an air weapon, but that should include a requirement that people have to demonstrate where they will use the weapon and for what purpose.

Cameron Buchanan (Lothian) (Con): How will the police handle the rash of licence applications? There will be an awful lot of people to license.

The Convener: That is perhaps not a question for this panel to answer; it is maybe best saved for the next panel. If anyone has a view, please indicate that.

Mike Flynn: I am more than confident that the police will be able to answer that question fully for you.

Dr North: I feel the same. We have always suggested that such registration should have a phasing-in process, with new weapons coming under the registration system immediately and current owners getting licences over a number of years.

Jennifer Dunn: I agree that this panel is not best placed to answer that question.

Cameron Buchanan: Do you believe that people who do not want to register the guns will hand them in during an amnesty?

Mike Flynn: I think that there are a lot of responsible people who might not have used their airguns for years and do not want them to fall into the hands of others. I believe that—unless they decide to get a licence for their guns because they have a fit and proper purpose for having them—if those people know that they have to comply with a law, a lot of guns will be handed in.

Jennifer Dunn: I agree. A lot of airguns are kept in drawers and are brought out very occasionally. It would be better if they were out of circulation.

Dr North: As long as there is sufficient publicity to ensure that everyone is aware that now is the time to hand the airguns in, there will be a good response, as weapons that have been forgotten about will be remembered and handed in.

John Wilson (Central Scotland) (Ind): One of the arguments that we have heard against licensing is that it might cause some individuals to trade up and apply for a firearms licence or a shotgun licence instead of relying on an air weapon. Under the criteria that are set out, they might qualify for such a licence as a fit and proper person. Some people have said that, in some cases, it might eventually be easier to apply for a shotgun licence than to apply for an airgun licence.

Dr North: I hope that it would not become easier to get a shotgun licence. I hope that the standards that apply now would apply at that point.

I am not in a position to know what is in the minds of current airgun owners. I suspect that the scenario that you outline is unlikely and that only a small number of people who currently shoot with airguns and do not use rifles or shotguns would change their weapons. I suspect that those who are involved in shooting have overestimated the degree of interest in shooting that those who shoot only with airguns actually have in shooting. I am not clear that the problem, if it is seen as a problem, exists.

Jennifer Dunn: One of the attractions of airguns, which feeds into why they are a problem, is that they are fairly cheap and easy to get hold of. Shotguns are far more expensive and their storage and use are far more regulated. It is unlikely that many casual airgun users would trade up to a shotgun or seek to do so.

Mike Flynn: We would welcome anyone who wished to trade up applying to do so, simply because they would be checked by the police and made fully aware of the responsibilities of owning any weapon that can inflict pain, injury and, potentially, death.

Jennifer Dunn mentioned the issue of security. At the moment, I could buy an air rifle and keep it
in my kitchen or somewhere like that, and if my house is broken into that gun could be taken and used by someone else. The police are more than capable of handling the licensing issue.

I declare an interest in that I hold a firearms licence because of my duties with the Scottish SPCA. I know the process that someone has to go through to get one, and I can tell you that the police are extremely stringent.

The committee or the Parliament would also have to consider the cost of applying for a licence. That cost should not be borne by the police. If someone wants to own a weapon and has a purpose for doing so, they should be willing to pay a licensing fee.

09:45

**John Wilson:** That is the point that I was trying to make in my earlier question. One issue that has arisen is the cost of applying for an air weapons licence. It may be more expensive than applying for a firearms or shotgun licence, because those licences are controlled by the United Kingdom Government and have been set at the same price since 2001.

If we opt for full cost recovery for an air weapons licence, the cost may be substantially higher than the current cost of a firearms or shotgun licence. How would you seek to ensure that the cost of an air weapons licence did not become too prohibitive?

**Mike Flynn:** That is for politicians down south to argue about. The burden of cost should not fall on the taxpayer or the police. In this country, we do not have a right to bear arms. If someone wants something that can potentially kill, they should be willing to pay for it. When people realise that they do not have a fit or lawful purpose or that they do not have permission to shoot in certain places, that will encourage many of them to get rid of their guns.

**Dr North:** We have had a lot of discussions recently with the Home Office and various ministers on the issue of the underfunding of the licensing process for firearms and shotguns. At one time, there was going to be a significant increase in the cost. I think that there will still be some sort of increase, but we understand that the current Government has blocked a full increase.

I am rather dismayed that the police have had to subsidise the current application process, as that raises the sort of problems that Mr Wilson has just mentioned. However, that is not a reason for not introducing airgun licensing.

**Jennifer Dunn:** I agree with everything that Mike Flynn and Dr North have said. My colleagues who lobby Westminster are raising with the Westminster Government the issue of the cost of shotgun licensing and the subsidy.

I should add that the League Against Cruel Sports, in its submission to the Smith commission, asked for weapons licensing to be devolved to the Scottish Parliament so that the licensing of airguns and higher-calibre weapons could be considered holistically. I do not think that the Westminster Government’s position should block progress in Scotland.

**John Wilson:** I have a final question for Dr North. You said in your opening remarks that there have been a number of fatalities caused by air weapons. We know from the evidence that we have heard previously that there have been a number of serious injuries. Can you quantify the number of fatalities that have been caused by air weapons?

**Dr North:** I cannot give you the number off the top of my head. The rate probably averages one per year in Great Britain. Over 20 years or so, there have been approximately 15 young people and teenagers killed in airgun incidents. Some were deemed to be accidents, and some—as in the case of Andrew Morton—were criminal acts.

It is important to say that, even in those incidents in which someone sustains a minor injury, the experience is still extremely stressful for the victim. We cannot dismiss such incidents as trivial just because a person sustains only a minor injury. We know, from communications that we receive, about the stress that people feel when they are hit, out of the blue, by something that is fired from a distance by someone else.

**John Wilson:** Thank you. As I said, we are looking at licensing in Scotland. You have given UK figures, but we are concentrating on the figures for Scotland. We suspect that 500,000 air weapons are held here—I do not know what the UK figure is—and I am trying to get a clear picture of the number of fatalities in Scotland.

**Dr North:** If it would help the committee, we could look back through the incidents and pick out the Scottish figures. They will certainly be available in the firearms crime statistics for the past few years.

**The Convener:** It would be extremely useful if we could have those figures, Dr North.

**Willie Coffey:** Good morning, panel.

Dr North, I am grateful for the written evidence that you submitted to the committee, some of which is quite harrowing. My colleague John Wilson introduced that aspect. You present some statistics in your submission, and you show that the majority of firearms offences in Scotland involve air weapons—indeed, you refer to a fatality.
As a new member of the committee, I would like to know in what way a licensing scheme will reduce that type of offending. What is it about licensing that will bring that number down and make the public safer?

Dr North: A number of the more serious incidents, particularly those involving young people, have occurred when someone has come across an airgun in the house that has been kept rather casually by the owner, who may be a parent, and has been playing around with it. We believe that, if the owner had to have a licence for that weapon, they would think seriously about whether it ought to be there.

I apologise for repeating this, but what runs through so many of the incidents is the casual way in which air weapons are treated. We think that if the signal is sent out that they are dangerous and therefore need to be licensed, a large number of people will think, "We don't want them any more, so we won't just leave them lying around the house."

Willie Coffey: There is also the practice of plinking, as I believe it is referred to.

The Convener: "Plinking" was a new word for me too, I have to say.

Willie Coffey: As I understand it, plinking involves a casual use of air weapons in people’s back gardens, presumably to take pot shots at objects or even people or animals. Do you think that a licensing scheme will really address that?

Dr North: I understand that plinking will no longer be legal. There are already measures in place that make it illegal to fire pellets outside the confines of one’s own property. Again, the Gun Control Network is contacted by people who are disturbed by the behaviour of neighbours and who find such activity intimidating and threatening. If they raise it with the neighbours, they find that they are challenged. Even when they complain to the police, no progress is made because it is sometimes difficult to prove that someone is firing slightly off line.

I know that that is the only form of shooting that some airgun owners undertake, but I think that they should consider what they do in a wider context and how their neighbours feel about it. If they are keen on shooting with an airgun, they can go to an airgun club and do it.

The Convener: For clarification, the bill, if it is enacted, will not necessarily put a halt to plinking, but through the licensing regime it may reduce the amount of it that goes on.

Willie Coffey: Lastly, do you have any views on how it should be determined whether a person is deemed fit to own an air weapon and to have good reason to own one? I intend to ask the police witnesses on the next panel how they propose to make that sort of assessment.

Jennifer Dunn: I wanted to raise a specific point about general licensing law. The committee may or may not know much about that, but it is the mechanism by which it is legal for people such as farmers or estate owners or employees to shoot animals that are deemed to be pests.

In general licensing law, if somebody has an unspent conviction for wildlife crime they are deemed unsuitable to kill animals. We would really like that provision to be extended to airgun licences, because we think it makes a lot of sense.

Dr North: There are obviously guidelines for other firearms. It is clearly important that anyone who is licensed to fire an airgun does it for the correct reasons. I know that there has been some debate about what those reasons should be, but I am sure that, with police help, appropriate guidelines can be formulated. What would not be allowed is the kind of casual use that we believe is responsible for so many of the incidents that harm people, property and animals.

Mike Flynn: I think that that is a question for the police to answer at the time that a licensing application is made. If the applicant is a young man who stays in a high-rise flat in a housing estate, who has no access to any land and who is not carrying out pest control on behalf of somebody else, the police will quite rightly ask why they want an airgun if they do not even have a garden that they could plink in.

On the plinking question, I firmly believe that many of the injuries to animals occur because, for a 17 or 18-year-old, shooting the same tin can gets a bit boring and if they see a moving target flying past, that might be an attractive option. To go back to our veterinary survey, I cannot think of any instance in which someone was aiming their air rifle at a tin can, but the pellet ricocheted off and ended up embedded in a cat or a swan’s head. People are deliberately aiming at animals. The licensing will get rid of the situation in which people have a gun but have nowhere lawful to use it.

Willie Coffey: I am very grateful for that. Thank you.

Anne McTaggart (Glasgow) (Lab): Good morning, panel. Given the wealth of experience and knowledge that you have, I seek your advice on the bill and the proposed licensing regime. Do you see any omissions? Is there anything that should be in the bill that is not in it?

Mike Flynn: If we are to go down this route, a definition of what a pest species is would have to be included. It would also have to be stated that people must have the landowner’s permission to
Clare Adamson: What about plinking for scouting or cadet groups, or other groups that are doing target shooting as part of their activities? Should it take place in a more controlled environment?

Jennifer Dunn: If they were doing it in suitable premises, perhaps in association with a shooting club, and were not shooting live animals, I do not think that we would have any objection, as long as it was not being done in somebody’s back garden or casually.

Dr North: I assume that the scouts would be well organised and would conduct shooting in an appropriate place, not in somebody’s back garden.

Mike Flynn: I imagine that a body such as the Scout Association would use a proper purpose-built place. Moreover, the youngsters would be supervised. The gun club or the scoutmaster would be licensed through the police and would know the responsibilities that came with that.

Cameron Buchanan: Ms Dunn, you said in your submission that you felt that under-18s should not get a licence to shoot live animals. How would you regulate that? Are you still of that opinion?

Jennifer Dunn: Being shot with an airgun can be very painful for the animal—it might not be killed outright and it could suffer quite horribly. Someone needs to have a certain level of maturity and responsibility before they seek to take the life of an animal. We think that 18 is a suitable cut-off point.

Cameron Buchanan: But do you have evidence that a lot of people who are under 18 are trying to shoot live animals?

Jennifer Dunn: It goes back to the problem that the police have little evidence. Anecdotally, there are problems with teenagers shooting animals in parks and so on. I would love to be able to provide more figures, but the nature of the crime means that I cannot.

Cameron Buchanan: But you said that the legislation should be amended. That would be quite a difficult amendment to make; it would certainly be difficult to regulate that.

Jennifer Dunn: The pro-shooting organisations argue that the whole scheme will be difficult to regulate. I can see that there will be some difficulties with the practical application, but that is no reason to back away from laws that could be very sensible.

John Wilson: Since we have Superintendent Flynn with us today, I will take the opportunity to put the issue into context. How many animals have been shot using crossbows or archery bows?
Mike Flynn: We have not had any reports of incidents involving archery bows for a long time. This year, we have had two incidents with crossbows, both of which were in Inverness, in the area of Raigmore roundabout. In one case, it was believed that the animal had been hit by a bolt from a crossbow then dumped there. Before that, it was geese in Lanarkshire. It is not a huge problem, though—it is nowhere near as bad as the airgun situation.

John Wilson: Ms Dunn, do you know of any incidents in which crossbows or archery bows have been used?

Jennifer Dunn: The only one that I am aware of was two or three years ago in a park in Glasgow, when a swan was targeted. It is within the competency of the Scottish Parliament to legislate on crossbows. However, as Mike Flynn said, airguns are used more often than crossbows in attacks on animals.

The Convener: Would anyone like to give the committee any additional information?

Mike Flynn: It is not just the Scottish SPCA that supports what is being proposed. In the survey that we carried out in 2012, 91 per cent of veterinary practices that responded were in favour of a change in the legislation, 61 per cent supported licensing and only 5 per cent supported the status quo.

Respondents were members of the Royal College of Veterinary Surgeons, who deal with the issue first hand and see the distress that the owners go through and the costs that owners incur. I would not like to think how much it cost the lady in Paisley to get her cat's leg amputated a couple of weeks ago or how much pain that animal went through. Imagine that your pet comes home after being shot. That is an attack on you as well as your pet—some people take it that way.

We dealt with 178 incidents that were reported to us. Those were incidents in which a live animal was involved and people thought that there was something that we could do to help. I have no idea how many people come across shot starlings or sparrows and do not report them to us because the birds are dead.

We firmly support what is being proposed.

The Convener: Could you tell us who carried out that survey and how many folk responded to it?

Mike Flynn: The Scottish SPCA wrote to 120 veterinary practices throughout Scotland, 75 per cent of which responded. Of them, more than 80 per cent had treated an animal that had come in with a pellet in it. Somebody's cat can go missing for a couple of days. It might come home with a limp, but the owner will not know that it has been shot until it is X-rayed. The vet has to decide whether to remove the pellet.

A couple of years ago, we had a Staffordshire bull terrier that we believed had been tied to a tree and shot, because it had 14 pellets in its head. Our vet, Mr Ian Footer, removed about nine of them. It was quite a heavily built Staffordshire and removing the other five pellets would have caused more damage than leaving them there; it was decided that they would not cause any problems if they were not removed. Luckily, two of the pellets just missed the dog's eye.

We have had cats' eyes taken out. We get the occasional fatality—swans seem to be a particular target. Two years ago, members of the public reported an incident in Livingston. When we X-rayed the swan, it had 14 separate pellets in it. The guns that we are talking about are not used like machine guns, which require only one pull of the trigger. That incident involved 14 loads, 14 aims and 14 shots. Sadly, the bird had to be put down. I could easily send to the committee X-rays of cats and swans that we have had in.

The Convener: The horror of the stories that you have just told tells us enough. We do not need to see the pictures, but thank you very much for the offer.

Dr North: In addition to the figures for fatalities and serious injuries, which I will find for the committee, it might be helpful if I got together a list of incidents that reflects the casual nature of some of them. I have a pile of examples, albeit that they are from the whole of Great Britain. If it would be useful for the committee to see some of the more recent press reports, I would be happy to send them.

The Convener: That would be useful. We are aware of some of them. When we had our first round-table session on licensing, we heard about an incident in County Durham. It would be good for us—particularly for some of our new committee members—to get a flavour of what is going on. We would be very grateful for that, Dr North.

Dr North: I will do that.

Jennifer Dunn: We have used case studies because of the difficulty of gathering figures. In those case studies, the injuries to cats, in particular, were horrible, as Mike Flynn has just described. I echo another of Mike’s points—the people we spoke to clearly felt less safe in their community when their pet had been targeted, particularly because airguns are so widely available. Except in one case, they had no idea who did it, other than that it was someone who lived in the same community as them.
The Convener: Thank you very much. Your evidence has been extremely useful and we are very grateful for your attendance.

10:09
Meeting suspended.

10:12
On resuming—

The Convener: I welcome our second panel this morning, who are all from Police Scotland: Assistant Chief Constable Wayne Mawson is head of policing for the west of Scotland; Superintendent Alick Irvine is from the licensing and violence reduction division; and Chief Inspector Fraser Lamb is from the firearms and explosives licensing division.

Do you have any opening remarks, gentlemen?

Assistant Chief Constable Wayne Mawson (Police Scotland): I do.

The Convener: On you go, Mr Mawson.

Assistant Chief Constable Mawson: Thank you, convener, and thanks for the opportunity to give evidence to the committee today.

Part 1 of the Air Weapons and Licensing (Scotland) Bill is principally about people, albeit that it sets out a licence regime that reflects the Firearms Act 1968, which deals with firearms and shotgun licensing. It is accepted that the law surrounding access to firearms is about public safety. As far as Police Scotland is concerned, the bill is about ensuring that inappropriate people do not get access to lethal barrelled weapons that can, by definition, kill.

The case of Andrew Morton, who was a two-year-old toddler when he was shot in the head by a man with an airgun in 2005, is a tragic example of what can happen when the wrong people have access to lethal barrelled weapons. Thankfully, such tragic incidents are very rare, but on most days the police and animal welfare groups have to deal with the results of air weapons being misused. Legislation that allows for responsible ownership of air weapons is to be welcomed. Air weapons in irresponsible hands are dangerous, and keeping people safe is the priority for Police Scotland.

As the committee will be aware, the chief constable of the police service in Scotland is responsible for licensing of firearms and shotguns, and of explosives. We understand that there is significant uncertainty about the number of air weapons in Scotland and, consequently, about the demand that will be placed on the police by the bill’s proposals, but it is a fact that we have at this time systems in place that cope with more than 53,000 certificate holders. Shogun—the information and communication technology system that is used to manage firearms in Scotland—has recently been linked up, which allows for the eight firearms-licensing processing centres effectively to manage workloads throughout Scotland. It can be relatively easily adapted to manage air weapons.

10:15
In other words, we have the expertise and experience to process applications and manage the risks. However, we do not have the budget to fund satisfying of that additional demand. Costs will be incurred in upgrading Shogun, in resourcing the departments that will administer the licensing regime and in subsequent criminal justice processes, for example ballistics examination. That is set against unknown demand.

We welcome the provisions of the bill, which will allow current certificate holders to possess air weapons under their firearms or shotgun certificates. That will reduce the demand on police resources.

The committee may be aware that, with the revisions that were introduced by the Firearms (Amendment) Act 1997, the term of certificates was increased from three years to five. That caused peaks and troughs in demand: there are three extremely busy years and two years in which demand reduces. In the light of that experience, it is essential that we legislate for a system that smooths or, as the earlier witnesses said, phases demand. That could be done by allowing the chief constable to determine the length of time for which a first air weapon certificate is issued. By doing that, and by setting a pro rata fee for the length of the first certificate, we can assess demand and allocate resources as required.

I understand that this is stage 1 of the bill and that amendments will likely follow after the committee’s and the Parliament’s considerations. That said, I reiterate that we commend the intention of the bill. We are of the opinion that it will reduce the ability of people who are intent, by design or recklessness, on criminally injuring people or animals, or on damaging property to do so.

The vast majority of people who legally hold firearms conduct their lives in a manner that reflects their acceptance of the responsibility for the safe use of their guns. The number of crimes involving legally held firearms is small in proportion to the number of guns that are held. Those people will not be detrimentally affected by the proposed legislation, but the people who should not have guns will be affected in a way that will only benefit the safety of people in Scotland.
The Convener: Thank you, assistant chief constable. Let us consider some of the budgetary implications that you talked about. You spoke about Shogun being easily adaptable to deal with air weapon licensing. Will it link into the i6 system when it comes into being?

Chief Inspector Fraser Lamb (Police Scotland): Yes.

The Convener: I am sure that that link will be helpful to investigating criminality involving air weapons.

Assistant Chief Constable Mawson: Absolutely. All eight legacy forces are now joined up. Shogun is working really well. It has been in place only since October, but there have been no issues so far. It helps us significantly with firearms licensing and an adaptation to it is a relatively easy fix at a relatively small cost. We have a provisional figure—I stress that it is provisional—of about £20,000.

The Convener: We heard from the previous panel of witnesses that the fees for firearms and shotgun licences, which are controlled by Westminster rather than by the Scottish Parliament, have not gone up for a long time. Those witnesses insinuated that the public are subsidising licenses. Does Police Scotland pick up the tab for that subsidy in Scotland?

Assistant Chief Constable Mawson: In short, yes it does, at the moment. We do a lot of work to ensure that only fit and proper people receive firearms or shotgun licences. A huge amount of work is involved in that, including visits, follow-up visits and checking gun cabinets. To be frank, the cost of that work is not covered by the existing fees. I believe that they have not changed since 2001.

The Convener: I do not want to ask you a particularly political question, Mr Mawson—feel free to say that you do not wish to answer it—but do you think that the costs of the licensing regime for firearms and shotguns should be borne by the owners, rather than by Police Scotland and the taxpayer?

Assistant Chief Constable Mawson: That is a fair question, and I think that the answer is yes. If people want to own a firearm of any kind, whether it is a shotgun, a rifle or an air weapon, they should pay the costs that are associated with that. We are not out to make any kind of profit from it; we just want the costs to be recovered.

The Convener: Before I move off the budgetary aspects, I note that the costs of dealing with airgun incidents must be fairly high. In my constituency a few years back, there was a spate of airgun incidents in the Seaton area. Is there any way of quantifying the costs to Police Scotland of dealing with crime involving air weapons?

Assistant Chief Constable Mawson: Yes. We have done some in-depth research into the matter. I will let my colleague Fraser Lamb answer the question.

Chief Inspector Lamb: Are you referring to the cost of investigation of crimes, convener?

The Convener: Obviously, you can answer only in relation to investigations. We know that there are other costs relating to the health service, and we know that there are also huge costs to lives and to the lives of animals. An indication of what you have would be useful.

Chief Inspector Lamb: I think that Assistant Chief Constable Mawson has been talking about the processing costs. In relation to actual investigations, the costs obviously vary, depending on how much inquiry needs to be done and how much time has to be taken to gather statements, to compile a police report and to record things.

One of the core aspects in such investigations is that we must, in order to establish that a firearms offence has occurred, prove the basic point that the article is an actual gun. Therefore, there is a ballistics cost of £180 each time, by the time we get the ballistics expertise, the provision of a report and a subsequent report being made to the procurator fiscal.

Can we specify how much the cost is per investigation? No—that would be very difficult. However, there are significant costs within the process.

The Convener: Of course, if somebody is killed by an air weapon, the cost of the investigation would be immense, would it not?

Assistant Chief Constable Mawson: The cost would not be a single number of thousands; a homicide inquiry of that nature costs many tens of thousands of pounds.

The Convener: What about a serious injury inquiry?

Assistant Chief Constable Mawson: That can cost several thousand pounds.

The Convener: So, we are not talking about insignificant amounts of money to investigate cases in which air weapons have been involved.

Assistant Chief Constable Mawson: No—absolutely not.

The Convener: I know that it is sometimes difficult to talk about monetary costs in this context. As I said previously, there is the human cost and the cost in animal life.
Clare Adamson: I apologise because as this is my first day on the committee, I am perhaps not as up to speed with the bill as I would have liked to be before this morning’s evidence-taking session. I therefore have a few background questions.

I appreciate that there is no storage issue with air guns; it is purely a matter of licensing. Will vetting of fit and proper persons be as stringent as it is under the shotgun legislation, in your opinion?

Chief Inspector Lamb: We have to reflect the Government’s intention on using a lighter touch.

The issue is the absolute lethality of such weapons. It is accepted beyond a shadow of doubt that they are lethal at close range. However, when we license a person for a firearms licence, they will have something that is used for sporting purposes that is capable of killing a deer at several hundred yards. An air weapon will not do that. Shotguns are extremely lethal at very short range—they have a more devastating effect and are proportionately more lethal than air weapons.

We must accept that we are talking about lethal weapons, but that there are different standards of range when it comes to lethality. We think that a lighter touch will be taken with air weapons, which will be proportionate to their lethality.

As far as checks are concerned, we do not go and visit everyone as part of the checks that we do for the Protection of Vulnerable Groups (Scotland) Act 2007, but if we trust people to work with children and other vulnerable people, should we not trust them to have an air weapon? I think that such an approach is a relatively good gauge. If, during the checking of the systems, information emerged that flagged up a challenge, we would resort back to our tried and tested processes for making sure that a person is a suitable person to have a firearm or a shotgun. Understandably, those processes are quite intrusive.

Clare Adamson: Given that the bill does not provide for any additional regulation about storage, is there anything that will mean that, in gaining a licence, the person will change their behaviour? For example, will guidelines be produced, or will it simply be the case that one has to have a licence to have an airgun?

Chief Inspector Lamb: I think that the people who apply for licences will be responsible. Under the bill, people will have three options: to hand in their air weapons, to apply for a certificate, or to risk becoming a criminal, because it will be an offence to have a weapon without having a certificate. I think that the people who apply for licences will be responsible because of their willingness to put themselves forward for the suitable person test.

We will work up guidance in relation to security, and recommendations on how such weapons should be secured. We will do that in conjunction with the Government.

Clare Adamson: The convener and Dr North had a difference of opinion on what the bill will do in relation to the legal situation on plinking. I am a bit concerned that there is an expectation that the bill will deliver a lot more than it actually provides for. What is your opinion on that point?

Superintendent Alick Irvine (Police Scotland): As far as plinking is concerned, there are sufficient powers to deal with reckless conduct in discharging a firearm. In my view, the bill is a preventative bill in that it will prevent people who are likely to engage in such conduct from getting access to air weapons. On the other side of that, should someone commit an offence, there is a licensing regime in place that will prevent their gaining an air weapon again. At the moment, if a person has committed such an offence, there is nothing to stop them purchasing or acquiring an air weapon. The bill’s intention is to stop that.

Clare Adamson: Given what we have just talked about, do you believe that the bill will result in a significant reduction in the misuse of airguns?

Superintendent Irvine: For me, the issue is access. At the moment, people have unfettered access to air weapons; there are no controls on that. Following the passing of the bill, there will undoubtedly be individuals who will want to surrender their weapons, which will reduce access. It is a question of controlling who can access weapons. To answer your question, I think that the bill will prevent access and will therefore reduce misuse.

John Wilson: Good morning. I refer to the submission that Police Scotland made to the committee. In the third paragraph of the answer to the first question, it states that

“the misuse of air weapons has fallen in recent years to very low levels”.

Will you define what you mean by “very low levels”? What are you measuring that against?

10:30

Assistant Chief Constable Mawson: We have identified that recorded offences in Scotland involving all firearms fell in 2012-13 by 32 per cent to 365, compared with 535 offences in 2011-12. Of those 365 offences, almost half—171 offences—involved air weapons. That is the lowest figure that has been recorded in Scotland since comparable records began in 1980.

I will bring you right up to date with some research that we have completed for today’s meeting. It covers April to July this year, so it is from six or seven months ago. During that period, there were 84 offences specifically involving air
weapons: 75 of those offences were in public places, six involved injuries to animals, nine involved injuries to humans—one of which was an attempted murder, when a man was shot in the head—nine were in a private dwelling or a garden, and so on.

There is a real threat; people are getting seriously hurt. We get calls all the time about air weapon misuse. I have been a firearms commander for 14 years in three different police forces and I can tell you that when we are busy and there is an awful lot of fast-time risk assessment to do, when we have cops on the ground and when people are pointing guns, it is very difficult to distinguish between an air weapon and a real firearm or shotgun. It is really difficult and challenging.

Another positive impact of the proposed legislation is that it will further reduce the risk of harm to people—including my officers—and it will significantly reduce the drain on my resources, because about half the firearms incidents in the last complete year for which we have figures were down to air weapons. There is an awful lot to be considered in the mix, so we are really supportive of what the legislation is trying to do.

**John Wilson:** I welcome the updated figures for offences involving air weapons for that four-month period because the total number of offences in that period represents 50 per cent of the total number of offences over the whole of the last accountable year. Based on that trajectory, we would expect a 50 per cent increase in offences across the year, compared with the previous total. I would appreciate it if the committee could get a copy of that list of incidents that have been reported as criminal activities and on which police have taken appropriate action.

You mentioned in your submission, and again just now, that you expect a reduction in the number of incidents as a result of the legislation. I know that it is very difficult for you to speculate, but how many of the 84 incidents that occurred between April and July involved people who would fall into the category of not being fit and proper to be licensed to have an air weapon?

**Assistant Chief Constable Mawson:** It is almost impossible to speculate on that. More generally, I can say that we expect that the benefit of legislation that prevents people who are not fit and proper, or who do not have a good reason to do so, from holding air weapons, will be that a huge number of air weapons will be handed in to the police for destruction. That means that there will be fewer air rifles and air pistols lying around in wardrobes, on bedside tables, in garages and in attics—where, to be frank, anybody could pick them up, including young people. That has to be a good thing. It is difficult to say which incidents would not have happened if legislation had been in place, but more generally we can say that the bill is definitely the right direction of travel.

**John Wilson:** In your submission you said:

“a 17 year old student shooting rats with an air weapon in a factory for a friend”—

with the friend’s permission—

"would be contravening the proposed legislation."

If the 17-year-old had the property owner’s permission to deal with vermin, would the incident warrant action being taken against them?

**Chief Inspector Lamb:** The example was used in relation to the proposed conditions under which someone under 18 will be able to use an air weapon, one of which is that the person is employed to carry out pest control. That means that an individual under 18 who wanted legitimately to engage in pest control in an area where they were allowed to shoot would not be able to do so unless they were employed.

**John Wilson:** Do you think that the bill is in conflict with the Scottish Government’s intentions to lower the voting age to 16? I am just using that as an example of the age at which someone is regarded as a responsible adult. The bill sets the bar at 18—is that too high?

**Chief Inspector Lamb:** I think that the age limit of 18 in the bill reflects the Firearms Act 1968 and European legislation. I must admit that the issue to do with 16-year-olds voting had not crossed my mind; I was just making the point that the bill is too restrictive of opportunities to shoot for a lawful purpose, in that it requires pest control activity to be linked to employment.

**John Wilson:** Thank you. Finally, in the Police Scotland submission you asked why, under section 26, the chief officer of police must be notified within a certain time. Why is that a problem?

**Chief Inspector Lamb:** We were asking about the purpose of section 26. If an air weapon is sold to a French national, for instance, and has no serial number, what are we realistically expected to do with that piece of information? If someone who stays in France is sold an air weapon that to all intents and purposes is unidentifiable, what do we record and why? What would we do with the information? We could not see the point of the provision.

**John Wilson:** Finally—

**The Convener:** That is two finallys.

**John Wilson:** Sorry, I thought that I had better get this one in. How quickly will the police be able to introduce the new licensing regime, following royal assent?
Assistant Chief Constable Mawson: We have plenty of time between now and the likely introduction date to get our ICT and training systems in place and to get guidance out to staff. We will be ready for any likely introduction in 2016.

Willie Coffey: What guidance will enable you to assess whether an applicant is a fit and proper person and has “a good reason” for having an air weapon? Will there be a Scotland-wide licence, so that if a person gets a licence in one part of Scotland but moves to another they will not have to reapply?

Chief Inspector Lamb: The establishment of Police Scotland has enabled us to move towards the standardisation of processes. For example, whether someone applies for a certificate in Wick or Dumfries, the tests in relation to refusal, revocation and so on are the same. We are moving towards greater consistency, with the aim of having absolute consistency on firearms licensing.

The fit-and-proper person test is about responsibility. It is about whether a person is responsible and has a reason for accessing the firearm. Under the legislation, the reason for having a firearm would be extremely important. It would be consistent with the guidance, which would say what we accept as a good reason for having a firearm. That is already reflected. We are used to dealing with good reason tests for shotguns and firearms, so we would be able to adapt quickly our thinking and the tests that we would require to make under the bill.

Willie Coffey: Is the assessment mainly subjective or is it based on any evidence about the person’s history and record? If a person is refused a licence in Ayrshire but then moves up to Aberdeen and tries again, will there be a record of that attempt to get a licence? Does your information technology cope with that?

Also, is there a subjective element to the test in that a person could be lucky in the way that they are assessed in Aberdeen compared with how they would be assessed in Ayrshire?

Chief Inspector Lamb: If a person moves, their nominal details are recorded on Shogun, which is accessible to police working in Dumfries or Aberdeen. Someone who works in Aberdeen can bring up the record of someone who previously stayed in Dumfries and they would be able to see the decision-making process.

We will have to run up guidance on a good reason for a person to have a firearm, and we already have set criteria for good reason for shotguns and firearms, especially firearms, which come under the Firearms Act 1968. The criteria have to be really specific about what a person will use the gun for. They are also specific to guns. If someone has a .17 HMR, it will be used for small vermin. A much bigger calibre gun, such as a .270, will be used for deer.

I think of air weapons as tools to be used for different jobs. For instance, they are used for pest control such as shooting pigeons in a byre where they are defecating over cattle feed and so on. A much more powerful weapon could drill holes in the roof, so it would be inappropriate. It is about using the right tool for the job and having a good reason for it. If someone says that an air weapon is for shooting rats or pigeons, that would be accepted as a good reason.

Willie Coffey: Forgive my ignorance, but is there an appeal process so that a rejected person can appeal? Who would they appeal to if the assessment was Scotland-wide?

Chief Inspector Lamb: There is an appeal process contained within the bill and an appeal would go to the sheriff court. That is replicated in the 1968 act for someone who is refused or whose firearm or shotgun certificate is revoked.

Willie Coffey: We heard from Jennifer Dunn and Dr North that there are likely to be many more incidents than are ever reported because of the nature of the offences. When an incident occurs, are you permitted to consult the register and pay a visit to licensed airgun holders? Can you use the information that you have about unsuccessful applications to visit those persons in relation to any incident?

Chief Inspector Lamb: If we receive information that someone has used a gun inappropriately, we are all over it immediately. The prime reason for the legislation is to keep people safe. If we have information that suggests that someone is using a gun inappropriately, we want to find out all about it and what the circumstances are, and remove that gun at the earliest opportunity. We want to put our foot on the ball and think about what to do with the situation.

That will be recorded on the Shogun system. It is already recorded on the system, so the information never goes away. Would we be able to use the information from a previous application? Absolutely. The information is there; it is evidence in relation to what the inquiry officer found out and what the witnesses were speaking to.

We deal with the issue on a daily basis with the 53,000 people who are certificated to have firearms in Scotland. Much of what the bill proposes is reflected in the 1968 act, and we would try not to reinvent the wheel but to use very much the same processes.
10:45

**Willie Coffey:** To clarify, those who are unsuccessful in applying for a licence will still be known to you, and they could be among those who the police will wish to visit in relation to an incident.

**Chief Inspector Lamb:** Yes.

**Willie Coffey:** That is very helpful.

**The Convener:** With regard to Mr Coffey’s question about the Dumfries to Aberdeen situation, was Shogun in place before the inception of Police Scotland? Was there co-ordination among the eight forces on applications?

**Chief Inspector Lamb:** Before the inception of Police Scotland there were eight chief constables, who were each responsible for firearms licensing within the area in which the certificate resided. With one chief officer of police for the whole of Scotland, we have got to have consistency.

**The Convener:** Would it have been easier in yesteryear to move from Aberdeen to Dumfries and, having been refused a firearms licence in Aberdeen, to get one in Dumfries?

**Chief Inspector Lamb:** Certain markers were put on the police national computer in relation to refusal or revocation of a licence. Therefore, licensing staff in Aberdeen would have been able to identify that application very quickly and to say that there was a marker on the computer system showing that the person had been refused a licence or had had one revoked in Strathclyde. Police would pick up the phone and speak to—

**The Convener:** However, it was not as consistent as what you have in place now.

**Chief Inspector Lamb:** It is much more consistent now.

**Superintendent Irvine:** There was no formal mechanism for notification when certificate holders moved or when someone was refused a certificate in one chief constable’s area and then applied in another area. Certificates were linked to residence under the terms of the 1968 act. Practically, they would have to get in a different address under the chief constable who was making the decision. In practice, there was no way of us mapping across Scotland who was applying to different chief constables. However, the new system and the new processes that are in place allow us to manage it as a nation.

**Assistant Chief Constable Mawson:** The system is now much more joined up. Mr Coffey’s point about subjectivity is well made.

As lead for firearms licensing for Scotland, I have started a process of inviting all firearms licensing staff—whether police officers or support staff—to training events at Tulliallan for whole days at a time. They get the same training to the same standard, along with the same guidance. We share experiences, difficulties and challenges. That goes a long way towards reducing significantly the element of subjectivity.

Of course, everything is now recorded on the national database, which everyone has access to.

**Cameron Buchanan:** As I understand it, not every airgun or air pistol has a unique identification number. How will you get round that when you are trying to license them?

**Chief Inspector Lamb:** The bill is about people rather than guns. People will be allowed to have certificates to possess air weapons. Under the shotgun legislation, a person is allowed to hold as many shotguns as they wish under their shotgun certificate. It is different for a firearms certificate—

**Cameron Buchanan:** The person is identified on the shotgun certificate, are they not?

**Chief Inspector Lamb:** They are identified. As far as we understand the bill, there would not be a mechanism for identifying, for instance, that the weapon is a .22 air rifle. As you say, a lot of the weapons do not have identification numbers on them, so we would not be able to identify them. It would be a case of a person, as an individual, being allowed to possess their weapons.

**Cameron Buchanan:** Would the quantity be specified, as it is in the shotgun legislation? I have two shotguns, and it is specified what make and what number they are. For airguns, is it proposed that the certificate would say that someone can have two, three or four?

**Chief Inspector Lamb:** There is no proposal for that in the bill, as far as I am aware.

**Anne McTaggart:** I will ask the same question that I asked the previous panel. You will have had loads of time to make up a wish list—after all, it is the season to be jolly—but do you think that there is anything that would make the bill better? Has anything been omitted from it?

**Assistant Chief Constable Mawson:** I will let Alick Irvine and Fraser Lamb add some more value but, for me, the big strategic issue is how we will smooth things out. We cannot have thousands of applications coming in on one particular day, our struggling to cope and exactly the same thing happening five years later. That is not a pragmatic or commonsense approach, and we need some kind of phasing-in or smoothing-out process.

**Superintendent Irvine:** That is a critical issue for our organisations. With regard to the management of the offences and the licensing regime that will be created, I am pretty confident that the bill covers everything that will support us,
keep our communities safe and allow a proportionate licensing regime to be put in place.

Chief Inspector Lamb: To reiterate Mr Mawson's point, it is hugely important that we get the smoothing right. When this legislation comes into force, a huge number—I am sorry; I should perhaps say an unknown but probably quite significant number—of people will apply for an air weapons certificate. Under the bill, there will be a small on-going demand, with a huge bulk of renewals every five years. That means that, every five years, we will have to deal with a huge workload over a very short time, while for the other four years and 11 months, that workload will diminish. That will make it very difficult to plan for staff, resources, commitment, checks and so on.

Under our smoothing proposal, the chief constable can decide how long the first certificate will last for, which will allow us to deal with the same number of renewal applications per month. In other words, certificate number 1 might last a year, certificate number 2 might last 13 months—and so on, until certificate number 60, which would last for five years and 11 months. Under that system, we would have the same number of people applying for a certificate every month, and we can plan for and resource that.

Anne McTaggart: How did you manage with your previous weapons amnesties, and what lessons did you learn?

Chief Inspector Lamb: In a recent firearms amnesty in England and Wales, 350 firearms were handed into the Metropolitan Police, about a quarter of which were air weapons. I think that our air weapons figures will outstrip those figures.

The Convener: Basically, you are telling us that there will be a lot of scrap metal about.

Chief Inspector Lamb: I think that a lot of air weapons will be handed in and destroyed, and the figures will dwarf the amnesty figures in England and Wales. There will be people saying, "My grandfather's air weapon is lying up in the loft: it's not been used for decades and we have no good reason to have it, so let's hand it in to the police."

Anne McTaggart: Thank you.

Clare Adamson: I have a supplementary to Cameron Buchanan's questions. If people have criminal intent, that is a difficulty for everyone in society; however, we cannot get over the fact that there will always be someone who will have such intent. That said, let me run a scenario past you. If you have no record of the number of guns that people with air gun licences have, can someone who is found in possession of a gun but not in possession of a licence not just claim that the gun is owned by a licence owner? That assumes, of course, that someone who is not upstanding slips through the system and gets an air gun licence. What would happen in that situation?

Chief Inspector Lamb: Police officers have a healthy dose of cynicism, and I think that we would ask the other person whether they had a certificate and pose all the investigative questions that we would expect officers to ask such individuals. We will be able to deal with that situation simply by investigating it appropriately and ascertaining what the facts are.

Clare Adamson: If, in that scenario, you suspected that someone was at it—in other words, the gun in question belonged to another person, and the two people involved were in collusion—would you be able, under the powers in the bill, to remove the licence?

Chief Inspector Lamb: Yes. It comes back to the unfit to be trusted test, which is quite a low bar in relation to firearms legislation. I think that, if it were proven that someone was telling lies, they would be unfit to be trusted with a firearm.

The Convener: Some have said that this legislation will affect only law-abiding citizens and will do nothing to stop or reduce criminality. Do you have anything to say about that view?

Assistant Chief Constable Mawson: I think that I have already covered that, convener. We know that there are a lot of air weapons out there; the exact number is not known, but the gun trade has suggested half a million. Three things will happen under this legislation. First, people will register—and they will for the most part be fit and proper people. Secondly, a huge number of weapons will be sent to the police to be disposed of as scrap. Thirdly, there will be a group of guns that will still lie around, but the number will be significantly smaller than the thousands that are currently in circulation and which someone could spontaneously pick up one day and do something very silly with. We have already mentioned the 84 offences that have been committed in the past four or five months, including an attempted murder with a shot to the head, and the bill will definitely have a positive impact on keeping people safe.

The Convener: Thank you very much for your evidence, gentlemen. It is appreciated.
Air Weapons and Licensing (Scotland) Bill: Stage 1

10:16

The Convener: Agenda item 2 is our third oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We have one panel of witnesses, who will discuss the alcohol licensing provisions in the bill.

Before I introduce the witnesses, I would like to clarify the committee’s approach to who we ask to appear before us and the general criteria that we adopt. This is directed towards those from the public sector, including local authorities in particular, although for others our approach is similar.

When deciding who to invite, we look to achieve a balance from across the country that covers both rural and urban. We also have in mind coverage from affluent and less affluent areas. We aim to spread the coverage across the whole country, although we recognise that those in the larger urban areas might have more experience and knowledge of particular issues to share with us. We also recognise that staff in the larger urban areas can be more specialised and potentially handle a wider variety of issues, but we are always looking to the impacts on smaller areas, too.

We consider written submissions and other pertinent information before we select witnesses, and we are always interested to hear from those who provide an opinion that may differ from the status quo. If we receive submissions that provide similar opinions, we will try to avoid duplication on our panels, and we will strive to have contrary views available to test what we are told.

When we issue an invitation, we expect witnesses to attend. We will cancel an invitation only in exceptional circumstances. These invitations are not like invites to attend Government or other working groups, and we do not consider acceptance to be discretionary. We have powers to compel, but we do not want to use them, as we appreciate that it is far better all round that people attend willingly.

If witnesses feel that they are not the appropriate person to attend, they should contact the clerk immediately. That will allow an opportunity to discuss whether there might be a better alternative. If witnesses leave it to the last minute to contact the clerks, they will not be allowed to withdraw, and we will expect them to attend.

I welcome the witnesses on today’s panel, who have accepted our invitation to appear in front of
the committee. John Lee is public affairs manager of the Scottish Grocers Federation; Stephen McGowan is head of licensing at the Institute of Licensing; and Paul Waterson is chief executive of the Scottish Licensed Trade Association.

Welcome, gentlemen, and good morning. Would you like to make any opening remarks?

John Lee (Scottish Grocers Federation): The Scottish Grocers Federation is the national trade association for the convenience store industry in Scotland. There are about 5,500 convenience stores in Scotland; SGF would not claim to represent them all. There is a high density of convenience stores in Scotland relative to the rest of the United Kingdom. Convenience stores are embedded in every city and town in Scotland and in every community, whether in rural or urban areas.

Alcohol is an important category for our members. SGF is an active member of the Scottish Government alcohol industry partnership, it sits on Glasgow City Council’s local licensing forum and the City of Edinburgh Council’s licensing forum and is an active participant in the east Edinburgh community alcohol partnership.

In our written response to the committee, we focused mainly on overprovision. I am happy to answer any questions on that, and I thank the committee very much for inviting us to give evidence.

Paul Waterson (Scottish Licensed Trade Association): The Scottish Licensed Trade Association was formed in 1880. We represent the independent trade in Scotland. Our members run our nation’s pubs, bars and hotels. We also have some members in the off-sales sector, and our membership includes operators of late-opening premises. We are delighted to be here to give you our views.

Stephen McGowan (Institute of Licensing): I am here to represent the Institute of Licensing, which is an umbrella organisation that represents licensing practitioners across the UK, including practitioners in private practice and practitioners who work for local authorities and police authorities. It is representative of many stakeholders who are involved in the day-to-day administration of licensing systems across Scotland and the UK. I am a solicitor in private practice. I appear on behalf of the licensed trade at licensing boards across Scotland.

In our submission, we sought to draw to the committee’s attention three issues, all of which are technical. Although they are not among the larger issues, they are issues that, as practitioners, we feel are incredibly important. The first concerns the existing provisions for the transfer of licences under the alcohol licensing regime, which I think that every licensing practitioner in Scotland would agree require to be updated. I hope to address that later.

Our second key point relates to provisional alcohol licences. Such licences are sought when there is no building or when the building is under construction. There are difficulties on the ground—if I can use that phrase—with the existing system.

Finally, there is an issue with the status of licences that have been surrendered. The Licensing (Scotland) Act 2005 does not deal with the surrender of licences particularly well, and I would like to address that. In addition, I would like to address the reintroduction of the fit-and-proper-person test and some issues that the institute has identified surrounding the use of police intelligence and the reference to the reintroduction of consideration of spent convictions.

The Convener: Thank you very much.

I will start with the subject of overprovision, which Mr Lee and Mr Waterson mentioned. I was quite surprised, given previous discussions that I have had with members of the bodies that you represent, that there are real concerns in some quarters about overprovision.

Mr Lee, what is the current experience of you and your members as regards how licensing authorities deal with their duty to assess overprovision?

John Lee: Under the 2005 act, all licensing boards must have regard to overprovision in their statement of licensing policy. It seems to us that, under the new bill, licensing boards are being encouraged to look at their entire geographical area as a potential area for overprovision. We feel that that could inhibit trade and be anti-competitive, particularly for our more independent members. If they were trying to refit their store and increase the size of their alcohol sales area, it could be an inhibitor for those types of expansion and investment plans.

There are different views on boards on the idea of overprovision. There has been a lot of focus recently on arguments that the number of alcohol outlets is responsible for alcohol-related harm. We feel that that is a misguided approach. I genuinely feel that there is not sufficient evidence to say that it is the number of outlets that causes harm.

There are a number of issues around overprovision that cause us concern. Overall, boards have to judge every case on its merits. When they look at a licence application, they have to consider whether the criteria for the licence have been met and either grant or refuse it on that basis. We do not think that a blanket approach to overprovision would be helpful.
The Convener: You mentioned that a retailer may plan to expand the area that they sell alcohol from. During one of our initial panel discussions, it was suggested that retailers could have a wee shelf with some alcohol on it that they could continually replenish from a huge storeroom out the back. How do we judge the retail space compared to the storage space when it comes to defining overprovision?

John Lee: At the moment, the Edinburgh licensing board requires applicants to state in their operating and layout plans the size of their alcohol sales area in linear metres. Our concern was that, if we start to drill down into the issue of overprovision and what will make an area into an area of overprovision, the overall metrage of alcohol sales area could come into play. We could almost put a cap on the sales area in a particular area and say that it cannot be increased at all. If, for some reason such as a shop refit or changing customer needs, a retailer wanted to expand the alcohol sales area, they may be prevented from doing so because of a particularly strict overprovision policy.

The Convener: Should licensing boards take into account the storage area, however? In some regards, what matters is not the shelf area but how they manage to keep that shelf stocked.

John Lee: Indeed, but it is only that shelf area that will be open to the public. That will determine the amount of alcohol that is on display and on sale at any given time.

The Convener: Do you think that, logically, the storage area should also be taken into account?

John Lee: I do not see how that would be helpful. There have also been discussions within Edinburgh about whether the volume of alcohol that an applicant expects to sell should be included in their application. Again, I do not see what utility that would bring.

The Convener: That would be quite difficult to define, one would imagine, particularly for a new premise.

Mr Waterson, I had the pleasure a number of years back of talking to your members at their annual general meeting in Aberdeen, and I was surprised that a lot of the offline chat was about overprovision and your members’ concerns about it. What do you feel about the current circumstances with licensing boards?

Paul Waterson: It is an argument that has been raging since before the Licensing (Scotland) Act 1976, going back to the days of the Clayson report. Our position has not changed since then. Overprovision is included in the 2005 act, which means that it is a ground for refusal. It is recognised in principle. The question is, how do we make it work?

We have heard the detail about what should be taken into consideration, and controversial items come up from time to time. In 2010, the board in West Dunbartonshire came up with an approach that we thought was novel and that took into account a range of factors. It decided that the whole area was overprovided. However, because of board changes, the work that we had done with others in the area fell apart. We have seen controversy in Edinburgh, where there were board changes, or changes in political attitudes, after it had been decided that off-licences would be refused.

10:30
Without going into all the details and the arguments that rage about the issue, our position has always been that there should be a freeze on the number of licences. That would not stop development, because licences could be transferred within the system, so there would be plenty room for development of new premises. If somebody wanted to open premises, they would have to have a licence of a similar kind and for the same square footage. A freeze would not stop development—it would actually help, because it would give confidence. We should remember that overprovision is covered in the 2005 act, so it is up to us to try to make that work, and a freeze is the only way that we can see it working. That happens in Northern Ireland with some success.

What could be worse for the development of our trade than all liquor licensing sales in Scotland being controlled by five or six operators? If that does not stop development, I do not know what will. How do we get some balance back into the market? Ultimately, with overprovision, we get overcompetition, which is responsible for the downward pressure on price, and that creates the problems that have led to our Government’s attempts to implement minimum unit pricing. If minimum unit pricing is the short-term answer to cut pricing and the general race to the bottom and deterioration in standards, dealing with overprovision is the long-term answer. We want a trade that is based on the quality, not the quantity, of premises.

The Convener: The committee has received a petition that we are considering as part of our scrutiny of the Community Empowerment (Scotland) Bill about a major supermarket chain—I will not name it—taking over smaller premises in high streets to set up the express kind of stores. Is that the kind of business that is taking over the market?
Paul Waterson: Supermarkets blitzkrieg their way through. I do not speak for convenience stores but, through time, the best sites will be snapped up by the big operators—we have seen that happen in Edinburgh—and we will lose independent operators. The situation is the same in the on-trade. I certainly do not want to lose independent operators, because they give people choice. Independent operators will be left with the scraps. They will be forced further and further out, and we will end up with five or six operators dominating the alcohol market in Scotland. Indeed, that is the case already—the figures are there to prove it. That is not good for competition or in any other way.

Licensing legislation is there to redress that balance. There is a host of arguments for and against the introduction of measures on overprovision. It is a numbers game, and it should be a numbers game. I stress that, within the numbers, licences could be transferred and development could still take place. People do not understand that. They think that, if the numbers are frozen, there will never be a new opening and it will not be possible to transfer licences in the system, but that is not right. A freeze will help development, not stop it.

The Convener: Mr Lee, would you like to comment on the issue about big operators coming into the high street?

John Lee: Yes, I am aware of the petition that you mentioned. Our members are under severe pressure from the organisation that is named in the petition and from other big operators like it. I am not here to defend them, or to speak up on their behalf—I do not even want to do them a favour—but we think that each application has to be judged on its individual merits. That has long been the case and should continue to be so.

The Convener: Mr McGowan, do you have some comments on overprovision?

Stephen McGowan: I endorse the point that each application should be considered on its merits. That has long been the case and should continue to be so.

The institute’s response on overprovision focuses on the introduction of licensed hours, which is in section 54 of the bill. There is an ongoing issue around the concept known as the duty to trade. In short compass, the duty to trade says that a licensed premises must be open throughout its licensed hours—it has a duty to remain open during the hours that have been granted. Very few licensing practitioners agree with that concept: the vast majority of, if not all, licensing practitioners in both private and local authority practice believe that there is no duty to trade. The institute therefore suggests that if licensed hours are to be a factor in overprovision, it would be helpful for the law to confirm that there is no duty for a licensee to open throughout all the hours in his or her licence.

In the 1976 act there was a specific section that stated that it was not a requirement for “any premises to be open for the sale or supply of alcoholic liquor during the permitted hours.” That wording was not carried through to the 2005 act and the institute would like to see that wording reintroduced if section 54 is to be enacted.

The Convener: Mr Waterson, do you have any comments on the licensing hours issue and the proposal to include licensed hours as part of the overprovision assessment?

Paul Waterson: That is just another point of detail that must be taken into account and further arguments will rage on that point. People will question whether other people are opening part time, or all the hours that they say they are opening. It will make the job of licensing boards far more difficult.

John Lee: We have no real desire to see licensing hours extended.

Cameron Buchanan (Lothian) (Con): I want to take up the point about occasional licences and members’ clubs. How do you regulate occasional licences and private clubs? Should they be regulated in the same way?

Stephen McGowan: Under the 2005 act, a voluntary organisation can apply for an occasional licence for its premises. The effect of that is to allow the public in. Under normal circumstances a licensed club premises has members, who are able to sign in members of the public as guests. The occasional-licence route circumvents that situation and allows members of the public access to such premises.

We are aware of issues across various licensing authorities in Scotland where there are concerns about the regulation of club premises. The 2005 act provides certain exemptions for club premises, one of which is that they do not have to name a premises manager in the way that bars and off-sales premises do. Some licensing authorities have raised concerns that clubs are not as well regulated as public access premises, such as pubs, bars and off-sales. It is a policy matter for the Scottish Parliament to decide whether further regulation is merited.

Paul Waterson: That is another problem that we thought would be addressed by the 2005 act but was not. Under the 1976 act, clubs were
registered with the sheriff and there was no police entry, which we thought was not a good situation; we knew that there were some problems. Some clubs are very well run, but some are not. Under the 2005 act, clubs have to be licensed, so we thought that that would be the beginning of the end of badly run clubs, because there would be police entry. However, that did not take into account the constitutions of such clubs.

Many clubs simply run as pubs, while enjoying all the advantages of being registered clubs. That is a ridiculous situation, in which clubs are competing with pubs. In some cases, part of the club is licensed and part of it is still the club, but the club people cannot get in because the public are in—the people who want to get in for the reason that the club was formed cannot do so.

It is difficult for us to accept a situation in which the public are allowed into clubs on numerous occasions throughout the year. We would like the loopholes in the law to be closed, so that registered clubs can continue to do what they were meant to do, for their members, instead of making money from the general public.

The Convener: The issue is a bit out of your sphere, Mr Lee, but do you want to comment?

John Lee: I have no knowledge of clubs, convener.

Cameron Buchanan: Are the clubs that Mr Waterson described getting an unfair business advantage?

Paul Waterson: Clubs have an unfair business advantage to start with because they do not pay rates in the way that normal premises do, and they have other advantages. The whole basis is unfair, to start with. If clubs are then allowed occasional licences throughout the year, so that the public can go in, they become big businesses. Some clubs are well run—there is no doubt about that—but some bend the rules, and that is unfair.

Cameron Buchanan: Should we be dealing with all that together?

Paul Waterson: We should certainly go back to the approach whereby a club’s constitution was taken into account and members had to sign people in, along with the other rules and regulations. With clubs now being licensed, that would close a lot of the loopholes. The constitution must be part of the licence and must be taken into account, and clubs should not be allowed consistently to trade with occasional licences until such trade becomes their main business, and the main reason they are there is to make money.

Stephen McGowan: This might be a useful point of clarification. Under the 2005 act there is a limit on the number of occasional licences that club premises can seek—the maximum is 56 days in a calendar year. There is a wee bit more to it, but for the purposes of this discussion, 56 days in a calendar year is the maximum.

It would be useful for committee members to note that a number of club premises have varied their licences, in effect to make them full public-access pub premises, albeit that they have a constitution and appear on the face of it to be members’ clubs. Because they have changed the conditions of their licence, they are allowed full public access. A number of premises in Edinburgh and throughout the country, which were historically club premises that were open to members and bona fide guests, have varied their licences and are allowed public access without those rules applying.

John Wilson (Central Scotland) (Ind): The convener asked whether licensing boards should be able to designate the whole local authority area when assessing overprovision. Is such an approach appropriate or does it go too far? If Highland Council made a decision based on overprovision in Inverness that could impact on other towns and villages in the Highlands. For example, someone might be prevented from opening up a small retail outlet in Wick or Thurso.

John Lee: That is a good question, and your point about a very large local authority such as Highland is apposite. We think that the approach goes too far and that a locality approach should always be taken, right down to local data-zone level. An application should be considered on its merits, with consideration being given to comments and objections from the police, health agencies and so on. A blanket approach to overprovision in the whole geographical area is a step too far. We would not encourage boards to take such an approach under the bill.

As John Wilson said, in Highland, if the main target was a busy urban area such as Inverness, there would be a knock-on effect on local independent convenience stores in rural areas—and such stores are very important to those areas. The provision is a step too far.

10:45

Paul Waterson: We want the area to be the whole of Scotland: you know the SLTA’s answer to that.

Licensing boards are in a difficult position on the matter. If a licensing board was to designate its whole area—we believe that boards could do that anyway—and, for instance, a development was to try to get a licence in the area but decided to move into the next one, that could cause a problem for the members of the licensing board with their constituents. It is not good for boards to be in the situation of simply moving the licensing around
because one area has a less lax overprovision policy. They worry about that.

Licensing boards are also under great pressure from the bigger operators and they certainly operate a two-tier decision-making system in relation to overprovision. They are very worried about the financial problems that would occur if a decision was appealed. They know that the bigger companies will appeal and that the independent trade perhaps does not have the finance to appeal, so they look upon the bigger developments more favourably than they do on others.

The question about what the area should be becomes part of the argument. We have heard the other side of the argument. There is only one way to sort it out, which is to make the whole country one area with no boundaries, while stressing the point that licenses can be transferred to different areas within the system.

**John Wilson:** Mr Waterson is basically saying that he would like the whole of Scotland to be categorised as a locality in relation to overprovision. Glasgow and Edinburgh—two major cities—have a lot of bars and off-licences in their city centres. How would it work if someone in Thurso or Wick applied for a licence? Based on your proposal, could somebody in Wick be denied an off-sales licence because of overprovision in Edinburgh or Glasgow?

**Paul Waterson:** The situation is interesting in rural areas because we have had so many closures and many villages in Scotland have now lost their pubs. If licences were just transferred within the system, it would give people confidence to go into those areas and open pubs.

Just because a village has one or two good pubs does not mean to say that it will have three; it could have three bad ones because the market is split up, and the three could close. The system could be managed so that places that have lost their pubs could get them back. We all know that when a village or another community loses its pub, it can lose its meeting place and its heart. There being a certain number of licences would mean that such things could be managed much better.

If you go into Glasgow or Edinburgh, the circuits of pubs get bigger and bigger. I refer not only to the numbers but to the capacity of the pubs. There are enough: overprovision is agreed, and the issue is how we apply it. That is why we think that the number system would work to take all the controversy away. It works in Northern Ireland. I do not see any problem with the development of pubs in Northern Ireland. There is a good spread of pubs there and the system seems to work okay.

Overcompetition consistently pulls prices down. The rate of closures probably proves the point anyway, but the market can change. It could overheat again—it did in the 1980s, and in the 1990s it went down again and there were closures but it grew again. The constant opening of more and more pubs can create problems.

**Stephen McGowan:** The institute’s position is that the existing law allows licensing boards to set their whole jurisdiction as an area of overprovision, notwithstanding that this bill seeks to allow that. There was, perhaps, a concern from one or two quarters that the existing terms of the 2005 act did not allow that. The Highland licensing board, for example, has an overprovision area that covers the whole of the Highland board area, but applies only to off-sales premises where the display of alcohol is 40m² or greater. That is a very good example of a local licensing board taking a very specific approach to overprovision.

Mr Wilson made a comment about cities. Glasgow is another good example of how licensing boards are picking and choosing defined areas within their locality, rather than going for the whole area. The Glasgow licensing board policy on overprovision is not based on where there are the most premises, but on where there is the most harm as a result of irresponsible sale or consumption of alcohol. From memory, I think that there are eight or nine small areas within the city of Glasgow where there is deemed, based on evidence that was presented to the Glasgow board in relation to health harms and crime and disorder, to be overprovision. For example, Sauchiehall Street is not an overprovision area, albeit that it is a very busy part of Glasgow. There are various other examples that I could give you from across Scotland.

**John Lee:** To follow up on Mr Wilson’s question, another problem with a blanket approach to overprovision is that it would not necessarily take account of the different types of premises that apply for licences. We outline the figures for Edinburgh in our submission. I apologise, because they may be out of date now. Edinburgh has roughly “449 restaurants, 428 bars/pubs but only 243 licensed convenience stores” so I do not think that the city is overprovided for in terms of the number of convenience stores. A blanket policy on overprovision would not take into account the differences between premises and what they offer, and the role that alcohol plays in their business model.

**John Wilson:** Mr McGowan quite rightly identified that Sauchiehall Street is not included in overprovision in Glasgow but that there are several localities where there are health issues with alcohol. Has any work been done by the trade or by the licensing boards on the type of alcohol
that is being sold by off-licences, in particular in the areas that are seen to be suffering most from alcohol abuse? The issue that we constantly get bombarded with is the sale of cheap spirits and tonic wine in particular areas. Traditionally, convenience stores had an off-licence on the basis that they were catering for people who wanted to buy a bottle of wine to go with their meal. That was the traditional reason for granting permission to have an off-licence in a convenience store.

Stephen McGowan: I think that each board has dealt with the issue differently. Some boards have dealt with it based on a higher level of evidence than others. If we look at the Highland licensing policy on overprovision, we can see that the board took considerable evidence from various parties—including the national health service and Alcohol Focus Scotland—about the health-related issues in its area. I think that the Highland licensing board took the view that the problems in its area were more to do with off-sales than on-sales. That is why it formed the view that it would set an overprovision policy based on off-sales in large premises with large displays and would not set an overprovision policy in relation to on-sales.

There are other examples. In East Dunbartonshire and West Dunbartonshire, evidence has been led by various stakeholders and licensing boards have responded to that evidence. Some licensing boards have taken it upon themselves to go out and investigate those matters, but I suspect that in regard to policy formulation, the vast majority of boards are responding to the consultation responses that have been put before them.

Paul Waterson: The best example is West Dunbartonshire, which took many factors into account and came up with an approach in 2010. It is one of the worst areas in the country for alcohol abuse. All that work was done for the right reasons. The approach was novel and fair, and seemed to be workable, but it fell apart due to board changes. It was not sustainable.

The Convener: Do you think that that was down to personnel change on the board?

Paul Waterson: Yes. The council granted a couple of licences to big operators. It was under pressure because one of the big operators said that it would move to another licensing board area and the council believed that it would lose those jobs. I would argue with that, but the council believed that granting the licence would create jobs. The electorate believed it, too, so the council was under pressure. That is what happens in these situations. It happened in Edinburgh—the council comes to a decision but it is not sustainable.

The Convener: It is difficult for us, as a committee, to look at individual areas when we are not aware of the circumstances within those areas. Are there any licensing boards that have had a long-term strategic plan and have stuck to that plan, irrespective of personnel changes on the board? Should boards have a strategic plan, with some flexibility if required?

Paul Waterson: My experience is that there are not such boards. Some boards have had overprovision policies, but they have for one reason or another fallen apart.

John Lee: I am sure that the committee is aware of this, but my understanding is that licensing boards’ statements of licensing policy last for three years, so that is roughly the timeframe for their overall approach. I am not sure that there would be any utility in extending that to four or five years or whatever. That is probably time enough.

The Convener: Alex, is your question on this point?

Alex Rowley (Cowdenbeath) (Lab): Yes. I had intended to ask Mr Waterson to clarify what he meant by the two-tier licensing system, but I think that he did so when he talked about supermarket jobs in West Dunbartonshire. Is that the problem? How useful or realistic would it be to have a policy on overprovision if it was not implemented? What pressure are licensing boards under?

Paul Waterson: We are not saying, “Don’t open supermarkets.” We are saying that they should not be licensed. They can open what they want, but we are talking about licensing. The argument about the number of jobs that supermarkets take from other places will rage, but it puts boards under pressure.

There are all these resources behind big companies, which can play the system for three years. If a company is building a massive operation, three years is not too long to wait to exhaust the objections. In some areas, when people object to new licences—on and off-trade—the company plays the system and one by one, as time goes on, the objections fall apart. We cannot blame people for that. The applicant simply withdraws the application and waits. If there are 50 objections the first time the application is lodged, there might be only 20 the second time it is lodged and 10 the third time it is lodged.

If the company keeps withdrawing the application, eventually people are exhausted, because they have to go to the boards. Community councils are thwarted and lose the objection process, yet the reasons for objecting have not changed. Usually, the objections are very valid. The system is wrong in that respect.
The Convener: Should there be some kind of co-operation between licensing boards?

Paul Waterson: In what sense?

The Convener: Should there be an agreement between, say, West Dunbartonshire Council and one of the neighbouring authorities, such as Glasgow City Council, about licence provision in the boundary area?

11:00

Paul Waterson: I remember going to a licensing board many years ago and asking whether it could co-operate with another licensing board. I was told, “No, we always do the opposite of what they do.” There is not a lot of communication between boards. In some cases, they could be in conflict with each other on jobs. It might suit one area to say, “We want that,” if it thinks that there are more jobs in it. Because there is conflict between some boards, the area must be made wider.

The Convener: In Aberdeen, there are licensed premises in what one would think of as quite strange places. Going back in history, they were built there because they were outwith the city boundary and the travellers rule applied, on Sundays in particular. At that point, boards did not co-operate with each other. You argue that there should be a Scotland-wide scenario so that such conflicts do not exist.

Paul Waterson: Absolutely. It might be argued that there are too many boards anyway. When we gave evidence to the Nicholson committee, that committee said—I did not think that it was a good argument—that there are too many boards anyway and that such an approach would not make a difference, but I think that it would make a difference.

The Convener: Mr McGowan wants to come back in.

Stephen McGowan: I will make a couple of minor observations. First, the bill proposes increasing the three-year licensing period to five years. I understand that licensing board members sometimes feel hamstrung when they come in following a council election and have to pursue their predecessors’ policy, so it is helpful that the term of the policy will be linked to council terms instead of being triennial.

My other minor observation relates to Mr Rowley’s comment about licensing boards taking jobs and employment into account. The policy in West Dunbartonshire is clear. West Dunbartonshire Council looked at evidential studies that demonstrated that there are health benefits to employment, and the policy on overprovision was amended to allow the board to take into account the health benefits that could be brought through the creation of jobs. West Dunbartonshire’s licensing board has been specific on that point and is probably more advanced than a number of other licensing boards, because it was one of the first to introduce a large overprovision policy, back in 2010.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Will you clarify what you just said about lining up the licence terms with the council terms? Would you suggest that, in the last year of a council’s term, licences be granted for only a year, until the next council election?

Stephen McGowan: Licensing policies currently run for three years and, because of when the 2005 Act came into force, the most recent periods have been 2010 to 2013 and 2013 to 2016. I understand that the bill will change the policy period to five years, on the basis that that is the length of a council term. That means that, when a new council comes in and a new board is established, a new policy can be written at that point and there will not be a one or two-year overlap with the predecessor policy. I believe that the boards requested that.

Willie Coffey: Will you tell us a wee bit more about the issues that you raised at the beginning of your evidence? You and Mr Waterson talked about the pros and cons associated with transfers and about issues relating to provisional licences when there is no building. You also talked about the status of surrendered licences. Will you tell us a wee bit more about your concerns?

Stephen McGowan: I am grateful for the opportunity to do so. I will endeavour to be as brief as possible. I think that licensing solicitors and practitioners would agree unanimously that transfers should be number 1 on the hit list of issues for the Parliament to look at. Licensing solicitors across the country have asked the Parliament to look at the status of surrendered licences. Will you tell us a wee bit more about your concerns?

Under the legislation, transfers take place when someone takes over existing licensed premises. That happens all the time. Normally, it happens because the premises have been bought or sold or have been leased to a new tenant, but it can also happen when a licensee dies, is declared mentally incapable or becomes insolvent. There are several reasons why a licence might have to be transferred.

The 2005 act does not deal with that correctly. It completely ignores the dissolution of companies. There is no provision on what happens to a licence that is held when a company has been dissolved. We are left scrabbling around trying to come up with a fix, with the good will of licensing
clerks, to keep premises trading when such situations arise.

The legislation does not take account of the reality of how property transactions and conveyancing are done in Scotland. There are issues with the on-going operation of premises and how the 2005 act reacts to a simple case of a pub being bought and sold. Such cases happen almost every day, yet the act does not adequately deal with them.

The 2005 act does not allow what I call a deemed grant of a transfer. In other words, it does not allow someone to trade straight away while a transfer is pending in the background. However, in England and Wales, the Licensing Act 2003 allows the incoming occupier—they might have bought the premises or taken a lease—to trade before the full grant of the transfer.

The institute and—I hope that I am correct in saying this—just about every licensing solicitor in Scotland very much request that the Parliament look south of the border at the transfer provisions under the 2003 act. I know that the Law Society of Scotland’s licensing law sub-committee, of which I am a member, has offered the Parliament drafting assistance on that point. I would certainly want you to take up its offer.

On provisional licences or licences when the building has not yet been constructed or is under construction, there was a process under the 1976 act for a site-only provisional licence. That allowed a new licence application to be lodged for a premises that had not yet been constructed, without it having to include full and detailed plans. The system under the 2005 act does not allow that. The institute and practitioners want us to return to the 1976 position, whereby an applicant could put in what was known as a site-only application.

The change is being asked for because of the difficulties with the current system. It is hard to produce an architect’s drawing for a premises that might be three years off being built or to present a full application on those terms.

The Convener: Is there a conflict with planning legislation? A licensing board might find it difficult to grant a licence for a building that had not yet been given planning approval, and it might be seen by the public as a fait accompli for a premises to be given the planning go-ahead if a licence for it had already been granted.

Stephen McGowan: Planning approval would always come first; what I propose would not move away from that. The 2005 act requires planning approval to be in place before an application for a liquor licence can even be lodged. The proposal for a site-only application would not negate that. Planning permission would still need to be in place, but the full level of detail about where the bar and the seating were to be would not need to be demonstrated at that early point.

The change is needed because the current system puts off investment. A number of developments are based on capital ventures and loans from banks and so on. That funding often cannot be secured unless the parties know that a licence will be in place. At the early stages of developments where planning is in place but the full details of the premises layout are not yet known, it is difficult for those developments to proceed, because they do not have the certainty that a licence will be in place. That commercial certainty would be of great use. If the Parliament could reintroduce the site-only application, that would be useful. I am happy to give any ancillary points on that by written submission if that would help the committee.

I turn to surrenders of licences and thank the convener for his indulgence. The 2005 act does not deal particularly well with those surrenders. It allows licences to be surrendered, but the problem is that it does not say what the status of such a licence is thereafter. Does the licence exist or not? Is it in the ether somewhere?

Sometimes, a licence is surrendered for legitimate reasons—for example, a premises no longer wishes to trade. That is accepted, but the problem is that there are also examples of licences being surrendered out of spite. If a landlord—the owner of the premises—has allowed his tenant to hold the licence, but they fall out because the rent has not been paid or whatever, the tenant might surrender the licence out of spite. The landlord is left with a pub with no licence, which is not the best situation for them to be in.

The Institute of Licensing and other licensing professionals would like the Parliament to address that by dealing in one way or another with what happens to a licence after it has been surrendered. The Parliament could say that such licences have gone for good, in which case we will know that that is the case, or it could allow licences to be restarted in some way, perhaps through a transfer back to the landlord or to another party.

The 1976 act made no specific provision for surrender. Some parties wrote to licensing boards to say, “I surrender this licence,” but such licences could be retrieved by way of a transfer. We cannot do that under the 2005 act, because it contains the specific surrender provision, which did not exist before. We would like to have that cleared up in one way or another. Either the licence has gone and that is it, or we allow the affected landlord or whoever to reactivate the licence, perhaps by way of a transfer application.
Thank you for your time on those points.

**John Wilson:** I seek clarification. Included in the bill is the fit-and-proper-person test. I am not saying that there are landlords out there who are not fit and proper persons but, if a licence holder who is trading decides to surrender their licence, that raises a concern—for me, anyway. You suggested that the licence could be transferred to and held by the landlord, but you mentioned other issues about the application of licences and the determination of whether, on the sale of licensed premises or the surrender of a licence, a transfer can take place to someone who might not be deemed a fit and proper person by a board.

What safeguards do you want in the bill to ensure that, in the scenario that you described of a licence holder deciding through spite to surrender the licence, the landlord that the board is asked to and may decide to transfer the licence to is a fit and proper person to hold it? There is a conflict in ensuring that we have a fit-and-proper-person test. As I said, a landlord might not be deemed fit and proper, which is why they do not hold the licence for the premises.

**Stephen McGowan:** The Institute of Licensing supports the proposal to reintroduce the fit-and-proper-person test. I think that most people in the system support that. I have separate comments about police intelligence, but I will leave them for the moment. If there is a chance later, I will speak about that.

The reintroduction of the test, which we support, will certainly go some way towards addressing the concern that you raise. However, there are existing safeguards in the system. Any transfer application that is lodged can be refused by a licensing board, and Police Scotland can object to it. Every transfer that is lodged is reported on by the police. They will say, “This person has no convictions and we do not object,” or, “This person has convictions and therefore we object.” Even when there are no convictions, the police can object to the transfer of the licence under the existing law if they believe that the licensing objectives would be prejudiced by the grant of the transfer. The existing system has safeguards and the fit-and-proper-person test will supplement them.

**Willie Coffey:** I will return to the surrender of licences. Did you say that there are circumstances when it is possible for licences to be lost permanently because of that process, or do they get recycled in the system and transferred? Is it possible to lose them?

11:15

**Stephen McGowan:** Yes. The 2005 act contains the phrase “ceases to have effect”, but it does not define that. There is a debate among licensing practitioners about whether the phrase means that the licence is gone for ever or whether it means that it is somewhere in the ether and can be reactivated.

**Willie Coffey:** What is the solution to that?

**Stephen McGowan:** This is probably a policy matter for the Parliament, but the decision is either that the licence is gone or that it can be reactivated. Let us have a decision one way or the other. Practitioners would prefer to allow a licence to be reactivated by way of a transfer, rather than it being lost for ever. I suggest that it would be for the Parliament to decide which of the two options is the preferable policy, but let us have one or the other.

**Willie Coffey:** I presume that Mr Waterson would prefer licences to be recycled and transferred.

**Paul Waterson:** We need clarification.

**Clare Adamson (Central Scotland) (SNP):** I return to the proposal for a provisional site-only licence. Mr McGowan said that that would give investors a degree of confidence that there would be a licence for the premises, should the build go ahead. I understand that the licensing board would have to base its decision on whether it was appropriate to grant the licence on the final layout of the premises and on whether it met all the licensing requirements. The provisional site-only licence is not really a guarantee that the licensing board will offer a licence, because it has to base its decision on the final build. I am having difficulty seeing what kind of confidence or help that would offer.

**Stephen McGowan:** The existing provisional licence process has two stages. The provisional licence is granted and then there is a second process for confirmation. At that point, the licensing board in effect revisits the application on the basis of the work having been done and environmental health officers having inspected the premises to make sure that it complies with food hygiene requirements. When a provisional licence is granted, the premises cannot be traded from until the second process has been gone through.

To get the licence confirmed in the second process, an applicant has to show the licensing board that they have met all the building regulations and that the premises have been built safely, have passed kitchen checks and have clean sinks. The applicant also has to tell the licensing board who will be the named day-to-day manager of the premises. In some cases when there have been changes to the layout, the provisional licence has to be varied to show the board what the new layout is.
A licensing board would not confirm a provisional licence without knowing what the final layout was. That is part of the existing process. The difficulty is that people cannot lodge their application as early as some developers and applicants would like if they do not have the final layout. The licensing board will always know the final layout when it gets to the confirmation stage.

Clare Adamson: I am having difficulty seeing how a licensing board could even grant a provisional licence if the premises in question was, as you described, like an empty box. How could a provisional licence be granted when it had not been demonstrated to the board that the requirements had been met?

Stephen McGowan: There were 30 years of experience of licensing boards granting site-only provisional licences under the 1976 act without that system falling into disrepute. Under the new system, with a provisional licence, licensing plans and the layout of the premises are always a fiction. We are asking for that to be addressed. It is slightly odd that people have to invent a layout simply to get the application lodged when they do not know whether it will be the final layout.

Clare Adamson: I will return to the club issue that my colleague Mr Buchanan raised. Mr McGowan said that clubs do not have to show that they have a registered manager when they are getting a licence approved. Do all the other provisions about certificated people selling alcohol still apply to a club?

Stephen McGowan: Yes. The staff training regulations apply, which require anyone involved in the sale or supply of alcohol to have a minimum of two hours’ training on various topics—I think that there are 16 in total.

Staff members still have to do the training, but clubs do not have to have a named day-to-day manager or a personal licence holder. Many clubs have personal licence holders on the books, but they might not be named on the licence as a day-to-day manager of the premises.

Anne McTaggart (Glasgow) (Lab): Good morning, panel. I want to ask about the creation of the offence of supplying alcohol to someone who is under 18. That has changed from what it used to be. What difficulties might arise from that, particularly for retailers and staff?

John Lee: That is a good question. It relates to proxy purchase, which is a big issue for us. Unfortunately, there are people aged 18 and over who are willing to buy alcohol on behalf of young people. In general we support the idea of supplying alcohol to young people being an offence but, as you imply, there will always be issues with enforcement.

It is not an easy one to crack, but I think that a multi-agency approach is the way to address it. As I mentioned at the beginning of the meeting, we are involved in a project called the east Edinburgh community alcohol partnership, which is based in Portobello and Piershill in Edinburgh. The idea is to look at underage drinking specifically, and the issue of proxy purchases.

We feel that, because retailers have been successful in implementing the challenge 25 regime in store, the problem has been shifted outwith the store. There is now very little that responsible retailers can do about the problem. We have to bring in police, social services, education and the local community generally to look at cracking it, and the only way we can do that is by establishing things such as community alcohol partnerships. The new offence might be part of that effort.

There will be problems of enforcement, but the only way that we can crack the problem is by broadening it out and looking at what happens outwith the store, in the wider community and the home. That is the only way that we are going to address the issue of proxy purchasing and make the new offence workable.

Paul Waterson: We do not have the same problems with proxy purchase, but we have some sympathy with convenience stores on that. We support the new offence regarding the supply of alcohol to children. The history of our involvement in trying to stop underage drinking and our involvement in a number of agencies show that we are determined to try to sort it out, and not simply by moving it on for someone else to worry about.

The Convener: Mr Waterson, you say that you have no problem with proxy purchasing. I realise that most of your members represent pubs and hotels, but I have seen situations in the past, particularly in licensed premises with outdoor areas, where folk have gone into the pub to buy drink for underage folk who are drinking outside it. I would not go so far as saying that that is an impossibility.

Paul Waterson: Sorry. My point is that it is not as big a problem for us.

The Convener: Before Anne McTaggart comes back in, Clare Adamson has a question.

Clare Adamson: I want to clarify how the provision will affect premises that sell food, if at all—for example, if a child is out with their parents for a meal. Also, what will be the effect in the family home, such as when a parent offers alcohol to a young person as part of a meal in that social setting?

Stephen McGowan: The bill defines where the offence applies, which is a “public place”, so it
would not apply to domestic residences. I think that church premises and religious establishments are mentioned as well.

Generally, the institute welcomes the provision as a tightening up of the offence. Historically, the issue was that the offence was tied to what happened on licensed premises as opposed to outside them. The police have had an issue with that for a number of years. The institute welcomes it being tightened up.

**The Convener:** Anne, do you want to come back in?

**Anne McTaggart:** No. I have finished.

**The Convener:** I know that you have been dying for me to ask this question, Mr McGowan. Would it be appropriate for a licensing board to consider spent convictions and police intelligence that has not necessarily been corroborated as part of its investigations into whether an applicant is a fit and proper person?

**Stephen McGowan:** Thank you for the opportunity to comment, convener. The institute firmly supports the reintroduction of a fit-and-proper-person test. We see that as a good thing for the trade. At the end of the day, all the stakeholders involved in the licensing system want alcohol to be sold and consumed responsibly, and a fit-and-proper-person test would assist that.

Our concern is that the test might, in assessing whether someone is fit and proper, open the door to the use of police intelligence—in other words, unknown and unseen evidence as to whether a person is unfit. The institute’s position is that human rights implications are raised in a situation where a police letter to a board suggests that someone should not hold a licence, but it will not say why. That is not something that a licensing board’s decision should be founded upon. The right to a fair trial and human rights implications certainly apply in those circumstances.

The police might have good reasons why they cannot introduce certain intelligence. There might be on-going investigations or undercover work that means that they cannot produce detailed information. However, the institute’s position is that it would not be correct for the police to point a finger at someone and say, “We don’t want you to get a licence but we’re not telling you why.” Licensing boards cannot really deal with such situations.

It is open to the police to endeavour to introduce police intelligence to licensing boards. In my other capacity as a private practice solicitor, I have appeared at hearings where such intelligence has been led. However, licensing boards find it difficult to respond when there is such a lack of detail. I imagine that licensing boards would be wary of finding a person unfit in those circumstances because they will be aware that applicants who have licences refused on those grounds will probably appeal to the sheriff, and my perception is that a sheriff would say that the board should not have taken the police intelligence into account.

**The Convener:** You said that that is your perception of what a sheriff would do.

**Stephen McGowan:** Yes, indeed. Often, the police will have legitimate concerns about an applicant, and it may well be that the person is involved in serious and organised crime, for example. However, even in those circumstances, if the evidence is not put before the applicant and they are not aware of the charges against them, how legitimately can the licensing board find that they are unfit?

**The Convener:** I will play devil’s advocate. If a person on a licensing board was deemed to be able to get more information round about intelligence, as certain members of police boards have been able to do in the past, would that be an acceptable way round the issue?

**Stephen McGowan:** Not if the applicant is not made aware of the information. It would not be appropriate for licensing board members to be given evidence that no one else has sight of, including the applicant.

We have accepted that licensing decisions should be made by our licensing authorities and not by the police. The institute is concerned that one of the proposals that has been made by other parties—it is not in the bill—is that a police intelligence commissioner should sit on licensing boards, pointing the finger as necessary but without giving any further information. The institute would be firmly opposed to that.

**The Convener:** We have concentrated on police intelligence. Do you differentiate between intelligence and spent convictions?

**Stephen McGowan:** Yes. There is a separate point to be made about spent convictions. Currently, licensing boards are not allowed to consider them. I would think that, before allowing that, the Parliament would have to hear evidence from Police Scotland that the licensed trade had fallen into disrepute as a result of boards not being able to consider spent convictions.

It should be borne in mind that the Rehabilitation of Offenders Act 1974 is there to allow people to move on with their lives. Certain categories of employment are not covered by that act. For example, taxi drivers and private hire drivers are not entitled not to disclose spent convictions. However, to me, there is a difference between a taxi driver, who is in an enclosed space with an individual, and someone who works behind a bar,
in a public place. On that basis, there are different considerations in relation to public protection.

11:30

The Convener: What if it is not a particularly busy bar and, at a particular time, there is only the bar person and one other person there?

Stephen McGowan: If there is evidence that the inability to refer to spent convictions has brought the system into disrepute, I am not aware of it.

The Convener: Do Mr Waterson and Mr Lee have anything to add before I bring in Mr Wilson?

Paul Waterson: We take a middle view. We believe that whether the 1974 act should apply depends on the severity of the crime. That is a decision for the police and the licensing board.

We are of the opinion that to hold a licence is a privilege. The premises manager and the personal licence holder are the most important people in the process. They are the ones who are standing there selling alcohol. We welcome the reintroduction of the fit-and-proper-person test. We should learn from 1976, when there were endless debates about what “fit and proper” meant. What we mean by it should be defined clearly, and if that takes into account training, age, the 1974 act and other elements, that will help us. Leaving the definition of “fit and proper” to people’s discretion caused real problems after 1976.

John Lee: We have no real problems with the reintroduction of the test, but we feel that applicants should be able to see any evidence that is presented against them.

John Wilson: Mr McGowan, I want to tease out the issue of police information being provided to licensing boards. My understanding—you can correct me if I am wrong—is that, at the end of the day, it is up to the board to decide whether to grant a licence. It is not up to the police. The board—at present and, as I understand it, in future—can note any information that is provided by the police in relation to an applicant, such as hard evidence of spent convictions or other issues, but it is at the board’s discretion to decide whether to grant a licence. Is that not the case?

Stephen McGowan: It is certainly down to the licensing board to make the decision. It has the ultimate discretion as to whether to grant a licence. In a practical situation, if someone is before a licensing board and the police say, “We don’t like this guy,” will that prejudice the licensing board, which will not know the full details? I think that that impinges on the right to a fair trial.

John Wilson: I equate this with other issues such as planning. National organisations go along to planning committees and say, “We don’t like this application, so we’re asking you to reject it.” The police and others can go along to a licensing board and say, “We’re not happy with this applicant” based on intelligence, spent convictions or whatever. There is an issue about what is meant by a spent conviction when somebody applies for a licence. Ultimately, however, as you said, the board has final discretion about whether to grant a licence to the applicant.

Stephen McGowan: That is certainly the case. The licensing board has the ultimate discretion. However, I reiterate that the position of the Institute of Licensing is that there is a human rights dimension to the reference to police intelligence. We do not believe that it is correct for an applicant to be faced with an allegation that is not substantiated or evidenced and to have their prospective livelihood held in the balance at a hearing without knowing what the evidence is.

John Wilson: What happens if police intelligence goes to the licensing board and says, “We suspect that this person is involved in serious and organised crime”? It goes back to the point that I raised earlier. A licence application may be being made on behalf of someone who owns the premises and is the landlord, and the police may have evidence that that individual is involved in serious and organised crime. The person who is applying for the licence could be accused of being a front person—

The Convener: A patsy.

John Wilson: —for someone who is involved in serious and organised crime and is effectively using criminal activities to fund the premises.

Stephen McGowan: Licensing boards will hear any evidence and place such weight as they deem to be appropriate on evidence that is presented to them, but the evidence has to be sufficient and probative. If it is neither of those things, the decision can be overturned on appeal.

That happened recently with a case in Aberdeen, Ask Entertainment v Aberdeen licensing board. In that case, a licensee had his licence revoked because of police information that was presented to the licensing board that a director of the licence-holding company was connected to or involved with serious and organised crime. Aberdeen sheriff court overturned that decision on appeal because of the lack of sufficiency and probativity of the evidence that the police had presented. That is the current state of play in case law under the 2005 act.

John Wilson: Thank you.

The Convener: Mr McGowan, you have offered a supplementary submission that will cover transfer provisions, provisional licences and
surrender of licences. The committee would be grateful for that. Would it be possible to get it before Christmas?

Stephen McGowan: Absolutely.

The Convener: Thank you very much.

Stephen McGowan: Consider it a present.

The Convener: Merry Christmas, Mr McGowan.

Alex Rowley: Mr McGowan has set out three areas that he believes we should look further at. Are there any other areas in alcohol licensing where improvements could be made that would make licensing more business friendly and support businesses more?

The Convener: Let us go with Mr McGowan first, if you have anything.

John Lee: Consistency from boards would be helpful. That is one of the main issues that our members face. I know that it is unlikely to happen, but the Scottish Government is looking at extending something called primary authority partnerships, whereby businesses that operate across more than one local authority area can form a partnership with a single local authority for compliance, enforcement, inspection and so on. I know that it is highly unlikely but if, in future, we could do that with alcohol licensing, it would be hugely beneficial to our members. The overall lack of consistency from boards is an on-going issue for our members.

Paul Waterson: I agree. We have always had that problem since the formation of licensing boards. Inconsistency even within one board has raised its head on numerous occasions. Consistency between local licensing boards would be really helpful to us.

Stephen McGowan: I will restrict myself to one request, which is about personal licences. In the past week, committee members might have seen that almost 10,000 personal licences have been revoked as a result of failures in connection with training and notification of training to licensing boards. When almost 10,000 people have had their licences revoked, something must be wrong somewhere.

Section 57 of the bill seeks to address that by removing what I will refer to as the five-year ban on personal licensees who have had their licences revoked in those circumstances. However, the bill might not take effect for some time, so it is incumbent on me to ask Parliament to consider emergency legislation on that point to allow those 10,000 people to reapply for a personal licence rather than having to wait for the bill to be enacted in a year or so.

I am happy to write to the committee on this, but my point is that 10,000 people represents a large section of the licensed trade community. It would be great if the Parliament would consider whether the legislation could be amended, not to restore those licenses, because they have been lost through the licence holders’ own failure to notify the board, but to address the situation because the five-year ban seems draconian.

The Convener: Emergency legislation is not in the gift of the committee. Only the Government can take such a step.

Clare Adamson: I am very new to the committee—I attended my first meeting last week—so I am trying to get up to speed. To help us understand the scale of what you are talking about, perhaps you can tell us how many people hold personal licences in Scotland.

Stephen McGowan: I can only give you an estimate, because there is no national database. We estimate that there are 35,000 to 40,000 personal licence holders across Scotland. At the last count there were 7,600 revocations, but several licensing boards have not yet given out figures, so we anticipate that the number could rise to 10,000 or even more.

Clare Adamson: There are a lot of people who do bar work temporarily—students and young people—to supplement initial jobs and so on. How many of the revocations relate to people who have let the licence lapse as they are no longer in that role?

Stephen McGowan: A percentage of the 10,000 people will have left the trade and in some cases the licensee will have died. Such factors will always be involved, but even if we take into account those who have left the trade and those who are not interested in having a licence for whatever reason, there is still a large number of people out there who have lost their licence as a result of an administrative oversight.

Clare Adamson: Is that an administrative oversight on their part, or on the part of the board?

Stephen McGowan: It is an administrative oversight on their part—they have a duty to undertake a refresher course within a set period and then notify the licensing board that they have done so.

The Convener: I am going to put a stop to this because, at the end of the day, it is outwith the scope of the bill that we are scrutinising and is a call for emergency legislation. You are right to point out who is responsible for the problem.

I have never served on a licensing board, but of the many notes and briefings that we have had on this subject, there is one point that sticks out for me, which is that licensing boards must hold their meetings in public, except that they are allowed to conduct deliberations on a point in private before
making a decision in public. Over the years, in my neck of the woods and elsewhere, I have heard many allegations about what goes on in the backroom. Do you have any comments on the behaviours or perceptions that there are about certain aspects of those bits and pieces of meetings that are held in private?

Stephen McGowan: I have appeared before a great number of licensing boards in Scotland. Some of them retire to consider applications before giving a decision and others will discuss everything in public. Personally, I think that all debates and discussions should be held in public—that is not necessarily the institute’s view, because I have not canvassed the members’ views on that point. It is preferable that applicants can see what the issues are and what issues the board members are concerned about, rather than the board retiring to consider in private.

Paul Waterson: Yes, I agree with that. However, sometimes I have seen boards that have very controversial applications before them not retire and immediately vote without any discussion at all. The members might look at one another before they put up their hands, but that probably means that the application was discussed before the meeting. In such cases, it is working the opposite way round and there are no public discussions.

The Convener: You talked about discussions taking place beforehand, but what about pre-meetings? There have been allegations that pre-meetings have been held in certain areas.

Paul Waterson: Absolutely. Stephen McGowan is right to say that any discussion should be held in public.

The Convener: Mr Lee, do you have a view on that?

John Lee: We would ask for the maximum amount of openness and transparency. The Edinburgh licensing forum is trying to move the board in the direction of podcasting and webcasting all its discussions, so that might be a way forward.

The Convener: On that note, I thank the witnesses for their evidence and close the public part of our meeting to continue our discussion in private.
Scottish Parliament
Local Government and
Regeneration Committee

Wednesday 17 December 2014

[The Convener opened the meeting at 09:30]

Air Weapons and Licensing (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the Local Government and Regeneration Committee’s 34th meeting in 2014. I ask everyone present to switch off mobile phones and other electronic devices, as they affect the broadcasting system. Some committee members may refer to tablets because we provide meeting papers in a digital format.

The first item of business is our fourth oral evidence session on the Air Weapons and Licensing (Scotland) Bill. Two panels of witnesses will discuss the alcohol licensing and scrap metal dealership provisions.

I welcome the first panel: Dr Deborah Shipton, programme lead, Alcohol Focus Scotland; Dr Sonya Scott, consultant in public health medicine, NHS Ayrshire and Arran; Janice Thomson, alcohol and drug partnership co-ordinator, East Renfrewshire alcohol and drug partnership; and Audrey Watson, managing solicitor, West Lothian licensing board. Good morning to you all. Would you like to make any opening statements?

Dr Deborah Shipton (Alcohol Focus Scotland): I thank you for the opportunity to give evidence. Alcohol Focus Scotland is a national charity that works to reduce the harm that is experienced by individuals, families and communities. We know that alcohol causes significant harm in Scotland to those who consume it and to those around them. One in two people in Scotland each year will be affected by alcohol through its effect on family, friends and co-workers, and one in three will have a drinker in their lives. In total, alcohol harm costs Scotland £3.6 billion per year in areas such as health and criminal justice.

The evidence from around the world suggests that tackling the availability of alcohol is the most effective means of addressing alcohol harm, and licensing is one of the key levers that enable us to do that locally. The bill strengthens previous legislation and has the potential to create a robust licensing system. There are issues with how that translates in practice, as was identified in the evaluation of the Licensing (Scotland) Act 2005, and there remains an issue with the accountability and transparency of the current licensing regime, which limits how the system can function. I hope that we will have the opportunity to discuss those points this morning.

Janice Thomson (East Renfrewshire Alcohol and Drug Partnership): Alcohol and drug partnerships are responsible for planning and delivering effective local strategies to prevent and reduce harm from drugs and alcohol on the basis of evidence and need. The alcohol licensing system is an important means through which the Scottish Government’s priorities, as set out in “Changing Scotland’s Relationship with Alcohol: A Framework for Action”, can be achieved. The licensing system makes a key contribution, through the implementation of the licensing policy statement and the overprovision assessment, to supporting the achievement of community planning and alcohol and drug partnership priorities in preventing and reducing harm.

East Renfrewshire ADP welcomes the inclusion of provisions in the bill to criminalise the supply of alcohol to children and young people; to introduce a fit-and-proper-person test for applicants; and to redefine overprovision. We raised issues in our submission regarding the accountability and transparency of boards and how they exercise their function in relation to the licensing policy statement. We recommended that the guidance should be reviewed and amended to assist the proper interpretation and use of the evidence to support effective licensing practice and that boards should provide a summary of how they reached a decision on overprovision. Finally, we recommended that boards should provide an annual report on how they discharge their duties in relation to the licensing policy statement and the five licensing objectives.

The Convener: Would Dr Scott or Ms Watson like to add anything?

Dr Sonya Scott (NHS Ayrshire and Arran): I thank the committee for the opportunity to speak. Like my colleagues, I emphasise that there is good evidence to show an association between availability and harm. In particular, I advocate the retention of the requirement that boards must consider the capacity and number of outlets when thinking about overprovision. The Convener: We will look at overprovision first. What is your experience of how licensing authorities deal with their duty to assess overprovision?

Dr Shipton: We have information on that. AFS reviewed policy statements and found that they tended to lack evidence on how the outcome of the overprovision assessment was derived. More evidence is needed to back up the decisions that
licensing boards make in that respect. My colleagues will talk about the difficulties that licensing boards have in trying to take evidence in order to make such decisions.

Dr Scott: Licensing boards have difficulty understanding what the concept of overprovision means. Initially, our national health service board gave a lot of evidence on levels of harm, mainly at local authority level. There are issues around data on harm and the appropriate geographical level at which we are able to provide it. The data is most robust for us at higher geographical levels.

Another difficulty is transferring from an individual perspective to a population perspective. As a public health doctor, I am interested in the population perspective, which involves aggregate levels of data.

On one level, given that alcohol-related harm is entirely avoidable, one could say that any harm equals overprovision. Overprovision could also be considered in terms of outlet density weighted for capacity, which would be a reasonable measure of availability.

As I said, boards struggle with overprovision, and there is no guidance or criteria on it for them. Many boards have said in their policy statements that their areas are not overprovided for, but there is no justification for why they have reached that decision or any evidence on the process of reaching it.

Janice Thomson: I agree with my colleagues that boards struggle with overprovision. There should be clear guidance on how overprovision should be interpreted.

We have discussed with our local board the data that is required and we have provided comprehensive and robust information. We have looked at the issue from an intermediate data zone level, and we have made clear recommendations that are with the board.

It is evident from looking at the AFS report that there is no clarity about how some boards have made their decisions, about the evidence that was used to underpin what was said about the five licensing objectives in policy statements and about how licensing boards decide on overprovision. Boards struggle, and our role is not only to support them but to be much clearer in guidance about what the process should involve.

Audrey Watson (West Lothian Licensing Board): When our board looked at overprovision last year, we had difficulty in getting evidence from the people whom we contacted. We sent out information to all the parties that are laid out in the guidance on section 142 of the 2005 act, but we got very little back, apart from a response from Police Scotland that identified hotspot areas, which allowed us to identify the localities. We had no response from NHS Lothian and very few up-to-date responses from any other parties.

The Convener: West Lothian licensing board’s submission said that health issues were not taken into account. Is that correct?

Audrey Watson: We have had no evidence, and the guidance makes it very clear that boards must make decisions based on evidence.

The Convener: So NHS Lothian has never given any evidence at all to West Lothian licensing board.

Audrey Watson: It has never given any evidence, nor does it respond to any applications that are sent to it. It has never had a presence at the board.

The Convener: Are you aware of any licensing boards in Lothian to which NHS Lothian has responded?

Audrey Watson: I am not. I can speak only for the past couple of years. At the beginning of 2009, there might have been a presence but, in the two years that I have been managing the team, no one from NHS Lothian has written to us or engaged with us in any way.

The Convener: Are any other witnesses aware of any health authorities contacting boards about overprovision?

Dr Shipton: Scotland has 40 licensing boards, and there is a good opportunity to identify best practice. Some licensing boards have worked very closely with their ADPs and their health boards to develop the evidence, and it is probably worth learning from that. Some licensing boards have developed quite nuanced overprovision statements—for example, the Western Isles board refers to vertical drinking establishments and off-sales-only establishments in an area, so it is responding to the needs in that area.

I understand that engagement with partners varies across the country, but it is worth identifying that there has been progress. The overprovision statement is more than five years old but is fairly new for such policy development. It is worth understanding that there is a lot to be learned but that there is good practice across Scotland.

Dr Scott: Our NHS board has provided significant evidence to the three licensing boards of our partner local authorities. We rely on alcohol and drug ring-fenced moneys, just as other areas of the national health service do to provide alcohol and drugs services. That can become an issue as budgets become tighter.

As Dr Shipton indicated, our work relies on strong relationships, particularly with ADPs. From a public health perspective, we see our work on
alcohol and drugs as being carried out very much through our alcohol and drug partners. I am sure that Ms Thomson can speak about her experience of ADP evidence in East Renfrewshire.

The Convener: When we talk about licensing boards, we all make the mistake of talking about local authorities, and we must remember that licensing boards are quasi-judicial bodies. A local authority might well have its single outcome agreement various things relating to alcohol, but the licensing board is somewhat different. Will you tell us how you deal with licensing boards, rather than with local authorities?

Dr Scott: Absolutely. That was my error and I accept the correction. In our area, the licensing boards are coterminous with the local authorities, which are not subdivided, so I think of them in terms of north, south and east Ayrshire.

The Convener: Thank you.

Cameron Buchanan (Lothian) (Con): Does Audrey Watson think that her board did not get a response to its inquiries because NHS Lothian was reluctant to commit itself? What was the reason why no one replied?

Audrey Watson: I think that it was a lack of understanding as to what was required. The guidance should be updated and made clearer.

West Lothian is alone in having an increasing population. The assumption is that there is overprovision everywhere, but I do not know that that is correct. Our licensing board is very concerned about overconsumption, rather than overprovision, and I think that the committee should look at addressing the problem of overconsumption.

Cameron Buchanan: Do the two aspects go together?

Audrey Watson: Not necessarily. In Armadale in West Lothian, there is a new Asda supermarket. A supermarket was necessary, given the number of new houses that had been built in that area. I do not think that Asda would have opened there if it had not got an alcohol licence. However, there is overconsumption, and boards see that all the time when Police Scotland does review applications. The reality is that it has become socially acceptable for people to fall about drunk every weekend. We see that on closed-circuit television evidence, yet no one is ever prosecuted for it.

The Convener: You said in your submission that health is not being taken into account, so how do we deal with overconsumption versus overprovision? You say that there is a problem of overconsumption but that your board is not considering the health aspects.

Audrey Watson: We could not consider the health aspects because we had no evidence on them. That is not to say that we would not consider them if that evidence were available. We will be consulting our key stakeholders again on whether we should look at overprovision and whether there is evidence. That door was meant to have closed, but we were asked to keep it open until the end of 2014. We will look again at overprovision in West Lothian, subject to any evidence coming forward. If that evidence comes forward, we will carry out a full consultation exercise with all stakeholders.

The Convener: How proactive are you in seeking that evidence? You said that you have talked to stakeholders. If I were on a board—although I was a local authority councillor, I never sat on a licensing board—I would do everything possible to gather the evidence and be proactive in my relationships with the local alcohol and drug partnership and the NHS board to get it. What efforts have you made?

Audrey Watson: We have certainly written to all those stakeholders. We have also attended a number of licensing forum meetings that the stakeholders have been asked to attend to discuss overprovision. We followed that up with more correspondence and did a number of online surveys.

09:45

Cameron Buchanan: I think that we heard from the Scottish Retail Consortium that a supermarket company would not open a supermarket unless it could get an alcohol licence, because alcohol was where it made the biggest profit. Will you comment on that?

Audrey Watson: I cannot comment on that from a commercial or legal perspective, but it appears to me that a supermarket would not come unless it got an alcohol licence.

John Wilson (Central Scotland) (Ind): I put it on record that I served on a licensing board. It is about 32 years since I did that, so my experience is a bit dated.

I note that the panel includes two witnesses from smaller local authority areas. How do the witnesses feel that we should use the overprovision criteria not only in local authorities such as West Lothian Council and East Renfrewshire Council but in Scottish Borders Council, Dumfries and Galloway Council and Highland Council? How do we determine overprovision if some outlying villages are not served by an off-licence or other licensed premises? How do we deal with that in the criteria that we set for overprovision without denying
 communities the opportunity to participate in social drinking?

**Janice Thomson:** When we define overprovision, we consider the totality of the area, break it down into intermediate zones and align them with the licensing board regional areas. That exercise considers the number and capacity of licensed on-sales and off-sales premises in the area.

In East Renfrewshire, we included in that consideration the range of health harms and alcohol-related crime and violence. We also undertook an extensive consultation with the public and licensees on overprovision. There was a triangulation of quantitative and qualitative evidence.

Depending on the level of health harm and alcohol-related crime, boards might decide on the basis of the evidence in their overprovision assessment that the whole area is overprovided. However, that does not preclude existing premises from trading. The overprovision assessment might also state that only certain designated areas are overprovided. That does not preclude areas, including rural areas, from having access to alcohol.

When we did our assessment, we factored in people’s mobility. We asked how long it took them to access on-sales or off-sales in their area and by what means they travelled to get there. We found that all areas in our area were well served with alcohol, but we have not recommended that the whole area be treated as overprovided.

**Audrey Watson:** We have had evidence of a number of licensed premises surrendering their licences because operating was no longer commercially viable for them. Against that background, it is difficult to see where there is overprovision.

We have some areas that are high in social deprivation, which will perhaps increase the NHS figures. Not an awful lot of alcohol is available in those areas, but one of the biggest Asda stores in the country is a short taxi ride away.

**The Convener:** Is a lot of the surrendering of licences down to the fact that big chains have moved in? Is it mainly off-sales premises rather than on-sales premises that have surrendered licences?

**Audrey Watson:** It is on-sales and off-sales premises.

**Dr Shipton:** I agree with Ms Thomson on responding to local needs. That is the advantage of the overprovision statement.

The research by Dr Shortt from the University of Edinburgh that was presented to the committee at a previous meeting identified the outlet density throughout Scotland. That showed that some large areas in some licensing board areas have high levels of provision but, in other licensing board areas, that happens in pockets.

Overprovision statements can respond to that, as I have demonstrated. The Western Isles and other boards have responded with nuanced overprovision statements. Boards can protect rural areas and respond to high levels of provision in, for example, urban areas.

**Dr Scott:** I agree with what Dr Shipton just said. To answer the question directly, I think that density is a good way of considering availability. I argue that there is strong evidence of an association between availability, as it relates to overprovision, and consumption and harm. Provision, in terms of availability, and consumption levels are interrelated. That can be considered comparatively. Outlets per capita, weighted for the capacity of outlets, would be a more robust measure than just the number of outlets, but levels of harm also need to be considered. In Scotland, our levels of harm are twice those in England and Wales. About 72 per cent of that is accounted for by off-sales. There are issues about types of premises but, in general, I suggest that we are overprovided for across Scotland.

**John Wilson:** In her response to the question about the surrender of licences, Ms Watson seemed to equate that with the opening of a large supermarket. Dr Scott said that the level of off-sales consumption is potentially greater than the level of on-sales consumption. Surely that suggests that we should look more carefully at the selling of alcohol by large supermarkets rather than by some of the smaller premises. Ms Watson seemed to suggest that licensees were surrendering their licences because of the opening of a large supermarket that is selling alcohol. Surely licensing boards should be seriously asking major retailers—such as the one that you alluded to in Bathgate or Livingston—about those off-sales, rather than just restricting the on-sales trade.

**Audrey Watson:** Perhaps I confused members. There are two Asda stores in West Lothian. The biggest one is in Livingston, and there is a smaller one in a new development in Armadale.

I struggle with this issue, because there is no fixed licensing objective that says that boards must reduce the consumption of alcohol. We would all agree that that would be a good thing, but I do not think that it is for boards to tackle that problem on their own. A multi-agency task force must be set up. If Scotland wants to reduce alcohol consumption, it needs to do something about it. We have made drink-driving unacceptable, and we should make public
drunkenness unacceptable, too. People learn behaviour, and they see from the time that they go to their prom that being drunk is acceptable. That certainly was not the case when I was growing up. I do not know how we have got here.

John Wilson: On that issue, are you saying that the bill that is before us does not go far enough?

Audrey Watson: The 2005 act was meant to regulate the sale of alcohol, not restrict the sale of alcohol. I think that some people in the alcohol-focus organisations would wish that that was not the case. However, when cases go before the courts, they are subject to the interpretation of what is in the legislation and, as I said, there is nothing in the legislation that says that boards have to take measures to reduce the consumption of alcohol.

Dr Scott: The five licensing objectives all have a health and wellbeing component. Obviously, there is an explicit objective of “protecting and improving public health”.

From a population perspective, with regard to the issue that we are discussing, the best way of achieving that objective is to reduce the availability of alcohol. I think that there is a discrepancy between the individual perspective and the population perspective.

Dr Shipton: I agree. The licensing regime has a public interest purpose. We must acknowledge that the level of harm that is caused through alcohol, and the level of alcohol consumption, in Scotland are high in comparison with the levels in the United Kingdom and western Europe. The public interest purpose is to reduce those levels, and two of the main levers to do that are availability and price.

In order to serve the public interest purpose, I agree that it is important to reduce availability and thereby consumption and harm. If that was not the case, a different requirement from the licensing regime would possibly be needed.

The Convener: I return to Ms Watson’s point about boards having no remit to reduce consumption and the point that I made to Dr Scott about the separation of boards, as quasi-judicial bodies, from local authorities. Ms Watson also talked about a multi-agency approach. However, at this time, because it is not up to boards to reduce consumption, how can a multi-agency approach be taken and progressed by the boards?

Audrey Watson: There are a number of licensing offences, including being drunk on licensed premises and serving a drunk person. However, because of the difficulties in interpreting what “drunk” means legally, those offences are prosecuted infrequently. In the past five years, we have seen only two cases of licence holders being prosecuted for licensing offences. However, when you consider the CCTV evidence that boards have seen of drunk people staggering out of night clubs at 2 and 3 in the morning, the two do not add up.

I have personal knowledge of cases in which the procurator fiscal has decided that it is not in the public interest to prosecute a licensing offence. Attitudes need to be changed. Although boards can play their part, it is not for them to reduce consumption.

The Convener: Does the West Lothian board go out with the police and visit premises?

Audrey Watson: Yes, we have done that on occasion.

The Convener: How often?

Audrey Watson: In every board cycle.

The Convener: So once every four or five years.

Audrey Watson: Yes. However, there are inherent difficulties in that approach. For example, if there are difficulties at a particular premises that then come before the board in a review and a member takes into account something that they have seen on a night when they were out with the police rather than on a night that we are talking about in the review, that is legally challengeable.

The Convener: I will play devil’s advocate. I am sorry that we keep coming back to you, Ms Watson. One of the licensing objectives under the 2005 act, at section 4(1)(d), is “protecting and improving public health”.

Does overconsumption not fall under that objective? Should boards not have an interest in overconsumption?

Audrey Watson: Yes, boards should have an interest in that. Under the legislation, boards should be notified if licence holders have been prosecuted for selling drink to drunk people and should then be able to take appropriate action. However, we have found a number of reviews for late-night premises in which there is CCTV evidence of a lot of drunk people milling around, but when the lawyers representing the licence holder ask the police whether anyone was prosecuted, the answer is no.

The Convener: In that case, surely the board should be more proactive and go out with the police to see what is going on. Would that not change attitudes?

Audrey Watson: Yes, but that behaviour is going on everywhere—on every street where there is a licensed premises, when the sun goes down. We all know that; it has become socially acceptable.
Dr Scott: It is important to remember that environments influence behaviour. We need to make healthy choices easy choices. From a population health perspective, that is often the best way in which to not only achieve good population averages, but narrow inequalities.

We know that our most deprived citizens are particularly affected by alcohol-related harm—there is certainly a deprivation gradient. From an inequalities perspective, the levers that boards have at their discretion to reduce availability are the best way of not only narrowing inequalities, but reducing overall harm.

On the idea of creating healthy environments, boards have powers there, but perhaps they are not being used as effectively as they could be. It is coming out strongly in Ms Watson’s evidence that availability is not just about physical availability and price competition—it also has an impact on social norms.

John Wilson: Ms Watson, I want to tease out an answer on a point that you raised: the issue of boards and the evidence that is presented to boards. One question that has come up in connection with the bill concerns police intelligence being presented to boards. Tying in to your comment about the number of convictions that take place in licensed premises, a national newspaper reported yesterday that at a premises in a west of Scotland local authority area there have been 94 visits by the police, and the board has finally decided to take action.

Can you give any examples in which the police have tried to take action against a licensee and the courts have been reluctant to prosecute?

10:00

Audrey Watson: I am afraid I cannot, because I do not know what cases are referred for prosecution.

John Wilson: Are there none in West Lothian?

Audrey Watson: I would not know what was referred for prosecution. All I can talk to you about is what happens when there is a review of a licence in West Lothian. We have had a number of reviews recently of late-night premises and, out of those cases, very few have been referred for prosecution. Of those that have been referred, not all have resulted in a prosecution.

John Wilson: In terms of police notifying the board of a potential prosecution or court action, is there no co-ordinated approach between the police and the board? Do the police notify the board that a licensee or premises has been reported to the procurator fiscal for court action?

Audrey Watson: Yes. The legislation allows for the police to ask for a review. In a review application, there will often be reference to the matters, or at least some of the matters, that are under review being referred for prosecution.

There is the difficulty that the board then has to liaise with the Procurator Fiscal Service on whether a hearing can be held, given that the matter could be sub judice and we cannot ask people to come and force them to speak about matters that they have pled not guilty to in a criminal court.

Clare Adamson (Central Scotland) (SNP): Given the commercial viability of premises, the difficulties that are caused in terms of what has been said about the licensing boards, and the effect that a large supermarket can have on an area, has any consideration been given to how minimum unit pricing of alcohol might change the situation? Have the licensing boards given any consideration to that?

Will minimum unit pricing of alcohol reduce consumption?

The Convener: Shall we start with Dr Shipton?

Dr Shipton: I cannot answer on how the licensing boards have reacted to the possibility of minimum unit pricing.

We find that there is overwhelming evidence that minimum unit pricing would reduce consumption. A high density of licensing availability results in price competition locally, which drives down price. Minimum unit pricing would help to prevent that from happening at the local level, so we would welcome it.

Dr Scott: I cannot comment on the specific impact of minimum unit pricing on supermarkets. However, in the most recent “Monitoring and Evaluating Scotland’s Alcohol Strategy” report, available sales data shows a difference between England and Wales and Scotland that is driven by about 72 per cent off-sales, and cheaper spirits make up the bulk of those sales. There is fantastic evidence that price is a good lever for reducing population levels of consumption and therefore harm, and minimum unit pricing is likely to have an impact on that area of sales.

Janice Thomson: From an alcohol and drug perspective, we wholly support minimum unit pricing for the reasons that were just cited. There is very strong evidence that its impacts on both price and availability support reductions in population-level consumption and reduce harm.

Audrey Watson: In our discussions on the policy statement we touched on minimum unit pricing, which the board was very much in favour of.
Our board is concerned about how some of the trade has found a way round the legislation that was supposed to prevent happy hours. The legislation, which is quite complex, has a condition on price variations but not on price reductions. Some premises in our area have brought in cheaper alcohol that they do not usually sell, so they are not varying the price. For example, they are selling Glen’s vodka at £1 a shot rather than Smirnoff at £2.20. That definitely needs to be tightened up.

Alex Rowley (Cowdenbeath) (Lab): I want to pick up on a number of points, the first of which is about on-licences and off-licences. Last week we heard from the licensing trade, and I know that a number of pubs would point to figures that I saw the other week, which show that although the number of pints that are being consumed in Scotland has fallen massively, the amount of alcohol that is being consumed has not, and a lot of pubs are closing. Is there a difference to be looked at in terms of off-sales versus the local pub?

Janice Thomson: In the overprovision assessment, we looked at on-sales and off-sales and at capacity. We looked at the period from 2010 to 2013 to see where the growth had been, and we found that it was not in on-sales but in off-sales. Again, it is important to consider the evidence so that when we are reviewing what is happening, or is required to happen, in a local area we have that vital information to hand.

Audrey Watson: Our board has had evidence that a number of late-night premises have been struggling recently as a result of people preloading—that is, drinking at home before going out very late. The alcohol for that is freely available from the big supermarkets and online sources.

Dr Shipton: On-sales and off-sales obviously have different requirements or issues, so I agree with Ms Thomson in that regard. The difference in price between on-sales and off-sales has widened; that has driven the general increase of 60 per cent in the availability of alcohol in Scotland since the 1960s. Alcohol has become a lot more affordable, which is driven by off-sales, so that is something local that needs to be looked at.

There is evidence around on-sales for local areas. A more generic comment is that on-sales contribute to the social norm, so a high provision of on-sales dictates what is available for people to do in an area. That is a local issue that might also need to be looked at.

Dr Scott: I agree that both on-sales and off-sales contribute to the availability of alcohol. Good data for both would help us to have a more nuanced assessment. Returning to the initial point in my written submission, I think that we need to retain looking at the number and the capacity of outlets. It would be good to have data for capacity-weighted outlets and to look at that in terms of population density. We could then subdivide that by the numbers of off-sales and on-sales.

Alex Rowley: Licensing boards seem to be taking into consideration a real mix of data out there. Perhaps we could ask about best practice, convener. There is a suggestion that there is good practice, so we could ask the witnesses to make that information available.

The Convener: Certainly.

Alex Rowley: Someone mentioned the role of ADPs in community planning partnerships. Could that role improve the situation?

Dr Shipton: Notwithstanding the comments about the separation between the licensing board and the local authority, I think that for the process to work appropriately and effectively there needs to be some working with the other planning structures, whether for community planning or land planning. That works very well in some areas. Some policy statements make reference to single outcome agreements and so on, which I think is appropriate to allow more joined-up working within the regime.

Dr Scott: There is synergy between the licensing board objectives and what community planning partners are trying to achieve. Both would be strengthened by greater consideration of each other’s objectives. It would be good for boards to have stronger links with ADPs and with the wider community planning infrastructure.

Janice Thomson: The ADP reports directly into community planning on the delivery of seven national outcomes. As Dr Scott highlighted, there is synergy between the licensing policy statement and overprovision assessment. We have that embedded within our delivery plan and therefore report annually to the community planning partnership on how we are progressing with supporting evidence on the overprovision assessment and so on.

Audrey Watson: I do not have any knowledge of community planning partnerships.

Alex Rowley: We might need to explore that area, given that we are looking at the Community Empowerment (Scotland) Bill and the role of community planning partnerships. From the licensing community point of view, there do not seem to be a lot of links. We would expect the ADPs to have the kind of information that would be useful when licensing boards are looking at overprovision. I just flag that area up for us for the future.
The other week, the Scottish Government was talking about a social responsibility tax. I asked the finance secretary whether the Government had any intentions of bringing anything forward because I wonder about the funding. The idea is that a local authority would be able to put a penny on a bottle of wine, for example, as a social responsibility tax to raise money that could be reinvested. A lot of the work on supporting people with alcohol and drugs problems is done by ADPs and the third sector. Is there a gap in funding? Problems with alcohol seem to be getting worse, so is funding available to those organisations so that they can support people?

The Convener: We are starting to stray out of scope but I will allow the question because it is necessary to get the answers.

Janice Thomson: Funding is available and is provided directly by the Government so that alcohol and drugs problems in an area can be addressed. This always comes back to the evidence. There is a great need for support for individuals with alcohol problems—a recent study shows that probably about 25 per cent of people are accessing alcohol treatment services and need support. However, within the economic constraints that we are all working under, generally there is never enough money to support the true unmet need.

Within the ADP, there is funding from all the partners. There is direct mainstream funding and funding directly from the council as well as funding from other budgets for prevention and early intervention. We clearly define what the budgets are and how they are spent on prevention and early intervention, treatment and supporting people into recovery. We have a financial framework in place that details that spend.

Dr Scott: From the preventative medicine point of view, there is a perennial tension between meeting the need to tackle raging fires, or immediate problems, and carving out a little bit of money for primary prevention, to stop coals that are not yet lit becoming raging fires—if you will excuse the analogy. I can see the attraction of a social responsibility levy. As we have already indicated, price is a very good way of reducing availability, as happened with tobacco. Increasing prices will have an impact on sales, consumption and harm. If that money could be ring fenced for preventative medicine, that would be all the better.

Dr Shipton: There is also the possibility of fees to recoup some of the costs. England has a late-night levy. We have heard of cases of the police taking lots of calls to certain premises. Several other countries have explored the idea of the licensing fee being directly related to the harms that might be caused by the sale of the product from that premises, so that could be explored. There is a large public sector bill to pay as a result of overconsumption; whether the cost could be recouped in some way would be worth exploring.

10:15
Audrey Watson: Again, that is outwith my area of expertise.

Alex Rowley: I have a comment to make on Audrey Watson's earlier point. Last week, people from the licensed trade made it clear to us that a conflict exists when a large supermarket chain wants to set up a supermarket in an area. There might well be overprovision, but given that the members of a licensing board will want to get re-elected, which of them will refuse an application from a supermarket that will provide hundreds of jobs? That tension has been brought to our attention and needs to be looked at in the context of overprovision.

I know that the witnesses broadly welcome the proposals in the bill but, from a policy maker's point of view, what is missing? What would be top of your agenda?

Dr Shipton: Accountability and transparency would be top of our agenda. Currently, there is no independent oversight of the performance of the licensing boards and how they carry out their functions. We have no outcomes, no monitoring data is reported and no review of licensing boards' performance is carried out internally or externally. We know that licensing boards are required to produce a policy, an overprovision statement and a public register of licensing data. Six months after the deadline, 11 of the 40 licensing boards still had not published statements and 17 had not published overprovision statements. More recently, using standard online searching mechanisms, we found 13 public registers of licensing data out of a possible 40. Given that it is a policy-driven process, not having a policy has huge implications for how a licensing board can function.

Information is absolutely key to monitoring performance locally and nationally. Without it, we have an information deficit and an accountability deficit. The committee heard from the University of Edinburgh researchers, and we know that NHS Health Scotland had to put in a freedom of information request to get the data that it required for its evaluation. We think it unlikely that stakeholders would be able to put in regular freedom of information requests to get such information.

Along with others, we ask for two main outcomes. First, we want outcomes data to be reported. We are not asking for any extra data but we feel that the data that the licensing boards obtain through the application process needs to be
collated and made publicly available. We also think that they should have a duty to report annually on their performance against outcome measures and, more important, against their policy statements. At the moment, we have no way of identifying that. Those are the two things that we would push for.

**Dr Scott:** I am in complete agreement with Dr Shipton. We need much better data on the decisions that are being made, the number of licences, the capacity of premises and their opening hours. That should all be freely available to members of the public, to whom the boards are ultimately accountable. An annual report would be very useful, as would public consideration of whether decisions have achieved the boards’ objectives.

On the tension between economic regeneration and public health in licensing boards’ objectives, it is important to remember that what is good for health is not simply work but good work. Some consideration must be given to the types of jobs that are being brought into the economy. There is no evidence that increasing the number of licences, whether through off-sales, large supermarkets or other premises, has a net benefit. In fact, when we hear that the economy incurs costs of between £3 billion and £5 billion, I might suggest that, overall, such increases are an economic drain.

**Janice Thomson:** I agree with Dr Shipton and Dr Scott on the need to improve the accountability and transparency of licensing boards, particularly in relation to what evidence is considered and how, and who is consulted. Published policy statements that are underpinned by evidence and which promote the licensing objectives provide a clear guide to licensing practice and support consistent and well-reasoned decision making, which makes the licensing process more transparent.

It is important that licensing boards publish annual reports, which could be considered at the joint meeting of the licensing forum. It is there to keep under review the ways in which licensing boards exercise their functions and that meeting is a key opportunity to show how the boards exercise their functions under the 2005 act and promote the licensing objectives.

**Audrey Watson:** I would like the guidance to be looked at and to be much clearer, and I would also like a board’s powers to refuse applications to be much clearer to take account of the issues that members have discussed.

**The Convener:** Section 55 is on the annual financial report. Proposed new section 9A(4) of the 2005 act states:

“A report under this section may also include such other information about the exercise of the Licensing Board’s functions as they consider appropriate.”

Should the issues we are discussing be brought up under that section?

**Dr Shipton:** Yes. It is probably worth being quite explicit about that. As I said, under the 2005 act, licensing boards are required to produce a public register of licensing data. That has not been—and is not—efficient. Not all licensing boards have an accessible register and the data that is in registers is not appropriate for monitoring. It is great that that provision is in the bill, but there will need to be more guidance—

**The Convener:** It needs to be teased out.

**Dr Shipton:** Exactly.

**The Convener:** Okay—thank you. I have another question before we move away from the issues that Mr Rowley has raised. It would be helpful if the witnesses could provide us with examples of good and bad practice. I understand that licensing boards get together every year at a conference, shindig or whatever it may be. Is good practice shared at those events?

**Audrey Watson:** Do you mean the Alcohol Focus Scotland conference?

**The Convener:** Is that what it is called? I have no idea.

**Audrey Watson:** I have never been to one.

**The Convener:** Dr Shipton, do you want to comment?

**Dr Shipton:** There are quite a few licensing conferences.

**The Convener:** I do not think that it is one run by Alcohol Focus Scotland.

**Dr Shipton:** I do not think so. I think it is a different one.

**The Convener:** Okay. We will leave that, then.

Finally on the issues that Mr Rowley raised, is it a problem that licensing boards are quasi-judicial bodies that seem to be apart from other things such as community planning partnerships? A yes or no answer will suffice, and if you do not have any comment, that is also fine.

**Dr Shipton:** I cannot speak to the legal side of the separation; I would struggle to speak to the details of that. There needs to be some working together to address how that would happen while accommodating the legal side, but I am afraid that I cannot comment.

**The Convener:** The legal side may cause barriers. Ms Watson, you are probably the expert on the quasi-judicial aspect.
Audrey Watson: Except that I do not really know how anything else works. [Laughter.]

The Convener: Okay—that is very honest.

Audrey Watson: All I can say is that if a decision that a licensing board takes is not open to scrutiny by Alcohol Focus and others, it is open to scrutiny by the courts. When the courts deal with a licensing matter, they do not know how it works; they just look at the law and at the words used, and the words need to be tightened up.

The Convener: Okay. Before we move away from accountability and transparency, I note that licensing boards are supposed to take all their decisions in public, but there are often backroom discussions on certain points. Should that stop?

Audrey Watson: No. It is essential that there is a forum in which discussions can take place and legal advice can be given in private, as long as that is then reiterated in public and parties have an opportunity to comment.

The Convener: Is it only legal advice that is given in private to boards?

Audrey Watson: It is on my watch.

The Convener: Does anybody else have a comment on that?

Dr Scott: I would prefer it to be done in public, but I can see that there could be justification for doing that. If we had annual reports that detailed decision making, the rationale and how that contributes to meeting the objectives, that would provide us with a level of comfort with regard to accountability.

The Convener: Grand. Thank you.

Anne McTaggart (Glasgow) (Lab): I go back to the point that one of you made way back at the beginning about the proposal to create a criminal offence of supplying alcohol to someone under 18 in a public place. Does that go far enough?

The Convener: Let us start with Ms Thomson, please.

Janice Thomson: Whether it goes far enough will come down to enforcement. The proposal is very welcome—I know from conversations that we have had that it has been welcomed by Police Scotland.

Dr Scott: I am not sure how it could go further. I probably welcome it, too. Things like that send a strong message about what is and is not acceptable. I would be interested to hear what further steps there might be, but it is a starting point.

Dr Shipton: I agree. I would probably want to know what the other steps were before discussing it further. I welcome the proposal, though.

Anne McTaggart: Do you think that what is proposed now is fine and will do the job?

Dr Shipton: My understanding is that it was a response to difficulties that the police were having—you can take away alcohol, but it can be supplied again.

Audrey Watson: I wonder how it will be enforced and whether Police Scotland has sufficient numbers to enforce all the various licensing offences which, as I have said before, are not being enforced.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning. Picking up on issues of accountability and transparency mentioned by all members of the panel, I want to talk about overprovision, and whether it should be defined and who should define it. We heard in response to Mr Wilson’s questions that there is quite a variation throughout Scotland. Wherever you go, the situation is different. Dr Shipton mentioned that the Western Isles has a clear definition of overprovision, which applies locally.

Who should define overprovision in a locality? Should it be defined in the bill or should the bill say that it should be defined and that the board should define it? Who is best placed to define what we mean by overprovision?

Dr Shipton: It is right that it is part of the licensing board’s policy statement to define overprovision for its area. However, it would be quite good to have a national steer—and support and greater guidance—on how overprovision should be defined. The current guidance, which relates to the 2005 act, is ambiguous about the level of evidence of overprovision that is required. That has made it quite challenging for some licensing boards to evidence the overprovision in their area. There is a need for all stakeholders to support the licensing board to develop a definition. Alcohol Focus Scotland has a toolkit for that, which is helpful, but there needs to be a national steer, too.

Dr Scott: I agree. Some national guidance is probably needed. Overprovision is a tricky concept. As I have said, it can be considered from the point of view of availability, weighted for capacity, number of outlets and the density of those outlets, or from the point of view of harm.

From a community empowerment perspective, we must engage and fully inform the community. We want communities to understand the evidence, to think about what harm it considers acceptable and what cost it is willing to pay for that harm, and to relate that to availability.

Further to that are the difficulties relating to geographical boundaries. The geographical area that one board serves is clearly boundaryed.
could have an area that is fantastic in its overprovision assessment and regulation and another that is not, but you cannot control what happens at the boundary. A national perspective is needed, too.

The Convener: I am a bit confused about the guidance that you are talking about. At the end of the day, courts will make decisions if they think that licensing boards are in the wrong. How likely is it that courts will overrule guidance that is not, as Mr Coffey indicated, included in legislation? Ms Watson, you are probably best placed to answer that.

10:30

Audrey Watson: The 2005 act says that the licensing board must follow the guidance in doing its job and taking decisions, so I think that the courts would welcome more detailed guidance.

The Convener: Would the boards take cognisance of that guidance in their decision making?

Audrey Watson: I think so. The members of the board are local authority elected representatives; they are not specialists in any of the matters that my colleagues are specialists in. Neither am I—I am a lawyer and I advise them, but I can only look at what the guidance says. Certainly in West Lothian, the people we have asked for evidence have struggled to know what sort of evidence we are looking for. It needs to come from the Government.

The Convener: Ms Thomson, I am sorry about leaping in there.

Janice Thomson: It is fine.

I concur that the guidance in relation to overprovision, particularly on the data that can be used in making an assessment of the evidence, should be strengthened. That would help boards to make the decision. Across Scotland, the extent to which public health data is used in practice varies, and there are varying interpretations of the evidence by licensing boards. The licensing policy outcome does not always reflect the health evidence that has been presented.

We actively engage with the licensing board on the data that we will provide. We also consult our local communities about overprovision. That is vital, because we can have the statistics at hand, but we also need the community’s views. The engagement and discussion have been very good.

Willie Coffey: If we do not get clear or rigorous national guidance along the lines that you hope for or expect, should the bill make a requirement that the criteria must be defined locally? Janice Thomson said that she would like boards to report and summarise how they come to their decisions. If the licensees and the public do not know what criteria are applied in making the decision, is there an issue with that? Should people be able to see that part of the process and what the criteria are? They could be different across Scotland.

Janice Thomson: The issue will always be about how areas assess overprovision and about the evidence that is considered in relation to alcohol-related harm, as well as the capacity and availability of licensed premises across the area. It will be down to licensing boards to make the final decision. We can provide the evidence and make recommendations that are based on the health indicators, the alcohol-related crime indicators and what the public say. We make our recommendation to the board and then it is down to the board to consider that. Because we have provided evidence, if the board does not accept that recommendation, we expect it to justify that. It is a transparent two-way process.

Willie Coffey: Should local licensees and the public be able to see in advance what overprovision means in their locality?

Janice Thomson: Yes. Well—

Willie Coffey: Should there be a clear statement of what is meant by that?

Janice Thomson: There is a clear statement. The board must provide or circulate for comment and consultation a draft overprovision assessment so that people have the opportunity to see it. We have engaged the public in wider discussions about alcohol availability in their area, as a precursor to the evidence.

Willie Coffey: Dr Scott, in your opening remarks, you said that you are here to argue for the retention of the numbers and capacity elements in the assessment. Do you foresee any circumstances in which a board would not include issues about numbers and capacity when assessing overprovision? Are you worried that boards might exclude that?

Dr Scott: Yes, I am worried, given the variation in practice that already exists. It is not an insubstantial piece of work to gather and collate that information—we currently do not have a database, which is the second step and which would be useful—so I am concerned that boards might not do it. As Dr Shipton has said, a number of policy statements that say that areas are overprovided for have no back-up on how that conclusion was reached or what was considered. It is essential that that remains a must rather than a may.

The Convener: There are a number of other questions. I hope that our witnesses are okay with
that. I want to extend this questioning a little if I can, to get everything in.

**Clare Adamson:** At our evidence session last week, representation was made about changes in the way in which private members’ clubs are operating. Because such premises are subject to a less vigorous regime than an on-trade pub or club, occasional licences may have an impact. It has been said that such situations are not being taken into account when overprovision is being considered by the licensing boards. I would like to get your comments and your view on that.

**Audrey Watson:** As we do not have an overprovision policy—because we never got the evidence—it is difficult for me to talk about that. However, I can say that there are a number of members’ clubs in West Lothian that cater for the needs of a number of people in the more rural areas.

**Janice Thomson:** The East Renfrewshire alcohol and drug partnership has concerns regarding the rules and use of occasional licences. The current rules create a loophole enabling the legal requirements for fully licensed premises to be bypassed. That allows commercial premises to be run under a series of occasional licences, which is inequitable to premises with a permanent licence. Furthermore, that can increase the availability of alcohol in an area where that is not presently taken into account for overprovision assessment purposes.

We would advocate that both members’ clubs and occasional licences need to be included in the overprovision assessment, as they both increase the availability of alcohol.

**Dr Scott:** I agree: it is the aggregate level of availability that you want to consider. You want the assessment to be as robust as possible, so every contributor to that availability should be considered. I understand that the number of occasional licences is not insubstantial. Anecdotally, I am aware that they are potentially having an impact on young people in our area.

**Dr Shipton:** I agree that both need to be included in the overprovision assessment.

**Clare Adamson:** You cannot comment on overprovision, Ms Watson, but could you give us an indication of whether you have seen an increase in the number of occasional licences for members’ clubs?

**Audrey Watson:** Yes, I have. That has been the case over the past year, and it is largely due to Police Scotland taking an interest in members’ clubs and how they are run. It would appear, anecdotally, that a number of clubs have effectively been running as if they were not members’ clubs. The police have been telling them that they need to get occasional licences when they are opening their doors to everyone, which they do at this time of year in particular. On the one hand, that allows them to operate legally but, on the other hand, I can see that that might be a problem from an overprovision perspective.

The other problem that I have involves the large number of occasional licences, which are very difficult to deal with over a short timescale. We cannot get people to tell us soon enough that they are arranging an event, even if they have been arranging it for months. They might come to us only at the very end of the process, and they pay a fee of only £10.

We had one occasional licence recently for a school that was running an event. The organisers wanted to sell drink at half-time. If that is equated with having 250 people in a large venue, I do not see how we can count those events up and say that they are the same.

**Dr Shipton:** It comes back to the data. If we have an issue with capacity, there is something that could be done. We do not know how the number of occasional licences has changed over time. If we could obtain good outcomes data, it would be publicly available at the click of a button, and we could identify how the number of occasional licences has changed over time. We need to get better at identifying capacity for all types of licences.

**The Convener:** Surely the definition of “occasional” might need to be considered, too. Events where a school sells alcohol at half-time, for example, are probably very occasional. Judging by what we have been hearing, however, such licensing is regular, rather than occasional, when it comes to the licences for some places. Would that be fair to say? I see that everyone is nodding.

**John Wilson:** I have a quick comment on that: the problem is that a lot of members’ clubs have changed their operational structures to allow them to open up to the public because of the trading pressures on their sustainability.

I want to tackle an issue raised in the West Lothian licensing board’s submission in relation to “minor variation”. Ms Watson can maybe address this point. The submission states that extending the area of licensed premises can be considered to be a minor variation—I assume that that would include, for example, a beer garden. How would that relate to the issue of the supply of alcohol in public places? For example, a local bar could decide to stick a beer garden on to the front of the premises that would be next to shops.

In terms of the supply of alcohol in public places, in Glasgow in the summer every bar in Buchanan Street, Sauchiehall Street, Gordon...
Street and Ingram Street seems to want to open up for the consumption of alcohol in what would be to my mind a public place. How does that equate with responsible drinking and its promotion, particularly for those under the age of 18? One of the issues that we should be trying to address is the responsible consumption of alcohol. Total abolition or promoting temperance might be a worthy cause, but surely we should be promoting responsible alcohol consumption, particularly to those under the age of 18.

Audrey Watson: There is an example in my submission of a recent variation that crossed my desk that people in the local area might have objected to if they had been notified of it as a major variation, because it was about the extension of outside drinking. However, because of the way which the legislation is written and because the premises concerned already had a small outside drinking area, the variation was not regarded as the premises seeking to increase its capacity; in effect, it wanted everyone outside on a good day rather than inside, so the variation fell under the description of a minor variation and not a major variation.

That contrasts with an off-sales premises such as a convenience store that wants to open earlier than licensed hours, which is regarded as a major variation that must be advertised. When we have advertised such variations recently, people have written in and said that they are objecting to the sale of alcohol. However, it is not the sale of alcohol that is changing but only the opening hours of the convenience store. There is an issue that should be looked at.

The Convener: Does anyone else wish to comment on that?

Dr Scott: That example is about a potential increase in capacity. The contribution in terms of additional capacity of such an application to the capacity of the aggregate amount of licences could be considered from an objective and public health perspective. In terms of social norms, the more availability we have, the greater the social norm. I therefore agree that there is a concern from a young person perspective.

The Convener: Okay.

John Wilson: Sorry, convener, but Ms Watson just said that the minor variation in her example was for accommodating the premises’ existing clientele rather than for increasing the clientele. Do we not therefore have a contradiction in what a minor variation of a licence is?

As I said, in city centres during the summer a lot of pedestrianised areas are opened up for the consumption of alcohol. It is a matter of how we get the message over in terms of what is regarded as a minor variation. I am not sure how city centre premises apply for the outside areas for the consumption of alcohol, but I would argue that those areas are in a public place in a city centre that people walk through. The issue is the consumption of alcohol in public places versus that in licensed premises and what message the former sends out to young people in particular, given Dr Scott’s comment about social norms.

The Convener: Who wants to comment on that? I know that it is difficult because different rules apply in different areas in terms of scenarios for the licensing of outside areas. Am I right?

10:45

Audrey Watson: Our policy is that such areas should operate only until 9 pm. Of course, it is only a policy, and people can apply to open later than that.

A lot of the discussion has focused on applications coming before the board, but the difficulty is that because licences last for ever some premises simply do not come to the board’s attention unless there is a review. The way things are meant to happen is that we hear about premises only if they have a problem; otherwise, we have to assume that the outside areas are being run properly and that licence holders are taking appropriate steps to ensure, through monitoring by either closed-circuit television or staff positioned in the areas, that neither underage drinking nor overconsumption is taking place.

Dr Shipton: It all underlines the need for the policy and, indeed, for the policy to be adhered to. This kind of issue can be detailed for a particular local area.

The Convener: What are your views, if any, on plans to reintroduce the fit-and-proper-person test?

Dr Shipton: Licensing boards should be able to determine an applicant’s suitability, but we are concerned that the factors in question have not been specified. We therefore recommend that, in order to provide some clarity and transparency, boards identify the relevant factors, perhaps in a non-exhaustive list in their policy statement.

Dr Scott: I agree that reintroducing the test is a reasonable step, and I also think that boards should be required to specify the factors that they will consider. As for spent convictions, they are more of an issue for police and criminal justice colleagues to comment on.

Janice Thomson: From an alcohol and drug partnership perspective, we wholly agree with the reintroduction of the fit-and-proper-person test, and we believe that there should be clarity about the considerations that would be made in that respect. We, too, feel that spent convictions...
Audrey Watson: West Lothian licensing board wholly supports the proposal, but we are concerned about the suggestion that Police Scotland bring forward information that might have come to it from different sources about something that amounts to less than a conviction. After all, a decision of the board can be appealed if the board has proceeded on the basis of an incorrect material fact. Things can become difficult if the police tell us, “Well, we think he’s done this” or “We think he’s involved in organised crime,” because all the individual has to say is, “I’m not—prove it.”

The Convener: What about situations in which the licence is held by someone other than the owner of the premises?

Audrey Watson: Again, that is a difficulty that we have experienced locally.

Ironically, the licence owner is the only person in the system who does not need to be trained; the designated premises manager must be trained, but sometimes there is no correlation between the two individuals. We have had a lot of issues with people who are de facto managers but who are not the designated premises manager. I therefore think that the definition of “designated premises manager”—or “premises manager”, as they are termed in the legislation—needs to be looked at to ensure that we are talking about the person who is in control of the premises.

The Convener: Thank you very much for your evidence. It would be useful if you could supply us with examples of best practice and, indeed, bad practice. We have run a fair bit over time, so I thank you for your forbearance.

I suspend the meeting. We will recommence at 11 am.

10:49

Meeting suspended.

11:00

On resuming—

The Convener: I welcome our second panel of witnesses. Jake Adam is director of John R Adam & Sons Ltd, Ivor Williamson is managing director of Rosefield Salvage Ltd, Ian Hetherington is director general of the British Metals Recycling Association and Joe McCann is a site manager for Stephen Dalton Scrap Metal Merchants.

Does anyone have any opening remarks?

Ian Hetherington (British Metals Recycling Association): Thank you for listening to our evidence today. We appreciate that we will be discussing a rather different topic from the one that the committee was dealing with earlier. We recognise that, as a group, you will probably not be familiar with the scrap metal industry, so I will say a few words about the industry.

The recovery and processing of metals from consumer goods, demolished buildings, industrial processes and, more recently—this is particularly important in Scotland—the oil industry are a critical part of Scotland’s infrastructure. Every tonne of metal that is collected and processed has one destination: it goes into a steelworks or a metalworks and is reprocessed to become what it was in the first place. It is a perpetual and continuous process.

Metal recyclers and scrap metal dealers are interchangeable terms—we are not proud or worried about either name. Metal recyclers process about 1.3 million tonnes of metal every year in Scotland. The industry’s net turnover contributes about £500 million to the Scottish economy. In the current climate, with the demise of the steel industry in Scotland, about £300 million in foreign exchange is generated every year from the sale of recycled metal to metalworks overseas.

The industry has an unusual shape—a fact that is important and relevant to licensing of the industry. There are about 200,000 Scottish individuals, small businesses and large businesses who sell and supply scrap to our members, but our members sell to only about 200 to 350 customers. It is an upside-down industry, in that we have multiple suppliers and a very small number of end customers. The bill sets out to regulate the way in which we conduct our business with that large number of suppliers. It is unusual for a licence to dictate buying practices—licences typically dictate how products or services are sold.

Our members actively support the intentions and principles in the Air Weapons and Licensing (Scotland) Bill that relate to metal dealers. All the comments that we have submitted and the evidence that we provide today are aimed at supporting the intentions and strengthening the bill, as well as at making it more practical to implement and enforce.

However, we believe that the bill could be a great deal clearer. As it stands, enforcement of the provisions would be extremely difficult for the police and licensing authorities. Crucially, from our point of view, that will potentially disadvantage law-abiding metal recyclers in favour of those who work on the margins of the law.
Ivor Williamson (Rosefield Salvage Ltd): I would like to talk about our business. My business, Rosefield Salvage, is part of the Williamson Group, which is a family-owned metal recycling company that was founded in 1923. We are a fourth-generation firm and operate on five sites throughout Scotland, from Peterhead and Fraserburgh in the north to Uddingston and Dumfries in the south. We bought Rosefield Salvage in January 1995 and moved from its existing Dumfries town centre site to a fully concreted recycling facility on the edge of town. When we took over the business it had two employees. It now has 10 employees, and we have increased the tonnage from 5,000 tonnes to 25,000 tonnes. In monetary terms, that is an increase in turnover from about £200,000 to £19 million, and we have been in the top 20 companies in Scottish Business Insider magazine for the past three years.

At present, we have a wide variety of customers, ranging from the small householder who comes in with poles from his garden shed to people recycling aluminium cans to large multinational companies disposing of hundreds of tonnes of metal a week. The majority of our business is not cash based but is paid on account, but we also have a number of smaller profitable trades that we call door trades, with about 20 to 40 customers per day coming in and getting cash, ranging from householders disposing of aluminium cans to plumbers disposing of a redundant heating system. Those trades are generally paid in cash for convenience and customer ease. Most customers do not carry identification as such, and we see them only once or twice a year, depending on the nature of their business.

We currently service the Dumfries and Galloway area by buying ferrous and non-ferrous metals, and we have large machines that chop and bale the ferrous metal, which is then transported to larger ferrous metal merchants, who generally export it abroad. The higher value non-ferrous metals we bale, sort and export abroad ourselves in containers. We hope that the new proposals will bring tight regulation and strong enforcement, without which there would be a reduction in business. For the legislation to work, we want it to cut metal theft, but we also want it to incorporate companies such as car breakers, waste companies and demolition contractors that also deal with the metal industry but are not regulated in the same way.

Jake Adam (John R Adam & Sons Ltd): Thank you, Mr Convener, for the opportunity to be here today.

The Convener: I do not want to be a pedant, but you just need to call me “convener”. It is a good Scottish term that can apply to a man or a woman.

Jake Adam: Very true. Thank you, convener.

I am a director of J R Adam & Sons Ltd. We are a family business that is based in Glasgow, with two facilities in Glasgow and one in Ayrshire. We employ more than 70 people and are one of the five exporters in Scotland, and we export scrap metal all over the world. We export steel scrap mainly to Europe, to sell on to steel mills, which then remelt it into reinforcing bar for the construction industry. Over the past four years, our turnover has been more than £70 million, and in 2009 we won a Queen’s award for enterprise for international trade.

The Convener: Mr McCann, do you want to add anything?

Joe McCann (Stephen Dalton Scrap Metal Merchants): I agree in many respects with what the other gentlemen have said. I have been in the industry for 60 years and I have seen a lot of changes—some for the good and some for the not so good. In my opinion, the current licensing regime is such that, as Mr Williamson said, there are a lot of operators out there who do not work under the same conditions that we work under. We have to look at how we can stop it and where we can get co-operation, but we will not get cooperation if we are not on a level playing field.

The Convener: Let us start with a question about police investigation of metal theft. What is your experience of that, Mr Williamson?

Ivor Williamson: Generally, if something has been stolen, the police appear at your premises three or four days later, or sometimes a week later. We have even had them in six months after something has been reported stolen, which obviously makes it hard to identify whether it has been in our yard. I find that we do not have too big a problem with metal theft. Obviously we do not encourage particularly dodgy people to come into our yard. We want to get on with the police—we show them our records and we generally do not have a problem. The biggest problem is the length of time it takes from when something is reported stolen for the police to visit the yard.

The Convener: Let us look at some of the thefts that have taken place of late in my neck of the woods, which is the north-east of Scotland. We have seen thefts from railway lines, which put the Aberdeen to Inverness line out of action for a fair while, and quite a lot of thefts from electricity substations. If anybody comes to your yard with anything that you think is a bit suspect, do you contact the police?

Ivor Williamson: Yes. Lately the police have been in and given us a number to contact them on
locally if anything suspect comes in. We have a
text message system to contact them quickly. We are
working with the police.

You mentioned the railway line thefts. People
think that the cable went abroad and that the thefts
were a result of organised crime, which is a major
problem. Organised crime could come into the
metal business and the waste business. If you ban
the use of cash, organised crime might provide an
avenue through which dealers can have cash to
pay people, if you get what I mean. That is why we
want to get everybody under one bill.

Jake Adam: I back up what Ivor Williamson
said. We fully support and co-operate with the
police on thefts of materials.

Sometimes the police come in quite quickly after
a theft—a matter of days. At other times they
come weeks after the theft has taken place. On a
busy day we buy from other merchants, industry,
the demolition industry and councils, all the way
down to householders, and 800 tonnes of material
can go through our yards. If stolen material comes in—either directly from the person who stole it or
from another merchant—it can often have passed
through the system by the time the police come, if
they come a couple of weeks after the theft. However, as Mr Williamson said, if we suspect
that anything is stolen we reject it and contact the
police.

Joe McCann: I can speak only about
Edinburgh. In Edinburgh we have the metal
broker’s licence system, which contains rules and
conditions that we adhere to. They say what time
we can open, what time we shut, what we can buy
and what we cannot buy. There is a limit on
weights. We have had the system for many years
and we have had no problems. The police can
come in every day, if they want. They do not have
to get a warrant and they can come in at any time
of the day. Most members of the scrap industry do
the same thing: they let the police come in at any
time. We are quite happy with that and we co-
operate with the police.

Ivan Hetherton: It is worth saying that the
industry runs an online metal theft alert system;
when people notify us of a theft we notify all our
members. The issue comes down to speed: if we
do not know about it because people do not tell
us, material gets lost within hours.

BT is one of the largest suppliers of high-value
copper cable to the industry; its network renewal
programme is in large part being funded through
the sale of surplus cable. We are seeing a flow of
that material. Electricity companies such as
Scottish Power and SSE sell a large quantity of
cable to the industry, so differentiating between
cable that is legitimately sold as part of renewal
work and that which is stolen is sometimes
difficult.

BT has really sorted it. Our members know that
unless they have a contract with BT, they do not
handle BT cable. However, lots of the other
materials are not easy to identify as stolen. Just
because it is cable does not mean that it is stolen.
Very often it is legitimate.

We work very closely with the network
companies and the other provisioning companies.
If they were to tighten up their disposal routes that
would make it a lot easier for our members to
identify material that is actually stolen.

The Convener: You say that BT has contracts
and that you deal with BT only through contracts.
Surely before that system was in place and in your
dealings with other companies you would deal with
company representatives.

Ian Hetherton: I will use Network Rail as an
example, rather than BT, because BT has
tightened up so much recently.

Network Rail’s small works contracts—which
are not small by my standards—are let through
main contractors to something like 400
subcontractors across the UK. That means that
some very small subcontractors handle the
material—it is not just Network Rail or main
contractors. There is therefore a problem with
planned disposal. However, the situation is getting
better, and those companies have become more
aware of the issue.

11:15

The Convener: Do you think that the cash ban,
which is part of the bill, will be successful in
removing incentives for metal theft?

Ivor Williamson: The cash ban would take
away a portion of the incentive. There is always
the corner of the trade that works outside the legal
system. If you take away the cash, people who
have historically been used to being paid in cash
will still want to be paid in cash and will look for
another avenue through which to get cash.
Obviously, we want to clamp down on that. We do
not want other companies, such as waste
companies, dealing with metal. Demolition
companies get involved in dealing with metal, and
you get people running around buying catalytic
converters from garages and so on. There are
many different avenues people can go down to get
cash. Because the public have been used to
getting cash for metal, if you suddenly say, “Right,
you are only getting a cheque or money paid into
your account,” they may well go to a garage that
will give them cash. That means that the properly
licensed scrapyard will be hurt, but people will still
be being paid cash.
I have heard rumours that people who are involved in organised crime are getting into the trade in England, because they have access to amounts of cash. Obviously, we do not want that to happen up here.

**Jake Adam:** The bill will help, but it has to be tightened up dramatically. As Mr Williamson suggested, the definition of metal has to be tightened up to include catalytic converters, waste electrical equipment and end-of-life vehicles. The definition of a metal dealer also has to be tightened up. At the moment, metal dealers will have to adhere to the bill but, as was touched on by Mr Williamson, companies that are on the periphery of the industry—demolition companies, waste contractors, vehicle dismantlers—will not have to, which would mean that there would still be an opportunity for scrap metal to be purchased for cash.

**Joe McCann:** Basically, the bill means that people will be paid by cheque. However, as you are probably well aware, you cannot put your car into a garage and pay by cheque. That is not allowed and they will not accept it.

Cash is everybody’s right. Employees can ask to be paid in cash rather than by cheque. That is their right. It is the same in the scrap industry. If someone comes in and says, “I’m sorry but I don’t want to take your cheque; I’d like cash, please,” what are you going to do? Do you turn them away? No. You pay them in cash. To criminalise that would be totally out of order, because it would mean that we would get into a situation where Tesco would say that it will not take cash, and that people must pay by card. What if they do not have a card? You will get into the realms of banking and other things that you do not want to get into. Cash is cash. People are entitled to be paid in cash, if they wish.

Should we tighten up the rules? Yes. All the gentlemen here and everyone else in the scrap trade are quite happy for things to be tightened up. We look forward to that. However, we must be on a level playing field. As has been said, there are elements out there who will pay cash. People who would be paid by us with a cheque will go elsewhere, perhaps to the criminal element. Do you want that? No. You are looking for everyone to be back on a level playing field.

**Ian Hetherington:** The industry in Scotland is clear that it wants a range of provisions in the bill and that it fully accepts that the restrictions on payment are part of a suite of provisions that it would support. I differ from Joe McCann on this one. The industry is generally supportive of the changes, with all the provisos that you have heard from my colleagues.

**The Convener:** Will stopping cash payments help to catch those folks on the periphery who might be up to some criminal activity?

**Ian Hetherington:** Unless changing the law serves to embrace all the players that you have heard about, it will not do the job. If the bill is amended to cover all the loopholes that we are talking about, it will serve to help with that. We regard the identity provisions in the bill as critical to the process; they will reduce the industry’s provision of any outlet for stolen material, which is what we all want. The ID provisions have driven down crime and levels of metal theft in certain parts of England.

As part of a suite of measures, the provisions will, we hope, bear down on criminal activity generally.

**Cameron Buchanan:** As one of the few members who have actually been to a scrapyard, I have gained some superficial knowledge. The problem with cheques is that people who have been paid by cheque can go next door and cash the cheque immediately. It can be very difficult to stop cheques. However, cash is a problem, too. You keep talking about a level playing field. Could we have a maximum amount—£100, for example—that people could be paid in cash? Would that be an idea? There are two questions there really. The point about cheques is quite interesting because cheques are out of fashion now.

I also wonder whether the requirement for photographic ID would put off some of the less-hardened criminals, because they do not like having their picture taken.

**Ivor Williamson:** We all have CCTV. If the bill comes in and we have to identify customers using their photographic ID, we will have a copy of their ID and they will be on CCTV, too.

However, someone in a rural area—in the Highlands, for example—who has a couple of washing machines that are worth £5 and which they will not get money for will just throw them away at the side of the road. The requirement might therefore cause a problem in rural areas, although perhaps not in populated areas around the central belt.

I made a suggestion, but my suggestion got voted down at our meeting because people wanted to talk about the complete cash ban. They are worried about people coming in 10 times in one day and so on.

Cash is going the same way as cheque cashing, given that somebody who gets a cheque can go to the high street and cash it. Personally, I will not cash cheques in future. There will be a lot of different legislation on cheque cashing, but that
will probably work only in the big cities such as Glasgow and Edinburgh anyway; I do not think that there will be a lot of uptake in rural areas.

I go back to the fact that you do not want anybody to pay cash. A car breaker might tell you that a scrap car is worth £100, but if it has five bags of copper in the back, it could be worth £500. It is all those little loopholes that we want to get rid of.

Jake Adam: Having photographic ID will help dramatically with the cheque-cashing issue. If my business issues a cheque and the customer is able to go to a cheque-cashing facility in Glasgow, that facility will require full identification so there will be a paper trail and full traceability. The big issue is that the material can be traced from the yard that it was sold to: there will be information on the name of the person who the material was bought from and the cheque-cashing facility will be able to identify the person who cashed the cheque. That is a slightly different issue, but, like Mr Williamson, we will not be looking to put cheque-cashing facilities on our premises.

For us, cash is a hassle. It is an expense and, more than anything, it is a security risk. When it goes, it will make our day-to-day business easier to run.

Joe McCann: I agree that cash is a hassle but, at the same time, we have to look at people's rights. When people come in, their registration, name, address and the time that they arrived are taken down. They are on CCTV on three different occasions: as they come into the yard, as they go down to the store and when they come back to be paid. They sign for their cash and they are on CCTV. Running the tape back is very simple. We do it, but the question is whether everyone else is doing it—and the answer is no. The small man does not have to put in all this equipment, and we do.

Ian Hetherington: The issue of cheques has been dealt with, but I note that the de minimis payment arrangement was trialled in France, although the trial was abandoned after six months and a full cash ban was brought in. People were getting round the system with multiple transactions and it was impossible to trace things. If we had a £100 limit, we would see a lot of people suddenly doing four or five £100 transactions in a day. Incidentally, in France, it was not only the police but the industry that deemed the arrangement to be completely unworkable, and the industry sought to have it transferred to a full ban.

Cameron Buchanan: I do not necessarily agree. Surely if photographic ID was required you would be able to spot the guy coming in every now and again.

Ian Hetherington: Yes, but the problem is that, unless you outlaw multiple transactions, you will need a very complex set of rules. Like all these things, unless the law is very clear, it will be difficult for industry people, local authorities and, more important, the police to enforce and understand it. Things can get very complex.

Cameron Buchanan: But what if, as in Mr Williamson's washing machine example, someone who comes to dump a washing machine cannot get cash and just says, "Sod it—I'll dump it in the river"? Should there not be a cash limit for those situations? Should we not apply a bit of common sense?

Ivor Williamson: The only problem is that that person could come to my yard and get £100, go to Jake Adam's yard and get another £100 and so on. He could split one load into four or five and go to four or five different yards.

Cameron Buchanan: Does that matter?

Ivor Williamson: It means that cash is still getting out there. If people want to steal material, they might think, "I can steal only £500-worth, but I can split it up and sell it to five different yards." I do not want to encourage that practice; I am just playing devil's advocate. In rural areas in the north of Scotland, where there are fewer scrapyards, people get money for the metal that they bring into yards. If we say, "We can take it, but by the time I check your ID and everything, it'll be worth nothing," they will tell us, "You're making a fortune out of this," and just dump whatever it is on the way home. In fact, that is what happens when the price of metal goes down: people think that you are making a fortune. This is also about people's perception.

John Wilson: Everybody around the table picked up on the convener's example of BT and Network Rail losing materials, but the main concern for many of the public is the brass plaque, the miners' memorial statue or whatever that is stolen and sold for scrap. How is the scrap metal industry challenging the perception that it is supporting that kind of crime?

Ivor Williamson: We share the distress caused by such actions. Many of our members subscribe to some of those monuments; in fact, in many cases where such thefts have occurred, our members have actually raised the money to replace them—not, I should add, out of guilt, but out of a sense of association. Such thefts are relatively rare but they are deeply distressing. It is perfectly clear that if a plaque with a name on it or a memorial were to be presented at a responsible scrap metal yard, it would be rejected and, I presume, the incident would be reported quickly.

As it happens, the most notable outbreak of such incidents was in London—it reached the
national press—and it came down to one particular London yard that set out, in a deeply immoral way, to collect these things. The distress that is caused by those thefts is enormous, as is the impact, but the volumes of metal involved are so small that no responsible dealer wants them.

11:30
The theft of lead from church roofs is a classic example of something that causes immense community distress. We have done a lot with the lead industry to try to control high-grade heavy lead and make our members aware of the sorts of grades that might have come from historic buildings. We have done a great deal to counter the problem. I do not say that that addresses all the perception issues—that is a longer journey, but the bill is part of that journey.

Joe McCann: When people talk about scrap metal being stolen, the story is often elaborated—as if by a storyteller—and things get out of hand. You would be lucky if one half of half a per cent of stolen metal goes into the panel members’ yards, because they have got too much to lose. That is where I am coming from. If you have too much to lose, you do not take the metal. It is as simple as that.

Here in Edinburgh, we have a system where the police come in and tell us what has gone missing and then ask to look around the yard. The yard is open to them and we are happy with that. There is a similar system in Glasgow, although they do not have the same rules.

We therefore get a wee bit upset when people turn around and say, “Ah, the scappies—they’re a bunch of crooks and ne’er do wells.” I hold my head up. I am very proud of the scrap industry. I can go back to when we were called junkmen. Everyone thinks that the scrap metal trade is run by crooks, but it is not.

These gentlemen here have families who have been in the scrap trade for years and years. I have 60-odd years’ experience in the scrap trade. That is how we were brought up: you had to learn from the bottom and work your way up. If someone comes in with stolen material, you show them the door or phone the police, and when the police come in, they are quite happy.

The committee will find that the police have no problems with the majority of scrap merchants, particularly the big ones. How many of the big scrap merchants have been seen in court? None—apart from me, way back; I was in court about 40-odd years ago.

If the Parliament wants to stop illegal scrap, you need to sit and listen to these chaps—go around and do it slowly, bit by bit, to pull out where things have gone wrong. We know where the system has gone wrong, but do you listen? No.

The Convener: You are here today so that we can listen. Where has the system gone wrong, Mr McCann?

Joe McCann: The system has gone wrong because organisations such as the Scottish Environment Protection Agency and the Department for Environment, Food and Rural Affairs created the waste industry. To me—the other gentlemen may not agree—scrap is not waste, but is a product that we have to process. We spend a lot of money on equipment. Even in the waste industry—I am also in that industry—we take the material in and what we recover goes in skips and back into the system. If we did not do that, it would cost the country a lot of money.

At one time, the scrap merchants were seen as the blue-eyed boys because we saved the country money by recycling—although I do not like that word. We brought in material that went to the steelworks, the brass foundries and so forth. We recycled and we saved the country a lot of money. Now, certain elements are causing us problems and that reflects on us all.

I get very passionate about this and when I read some of the legislation that goes through, I get upset. I would rather sit and talk to you. The police stop the illegal ones, but they say, “Oh, I’ve got a waste carrier’s licence,” so the police say, “Okay, on you go,” because they are licensed. We are the ones who have to take all the flak, although we abide by the law and make sure that everything goes well.

The Convener: It is up to us to try to safeguard legitimate traders. However, the problem that we have—the reason why the bill is in front of us—is that there are folk out there who are obviously not trading legitimately and we must ensure that the miners’ memorials, the railway infrastructure, the drain covers and so on do not disappear, causing lots of problems. We are trying to close down non-legitimate, criminal traders.

We are here to hear your views, and you can feed in anything that you like. We are not playing about with the scrutiny of the bill—it is up to us to ensure that it is as right as it possibly can be. The last thing that we want is to have to revisit it at a later date after having found that the problems have not been resolved.

Jake Adam: The industry fully supports the bill. I go back to the point about the brass plaques. In my opinion, if the bill is passed as currently drafted, theft will still occur because the industries that I have mentioned, which are on the periphery of the scrap trade and the metal recycling trade, will fall outwith the scope of the bill. There has been a lot in the press recently, particularly in
Scotland from SEPA, about organised crime in the waste industry. The waste industry will fall outwith the scope of the bill as drafted, and if it is passed as drafted, it will not eradicate metal theft.

Ivor Williamson: I fully agree with Mr Adam. As Mr McCann set out, the bigger scrapyards are fixed entities and the police can check their CCTV records and everything. It is the smaller, maybe itinerant, traders who are possibly causing problems, and it is harder to police the ones who are on the outskirts of the law and who mostly do not want to abide by the law. Those are the ones that we are worried about. As Mr Adam says, we have to include businesses and companies that deal in metal but which do not fall within the scope of the bill.

The Convener: It would be useful for the committee if you were to list those dealers for us—all the associated trades that deal in metal—so that we could look at the matter in some depth. It would be extremely useful if you could do that, whether via Mr Hetherington’s organisation or individually.

Ivor Williamson: That is not a problem.

John Wilson: Thank you for your responses. As the convener has outlined, the committee is here to listen to your concerns about the legislation, because we need to ensure that we get the legislation right and relay your message to the Scottish Government. Part of the purpose of today’s evidence session is to allow us to hear what the industry thinks so that we can challenge the Government on what it puts forward.

Mr McCann, in your written submission you raise a concern over the separation of the waste management licence and the scrap metal broker’s licence. Can you expand on that so that we fully understand what you mean and what impact that separation might have on tackling the underlying problem of scrap metal theft?

Joe McCann: The waste licensing that is done through SEPA or DEFRA is entirely different from the broker’s licence. Anybody can apply for SEPA’s licence, as there are no hard and fast rules. That is for the likes of the car breakers, who can open 24/7, whereas we are curtailed to work between 7 in the morning and 5 at night, and between 7 in the morning and 12 noon on Saturdays. We cannot buy anything outside those hours—that is when we shut down. We adhere to that and are quite happy with it, but the ones on the periphery can work 24/7. They can walk into a pub and buy scrap. They will not pay with cash; they will pay with a cheque. Then they sell it elsewhere. Because they have a licence from SEPA, they are legal—they have a licence for recycling—but SEPA can also come into our yards and say that it is not happy with this or that and we have to spend money whereas the others do not. We are being penalised for what is going on with material that is being stolen and handled, and we are asking for a level playing field.

As I keep saying to you, I am happy with the system that we have for the broker’s licence. We have too much to lose. If scrap is worth £100 a tonne and you buy it at £50 a tonne over the door, and the scrap is stolen, you are charged with reset. You lose your cash and your scrap, and you can even lose your licence. That applies just to us, though; it does not apply to those who have licences from SEPA. There should be a level playing field. That is all that I am asking. If we can get the people who set out the laws to look closely, they will see that there is an unbelievable number of anomalies.

John Wilson: Mr McCann said that a broker could lose their licence. Mr Williamson’s submission suggests that somebody found breaking the licensing conditions should be struck off after three misdemeanours. That gives the impression that the current penalties—including the possibility of losing your licence—are not strong enough. Do you think that the prosecution system and the licensing system are strong enough to deal with these issues?

I take on board what all the witnesses have said. You are all legitimate businesses who are running legitimate businesses. The issue is how we tackle the illegitimate businesses that are causing most of the problems. As the convener said, we hear reports about theft from British Telecom and Network Rail. We have seen the footage on the television. The scrap is loaded into a container, the container is shipped off to a port and it is in China or India within a couple of weeks. It does not go through any system in Scotland or the rest of the UK. How do we tackle that? Can you assure us that you are fully behind consideration of the penalties and other opportunities that we have to curtail this type of trade?

Ivor Williamson: I think that what Mr McCann was getting at was that you need a waste carrier’s licence for carrying what is classed as waste, whether it is rubbish from a building site or scrap metal. That licence is about £140 from SEPA, for three years. If you are a plumber or you deal in metal, you need a waste carrier’s licence. A lot of itinerant and smaller dealers have those. However, it is only recently that the police have realised that a broker’s licence is also needed for dealing in metal. The police were not up to speed on a lot of the legislation.

SEPA gives out a licence to waste carriers, whereas local authorities give out what they call a metal dealer’s licence—which most of us have—or an exemption to a metal dealer’s licence. The
smaller ones have a broker’s licence. If we have a metal dealer’s licence, we have opening times and times we are shut and so on. Those things are fixed, whereas the itinerants, who have a broker’s licence, are travelling around and are harder to police. The policing of that is a big problem.

SEPA has problems with other things. SEPA visits us only three or four times a year. It has a league that sets out how good our yards are. I suppose that the number of people that SEPA has available to check these things is all down to finances.

The three-stage idea was my suggestion—if somebody is dealing at the fringes and they get caught three times, they get their licence taken away. It was just a personal opinion. I thought that it might work.

Jake Adam: I believe that in England, if an individual or a company is charged with metal theft, they lose their licence. That should be the same for Scotland. A bill went through in England two years ago. It had a number of errors, which have since been changed. I believe that the legislation has been tightened up. However, Mr Hetherington is probably best placed to comment on the situation in England.

The Convener: Let us hear from Mr Hetherington, then, please.

11:45

Ian Hetherington: We heard about fit-and-proper-person tests in the previous evidence session this morning. We, too, would like a fit-and-proper-person test to be put in place under the Air Weapons and Licensing (Scotland) Bill. We would also like some clear definition of what criteria a licensing authority could use—a non-exclusive list of offences, for example, which the authority could or should take into account.

We think that the sentencing levels that have been set out in the Civic Government (Scotland) Act 1982, as amended, are inadequate. The rewards for people acting illegally on the margins of the business are high—potentially very high—and we believe that a level 3 fine is not an adequate disincentive. In fact, it is at a level at which certain groups of people may well decide to take the hit occasionally, as the rewards are worth it. The levels of fine for certain offences are not adequate. Acting without a licence should be the number 1 offence and should attract the maximum fine.

On the whole, we believe that the levels are not adequate as they are currently defined. A licensing authority should have the ability to refuse a licence on the basis of a fit-and-proper-person test or, importantly, to revoke a licence if a certain range of offences need to be taken into account.

We would also ask that those who have been found guilty of serious environmental offences, not just criminal offences, should have those taken into account, so that we do not have a proliferation of people moving from waste crime into metal theft and back again, which is one of the dangers.

Joe McCann: It comes back to the need to examine these things very closely. I could show you paperwork going back to the waste directives. There are hundreds of waste-related provisions. Because scrap is classified as waste, anybody can apply for a waste transfer licence and a waste carrier’s licence. That is wrong. There must be proper definitions.

This is just my opinion about the other aspect of waste. This is nothing to do with scrap metal being stolen; it comes down to HM Revenue and Customs looking for ways to collect revenue for itself. It is so obvious it is unbelievable, but HMRC passes the buck. I would love to see the trade in stolen metals stopped, but that is only possible if the rules are tightened up.

The Convener: I point out that, at this time, the Parliament has no powers over HMRC.

Joe McCann: I understand that.

The Convener: I wish it were different. We are considering this matter entirely because of the difficulties that many organisations and people in general are having to suffer on a daily basis because of metal thefts. Ones that the committee has highlighted involve rail infrastructure, drains and memorial statues. That has nothing to do with scrap metal being stolen; it comes down to HM Revenue and Customs (HMRC); it is about the inconvenience that is being caused to people across the country.

Alex Rowley: I welcome the witnesses. Thank you for coming.

There is talk about the need for a national register of scrap metal dealers. Could you say a bit about that?

Ian Hetherington: We recognise that licensing will be a local process. However, unlike a lot of activities that are licensed by local authorities, this activity is not really localised. It is highly mobile. The sites of the gentlemen concerned are static. They are in the locations that they are in, and they can therefore be looked at and inspected. However, they may well be buying from businesses or suppliers from all over Scotland. By definition, they will be selling all over Scotland and beyond.

Itinerant collectors—I hate the word “itinerant”, which I think is pejorative; I would prefer to refer to them as mobile collectors, if we could have that amended at some point—are highly mobile and will work in multiple authority areas, so it is essential that there is a central and easily accessible place where the public, the police and
site operators who are buying from those people can identify who is a legitimate, licensed operator in the industry. That would require local authorities to be under an obligation to provide the data, which could be collated in a single place and provided online.

Let us bear in mind that a lot of the public sell or give metal to collectors, sometimes on their own doorstep, and it is right that they should know that the people who are working in their communities doing door-to-door collecting are legitimate. That way, we might also be able to deal a death blow to the unfortunate occurrence of multiple local collectors going round housing estates in some of our conurbations.

It is an essential part of enforcement to have a national register, because if the police pull over a mobile collector somewhere west of Edinburgh, they will have no means of knowing whether he is legitimately licensed, or which authority to apply to to determine that. Having somebody present their licence within five days is not adequate. A licence should be displayed on premises or on a vehicle, and should be visible to the public, so that people can see immediately whether someone is licensed or not, and the police can then take action immediately, because anybody who has not displayed a licence will be committing an offence and the police can at least take the load away from them. The sort of sanction that we need is quick, effective policing.

SEPA is prepared, in principle, to undertake that work and to provide the register, which could sit alongside its existing registers, so it could be done. There is a cost issue, but that is probably open to discussion.

The Convener: Does anyone else have comments on the national register?

Ivor Williamson: At the moment, anybody can sell any metal to any person. If 98 per cent of the country wants to abide by the law, could you make a law that makes it illegal to sell metal to anybody who is not a properly registered dealer or scrap merchant? The majority of the public will want to deal with somebody who is properly registered. I do not know whether that could be fitted into the bill; it is just an idea.

The Convener: I do not know whether that is practical, but we have noted the suggestion.

Willie Coffey: Mr Hetherington, you mentioned the metal theft alert system in your opening remarks. Could you tell us more about that? Does it operate in Scotland or only in England, and do all dealers participate in it? Is it a visual system or a text system?

Ian Hetherington: It is an online alert system. Virtually all our members work with smartphones, which are de rigueur, so they all get a message identifying the theft, preferably including a photograph of the item or material that has been stolen. That message goes out within an hour of us being alerted to the theft.

Willie Coffey: Has it been effective so far in tracing items that have been stolen?

Ian Hetherington: Yes, it has, but it is a function of speed. If we get a really good description and get the message out within hours, we often get a response from a member saying that they have rejected the load or that they have seen a vehicle that looks familiar.

Willie Coffey: Who gets that information? Do the police get it?

Ian Hetherington: No, the police do not get it. It is aimed at the trade, because that is where we assume the stolen material is destined. As the convener has said, we are now beginning to see some direct exports from Scotland, but that is a different issue.

Willie Coffey: In terms of numbers, it cannot be the case that all traders, dealers and individuals are participating in the scheme. It would be great if they were, but how do we widen it to bring in more participants?

Ian Hetherington: We have just formed an industry partnership with a group that has a similar but smaller system that is technically much better than ours. We have raised some money to spread it out. The system will be linked to the police and will provide a police notification service.

The problem is speed and the time that it takes the notification to get to the police. I am not criticising the police; it is a resource issue. The information is not getting out quickly enough. As colleagues have said, if we are not notified within the day, it is difficult to track things.

We have done a lot with BT, and there is more that we can do with SSE and with Scottish Power, which has not been up to speed.

We are envisaging rolling the system out far more widely, beyond our own membership, which is also important.

Jake Adam: It is a case of closing down the avenues for the unscrupulous side of the trade. If someone offers you some lovely copper cable, you are not going to buy it, you are not going to give them cash for it and you do not want it, because it is not what you do. If the bill goes through as it is and the metal-recycling industry gets a full identification scheme and no longer deals in cash, but other industries on the periphery are still able to operate outwith the laws, there will still be a market for the unscrupulously procured material. If all those other industries are pulled into
the bill, we hope that there will not be much of a market left for that material, if there is one at all. That should shut it down. People are not going to steal material if they cannot get money for it.

Willie Coffey: That was very helpful.

Clare Adamson: I will push a wee bit on one issue. You have all given examples of how your legitimate businesses operate and comply with all the regulations. I am not an expert on the industry, but my understanding from what has been said is that, in the pyramid of recycling, it is the ones at the bottom who do not have to comply with the same regulations that you have to.

Mr Hetherington mentioned smartphones; obviously technology is becoming much cheaper. In your opinion, are there regulations that you as larger operating businesses have to comply with that could be pushed down easily to the broker level?

Ian Hetherington: Yes, we believe that all of the regulations are quite manageable right the way through the trade, from the larger sites to the mobile collector. We have tested this idea across the border, mainly in Wales, where mobile collectors have been encouraged to use smartphones to photograph the material that they buy or collect. In our view, they should take some identification of where they have collected material, photograph addresses, and photograph payment methods if they are paying for material. All of that can be recorded on a phone and transferred very simply—this is not Superman stuff—and at no additional cost for equipment. It does take a bit of time, but it is time well spent.

All the provisions that we see here on identification and on payment restrictions should be applied at all levels of the industry and on the fringes of the industry, in our view. We do not see any barriers to small businesses gaining access to the technology. In fact, the proportionate cost is higher for larger businesses, because their installations will be more complex and have to be networked, and that will be at higher cost. All that technology exists at the moment.

Clare Adamson: Mr McCann, when you talked about a level playing field, did you mean the smaller businesses in the pyramid that was described or the ones that are external to the metal industry?

Joe McCann: We agree to the rules and we do our job, but the regulations do not apply to smaller unlicensed businesses. That is an anomaly that we must try to address. If we can address it, that will be great, but the other gentlemen on the panel do not want to go down a road that will end up with them in court and losing their businesses, because their names—believe it or not—are important to them. We guard our names jealously, and we get upset when what other people do could lead to our being criminalised, because of the way in which the bill has been written. As the joke goes, “In God we trust. Everyone else pays cash.” That is a fact of life. I am not trying to be flippant. It is something that the committee must look at and decide whether we are going the right way or the wrong way. Once you start the process and the bill goes through, you could have problems.

12:00

Cameron Buchanan: Having visited a scrapyard, I have seen the problems of storing material for 48 hours. It just does not seem to be practical. However, I see that Mr McCann of Dalton’s stores his metal for longer than 48 hours. What do the witnesses think about the storage rule? It seems to me to be onerous, because the police obviously do not come within 48 hours.

The Convener: Let us start with Mr McCann, who manages to cope with that at the moment.

Joe McCann: In Edinburgh, we have smaller materials from householders and we hold that stuff for 14 days. The stuff that we buy from engineering works we do not hold for that length of time, because we know exactly where it has come from and there is a paper trail, so it moves on. The smaller merchants hold the small materials for 14 days, so that part is clear, and if that material goes down to Mr Williamson’s yard he knows that it has sat with the person he has bought it from for 14 days and that the police have had a more than ample chance to visit. It may then sit in his yard for another 14 days, because the markets go up and down. That is how it is played, but unfortunately the rules are not always as we would like them to be. We all abide by the rules, but nobody else does, so we are the ones left holding the baby.

Ivor Williamson: I do not agree with that. If you have an acre of a yard and a weighbridge, a skip lorry may come in carrying council material in a 20-foot container. You could probably tip two or three such containers in a room this size, and that would take up 10 or 15 per cent of the yard space. By the end of a day, you would have run out of yard space if you had to keep that material and not move it for 48 hours.

There is another thing in the bill about notifying a date and time when you process material. The bigger the yard, the worse it is, because when material comes in we put it into machines, chop it up, squash it and bale it for moving on to larger steelworks or abroad—we are dealing with a large volume of light loose material that we have to process. The notification requirements would probably also cause a problem for SEPA, because there are tonnage limits and space confinements, and we are allowed certain materials in certain
areas only for certain lengths of time. Some materials could come in and be chopped up and put in stock until the market goes up, but that would generally not work for scrap. I would have to shut my yard down within a week.

Jake Adam: I agree with Mr Williamson. Mr Buchanan saw the scrapyard in Edinburgh, so he knows that it would be impossible to fulfil the storage requirements. We would be able to operate on a Monday and a Thursday and that would be it. SEPA would have huge issues, as would the Health and Safety Executive, and the industry is under increased pressure from the Health and Safety Executive. Our insurance companies would also have huge issues with that requirement. It is just not workable.

Ian Hetherington: The definition of a mobile collector or itinerant collector is that they do not operate a site, so I am not sure how a mobile collector could hold material for 48 hours, apart from by piling it up on the road outside his house.

Ivor Williamson: If the cash ban comes in, which we all expect would stop 95 per cent of thefts, the 48-hour rule would not be needed.

Cameron Buchanan: That rule would be redundant.

Ivor Williamson: Yes, because dealers would want to keep the material for the police to see it. If you ban cash payments and think that you have stopped the crime, you do not need to keep the material.

John Wilson: Mr Hetherington’s submission to the committee refers to the fact that the bill wants to ban cash payments for scrap metal. You go on to talk about the Scrap Metal Dealers Act 2013 from England and Wales and you say that the bill contains significant weaknesses in comparison with the legislation down south. Will you expand on what those weaknesses are? Although we are not trying to mirror the English and Welsh legislation, we are certainly trying to achieve a level playing field and, if possible, to get better regulation in Scotland than currently applies.

Ian Hetherington: We deal with quite a number of the weaknesses, as we see them. I will go through them quickly. We believe that the definition of scrap metal is inadequate. Also, the Civic Government (Scotland) Act 1982 defines a scrap metal dealer as “buying and selling” scrap metal; our strongly held view is that the definition of a scrap metal dealer should refer to their buying “or” selling scrap metal.

I know that the Scottish Government was keen to avoid getting into detail about payment methods, but that is an area in which there has to be detail and prescription, because it is complex. I give the example of cash cards that do not require the individual to hold any identification. In our view, that is the direct equivalent of cash. There might be an argument that the bill is non-prescriptive but, in essence, by not spelling things out, it lends itself to misinterpretation and poor enforcement.

I dealt with local authority licensing in relation to a register. On inconsistent licensing conditions, if mobile collectors are to be licensed only in one local authority, they will license themselves in the cheapest local authority, or the one that has the least stringent conditions. I have termed that “licence tourism”. It will be rampant. These are very bright people. That issue has to be dealt with. It is probably best dealt with through strong guidance and placing a strong duty of consistency on licensing authorities.

I have dealt with display of licences. We have not talked too much about establishing a seller’s identity. I know that the Scottish Government sought to avoid having too much detail on that in the bill, but it has to set out, either on the face of the bill or in definitive guidance, what forms of identity and what processes are required. In other words, do you need to verify the name and address by reference to a publicly available means of ID that contains a photograph and an address, for example? That would be our recommendation. The bill should also set out some alternatives.

We have referred to tag and hold. We believe that the lack of a suitable applicant test, or fit-and-proper-person test, is an omission. We also believe that there should be consultation with SEPA on applications for a new licence or for renewal of a licence. Joe McCann has highlighted the fact that, like it or not, the correlation between waste licensing and scrap metal dealer licensing is very close indeed. Frankly, if somebody is in breach of conditions on one side, that should be taken into account.

Some work needs to be done on who is being licensed. These are not all individuals; a large number of the licensees in Scotland are corporate entities of one sort or another. Some thought has to be given as to whether we should license the site manager—that goes back to the discussion that you had with the first panel—the owner or the controlling mind. The owner and the controlling mind might not be the same person, nor might either be the site manager.

Our assertion is that in a lot of these areas the bill needs more detail, I am afraid. I also comment—because I have been asked to—that trying to mesh this in with the Civic Government (Scotland) Act 1982 adds a level of complexity and interweaving that makes the bill very difficult to read and understand, even for those of us whose job it is to read and understand these things.
We have been impertinent enough to produce a draft suggested rewording of some sections, which might bring it all together in one place, and which the Scottish Government and your clerks have received. We would be very happy, as the bill moves on, to work with the committee and with Scottish Government officials to try to make better legislation. We would like to see the best legislation in Scotland.

John Wilson: Thank you very much.

The Convener: No one has anything to add, so I thank you very much for your evidence. We now move into private session.
Scottish Parliament

Local Government and Regeneration Committee

Wednesday 14 January 2015

[The Convener opened the meeting at 09:33]
Air Weapons and Licensing (Scotland) Bill: Stage 1

09:37

The Convener: Agenda item 4 is our fifth oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We will begin with a round-table session, which will be followed by evidence from a panel.

I ask our witnesses to introduce themselves. We will go round the table, starting with Janet Hood.

Janet Hood (Association of Licensed Adult Entertainment Venues Scotland): I am from Janet Hood Consulting. I offer specialist licensing services to the trade. I am representing the Association of Licensed Adult Entertainment Venues Scotland. We thank the committee for the opportunity to present evidence. Do you just want a brief introduction?

The Convener: That is fine for now—we will come back to you on other matters.

Cameron Buchanan (Lothian) (Con): I am an MSP for Lothian and a member of the committee.

Andrew Cox: I am one of the managers in Glasgow’s Seventh Heaven lap-dancing club.

John Wilson (Central Scotland) (Ind): I am deputy convener of the committee and an MSP for Central Scotland.

Professor Phil Hubbard (University of Kent): I am from the University of Kent. I am the leading academic authority on the licensing of lap-dancing and sexual entertainment venues in England and Wales.

Alex Rowley (Cowdenbeath) (Lab): I am the MSP for the Cowdenbeath constituency.

Mairi Millar (Glasgow City Council): Good morning. I am legal manager for licensing at Glasgow City Council and clerk to the city of Glasgow licensing board.

Sandra White (Glasgow Kelvin) (SNP): I am the MSP for Glasgow Kelvin. I have an interest in relation to part of the bill. I thank the committee very much for allowing me to be here.

Cara Hilton: I am the MSP for Dunfermline.

Jon Morgan (Federation of Scottish Theatre): I am director of the Federation of Scottish Theatre, which is a membership body for dance and theatre companies and venues. We have around 160 members across Scotland.

Stewart Stevenson: I am the member of the Scottish Parliament for Banffshire and Buchan Coast.
Eric Anderson (Aberdeen City Council): Good morning. I am deputy clerk to Aberdeen city licensing board and legal adviser to the licensing committee, which is the committee that deals with civic government legislation.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Hello. I am the MSP for Kilmarnock and Irvine Valley.

Laura Tomson (Zero Tolerance): I am from Zero Tolerance, which is a charity that works to end violence against women.

The Convener: I am the convener of the committee.

We have received apologies from Willie Taylor of Dumfries and Galloway Council. He is unable to attend because of bad weather conditions.

The panellists are most welcome. When you are called to speak, you do not need to press the button on your console to put on the microphone; that will be done for you. If I call you to speak, hands off the consoles—that would be grand.

My first question is about sexual entertainment premises. Many of us who represent areas where there are such venues know that there are often complaints from folks who live close by. These venues cause a little bit of controversy. What are folks’ feelings on that situation and on the positioning of some of the premises? Janet, would you like to go first?

Janet Hood: Yes, I would. The Scottish Parliament very cleverly regulated adult entertainment venues, which are what exist at the moment, under the Licensing (Scotland) Act 2005. One of the great boons in that act for anybody who has difficulty with any type of licensed premises is that any person can raise a complaint and any person can raise a review. If there are complaints about the running of these premises, they can easily be brought to licensing boards, which I have no doubt would deal with them.

The act is predicated upon five objectives, which include the protection of people; the preservation of public safety; the prevention of crime and disorder; and the protection of health. It is highly surprising that comments are made that these complaints are out there, given that—as far as I am aware; of course I am not omniscient—there have been no complaints on those grounds to do with the running of premises.

One could say, “Oh well, people might feel intimidated about coming to a licensing board,” but the Scottish Parliament thought about that. There are licensing standards officers and the police, to whom complaints can be made. I had experience of people complaining about noise nuisance from a noisy pub. The licensing standards officer took the complaint to the licensing board, as is his right, on behalf of the people who were making the complaint because they did not have the confidence to do so.

It is therefore surprising that, as far as I am aware, nothing has been raised with licensing boards to date.

The Convener: Thank you very much. Others should feel free to indicate if they want to come in. Professor Hubbard, would you like to comment?

Professor Hubbard: Yes. The academic evidence suggests that there is no particular association between criminality and the presence of lap-dance clubs or gentlemen’s clubs in particular communities, but we need to acknowledge that those clubs do create anxiety and moral disapproval from certain sections of society. There is a great deal of evidence that people are anxious about them being located close to residential premises, places of worship, schools and other community facilities.

The introduction of the Policing and Crime Act 2009 in England and Wales gave adoptive legislation to local authorities, allowing them to control these premises with a degree of flexibility and discretion and in many cases that has been done successfully. However, the introduction of the act in England and Wales was by and large farcical in the way that it was allowed to proceed.

We have a situation in England and Wales that I would like to see avoided in Scotland—I think you could learn the lessons from England and Wales. The legislation is adoptive, not mandatory. We have a situation, in London for example, where there is a licensing regime for these establishments in one local authority but not in a neighbouring one. The fees for the establishments range from £300 to £26,000. Some local authorities will ban nudity and others will not.

The situation has given rise to a whole range of appeal cases and litigation in which legal unreasonableness and inconsistency have been raised as valid concerns. Some of those appeals have been upheld. It has created a great deal of anxiety, expenditure and time for many local authorities, which have been left to evolve policies of their own.

My recommendation is that if Scotland introduces the bill, which I think it should, it should ensure that licensing of these types of premises is mandatory for all local authorities in Scotland and that the legislation provides a much clearer definition of sexual entertainment, because that is being challenged in England and Wales at the moment. The legislation needs to distinguish that form of entertainment from theatre performance. It also needs to ensure that it does not allow for massage parlour owners in effect to license their
premises as brothels, which, as we know, would be contrary to other criminal law.

Finally, we need to ensure that there are clearer grounds for refusal in the primary legislation, not just in guidance notes. It needs to be stated in the legislation that local authorities should pay particular attention to the uses in the vicinity where those uses include education, places of worship, community facilities and so on. That should be stipulated in the legislation, so that if a case goes to appeal it is clear that the primary legislation indicates the grounds for refusal.

09:45

Sandra White: I would like to touch on what Janet Hood said about no one having objected. I appeared at the city of Glasgow licensing board in John Street with regard to clubs that were opening in Royal Exchange Square, along with a number of businesspeople who had businesses there, so it is untrue to say that people have not gone along to object. It is quite intimidating when you go to a licensing board, because the owners of the clubs are there as well, and you have to appear before a panel of councillors and give evidence. It is like a mini court, so it is quite intimidating, but I and others have certainly been there.

I would also like to pick up on the point that Professor Hubbard made. I agree with most of what he said, but when I was putting forward the bill we were advised that to make licensing mandatory would be much more difficult. The legislation in England and Wales went through before we managed to put our Scottish bill through.

The Convener: Could you clarify whether, when you talk about putting forward the bill, you are talking about the member's bill that you intended to introduce, rather than the Air Weapons and Licensing (Scotland) Bill, which we are dealing with now?

Sandra White: Yes, my intention at the time was to introduce a member's bill that would make the licensing of such premises mandatory, but our legal advice was that it would be much better to make it a matter for local authorities. It costs local authorities, such as Glasgow City Council, a lot of money if a case goes on appeal to the Court of Session, so they would invariably drop their cases as the owners appealed. It was therefore felt at the time that allowing each individual local authority to make its own choice was the best way forward, because that way the people who live in an area could ask their councils to adopt the legislation.

I shall leave it at that, convener, but thank you very much for allowing me to come in at that point. I may come back in on some other points later.

The Convener: We shall hear from Mairi Millar next, and then from Cameron Buchanan, Janet Hood and Stewart Stevenson.

Mairi Millar: I agree with some of the comments that Janet Hood made. In Glasgow, there are four lap-dancing clubs, or licensed premises with adult entertainment, and there have not been any reviews brought by members of the public against those premises. Equally, however, there have been no reviews brought against any licensed premises under the new provisions by any member of the public. That probably says a lot about people's understanding of and involvement in the licensing process.

We had an objection to a lap-dancing club at the time of the transitional arrangements, brought by one of the licensing standards officers, and that led to the appeal in the now famous case of Brightcrew Ltd v City of Glasgow Licensing Board. One of the issues that we have now is that, because of the Brightcrew decision, it became clear that the licensing board's responsibility is primarily in terms of the licensing objectives relating to the sale of alcohol. Licensing standards officers now do not regulate adult entertainment activity because of that decision, so the premises are largely unregulated.

I also support Sandra White's comments. When we have had new applications—going back quite some time—there has been a significant level of objections to those applications. Again, that supports the comments made by Professor Hubbard about the feelings of local communities about new establishments opening up in their area and the impact that that could have on a residential area.

Janet Hood: My understanding is that there have been no new applications for some time, certainly in Glasgow, and that we are in a falling market. There were 20 lap-dancing clubs in Scotland and we are now down to 17. Two of those 17 premises happen to be owned by the same person in the same building, so I suppose that we could say that there are 16. Aberdeen City Council turned me down for an application for a lap-dancing club in Chapel Street on the grounds of the protection of children from harm. It turned down another application in Union Street—I did not act for the client at the time—on the grounds of location, and it turned down another on the grounds of the unsuitability of the location.

The Licensing (Scotland) Act 2005 and, indeed, the Civic Government (Scotland) Act 1982 set out various criteria, one of which is that local government is a statutory objector or statutory consultee. As a result, local government already has the ability to comment or complain, but I have no idea whether it has commented on or complained about any of these licensing
applications. It certainly has not done so with regard to any clients with whom I have dealt.

Taking up Professor Hubbard’s point, I should point out that location, character and condition already form part of the 2005 act. Licensing boards look at where the club in question is, and if it is near a school, a church or something of that ilk, it is highly unlikely that an adult entertainment licence for a premises where such activity takes place will be granted. If the character of the building overtly demonstrates what is going on within it—which is barred in the bulk of Scotland—not only the licensing board but the planning committee, which deals with advertisements, will comment on its unsuitability. That can be linked directly to the sale of alcohol because such advertising, whether it be a sign for Tennent’s or anything else, can lead people into the premises.

I find it unfortunate that it is being implied that local government has no say in this matter; it has a say, but so far it has chosen not to say anything—or so it appears.

Cameron Buchanan: I seek some clarification from Professor Hubbard. In England and Wales, is the licensing for theatre performance the same as that for sexual entertainment? You said that things in that respect were rather loosely worded.

Professor Hubbard: My expertise is in the area of sexual entertainment venue licensing, which is separate from the public entertainment licensing regime. As far as I know, no theatre or theatrical performance has applied for an SEV licence. At the moment, 221 venues in England and Wales are licensed for sexual entertainment, the majority of which are gentlemen’s clubs. There are five gay clubs with what are called dark rooms or fumble rooms that gay men frequent to have sex with each other, and there is one licensed swingers club. As far as I know, no theatrical entertainment or burlesque spaces are licensed in that way.

Cameron Buchanan: Thank you.

The Convener: Did you wish to make a point, Mr Morgan?

Jon Morgan: With regard to the licensing of theatres in England and Wales, I point out that they come under a single catch-all licence called a premises licence, which covers alcohol, public entertainment, theatres and cinemas.

Stewart Stevenson: This early part of the discussion has focused on the point that any such premises or activities taking place in communities need to be properly located away from sensitive areas such as schools, churches and so on. That immediately draws me to the exemption in the bill under which it is possible for premises to host sexual entertainment on no more than four occasions over the 12-month period. In other words, they are outside the regime altogether.

I wonder whether I can draw on the expertise of the people with us this morning by asking whether that might create disproportionate discomfort in communities. Because there would be no control over the location, there would in law be nothing to stop premises immediately next to a school being used for such activities—infrequently, perhaps, but enough to cause disproportionate concern to people whose kids go to that school. In fact, it might bring into disrepute the whole attempt to bring some sanity to the situation through this legislation.

Can the experts around the table contribute to that discussion? I have to say that I am quite uncomfortable about this exemption, particularly with regard to the issue of location.

The Convener: I will take Eric Anderson next, given that Aberdeen City Council has been mentioned. Perhaps you can also cover the point that Mr Stevenson has highlighted, Mr Anderson.

Eric Anderson: Certainly, convener. We expressed the same concern in our response to the consultation, and we think that it might create a loophole that organisers could exploit. Instead of having a permanent premises with a licence and proper facilities for performers, they could simply transfer the activity to different venues where there are no such facilities or protection. Such an exemption could therefore mean defeating the aims and purposes of the amendments to the 1982 act.

The Convener: Ms Hood made some comments about Aberdeen City Council. Do you want to react to those comments?

Eric Anderson: As far as the refusal of licences is concerned, I can confirm that, since the 2005 act was put in place, we have refused one premises. We have refused others in the past under the previous legislation—that is correct.

Laura Tomson: What has been missing from this conversation so far is what is different about sexual or adult entertainment and how that fits in with other policies across the Scottish Government. The Zero Tolerance position, along with the position of many other equalities organisations in Scotland and the Scottish Government’s violence against women strategy, is that sexual entertainment is a form of commercial sexual exploitation with links to violence against women.

The introduction of a separate licensing structure is important not just because we have had issues with alcohol licensing, but because there are so many issues around prostitution being accessed through lap dancing; research in
Scotland shows that that is very prevalent. There are also issues around prostitution itself—for example, women who are involved in prostitution are much more likely to be victims of violence against women; women feel unsafe around the venues; and women who work in the venues face abuse and harassment.

If a new licensing regime is to be introduced—we support that, with the caveat that we would like to see an end to that kind of exploitation—the regime needs to take those broader themes into account. That is why I agree with Professor Hubbard that it should be mandatory for all local authorities in Scotland to take it up. If that does not happen, we will be ignoring a lot of very important issues, such as those around child protection; it should not be up to local authorities to decide whether those issues are relevant to them.

The regulations should include guidance for local authorities on what they should inspect and what they should expect licensed venues to do, for example in terms of allowing in welfare visitors to speak to their workers or contact between customers and workers. That is all very important.

On the point about the number of times that sexual entertainment happens in a venue, when those themes are taken into account, how many times it happens is irrelevant. The potential for harm is there no matter how many times it happens. In their submissions to the consultation, a lot of people expressed worries that organisers would simply move from venue to venue, which would make it much more difficult to regulate those harms. If sexual entertainment occurs once a year, the venue should have to have a licence for it.

When it comes to signage around schools, I point out that if you walk down Lothian Road—or what is called the pubic triangle by locals—in Edinburgh, you will see that it is very clear that very sexualised, very obvious signage is being used. It is being challenged by Zero Tolerance, but nothing has changed. The signage is within one or two streets of at least three schools, so obviously nothing is happening there.

**The Convener:** One thing that the committee has looked at in previous sessions is occasional alcohol licensing. The four-times-a-year allowance seems to raise that kind of occasionality again. Do such situations cause real difficulties for licensing boards?

**Mairi Millar:** It would be almost impossible to enforce the number of times that the activity is held. Licensing boards or licensing standards authorities simply would not know how many times it had happened, because there would be no requirement for them to know. They would be reliant on the premises to self-regulate and admit if they had not kept it to four times. We simply cannot rely on licensing standards authorities being able to cover all licensed premises to keep track of the number of times that an activity takes place. I share the concerns about it being unregulated generally, but I feel that a limit on the number of activities would be impossible to enforce.

**Eric Anderson:** I concur with everything that Mairi Millar just said. Control and monitoring would be very difficult if a premises were not properly licensed.

**Professor Hubbard:** Such restrictions are being introduced to deal with the situation that one finds in some holiday resorts in England and Wales, such as Newquay and Scarborough, and in particular for things that happen around the Cheltenham gold cup, for example, when, for the seven days’ duration of the event, premises will put on lap dancing—they will not have it for the rest of the year. That falls within the 12-times-a-year limit that has been set in England and Wales.

Local authorities would become very much aware of the fact that particular premises were abusing that law for the whole week, say, of a particular sporting event. If a particular pub or club was putting on that type of entertainment during the Edinburgh festival, for instance, it would become clear to the licensing board, through reports.

10:00

**The Convener:** I look to the licensing clerks to see whether they agree with that position. I imagine that, in certain cases, it might be a little bit more difficult for you guys to get to grips with what is going on at some private members’ clubs. Is that the case?

**Mairi Millar:** With regard to the example that has been given of a pop-up, one-off annual event, I suppose that there would be more visibility there. I was thinking about the idea of such entertainment being taken around different premises. It would be very difficult for a board or a licensing standards officer to keep track of that among licensed premises.

**The Convener:** There are a number of private members’ clubs in sports and social clubs in Aberdeen. Would you be able to keep track, Mr Anderson, if such a timetable was used?

**Eric Anderson:** There are indeed. It is difficult to keep track of all the activities. Where there is an opportunity to have an itinerant type of entertainment, which moves from place to place—here one day and gone the next—that makes monitoring, control and keeping tabs very difficult. I would certainly consider opposing that proposal.
As Professor Hubbard said, a one-off major event with consistent types of regular entertainment on an annual basis is one scenario. However, if things are arranged on a day-by-day or week-by-week basis, that is a different story altogether.

Janet Hood: I find myself, and my clients find themselves, in agreement with the licensing boards and with Zero Tolerance on this point. At the moment, the clubs that I represent in the Association of Licensed Adult Entertainment Venues are highly regulated. They have vast numbers of stewards, closed-circuit television and high levels of training for management. The premises are properly and well regulated. The dancers are not employees, and they are not forced to dance. They apply to dance within the premises, and they come there to dance.

We have particular concerns about the arrangement for allowing four events a year. Those events could take place in unregulated public places. That is bad enough, but what is happening now—we feel that the Scottish Government should be turning its eye on this—is that seriously unregulated sexual entertainment is going on in Scotland.

I spent an exceedingly unpleasant weekend last weekend typing “strippers Dundee” or “strippers Perth”, among other things, into Google—even “strippers Edzell”, which is where I live. I discovered to my horror that, although I am unlikely to do this, groups of young men or whoever could engage women to come to their premises for the purposes of performing a striptease. They could say that it was for a stag night or for something else. The women can come to a private house or to a hotel room. They will not turn up in tassels and a G-string; they will turn up and go to the room looking as if they are normal human beings.

That is completely unregulated. On each one of the websites, I asked whether I would have to pay for a chaperone, and I found out that there are no chaperones. Those women are the people who are being seriously exploited in Scotland, and my clients have serious concerns with that.

Among the comments that were made at a previous committee meeting, there was an implication that striptease performances and so on for hen nights or stag nights were not particularly serious. I would say that those instances are where the serious harm is likely to lie in Scotland. If the provisions involving four days a year are used, such events could probably happen in pubs and clubs. At least they will be in public, and there is a chance that the girls might get away unscathed.

However, they will not be regulated in the way that adult entertainment venues are currently regulated. My clients have an immigration and migrant toolkit, which has been presented to this committee, whereby girls are identified with a passport or driving licence and their next of kin is sourced. Photographs are taken of their identification documents and are passed to the police. That all helps to keep people safe—and not only within the clubs. Payments are made only to the girls’ bank accounts or into their hands; no payments are made to third parties. That is not the case when someone goes online to book a girl to come to their flat or bedroom. Those are matters with which the committee should be concerned.

Andrew Cox: In the club that I work in, no one has ever been arrested or charged with people trafficking, prostitution, money laundering or any of the other things that have been targeted at us.

Laura Tomson talked about letting welfare in. We are open to anybody. We let the police and licensing standards officers in. Anybody here is welcome to come in and talk to the girls.

My main concern, other than the girls, is myself. If there is a ban or zero licences for Glasgow, I will get put out of a job. I would like to know what is going to happen to me. Is there provision to help retrain me? There are nine or 10 full-time employees in my club—that is just one club—so you could quite easily be talking about 1,000 jobs, including the dancers. Will I get redundancy pay? Once the club loses its licence, the money will dry up. Who will help me pay my mortgage or plan for my future? I just want to know if that is going to be mentioned.

Stewart Stevenson: I want to follow up on Professor Hubbard’s description of the 12 occasions provision in the English legislation. As a substitute member of the committee, I am afraid that I might not be quite up to speed with some of my colleagues. I want to explore with the professor and with others who can make informed comment what the practical effect is. The example that was given was the Cheltenham gold cup, which is fair enough. Does the way that the 12 exemptions provision works inform the committee? I started from the point of view of whether taking those occasions entirely outside the licensing system, particularly if it meant that no drinks licence was associated with them—after all, bring your own bottle is common in other circumstances and it could apply here—causes difficulties for communities in England. Practical examples would help inform our understanding of what we should do in Scotland.

Professor Hubbard: I think that this issue is a red herring in relation to what we are talking about. We are talking about the licensing of a premises, not the licensing of an activity. If an activity is
highly itinerant it is not likely that any community would identify a particular premises as being associated with it. Therefore, I cannot think of any particular situation where itinerant striptease at a venue has caused anxiety for communities. It is where a particular premises becomes identified, visibly known and advertised as a lap-dancing club that opposition and anxiety begins to be perpetuated.

Stewart Stevenson: The itinerant activity is presumably advertised by some means, otherwise it would be difficult for clients to arrive at the venue. How does that work in practice? Forgive my naivety.

Professor Hubbard: There are agencies in England and Wales that will provide dancers to certain striptease pubs. You cannot find websites for those pubs; they do it as an irregular activity and they will generally advertise through word of mouth or just by putting something on the chalk board outside. It might happen on a Sunday lunch time once every six months; it might happen on a regular Friday or Saturday night. Those places are not particularly known or reputed for sexual entertainment; they would not be understood by most residents as specifically having that type of entertainment and it might alternate with other forms of entertainment such as live music and comedy. This is a bit of a red herring. If you have particular anxieties about itinerant adult entertainment, you should license the dancers and the performers, not the premises.

Stewart Stevenson: What you are saying to the committee is that the premises that operate on the exemption basis are all premises that are otherwise regulated. You are suggesting to me—or at least I am hearing—that there are no cases in which premises that are not regulated by some regulatory regime are exploiting the exemption. Is that what I am being told?

Professor Hubbard: It is possible that some escape regulation, but the majority will be issued with a standard premises licence for alcohol.

Sandra White: I want to raise a number of issues. We are talking about local authorities, which have a very hard job to do. I would be interested to know how many times clubs in Aberdeen have appealed the decision.

In Aberdeen, I mentioned that, in one of the clubs that I was in, I spoke to a group of young men. I felt that they were being exploited because they were being egged on by their friends to put money—blah, blah, blah—to get a dance. I asked these young men what they thought about the women in the clubs and I could not repeat the language that they used. When I asked what they would do if it was their wife, girlfriend or sister, they said that they would never do that. That is another point that we have to consider.

We talk about employment. These dancers are self-employed. They pay to dance—they pay for their costumes and the tables. These girls are being exploited in many ways. It is about a perception that men in particular have of women when they see these dancers, or whatever you wish to call them. We talk about the public corner in Edinburgh, which is very well advertised. A lady who works in one of the clubs was accosted by a customer outside a club when she was not working. The treatment of that poor lady says a lot to me about how men perceive these dancers.

In my area, people coming from Central station—people coming from work and going about their business—have to walk past these clubs. We need to look at it seriously.

The Convener: Can I stop you again, Sandra? You said “this bill” again. You are talking about your previous proposed bill and not the bill that we are discussing.

Sandra White: Yes. I suppose that it is all experience to take us forward. I am very pleased that the committee is scrutinising the bill.

What struck me in some of the clubs that I went into was the lack of customers. I often wondered how the clubs made enough money to remain open.

We are missing an important point here, though. Laura Tomson raised the issue of how women are looked on by the men who frequent the clubs. In one of the clubs that I was in, I spoke to a group of young men. I felt that they were being exploited by their friends—blah, blah, blah—to get a dance. I asked these young men what they thought about the women in the clubs and I could not repeat the language that they used. When I asked what they would do if it was their wife, girlfriend or sister, they said that they would never do that. That is another point that we have to consider.

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In my area, people coming from Central station—people coming from work and going about their business—have to walk past these clubs. We need to look at it seriously.

The Convener: Eric Anderson, there was a specific question about Aberdeen.

Eric Anderson: In Aberdeen, I mentioned that, since the 2005 act, we have refused one application for a sex entertainment premises. That was not appealed by the applicant. Of course, we cannot read anything into that particular scenario. The other two came under previous legislation going back into the mists of time. As I recall, the case in question attracted objections into double figures.

Janet Hood: There were 22 objections. Sorry, I beg your pardon. It is just that it was mine.

Eric Anderson: I did not clerk that meeting. There is a particular concern, as you can perhaps detect from that.
Mairi Millar: I want to follow up on points regarding the occasional use of premises. It could be that the temporary licence provisions would suit, so that, if premises are to be used on an occasional basis, an application could be made for a temporary licence, just as a one-off public entertainment event can be covered by a temporary licence. I am not sure whether the provisions currently extend to include the temporary licence provisions—I would need to check that—but it would certainly be an option, rather than having the de minimis provision.

10:15

On a more general point, following on from Sandra White’s comments, it strikes me that we have licensing legislation and regulations to cover everything from window cleaning to selling burgers from a van or selling chewing gum at 3 o’clock in the morning under late hours catering regulations, but adult entertainment activity is currently not regulated. There are no provisions and there is no control over the conduct of such activity, and that is a fundamental point about what the bill would allow local authorities to do that is not currently available to them or to licensing boards.

Janet Hood: I would like to come in on Laura Tomson’s point about the advertising of clubs in the Lothian Road area. Advertising is in the control of local government planning committees. If advertising is deemed by the local authority, which might, according to Mairi Millar, be anxious to control such venues, to cause offence, one would have thought that such advertising, which was mentioned by Laura Tomson and Sandra White, should be controlled by the planning authority. That is a matter that should be taken up with planning authorities.

Mairi Millar suggests that the Brightcrew decision has removed any element of control. The five objectives, and the requirement to consider any form of criminality through the fit-and-proper-person test that is coming back in, give licensing boards huge control. My clients’ premises are among the most controlled premises in Scotland. That is why we have so few incidents of any harm happening. The controls are implemented by management, staff and stewarding. All the activities in the clubs are open to scrutiny by the police, licensing standards officers and, as has been indicated by Andrew Cox, any other person from local government, or from anywhere else, who wishes to come in, and they are always welcome. My clients are not trying to hide anything that they do. They welcome scrutiny because they wish to be in a position to demonstrate how well the clubs are regulated.

Part of the issue in the Brightcrew case was whether a kettle should be produced in a changing room. There were issues that really had nothing to do with the preservation of order and good practice within premises. I defy anybody round this table to suggest that the clients I represent do not carry out good practice and care for the dancers, the public, the staff and people in the vicinity.

Andrew Cox: Sandra White said that it is quite daunting going to a licensing board. It is just as daunting for me to give evidence to this committee.

Sandra White mentioned that the premises were near a church. As a layman, I would have assumed that churches are morning things, so I do not think that the two crowds would bump into each other. I thought that that was a bit strange. People have been talking about this club and that club, but I am interested in my club. We have succeeded in meeting every single regulation that we are hit with, and we are happy to do it. It has been said that the girls are self-employed and that there is a lack of customers. The girls obviously make money, and it does not matter how many customers there are. If it is quiet, one millionaire is as good as many other people who are spending the same money on the same things.

People have also commented on how the girls are looked on by men. My girlfriend, who is my future wife, was a dancer and how she was looked on by men has done no damage to her. She is more than happy, so I do not really see how you can categorise everything with the one thing. Every girl is different and every club is different.

Sandra White: Could I come in on that?

The Convener: I have a list of people who want to speak, Sandra, but I will let you come back in later. Let us hear from Professor Hubbard.

Professor Hubbard: I return to the issue of advertising. In general, I am in favour of the introduction of the new power, because licensing provides flexibility and discretion to local authorities that the planning system does not. It allows people to react to changes in a way that, once initial permission has been given, perhaps cannot be dealt with under the remit of a planning committee.

I note that the system has to be proportionate. The fees must not be contrary to EU competition rules, particularly the EU services directive, which says that businesses should be unfettered by unfair legislation—they should not be overregulated.

On advertising, I point out that the bill is proposing an amendment to the schedule to the Civic Government (Scotland) Act 1982 on sex shops, which mentions the control of advertising in or on sex shop premises. That should be amended to read “in, on or in the vicinity of”.

...
England and Wales, A-frames are being located on the street indicating “lap dancing this way”. That might not be mentioned in the licensing conditions, given the current framing of the sex shops legislation. There is also touting, pamphletting and so on. Adding “in the vicinity of” to the provisions would allow licensing committees to impose some fairly commonsense rules and conditions on advertising in, on and in the vicinity of premises that are licensed for sexual entertainment.

Laura Tomson: The aim of the regime should be to make it easy for communities to complain about or object to planning decisions, sexual entertainment venues or alcohol licences—for example, if people feel that the advertising signage outside the venues on Lothian Road is not suitable two streets away from a school. Different things are covered by different planning and licensing authorities, which is confusing for people. The point should be to bring everything under sexual entertainment venue licensing, which would make things easy.

Andrew Cox said that all venues are different, all managers are different and all the women who work there are different. That is the point. That is why licensing should be mandatory and coherent across Scotland. Just because one venue is run effectively does not mean that they all are.

The Convener: Do you have examples that you have dealt with where folks have gone from pillar to post with their objections? Their objection might not necessarily be against the venue per se; it might concern some of the advertising.

Laura Tomson: Yes. Different people object to different things. There are probably people who feel comfortable with things happening as long as their children do not have to walk past the venues on the way to school every morning. It is very obvious in the Lothian Road area what happens there, and there are some very objectifying views of girls and women. There is more and more research linking that to violence against women and to inequality.

It is important that people get to raise their objections in a simple way. Colleagues have raised objections about the signage on Lothian Road, but nothing has happened even though, as far as we can see, it contravenes policy. We have been told by people we have spoken to that we have taken our eyes off those places. From our experience, I personally do not see that the policy is functioning well at the moment.

The Convener: I will let you come back in briefly, Sandra, although other folks are on the list.

Sandra White: That is fine. I just wanted to say to Andrew Cox that I did not make up the rules about the churches and schools. That is part of the parcel, as Janet Hood has explained. I will leave it at that.

There is a further issue that I want to discuss, which nobody else has mentioned: the immigration and licence toolkit. Is it okay to mention that just now? I know it is something different.

The Convener: Yes—go ahead.

Sandra White: I spoke to Janet Hood earlier, and she will be sending me an immigration and licence toolkit. I have never heard about such a proposal for any other form of employment.

The Convener: Janet Hood mentioned earlier that the committee has had sight of that toolkit. I have spoken to the clerks, and we do not have that information. It would be extremely useful for us to have that information, so that we can have a look at it in the course of our deliberations.

Janet Hood: We would be delighted to send it in. We included it as part of our sexual entertainment venues consultation response. We are sorry that it has not come to MSPs and to members around this table. We will certainly ensure that it is sent to your clerk.

The Convener: Could that have been in response to the Government, rather than to the committee’s call for evidence?

Janet Hood: Yes, it would have been.

The Convener: That is a separate process. I ask you to send that to our clerks.

Janet Hood: With pleasure.

The Convener: That would be grand—thank you.

Sandra White: I will wait until I see the toolkit. Is that all right, convener?

The Convener: That would be the best way forward.

Sandra White: That is fine.

The Convener: We will ensure that it is disseminated to you, Sandra, as well as to other committee members.

Sandra White: Thank you.

Willie Coffey: Could our city council colleagues clarify the issue of financial gain? The submissions of both Aberdeen and Glasgow councils mentioned a lack of clarity in the bill’s proposal on that point. Could you tell us exactly what your concern is and how it might be addressed and tidied up in the bill? Perhaps we could also hear what the response of the club operators or association colleagues might be to that.

Mairi Millar: My concern is that the bill would allow an escape provision. It would be arguable
that the premises owner was not making any financial gain from a sexual entertainment activity—that an event was laid on free of charge, for example, and that their financial gain was through the sale of alcohol or some other activity. Litigation would then be required to determine whether they were properly making a financial gain. The concern is over the interpretation that could be given to the link to financial gain and the difficulty of enforcement.

Eric Anderson: Again I find myself endorsing what Mairi Millar has said. The definition of financial gain appears sufficient, but some more clarity may be useful. It is interesting that, if we look at the changes to the 1982 act and what had gone before, we see that similar provision for the payment of money or money's worth has recently been removed from the licensing of places of public entertainment, yet the financial gain element is to be stipulated for this particular activity, which is a concern. That is just a general comment on the bill.

Professor Hubbard: Again, I think that this issue is a red herring. The provisions clearly refer to direct or indirect financial gain. There has been no case in England in which anybody has challenged the idea that somebody providing free striptease entertainment may not be benefitting indirectly from increased patronage, which results in increased alcohol sales. I think that the definition is adequate in that sense.

My concern is that—and licensing authorities and a licensing solicitor have advised me of this—there is a disjunction where the bill says that the definition of sexual entertainment is “any live performance, or ... live display”.

I think that it should read “any live performance involving live nudity”. As the bill is drafted, it could involve just a live display of nudity, which would begin to include massage parlours, because in a massage parlour there is a live display of nudity in some instances, where a massage is provided by somebody who is topless or naked. We know that that goes on—it is advertised, and it is known to be for the purposes of sexual stimulation. There is financial gain for the organiser who runs the massage parlour, even if he or she denies knowledge of that. As the provisions are framed, there is a danger that they bring massage parlours into the equation. Although we would like to turn a blind eye to the fact that it goes on, in Scotland, as in England and Wales, saunas and massage parlours are known and advertised as places where sex is purchased.

There needs to be an additional section inserted that suggests, under section 45A(7), that the bill should exclude any premises resorted to or used by more than one woman or man for the purposes of prostitution or fornication. Otherwise, one could get into a situation in which a licensing board, on a very good day, decides to issue a massage parlour a sexual entertainment licence. Then we would have a civic regime that is licensing massage parlours contrary to the criminal law, which forbids the running of a brothel, or a disorderly house. That situation has not been challenged in England and Wales, but it is going to be challenged soon.

Janet Hood: I am quite surprised by Professor Hubbard’s comments. It appears that we should be turning a blind eye to prostitution and serious abuse of women. If that were the case, it would be rather depressing.

However, I would say that the main point for local government—and I have 21 years of experience on clerking boards and committees in local government—is going to be the challenge of trying to marry two separate definitions. Adult entertainment is defined differently from sexual entertainment. I think that it would be almost impossible to decide how anybody is going to determine what is happening in a premises. That in itself could tie local government up not only in the local courts but in courts furth of Scotland, should the legislation come in. My clients are particularly concerned about that, because it will be impossible to get the two regimes to marry.

My clients would certainly be happy if grandfather rights were issued to those places that are currently operating under the safely and properly regulated system under the Licensing (Scotland) Act 2005, and they hope that the Government will look at the licensing of sexual entertainment venues coming in for new places. However, if you do not manage to marry up the two definitions, it will cause enormous cost and difficulty for local government. The issue has been canvassed by Jack Cummins, Stephen McGowan and other people who have appeared before the committee, and it is something that you will have to take on board in deciding how it will work.

10:30

The last question on that point is what you are going to do about the places that are currently licensed under the 2005 act to provide adult entertainment. They have been deemed fit to provide adult entertainment. There has been no slipping in under the rug or under the counter. Under the Licensing (Scotland) Act 1976, you had to declare the type of entertainment that took place in those premises. That was accepted by licensing boards then, with all the rules that we have already talked about concerning location and so on.
Under the 2005 act, the activities had to be declared, and the premises have been deemed to be fit for those activities to take place. How are you going to marry that up with the new regime if, for instance, Glasgow City Council decides—as it has already declared in the press—that it wants a zero number? That is rather odd, because it has not considered anything. How will Glasgow deal with the premises that already exist that are providing legitimate activities in a well-regulated set-up? How can that consent be removed from the licensed premises under the 2005 act? That is a quandary for everybody.

**Jon Morgan:** On definitions and exclusions, I would like to explore the potential implications for theatre, dance and other kinds of legitimate performance.

**The Convener:** While you are at it, maybe you can tell us about a number of your practical concerns around the bill’s impact on theatres, because I know that we have missed that out.

**Jon Morgan:** I was not quite sure when would be the right moment to come in.

**The Convener:** You go ahead, sir.

**Jon Morgan:** I will deal first of all with licences for sexual entertainment venues. We do not have a position on the substantive proposal, but we are certainly not speaking in opposition to it. Our main concern is around the definition of sexual entertainment as it is currently constituted and the potential impact on freedom of artistic expression for legitimate artists.

We are pleased to see that there are provisions elsewhere in the bill to continue the ban against censorship, which was in the Theatres Act 1968, and to prevent local authorities from attaching conditions to public entertainment licences about which plays may be performed or the manner in which they may be performed. Those are important safeguards for freedom of artistic expression. Our concern is that the bill might inadvertently—we know that it is not the intention—have an impact on freedom of artistic expression.

We surveyed our members about the issue and they were unanimous in their concerns, which are threefold. One is about the potential misinterpretation or misapplication of sexual entertainment venue licensing to restrict unreasonably their legitimate artistic performances. The second is the potential for individual members of the public to make vexatious complaints, perhaps on the ground of taste or decency rather than on the ground of a performance being an example of sexual entertainment. The third is about self-censorship by our own sector: out of fear of falling foul of the legislation, people may simply choose not to put on a particular performance or production.

I will not go into detail, but there are examples, such as burlesque artists and artists whose performances explore questions of sex, sexuality, prostitution and pornography. Such examples include the production of “Wonderland” that was on at the Edinburgh international festival two years ago, which explicitly explored pornography and involved nudity on stage. There was also a performance at the festival last year called “Sister”, which involved a lap dance as part of the performance, to demonstrate the different attitudes of the women in the performance to that kind of sexual performance. We are concerned that such performances, which push at the boundaries of taste and decency for many people but which are not illegal, may fall foul of the definition.

We have some proposals about how the definition might be changed. We would request an exemption under proposed new section 45A(7) of the 1982 act for venues with a public entertainment licence, and an explicit exemption for artistic or theatrical performances, whose intention is artistic or creative.

I noted that, when the consultation on the matter came out in June 2013, the guidance notes contained an explicit statement that the proposed measures were not intended inadvertently to affect artistic performances. However, that explicit statement does not exist anywhere in the bill at present. We would like to see that in the bill and in the accompanying guidance.

**Professor Hubbard:** I would demur slightly from that. As proposed new section 45A(3) already indicates,

"’sexual entertainment’ means—
(a) any live performance, or
(b) any live display of nudity,

which ... it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating ... the audience (whether by verbal or other means)."

Our understanding would be that an artistic or theatrical performance would not be construed as being "solely or principally for the purpose of" sexual stimulation.

One could add—and I am advised that it may be prudent to do so—the phrase “including advertising” after "whether by verbal or other means".

There is a clear difference. I could set up premises called “Bottoms Up”, for example, or “Cuddles” or something along those lines, and the act of advertising in that way would indicate that the
entertainment that I was providing was for the purpose of sexual stimulation. If I have premises that I call a theatre, it becomes clear that my primary objective is not sexual stimulation, but artistic entertainment.

**Jon Morgan:** Here in Edinburgh, there are lots of venues that are not normally called theatres, but which become theatres during the fringe and the festival. I am not sure that that approach would provide sufficient protection.

**Professor Hubbard:** Yes. There have been similar instances but, given the nature of advertising, a commonsense view would be that “verbal or other means, including advertising,” would indicate that a programme of entertainment was part of a particular cultural season. If it was indicated, somewhat differently, that the entertainment was about sexual stimulation, the outcome would be very different. The issue is something of a red herring, and the legislation as it is framed makes adequate provision for local authorities to distinguish between what is and what is not exempted.

**The Convener:** I will play devil’s advocate. If I wanted to get round some of the regulations, I might say that my venue was a theatre, rather than anything else. Were some of the original venues for sexual entertainment in Soho not dubbed “theatres” at one point?

**Professor Hubbard:** I do not think that such instances are likely to occur. With regard to advertising and likely patronage, people would be unlikely to follow that particular route. There has been no such occurrence in England and Wales over the past five years.

**John Wilson:** I wish to ask Mr Morgan about theatre performances. I have a fear that, because of the way in which the bill is laid out, different licensing authorities may have different interpretations of a theatre production.

Let us say that a theatre production containing live nudity takes place in Glasgow, and the same production tries to go to West Dunbartonshire, East Dunbartonshire or North Lanarkshire, where the licensing authority decides that it is not fit for performance in its area. Part of my difficulty is with trying to ensure that the legislation will have the same effect throughout Scotland, and that audiences in Glasgow, for example, will have the same rights as those elsewhere in Scotland: we are relying on 32 licensing authorities interpreting the legislation.

Mr Morgan can comment on this, but I feel that there may be an issue with artistic licence being taken away from theatre productions, based on the decision of licensing boards in some areas. That is the difficulty, and we should try to define the provisions in such a way that does not allow that to happen.

**Jon Morgan:** That is our concern. The phrase “must reasonably be assumed” means that interpretation and subjectivity are involved. We are concerned that different local authorities or licensing boards could take a different view of the same show or production, as you said.

We feel that the simple inclusion of a section that provides for an exemption for legitimate artistic or theatre performances and an exemption for venues with a PEL would provide a sufficient safeguard.

I take your point that someone could say, “Well, I run a theatre and I have a public entertainment licence,” but the issue is about proportionality. There are hundreds of theatres and community arts venues up and down the country, and we are talking about 20 sexual entertainment venues. Surely it must be possible to verify that someone is legitimately running a theatre or a sexual entertainment venue.

**The Convener:** I will let John Wilson come back in. If he does not pick up on that, I will.

**John Wilson:** You should pick up on it, convener, because I was going to move on.

**The Convener:** My question is on the definition of “legitimate theatre performance”. You and I may think that something is a legitimate theatre performance, but others may not agree. The issue is about that definition in law.

I often think that the more that we legislate on things, the more that we create a rod for our own backs, in some regards, because definitions often cause us great difficulty.

**Jon Morgan:** The definition in the Theatres Act 1968 will subsist under the bill, because not all of the 1968 act is being repealed. There is a definition of “play”, which would cover a legitimate theatrical performance. One could use that definition.

**John Wilson:** My next question follows on from Laura Tomson’s point about signage outside premises, on which I seek clarification—maybe one of our witnesses can clarify it. My difficulty is that the licensing of premises is done by the licensing board or licensing committee, but the display of signage is covered by planning regulations. The licensing board determines what is acceptable to it, in terms of licensing, whereas, as Ms Tomson indicated, signage outside those premises falls into the planning regime. Has there been any discussion of that crossover? Is it clear to people when they make a complaint about signage that they are complaining to the right department? The licensing officers around the room might be able to clarify the link between the
planning department and the licensing board in ensuring that signage does not impinge on decency, in terms of residents and other citizens in the area concerned.

**Laura Tomson:** I do not have an answer to that. We think that signage should come under the licensing of the venue, because as far as I am aware—and I am not an expert on this—planning objections can be raised only once. A school or a religious centre could be built down the street from premises that have already been given planning permission for a certain type of signage, and there is nothing that the community can do about that. It can be a very convoluted process, in terms of local people understanding who they should approach.

**The Convener:** I will bring in the licensing folk. I imagine that some clubs are in areas that may be conservation zones or have other planning strictures around them. You might want to comment on that, because if that were the case it would allow not just a single objection but an ongoing scenario.

**Eric Anderson:** I refer to one case that took place a few years ago, regarding premises that a business wanted to expand and which displayed signs that led to a number of complaints from members of the public. Those complaints went to the local authority in general—some went to planning and some went to the licensing board. To deal with the situation, we put everything to the planners, who were able to investigate. As a result, the offending signs were adapted and were displayed within accepted terms.

**The Convener:** Had an application been made for that, or had the business existed for a while, with changes made?

**Eric Anderson:** The premises were fairly new. The business wished to expand and develop, and I guess that the sign was a form of advert. Such things are in the eye of the beholder as far as signs are concerned; nevertheless the signs attracted a number of complaints. The issue was dealt with fairly quickly, I must say.

10:45

**Mairi Millar:** Our approach is that the licensing and planning regimes are entirely separate and do not cross over. In my experience, that tends to be the biggest single frustration for members of the public. There is certainly a big misconception around the fact that one cannot enforce the decisions of the other. People who come to the licensing section to complain about advertising on licensed premises become frustrated that that issue does not sit with the licensing board and that we have to pass it on to planning to deal with. Members of the public struggle with that distinction.

**The Convener:** I take it that you have a level of co-operation in your local authority and that the licensing board will deal with the planning department and pass on any such complaints.

**Mairi Millar:** If I received a complaint, I would pass it on to my colleagues in planning to deal with. However, I would not necessarily request a report back on the issue because there would not be anything that I could really do with that information.

**Professor Hubbard:** I am sorry to come in again on this, but it is in my area of expertise. I refer members to a case law example from south Buckinghamshire in 2003, where a local authority gave planning permission for a lap-dance club in a rural location and approved signage, advertising and elevation. It had all the information and approved it. However, two weeks later, the licensing committee rejected the licence application. It is entirely possible for a licensing committee to draw completely different conclusions from those drawn by planning from the same set of evidence. They are separate regimes and case law suggests that they can be treated as such.

By moving the control of advertising to the licensing regime, you would have flexibility through annual renewal to look at what had been happening and to impose new conditions on signage and advertising in, on, or in the vicinity of particular premises. It would seem sensible to acknowledge that and give licensing committees that control.

The contradiction between the two regimes and the fact that they do not have to pay much attention to each other is interesting and unresolved as far as I can see, given that they both consider the material effect of premises on a locality. The bill is particularly mindful of the impact of premises on a locality, with the definition of the locality to be decided in accordance with the facts of the application. Again, a planning committee and a licensing committee can define the locality differently, but it cannot be defined in advance.

**John Wilson:** I have no further questions.

**Janet Hood:** I have a quick point on advertising.

One of the objectives of the Licensing (Scotland) Act 2005 is “preventing public nuisance”. If people are offended and upset by signage, that could be a route by which they could make a complaint to the licensing board. The licensing board would then have a legitimate reason for at least looking at the effect of signage, and it would no doubt report back to the planning service.

I know this because my clients change their signs all the time, but if somebody changes a sign—for example, if they call their hotel Janet Hood’s hotel today and Stewart Stevenson’s hotel...
tomorrow—they require planning consent for the new sign, even though there was, we would hope, nothing offensive in either of the two names. It is quite important that the committee realises that. The signage in the Lothian Road area must have been approved by the City of Edinburgh Council. The local authority—after all, the planning committee is part of the local authority—must have made a decision about that, and it is subject to ratification at council level. Therefore, we must be careful.

The licensing board is undoubtedly the appropriate place to deal with such venues; it has the powers to control these matters. I think that dual licensing will confuse the issue and make it harder for the public to know where to bring their complaints—or where to attack.

**The Convener:** One thing that may be a little bit difficult for us today as regards the signage aspects is that we do not have anyone present from planning. We may have to write to authorities and ask for clarification on how they deal with the issues. I imagine that some of them have been dealt with not by planning committees per se but by officers under delegated powers. Some of the difficulty may well lie in the fact that there is no elected member overview at some points. We will write to some planning committees or to local authorities to get their planning views on that.

**Cameron Buchanan:** I will pick up on Professor Hubbard’s point. The word “vicinity” is very important in relation to signage. A-frame boards are sometimes spread all over the place, which is not very helpful.

What do the panel members think of occasional licences? The policy memorandum suggests that venues that host sexual entertainments on no more than three occasions a year will be exempt. What do the panel members think about that? I could not gather what people thought.

**The Convener:** We have already covered some of that.

**Cameron Buchanan:** Only some of it.

**The Convener:** Does anyone want to come in?

**Mairi Millar:** I do not support the exemption. I do not think that there should be a de minimis rule.

**Eric Anderson:** I agree with Mairi Millar.

**Janet Hood:** We agree with that point.

**Willie Coffey:** What are the panel’s views on the proposal to permit under-18s to work on the premises, albeit outwith the operational hours of the entertainment?

**Janet Hood:** Our clients have nobody under the age of 18 working on the premises and I do not think that it is something that would happen. Licensed premises such as ours and other licensed premises are often not suitable for persons under the age of 18 to work in.

**Laura Tomson:** I agree with Janet Hood. We are talking about premises, not just activity that happens within the premises. There is an issue with the images in such premises and, I would argue, with the attitudes and daily work of most of the people who work in them. It is not appropriate for under-18s to be in such premises.

**Professor Hubbard:** I suspect that that proposal was added as a result of equalities legislation, which suggests that anyone of working age ought to be able to have employment within such premises. Issues in relation to the age of consent may also come into play.

**The Convener:** Are there any other views on that aspect of the bill?

**Sandra White:** I want to raise the important issue of artistic performance and expression. We have said that the bill would not have a negative effect on that and you have admitted that.

The premise of the bill is to enable local authorities to license premises that provide a certain type of sexual entertainment that has nothing to do with artistic expression, or with theatres where there are visiting theatre companies and every so often there is a different type of entertainment. Jon Morgan and others have raised concerns about that. The licensing laws that we have at the moment mean that some local authorities will not allow some forms of entertainment under “artistic expression” in their theatres, but it is allowed in other council areas. There is an anomaly, but the bill should clarify things. As the committee is scrutinising the bill, perhaps that could be specifically included somewhere in it. The bill is in no way intended to prevent artistic expression in places such as those where Edinburgh festival events are held and in various other fantastic entertainment venues.

**Jon Morgan:** Thank you for that reassurance. We understand that that is not the intention or purpose of the bill, but we would like an explicit statement to that effect in the bill, as you suggested. We want very clear guidance for local authorities.

At some point I would like to comment on theatres and public entertainment licences, although it is a completely different subject.

**The Convener:** I intend to get all of that in.

**Jon Morgan:** Okay. Thank you.

**Alex Rowley:** I want to pick up on that point. Glasgow City Council’s submission says that consideration should be given to repealing the Cinemas Act 1985. Are there practical concerns in
moving to a new licensing regime, and if so, what are they?

Mairi Millar: That is part of a wider point that we are making about having so many different licensing acts and regulations. The system in England and Wales is effectively covered by one act—the Licensing Act 2003—and a single premises licence authorises all the various activities. We are some distance from that in Scotland.

The proposal to repeal the licensing requirement under the Theatres Act 1968 and to bring theatre licensing into the general public entertainment provisions of the Civic Government (Scotland) Act 1982 is a significant step forward, but something has been missed: the Cinemas Act 1985 has not been looked at for a long time; to bring cinemas into the scope of the 1982 act, so that we would not require so many separate licences, would represent progress.

Eric Anderson: Licensing legislation, in its broadest sense, needs consolidation. For example, for liquor licensing we have the 2005 act and about 40 statutory instruments, to which have been added two more acts: the Criminal Justice and Licensing (Scotland) Act 2010 and the Alcohol etc (Scotland) Act 2010. Now we have the Air Weapons and Licensing (Scotland) Bill, and bits and pieces are being added to the 1982 act. What is needed is consolidation, rather than bits being added piecemeal. I heartily endorse what Mairi Millar said about including the provisions of the Cinemas Act 1985, but in any event what we need is far broader consolidation of the licensing legislation.

The Convener: Thank you. That is extremely useful. Does Alex Rowley want to come back in on that point?

Alex Rowley: No.

Janet Hood: May I quickly make a point about the differences between licensing boards? It would be unwise to try to fetter the decision making of licensing boards, licensing committees or planning committees. We have to allow local decision making, whether we are talking about sexual entertainment venues, alcohol licensing or anything else. I do not think that it is the purpose of the Scottish Government to try to impose a draconian regime to be followed by elected members who consider what is required in their communities.

“Life of Brian” was banned in Glasgow for 20 years, and “Emmanuelle” was barred from certain rural cinemas for years, although those films could be viewed openly virtually everywhere else in Scotland. Those were decisions taken by local government for whatever reasons the decision makers had, and whether or not we approve of the decisions, they were taken legitimately by people who were concerned about people in their areas. My clients recognise that; their position is not that there should not be differences between local authorities but that they should be treated fairly and how they operate should be recognised.

The Convener: That inevitably leads me to ask whether authorities should be able to set the number of venues at zero.

Mairi Millar: Local authorities should be given the power to set the number of venues at zero. However—this follows on from Janet Hood’s comment earlier—each local authority would have to gather a significant amount of research evidence to determine the appropriate number in its area. It is not my position, on behalf of my local authority, that the number would automatically be zero. Such a decision would have to be based on wide-ranging consultation and evidence gathering.

Local authorities should have the ability to limit the number of venues, including setting the number at zero, but it is important that we have clear guidance and regulations about whether existing licensed premises should be granted grandfather rights.

Eric Anderson: The local authority should be given the flexibility to consider the number of premises in its locality. That said, the decision cannot be arbitrary; it has to be made properly, with proper evidence. Guidance and proper legislation to assist local authorities in making that decision would be welcome.

Professor Hubbard: I have strong views on this. The whole notion of setting a nil limit in advance is legally unreasonable and indefensible, and would put a huge burden of proof on the local authority to demonstrate in advance that it had no suitable localities in which sexual entertainment could occur. The approach would be extremely burdensome. Local authorities would have to draw up a policy that reviewed localities and established a basis for why sexual entertainment should not be present. The policy would have to be renewed annually, because localities change annually, which would create a huge burden for local authority officers. I would strike out all reference to a nil limit from proposed new sub-paragraph 5A of paragraph 9 of schedule 2 to the 1982 act.

I would also be mindful of situations such as that of Andrew Cox’s club, which has been running lawfully for a good number of years. A nil limit would be legally unreasonable in that regard. The bill should make it clear that every case should be decided on its merits and in relation to the facts of the case, to provide flexibility to local authorities to do that.

The Convener: Does Andrew Cox want to say anything on that point?
Andrew Cox: No—I am fine.

The Convener: Does Eric Anderson want to come back in?

11:00

Eric Anderson: Proposed new sub-paragraph 5A in the bill says:

“For the purposes of sub-paragraph (5)(c)—

which is what we are talking about just now—

“a local authority must ... from time to time determine the appropriate number of sexual entertainment venues for their area and for each relevant locality, and ... publicise the determination in such manner as they consider appropriate.”

I have an issue with the words, “from time to time”.

That means that, once a local authority has determined how many such venues can be in their locality—which might be zero—it

“must ... from time to time determine the appropriate number”

of them. That is too general. I would be looking for something more specific so that a local authority would have proper guidance.

I had originally thought that it would be better if the word “may” were used, as in: “if a local authority considers it appropriate or reasonable, it may from time to time determine the appropriate number”. However, if the word “must” is used, it would be better if, rather than saying “from time to time”, a more specific timeframe were set out.

Laura Tomson: It will come as no surprise that Zero Tolerance would welcome local authorities being able to set a limit. It is up to the local authority to decide whether that is suitable for it. It is completely appropriate that local authorities should decide that, based on their violence against women and equality policies. That is a completely reasonable rationale.

Janet Hood: The matter could easily be dealt with by the Licensing (Scotland) Act 2005, which permits licensing boards to consider overprovision in their areas in terms not only of numbers but of types of premises. As has been pointed out by many people today, it is hardly difficult to spot an adult entertainment venue. There are 17 in Scotland—they are quite overt—and it would be easy for licensing boards to identify them. When my application on behalf of a client was refused, the Aberdeen licensing board suggested that overprovision might come into the matter, because, at that time, there were eight venues in Aberdeen. The chairman of the board stated that she was concerned about overprovision, although that was not the basis of the decision.

The aspects of law that we are discussing already exist in the 2005 act, and the challenge is for boards to decide to take them up. New legislation is not required. This committee has to consider whether the provisions in the bill are actually necessary.

Stewart Stevenson: There are few benefits of being older than colleagues, but one of them is that I remember things that others might not remember. Some might recall the veto poll provisions, which were abolished in—I think—1964. Basically, they involved people in a ward voting on whether to allow any licensed premises at all. I think that the last area in Glasgow to have a veto was Cathcart—that is my distant memory. So, in the past, there have been ways in which such matters have been handled. However, that provision was abolished. My grandfather, who was a Rechabite, would no doubt be desirous of that provision being brought back, but I suspect that, today, communities would be unlikely to vote for it. We should not discount the fact that there are ways in which it is possible to add legitimacy to a community’s quite properly deciding on whether it wants such premises, and on other matters as well.

The Convener: I will turn to theatre licensing. I appreciate Mr Morgan’s patience, as a lot of the discussion so far has been around sexual entertainment.

Do you have concerns that some theatres might be exempt from a requirement to hold a public entertainment licence because they have a licence to sell alcohol?

Jon Morgan: We welcome the fact that the provision simplifies things somewhat. As Mr Anderson and Ms Millar said, things could be simplified even further by having a single licensing regime to cover alcohol, theatre and cinema, as is the case in England. It certainly helps to simplify matters for some venues in our membership. Some hold only a theatre licence at the moment. Some, even though they do not need to, hold a theatre licence and a PEL because there is confusion and they were not sure. Village and community halls up and down the country, which typically have an alcohol licence or, perhaps, a PEL but not a theatre licence, will no longer have to apply for a temporary theatre licence for the occasional showing of a touring theatre company.

From that point of view, the fact that there is flexibility between operating within an alcohol licence or a PEL is welcome. The only concern is that alcohol licensing does not give much guidance on the specifics and safety issues of running a theatre venue. We want those rules to be retained and licensing officers to continue to have a close relationship with theatres on safety issues, which are specific to theatres, rather than relating to pubs or other alcohol-selling establishments.
The other question for us concerns cost. There is huge variation around the country in the cost of a PEL, let alone a theatre licence. In one local authority area, it will cost £140 for a year if the venue is up to 5,000 seats and, in another, it will cost £1,855 for the same size of venue. There is a huge discrepancy. The regulations in England and Wales also introduced consistent fees across the country for premises licences, which makes the system much fairer and simpler for everybody concerned. Although that is not within the bill’s current remit, we would certainly like it to be considered.

We also assume that there would be no reason for licensing authorities to increase the current costs of their public entertainment licences because of the changes in the bill, and we would not be happy if that were to happen, because the bill simplifies the system and makes it cheaper and easier to obtain a licence rather than more expensive.

Those are our main views on the matter.

Mairi Millar: Glasgow City Council certainly supports the inclusion of the theatre licence provisions within public entertainment and the abolition of the separate licensing regime. We already include theatres in our public entertainment resolution because, having worked with the theatre trade, we recognised and took on board the difficulties of applying for a theatre licence for the plethora of different types of premises. We also have a broad range of fee categories that suit the different types of premises. Therefore, we support the provisions in the bill.

Eric Anderson: Aberdeen City Council supports the provisions in the bill. If the bill becomes law, it will be interesting to see what the effect will be on some premises that have gone for a theatre licence because, although they do not restrict themselves to producing plays and might have other activities, they do not also require a public entertainment licence.

The Convener: Will you give us examples?

Eric Anderson: The Aberdeen Exhibition and Conference Centre puts on a number of different activities, dependent on its programme. There could be plays and there could be different activities to do with sport, or there could be concerts, if it is used as music venue, which can be covered by a public entertainment licence or by a theatre licence. If that is to be changed and there is a need for a public entertainment licence, rather than a theatre licence, the centre will have to have a public entertainment licence for a range of named activities. If the centre wished to broaden the range of activities, it would have to apply for a variation. That is one of the implications that could result from the bill.

The Convener: Mr Morgan looked a bit puzzled.

Jon Morgan: Yes. Surely all those things are included in a PEL anyway, so there would be no need for a variation.

Eric Anderson: They are included now, if the premises has a theatre licence, but with a public entertainment licence, the activities that are to be carried out must be named. Therefore, for example, if somebody names three activities, which may include theatre, but wishes to add another, they will have to apply for a variation.

The Convener: What you describe is maybe an argument for consolidation.

Janet Hood: It is exactly that. A lot of my licensed premises—that have nothing to do with SEVs, you will be pleased to hear—have ticked the boxes for theatre and cinema on the list of activities. Those are usually bigger premises, but they are often village premises that used to be wedding function rooms, where a variety of things occur. If the measure comes into force, will those premises have to apply for a public entertainment licence?

There was a lacuna in the Criminal Justice and Licensing (Scotland) Act 2010 in relation to the requirement for late-hours catering licences. With places such as supermarkets that had 24-hour opening, although not for the sale of alcohol, some local authorities decided that they had to get late-hours catering licences to enable them to sell tins of beans, while others decided that they did not. The 1976 act dealt with that by making liquor licensing cover those things, so they were exempt.

We should ensure that we do not have multiple licensing on premises, because that leads to confusion and difficulty not only for local government licensing boards but for police and enforcement officers and, more particularly—from my clients’ or anybody’s point of view—for the trade. As you say, convener, consolidation might be the answer.

The Convener: Mr Morgan, we have kind of strayed away from theatres.

Jon Morgan: It is all related. My understanding is that, under the proposed legislation and in the 1982 act, a public entertainment licence is not needed for entertainment if there is a premises licence for alcohol, provided that the entertainment is during licensed hours. In one respect, the bill simplifies things and in another respect it complicates things. My understanding is that, if the bill is passed, local authorities will not be able to oblige people who run theatres to have a public entertainment licence. They could simply say that they will put on plays, dance performances or whatever during the licensed hours under the
I suspend the meeting for five minutes to allow for a change of witnesses.

11:16

Meeting suspended.

11:21

On resuming—

The Convener: I welcome our next panellists: Michael McDougall, solicitor, Glasgow City Council; Gary Walker, principal policy officer, waste unit, national operations, Scottish Environment Protection Agency; and Guy Jefferson, director, SP Distribution, Scottish Power.

Would you like to make some opening remarks, gentlemen? Mr Jefferson, do you want to go first?

Guy Jefferson (Scottish Power): Good morning, convener, and thank you for the opportunity to give evidence. SP Energy Networks, which I represent, maintains the electricity network in the central belt of Scotland and we also have infrastructure interests in England and Wales, so I guess that we are well placed to look across those three regimes and compare and contrast.

Metal theft has been a serious problem for us. Over the past four years, we have had more than 1,000 incidents of attempted or actual metal theft to deal with. That has cost us about £4 million in direct repairs, but we could probably double that to take account of loss of revenue and the number of proactive security measures that we have had to put in place.

The cost is rather outweighed by the risk to health and safety, however. We have had a number of instances of fatalities of thieves who have attempted to steal metal, and also some what I would describe as near misses with members of the public and customers who have been affected by metal thefts. It is not a victimless crime.

On that basis, we fully support the bill. The key areas that we wish to see included, which are in our written submission, are: the removal of all cash transactions; effective record retention; verification of proof of identity for those who sell metals, as we see that as a big deterrent; establishment of an accreditation scheme or a list of registered, compliant and trustworthy dealers; and appropriate penalties for those who are found to have breached the legislation.

In addition, whatever the shape of the legislation, it will be vital to put in place a robust mechanism to implement the new processes and monitor them accordingly.
Guy Jefferson: Thank you for inviting us to give evidence. As you may know, SEPA is Scotland’s principal environmental regulator. Our main purpose is to protect and improve the environment, but it is also to contribute to the health and wellbeing of the people of Scotland and to the achievement of sustainable economic growth.

SEPA is responsible for regulating the environmental impacts of scrap yards through a system of waste management licensing, and we also regulate waste carriers. Although SEPA has no role in the implementation of a scrap metal dealers licensing system, there is an overlap in relation to businesses that are impacted on and targeted by them, albeit for entirely different purposes.

SEPA welcomes the bill. We are concerned about metal theft and have been involved with the metal theft task force and in multi-agency work with the British Transport Police and Police Scotland. The bill offers a series of proposals to disincentivise metal theft.

Michael McDougall (Glasgow City Council): Thank you for the invitation to give evidence. Glasgow City Council, as a licensing authority, regulates scrap metal dealers. For some time, the council has been concerned about the extent of metal theft at both national and local level, not just because of the financial implications, but because of the risk to the public and to perpetrators themselves, which has been mentioned.

Glasgow City Council welcomes the bill’s proposals, especially the introduction of cashless payments and the removal of the exemption warrant system.

The Convener: Mr Jefferson talked of a loss of some £4 million, and probably greater losses beyond that. Obviously, those costs are likely to be passed on to your customers, are they not?

Guy Jefferson: Yes, we have an allowance as part of our regulatory regime, which we utilise, but the costs so far have gone well beyond that given what we have had to do, not only to perform repairs to our network but to put in proactive measures, such as security cameras, to ensure that we keep the thieves out and the lights on.

The Convener: Have there been any examples of major safety difficulties because of the theft of metal, or have you been lucky thus far?

Guy Jefferson: I can give you a couple of examples; we have had a number of issues. Probably the biggest issue was in Govan, about three years ago, when thieves got access to some 132,000-volt cables and set them on fire, expecting the protective systems to trip out the cables so that they could saw them up and take them away to sell for scrap. They caused a major fire that closed the M8 because of the smoke and took out the infrastructure to the Govan area and the west end of Glasgow, putting around 30,000 customers at risk for a period of about three days while we repaired the cables. We had to invoke the gold command emergency authority, and we could have had a situation in which Govan was blacked out for the repair time for a cable—about 36 hours. We came close to a major incident in that case.

In other cases, we have seen theft in substations cause high fluctuating voltages to customers’ premises, and that has caused house fires. We had such a situation in Greenock about a year and a half ago. We worked with a member of the Scottish Parliament who used to be on the Local Government and Regeneration Committee, Stuart McMillan. He was directly involved in dealing with the incident, in which an elderly lady suffered from smoke inhalation because of a small fire caused by voltage fluctuation in her premises.

Those are two examples, but there are a number of others that I could relate.

The Convener: That is useful, Mr Jefferson. Thank you.

Cameron Buchanan: The cash ban is obviously worth while, but having heard some evidence already, I was concerned that, because somebody could pay by cheque, they could just go next door and cash the cheque; therefore, photographic identification is obviously essential. Do you all think that banning cash is right and that photographic ID is essential?

Gary Walker: As I said, SEPA has no experience of the operation of the scrap metal dealers’ system; it is not something that we are responsible for. However, as a regulator, we can understand the importance of identifying the people involved in transactions. We are undertaking some work through the Regulatory Reform (Scotland) Act 2014 to improve our own identity checks when it comes to licensing, so we think that the provisions concerning identification are a good part of the bill.

We also understand and recognise the benefits of cashless transactions in making metal theft less attractive or less easy and convenient.

Michael McDougall: The licensing authority supports the ban on cash payments and the adoption of a cashless system. We are of the view that it will be a vital tool in combating stolen metal entering the system through metal dealers. I understand that the Scrap Metal Dealers Act 2013 requires photographic identification and proof of address, such as a utility bill. We support the introduction of a similar measure.
11:30

Guy Jefferson: It would probably be appropriate to mention evidence that we have seen in England and Wales, where, as my colleague suggested, the system of cashless transactions and identification is already in place. There has been a big drop in metal theft in England and Wales, certainly partly—although probably not wholly—as a result of the legislation, and what I would call opportunist thefts have been almost completely removed. Those are the ones that we would expect to involve transactions of the level of cash that we are talking about. I believe that that is almost wholly down to the introduction of cashless transactions in England and Wales, alongside the use of photographic identification and, in many situations, CCTV.

Cameron Buchanan: An issue that was raised in one of the submissions was that someone who wanted to sell their car for scrap for a minimal amount would be put off, with the result that they might just dump their car. The same might be true of someone who wanted to get a fiver for their fridge. Would not such people be put off, or would you want to ban all transactions anyway?

Guy Jefferson: My expertise in that area is limited, but in our industry we have seen the complete eradication of opportunist thefts. That is because the people who might have carried out such small thefts now have nowhere to go to get cash.

The Convener: Does SEPA have concerns about an increase in dumping if cash payments are not made for small amounts of scrap metal?

Gary Walker: I think that it is a legitimate concern. There is the potential for that to happen on a small scale with materials that are not valuable but, along with local authorities, we operate a system called flycapture, which monitors and tracks fly-tipping, so we should be able to monitor the impact. I would not expect it to be massive. The value of the materials that are stolen is relatively high, so I do not think that there would be much of an effect.

Michael McDougall: I agree with Mr Walker that it is a genuine concern, but such is the extent of metal theft that a balance needs to be struck, and I submit that a cashless payment system is a vital tool in tackling metal theft.

The Convener: An issue that some of the scrap metal dealers raised when they gave evidence to the committee was that itinerant waste dealers who are licensed by SEPA might be left out of the regime. Mr Walker, would you like to comment on that? Should itinerant waste dealers also have to be licensed for scrap metal dealing if that is what they are doing? If they do not have to be licensed for scrap metal dealing, might the bill not stop some of the things that are currently going on?

Gary Walker: The itinerant metal dealers on our books are dealers who do not operate from a site—they might operate from a vehicle that they use to transport waste and would be registered as waste carriers, if they have registered and comply with the legislation. We have many thousands of registered waste carriers and, within that portfolio of registered carriers, it is not possible to identify who is an itinerant scrap metal dealer, so our systems do not help with coverage of that area.

Should those people be licensed as scrap metal dealers? That is more a matter for the experts on scrap metal dealing licensing, but I understand that the split is about 50:50—50 per cent of scrap metal dealers operate from sites and 50 per cent are suspected of being itinerant. From my perspective as a regulator, it would make sense to try and capture the entire sector. That would be my approach to environmental legislation and waste management licensing. I suspect that itinerant scrap metal dealers should be covered by the bill but, as I said, we are not experts in scrap metal dealing licensing.

The Convener: Do you have any information about how many of the folks who are licensed by you for the waste aspects would be dealing in scrap metal at any point in time?

Gary Walker: We have somewhere in the region of 267 licensed premises, which are licensed specifically to deal with scrap metal. That could involve end-of-life vehicles, precious metals or a combination of metal dealing. We have 69 sites registered with us that are exempt from licensing.

The Convener: Why are they exempt?

Gary Walker: Although they are exempt from licensing, they still have to register with us. There is not an exclusion from the licensing system altogether; it is a lower tier within the licensing system, with basic standards in the legislation rather than in the licences. The sites concerned operate in the breaking of depolluted cars, for example—it is perceived that there is less of an environmental risk with cars that have already been depolluted. Operators that depollute cars deal with oils. They operate within the upper tier of the licensing system, and they require a licence.

There are 69 sites that are registered with SEPA as exempt. It is not possible to tell how many of them are also registered with the 32 local authorities as scrap metal dealers. We do not have that information.

The Convener: The scrap metal dealers who were here seemed to indicate that some of the itinerant folks were handling quite large amounts
of scrap metal. Do you have any evidence that that is the case?

**Gary Walker:** We do not have any evidence on that.

**John Wilson:** I seek Mr Walker’s view on whether SEPA would wish to operate a national registration scheme, rather than what we have at present. You mentioned the 32 local authorities and the number of scrap dealers that are licensed with them. Would it not be preferable, and in the greater interest of everyone concerned, to have a national licensing scheme that SEPA or some other national body oversaw, with everybody being registered with that body?

**Gary Walker:** There were a couple of different questions there. There is the issue around dealing with the applications, which is perhaps different from the question of the register itself; there is also the matter of the difference between having a national register and the option of using SEPA to host that register. SEPA’s view is that a national register could deliver benefits and improvements. That is the kind of system that we operate. That would allow better co-ordination and multi-agency efforts to tackle metal theft, and it could improve information sharing between the authorities, Police Scotland and the British Transport Police. It could also help to address some of the concerns around the control and oversight of itinerant metal dealers.

We think that a national register could be beneficial. However, any move to a national register would require a thorough evaluation of options, costs and benefits. The matter would need to be considered alongside the licensing process. Do we separate out the licensing process and retain it with the 32 local authorities, with a central national register? Would that national register necessarily have to be hosted by one body? Could a virtual national register be operated by the 32 local authorities? There are a range of potential options that would need to be explored.

At the moment, SEPA is not resourced to provide a national register of scrap metal dealers, but we recognise that delivering a national register through SEPA could be an option. We would be happy to explore that.

**Guy Jefferson:** I would support a national register. We deal with quite a lot of scrap, and our contractors deal mainly with our scrap. It would be helpful to have the capability to put it in contracts that the register exists, and that we expect our contractors to work within the register and to go to registered scrap dealers, so as to ensure that the scrap metal may be traced through its various cycles.

I echo some of Mr Walker’s comments. I know, because of our involvement in England and Wales, that a parliamentary group will meet in three weeks to discuss the implementation in the south of the provisions of the Metal Theft (Prevention) Bill. The biggest issue for them is how they maintain a national register in terms of the responsibilities of local authorities and of—in this case—the Environment Agency as the overseeing body. I know that they are having problems getting the registers in place because the responsibilities are not absolutely clear. There are a number of on-going discussions about the resources that are available to undertake the task.

Having a national register is key and I think that there is a good opportunity for Scotland to take the lead on that.

**Michael McDougall:** There is clearly a strong argument for having a national register, particularly because, as you will appreciate, once an itinerant metal dealer is granted a licence they can trade Scotland-wide. However, the Civic Government (Scotland) Act 1982 is very much predicated on the local level and having visibility for local voices to act on local conditions. Any move to a national licensing system would require evaluation of all the options, which would include a national register.

**John Wilson:** Mr Walker said that SEPA might be in favour of a national register. Mr Jefferson gave a good example of what is happening in England and Wales regarding a register because of perceived conflicts about who would be responsible for what. In relation to that and to Mr McDougall’s response, I know that SEPA works closely with local authority planning departments and environmental health departments but could that same arrangement be applied to SEPA so that it had overall authority?

According to what Mr McDougall said, if an itinerant scrap metal dealer gets licensed in Glasgow, they can also operate in Dumfries and Galloway, for example. Given that, would it not be better if all dealers were registered with SEPA as the overarching authority instead of having the current situation whereby 32 local authorities issue licences to itinerant scrap metal dealers? At the moment, depending on a local authority’s decisions, dealers can operate throughout Scotland in different local authority areas with no apparent control over what they do.

**Gary Walker:** We recognise the benefits of local decision making for local licensing considerations. We understand that and can quite easily work alongside and complement it. As I said earlier, the licensing process could be distinct from a national register and the two aspects could work in a complementary fashion, if that was desired and it became evident after an options appraisal that it was the right way forward. However, to pick up on the experiences of our colleagues down south, it would have to be clear what the responsibilities
were and that they would be effectively implemented by all involved: the 32 local authorities and SEPA. Itinerant dealers could be registered with a local authority, if that system could be made to work, or directly with a national body, such as SEPA, that hosted a national register. The pros and cons of all the options could be considered.

On the point about SEPA having the ultimate authority over decision making, it would not be good to have local decision making with a licensing board and then for a national authority such as SEPA to have a second bite at it. A distinct streamlining of licensing decisions would need to be part of any proposed system.

**John Wilson:** The convener raised the issue of local authority licensing of itinerant scrap metal dealers. I referred to the example of somebody being licensed in Glasgow but being able to operate in Dumfries and Galloway; they would also be allowed to operate in Orkney or Shetland, for example. Who has the authority to oversee how they are gathering the materials that they are trading and what they are doing with them? When an itinerant scrap metal dealer is licensed in one authority but operates throughout Scotland, who has ultimate oversight of what that dealer does?

**The Convener:** How would Glasgow handle that?

**Michael McDougall:** We would look to Police Scotland to be the enforcement body to take action. Obviously, Police Scotland would deal with unlicensed dealers. If there was a breach of condition we would be able to make a complaint that would be brought before the licensing committee, so it would probably be dealt with in that way. Glasgow’s local authority officers would not have knowledge of what was happening in Orkney, so we would turn to Police Scotland. That is one of the benefits of a joined-up police force, and we would look to it to make the committee aware of a complaint.

**John Wilson:** In effect, you are saying that if Glasgow issued an itinerant scrap metal dealer’s licence, it would not always know what that dealer did in other parts of the country and that you would rely on Police Scotland to intervene.

**Michael McDougall:** Yes.

**John Wilson:** I assume that Police Scotland would report to Glasgow, and Glasgow would then have to take action to remove the licence.

**Michael McDougall:** I am not aware of any specific examples—

**John Wilson:** But speaking hypothetically—

**Michael McDougall:** Yes. The police would be able to bring a complaint to the Glasgow licensing committee.

**John Wilson:** Clearly that highlights an issue with the current licensing regime, particularly for itinerant scrap metal dealers. Oversight of what such dealers do and how they operate in other areas of Scotland becomes difficult. That raises another issue regarding Police Scotland’s role and the link between Police Scotland, other agencies and local authorities.

Michael McDougall said that he did not have any examples of Police Scotland reporting incidents. Is SEPA aware of any incidents of itinerant scrap metal dealers acting illegally or outwith their licence agreement?

**Gary Walker:** I am not aware of any circumstances.

**John Wilson:** We might have to contact Police Scotland to seek clarification on that.

**The Convener:** We have used the terminology “itinerant scrap metal dealer”. What about itinerant waste dealers who might not be registered as scrap metal dealers because they fall outwith the current regulation? Are you aware of any of them having been reported to Police Scotland for metal theft and metal dealing?

**Gary Walker:** I am not aware of any cases in Scotland.

**The Convener:** Okay.

**Willie Coffey:** Guy Jefferson mentioned 1,000 incidents. I will ask the question the other way round: how can the bill reduce that figure? I am interested in what happens in those incidents. Is the stolen metal repurposed really quickly and does it disappear into the system? Is there an issue there? How does the legislation help with that? Alternatively, is it all about the registration scheme and its cashless nature? Would that reduce the number of incidents? Perhaps you could give us a couple of examples of the incidents and say how they get through the system undetected.

**Guy Jefferson:** I am happy to do that. Speaking from our experience in England and Wales, my view is that two types of thieves are associated with metal theft. There are the organised groups that hit a variety of sites in a short period. That could involve overhead lines, for example; across
the country we have seen a big upsurge in activity in that area. An organised group might concentrate in the Falkirk area. We have 25,000km of overhead lines, so it is very difficult to proactively manage and secure that asset base. The thieves will hit an area over a week and get quite a lot of scrap; they then—I believe—take it abroad via containers. The legislation would not necessarily assist in that area.

The other type is the smaller opportunist thief, and the implementation of the scheme has had a big effect in that respect in England and Wales. You are right to note that the thieves do not get ready cash for the scrap metal. They have to present themselves with identification, and there may be CCTV on the site. The scheme acts as a general deterrent, and—as I said—we have seen a big reduction in that type of theft in England and Wales since the legislation was introduced.

I am happy to provide the committee after the meeting with evidence on that. Such activity started to increase in Scotland as some of the opportunists came north to take advantage of our less stringent system. Evidence exists not only for electricity infrastructure, but for other utilities too.

Willie Coffey: Is the material pretty much unidentifiable soon after it has been stolen?

Guy Jefferson: Yes, in general. We provide information to Police Scotland on our specific types of cables so that, on days of action—in which we get involved—with scrap dealers in central Scotland, the police are able to identify our cables. They are not marked with “Scottish Power” or any other identifying mark, partly because of the cost. It would cost us significantly more to do that, and the reality is that we turn over perhaps 1 to 2 per cent of our assets every year, so the benefit that we would gain from doing that in terms of addressing theft would be fairly limited for the extra expense.

We tend to invest more in proactive measures such as CCTV and guarding high-risk sites and sites that are often targeted by thieves. Generic cables can be identified, but they are not marked specifically with our name.

Willie Coffey: I have one last question. Should the 48-hour rule on retaining metal on the premises be fixed or retained? Should it be flexible, or more stringent?

Guy Jefferson: Again, that is probably a matter for Police Scotland rather than for us. As long as sufficiently detailed records are kept, it is not critical to have the metal on site for a prolonged period, but Police Scotland would be better equipped to answer that question.

Gary Walker: My answer runs along similar lines: Police Scotland’s views are foremost in that respect. We have noted the British Metals Recycling Association’s concerns about the tag-and-hold system and a potential conflict with the waste management licensing conditions that are part of our licensing system.

We are comfortable with the current proposal in the bill to remove the so-called tag-and-hold provision. If that system was brought back in, we would just have to do a bit more work with Police Scotland to ensure that our efforts were coordinated collaboratively and effectively.

Michael McDougall: As Mr Jefferson and Mr Walker have said, it would be useful to hear Police Scotland’s comments on the issue.

The licensing authority recognises that the tag-and-hold requirement may be a burden on metal dealers owing to the market in which they work and the need to turn around metal quickly, and—as Mr Walker mentioned—the requirements of a SEPA licence. Given the introduction of new record-keeping requirements, the licensing authority believes that the provision could be done away with.

The Convener: Are the record-keeping requirements that are proposed in the bill sufficient to deal with the matter?

Michael McDougall: Yes, they are.

The Convener: Do you agree, Mr Walker?

Gary Walker: Yes.

The Convener: And Mr Jefferson?

Guy Jefferson: Yes.

Alex Rowley: I have a question on the 48-hour requirement for the witness from SEPA. The scrap metal dealers have argued that larger dealers would have to find more land and run a much bigger operation. Would that create difficulties for SEPA in trying to regulate compliance with conditions that require extra land?

Gary Walker: Yes, there can be a knock-on effect. I have visited scrap yards and I know that on many sites space is constrained. For environmental protection reasons, we often impose conditions, such as maximum quantity and storage limits and storage conditions—for example some material has to be stored on impermeable concrete. Tag and hold—the requirement to store metal for 48 hours—can have an impact on how operators respond to our licensing conditions and may cause them some difficulties. As I said, we might have to work through that with Police Scotland and individual operators.

The Convener: Does the current legal penalty for failure to comply with the licensing regime, which is a maximum fine of £5,000, need to be increased?
Michael McDougall: The licensing authority does not have a specific view on the matter.

Gary Walker: The fine level is comparable with that for some environmental offences. If it would be helpful, I could provide some information to the committee on environmental offences and fine levels, which would allow you to see whether there is parity there.

The Convener: That would be extremely useful for the committee. If that could be sent to the clerks, we would be grateful. Mr Jefferson, do you have a view on the fine?

Guy Jefferson: Speaking from my experience, I do not believe that that level of fine has been a sufficient deterrent for the thieves that Police Scotland and the police authorities in England and Wales have apprehended on our sites. A higher fine or some other penalty needs to be considered. I talked earlier about the impact on communities. This is not a victimless crime. It would be beneficial if the penalty were to make a significant statement. This is not my area of expertise but, given my experience in England and Wales and in Scotland, I do not believe that £5,000 is a sufficient deterrent.

The Convener: What is the value of some of these thefts? In the Govan example that you gave earlier, what was the cost to Scottish Power and its customers?

Guy Jefferson: The cost of that individual event was in the region of £750,000. That was an extreme event—it is the worst that we have had in the past four years. At the other end of the scale, there is the Greenock example that I gave, in which there were a small number of house fires and an elderly member of the public suffered smoke inhalation. The value of the metal that was stolen that resulted in that incident was probably no more than £10.

The Convener: Going back to the Govan scenario, was £750,000 the cost of the metal that was stolen or the cost of the entire event?

Guy Jefferson: It was the cost of the entire event. No metal was stolen.

The Convener: No metal was stolen but the event cost £750,000.

Guy Jefferson: A fire was set but it went out of control and the thieves had to abandon the scene without recovering any metal.

John Wilson: I want to put a similar question to Mr Jefferson. In earlier evidence you talked about the theft of £4 million-worth of material. The £750,000 cost of putting right the incident in Govan gives us a good indication of the cost to Scottish Power of carrying out work to bring power back to a line and of repairing the damage caused, even though, in that case, the thieves did not steal any metal.

On the £4 million, it would be useful if you could provide us with the estimated costs to Scottish Power of replacing the scrap metal that was stolen. In the Greenock incident, you said that the value of the metal would have been about £10; however, the cost to Scottish Power would have been substantially more than £10. Will you indicate the cost of putting right the thefts that have taken place so that we can compare that with the fines that are being imposed—or might be imposed—on the criminals involved?

12:00

Guy Jefferson: I clarify that the £4 million that I mentioned is the direct cost of repairs and not the value of the metal. As I said, we could approximately double that to take account of revenue losses and the other costs associated with the events and managing our response to them. I will provide you with some information on the value of the metal that has been stolen, but it is significantly lower than £4 million.

The Convener: It would be useful for us to get an idea of the value of the metal, but the overall cost is of great interest to us, as is the inconvenience to your customers. The more that it gets out there how much this is costing people, the better, because it is your customers who are bearing the burden of the costs that arise because of the thieves. We would be immensely grateful for any additional information that you can provide, Mr Jefferson.

Guy Jefferson: Okay.

Stewart Stevenson: To supplement that, if there is anything available about the cost that is borne by your customers—there may not be—that would be helpful.

The Convener: Mr McDougall, you are involved in the licensing regime. Are you aware that Glasgow City Council has removed licences from scrap metal dealers in recent times? How many refusals have there been in recent times for scrap metal dealing licences?

Michael McDougall: Unfortunately I do not have those figures to hand, but I could provide them, if appropriate, to your clerk.

The Convener: That would be useful. It would also be extremely useful if we could have an indication of how many applications you have had, as an authority, for scrap metal dealing licences in recent times. That would give us an idea of the scale of what local authorities have to deal with. As you are a larger local authority, that information would give us a good indication.
Alex Rowley: On the point about enforcement, I assume that for a licensing authority such as Glasgow City Council, or indeed any of the 32, the majority of breaches of licences will be picked up by the police. I assume that you do not have enforcement officers who are constantly checking on what is happening.

I also want to ask SEPA about that issue in relation to licensed scrap yards. Does SEPA have enforcement officers who carry out regular checks or are we very much reliant on Police Scotland to ensure that people are sticking to what they say?

Michael McDougall: My view is that Police Scotland is responsible for the bulk of enforcement. There are proposals in the bill relating to civic licensing standards officers, who, if the bill is passed, may also have a role in relation to metal dealers. I will not go on about that at length, but the bill proposes that they have an information and guidance role. That could assist not just with enforcement but with bringing people who should have a licence into the system, so that they are subject to the scrutiny of the licensing regime.

Gary Walker: SEPA has waste management licences and there is a licensing functionality that covers people going through the process of applying for licences and our issuing them. Beyond that, there is an enforcement resource within SEPA. We have environment protection officers who routinely visit licensed and authorised sites to check compliance with licence conditions and we publish on our website compliance assessment scores for all our licensed and permitted premises.

The Convener: Thank you. Are there any other questions?

Alex Rowley: I have a question about the differences between the licensing regime in Scotland and the one in England and Wales. A comment was made about some opportunistic people coming up here because the rules are different. What are the main differences?

The Convener: Mr Jefferson, I think that you mentioned that. Do you know the main differences?

Guy Jefferson: Are you asking about the licensing regime that exists at the moment?

Alex Rowley: Yes.

Guy Jefferson: The registration system is different. I do not think that identification is required to the same extent as is proposed in the bill and is in place in England and Wales. Also, cash can be transacted.

I do not believe that there is a huge difference between what is proposed for Scotland and what exists in England and Wales, but there are one or two things that are still being debated about the legislation in England and Wales that it would be important for us to ensure are included in the bill. As I said, the main one concerns the administration of the scheme. We need to get absolute clarity on that.

I also strongly support the idea that we have some sort of national accreditation system, because that would provide an incentive to the scrap dealers as well. If they are on it, companies such as Scottish Power are much more likely to use them for managing scrap, so there is an incentive for them to be accredited at a national level. Unless we have some incentives in the system, people will not necessarily comply.

The Convener: Mr Walker, do you have anything to add on that?

Gary Walker: I have nothing to add.

The Convener: How about you, Mr McDougall?

Michael McDougall: As Mr Jefferson remarked, the main difference is that England and Wales already have a cashless payment system in operation. I believe that they also do not have an exemption warrant system. The implementation of those two measures in Scotland will be fundamental in preventing regime shopping—that is, people coming from England and Wales to dispose of scrap metal in Scotland.

The Convener: Thank you very much for your evidence. Some of the information that you have provided will be helpful when we hear from Police Scotland on the issue on 28 January.
The Convener: Item 2 is our sixth oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We will take evidence from witnesses on the provisions that relate to taxi and private car hire. We begin with evidence from Dr James Cooper of Edinburgh Napier University and the University of Missouri—St Louis in the United States of America. We will then hear from a panel of witnesses from the taxi and private car hire trade and then from licensing authorities and hire car service users. I point out that witnesses do not need to press the buttons on the consoles; the microphones will be operated by the sound engineer.

I welcome Dr James Cooper. Would you like to make opening remarks?

Dr James Cooper (Edinburgh Napier University): Thank you ever so much for inviting me to give evidence, convener. I have prepared a short presentation for the committee and I would be delighted to take questions to the extent that I can answer them.

The Convener: Please go ahead.

Dr Cooper: Good morning, ladies and gentlemen, and thank you ever so much for inviting me. My presentation will address issues specific to licensing of taxis, which in my definition will include hackney carriages, private hire cars and other operators of vehicle types that offer a comparable service, which have in some places been titled transportation network companies—examples include Uber, uberX, Lyft and others that provide services in a taxi-like way. If I mention trade names and company names in my commentary, that is intended to give you an example of a service type; it is not intended to single out any company.

I commend the Parliament and the Government for their desire and effort to develop taxi and private hire car legislation. It is appropriate and commendable to provide a legislative framework that facilitates and protects in the public interest.

I believe that legislation needs to be aware of the current market, current change in the market and future activities that might impact on its effectiveness and implementation. I contend that the bill fails to address the needs of the transformed market that is likely to emerge in the very near future.

I highlight the view that, in framing legislation, it is easy to suffer from a belief that the legislative
framework itself is sufficient to ensure appropriate supply. Evidence from locations where the market has been transformed does not uphold that view. Many of the new entrants sit between legislative instruments. It is important that that point is made clear. The market in its transformed state will be very different from the market that we see now.

I suppose that the most important question is: what is a transformed market? I highlight that it is the opposite of the legacy market—the one that we know and which has operated successfully for a significant time, with legislation dating back to 1847 and even prior to that still being in force in some places in the United Kingdom.

The transformed market will include new technology operators—predominantly those associated with smartphone applications, otherwise known as apps. Those exist in a number of generations and have been present in the taxi and taxi-like industries for about five years.

We have had six generations of apps, which suggests a rapid evolution in the market of one revolution per eight months or thereabouts, as opposed to one revolution in legislation for taxis every 80 years or so. That difference is significant.

The transformed market will include quasi-taxis—vehicles that operate in the taxi market and provide a taxi-like service, which are often indistinguishable from taxis to those who wish to use them. Those operator types have in the United States of America been named transportation network companies, which are often abbreviated to TNCs. New services will spread across licensing categories to offer services from a variety of traditional licensing distinctions and many services that sit outwith current legislation.

The transformed market will facilitate service provision by private individuals offering trips in their private cars under what is in effect a private contract. That does not fit readily into the distinction of ride sharing, which is a term that has been applied in some locations. In my definition, ride sharing is a positive public contribution that offers a ride for part of a trip that would exist in any case, whereas TNCs or quasi-taxis provide ride sharing on a commercial basis for profit.

It is worth noting that the transformed market and specifically the apps that facilitate transportation will often obscure from the user the category of vehicle that is being engaged and thus its legality or otherwise.

It is appropriate to frame legislation currently, but it needs to be sustainable. The Government and the Parliament need to be aware of the transformed market in developing legislation and must legislate to an extent that supports policy in the new market dynamic.

I will touch on taxi and private hire car distinctions. Hackney carriage and private hire car services are distinct only in the legacy market. They are consistent only in their legislative differences.

Apps in effect provide an electronic hail to quasi-taxis, which removes one of the few distinctions of the hackney carriage. Number constraint, which is a part of some hackney carriage markets, might become ineffective under the current testing of it if the regulation that allows for it is unenforceable. Number constraint might also become irrelevant if its market impact is lost.

The measurements that are applied to number constraint, commonly known as measures of significant unmet demand or SUD, will become impossible to use in their current form in a transformed market. That does not exclude the possibility of testing and measurement, but that requires change. That will have an impact on all other areas of regulatory control, to wit, quality control and economic constraint—fares and leases. The three elements of quantity, quality and economic controls are completely interlinked and cannot be divorced from one another.

If I may, I will touch briefly on taxi numbers and quantity constraints.

**The Convener:** Please be brief, as we have quite a lot of questions to get through.

**Dr Cooper:** The concept of quantity restraint has been based on a view of market failure and a lack of equilibrium. Concerns change when the market is transformed. The concept that is being proposed for the licensing and regulation of private hire car numbers appears to be unenforceable in a transformed market and is not measurable for quasi-taxis. I also note that the cost indicated for studies appears to be completely incorrect.

I will touch briefly on two further points, the first of which is market transformation. There has been and continues to be a clear demand for app-based booking. That is not being and has not been predicted in any SUD study, to my knowledge. The transformed market has grown, but it has also had an impact on traditional hackney carriages, resulting in a 20 to 40 per cent loss in taxi use. There is evidence that cities and Governments might find it easier to recast legislation than to seek to enforce it.

My final point relates to accessibility. To date, no TNC fleet vehicle has been accessible at all—the term “accessible” is well defined in relation to wheelchair-accessible vehicles—because the companies that provide such services rely primarily on private individuals to supply vehicles. That is an uberX type of service that negates any desire for equality of access at the same price.
I point out one area that relates to market manipulation. The licensing review discusses the concept of cost neutrality to councils, as the costs of any tests applied are covered through the fees of the private hire and taxi industries. A TNC does not need to win any legal challenge. It simply needs to push the price in the taxi industry beyond a tipping point where taxi supply becomes an uneconomic and non-commercial venture.

The Convener: You have highlighted some areas that the committee has already asked the Government for clarification on. We posed questions to the Government on the growth of mobile phone apps and Uber and had a response from civil servants that states that, while the taxi and private hire car provisions in the bill do not specifically address technological developments, the Civic Government (Scotland) Act 1982 provides considerable scope for secondary legislation to address such issues, and that the Government has the ability to provide clarification and best practice guidance for local authorities. What do you think of that response?

Dr Cooper: The technology appears to have moved so quickly that any response needs to be aware of its current and future development. It is true that the taxi industry has provided apps and app-based booking. The relative effectiveness of those services pales in comparison with the TNC operations, and they are restrained by the commercial operations in which they fit. The technology is advancing at such a speed that it might not be possible to understand its impact fully prior to its application.

The Convener: Uber has tried to be somewhat conciliatory this week in response to criticisms that have been made. It faces legal challenges in a number of countries and has been accused of flouting competition rules, and there are major concerns in some places about the lack of sufficient safety checks on drivers and their vehicles. How can we ensure that, if and when such companies enter the Scottish market, they cannot flout safety rules and regulations?

Dr Cooper: The question is difficult to answer, as evidence suggests that most cities and Governments have been powerless to control the excesses of some of the TNCs. To my knowledge, the most common response is to fine and place citations on Uber drivers. A difficulty is that the company that provides the service considers itself to be not a transportation company at all but a technology company and therefore outside the regulation of transport that applies to the drivers who happen to use its service. Citations and fines are therefore placed on the drivers, and the most common response by Uber has been to pay the fines as, in effect, a cost of entering the market.

The only really successful action against Uber has been in the Spanish courts and has removed telecommunications access to its app, which prevents anybody from getting to Uber through their smartphone. That comes at a high price, in that not everything that the technology allows is a bad idea. Perhaps its application is bad or even illegal, but the concept behind it might be harmed by the removal of the service.

It is hard to accommodate Uber. Cities in the US that have done so have done that by changing their laws, chapters and codes in a way that is satisfactory—if you will excise the term—to the companies that want the change. That has been the only method by which the service has become fully legal.

The Convener: Do you think that we have the flexibility under the current legislation and the bill to make changes in law if necessary, should Uber or others try to enter the Scottish market?

Dr Cooper: I am afraid that I do not. The bill as it stands reflects the legacy market alone and will not be fit for the following market.

The Convener: Do you disagree with the statement that I read out earlier from a civil servant in response to our questions?

Dr Cooper: I am afraid that I do.

The Convener: What is your reason for that?

Dr Cooper: I believe that Uber accrues a benefit in being seen to be on the wrong side of the law. It gains notoriety among its user group and benefits from that position. I also contend that the market that the bill will facilitate—the market that we are heading to—has inherent problems that will require further addressing. We are heading towards a monopolistic provider based on app provision. That will require considerable review in the future. I fear that the concepts as set out in the bill, and the proposals on the ability to control technological developments, do not foresee the extent to which the market will change.

The Convener: I will bring in Mr Rowley in a minute as he wants to ask a supplementary question, but first I have a question about the monopoly of the application of the app. This morning, I took a taxi in to Parliament—I should say, before anybody suggests that I am abusing my position, that I did so at my own expense. Sitting in the taxi, I saw an advert for the app for that taxi company, which I could download to my phone and then use to order and track the taxi—that is what the advert says, although I have not used the app.
You say that Uber has a monopoly on such applications, or is monopolistic. How is that possible when all those other apps are being developed?

Dr Cooper: The contention was that it may become monopolistic. The Edinburgh hackney carriage apps are extremely good and I can recommend them.

The benefits of the technology should not be underestimated. There are very good reasons for having such apps. Where Uber sits, in terms of its market dominance and share, and where others of the same type sit, are due to the nature of the market. For the first time, we are dealing with a company that is not local but global. The app is transferable, without any penalty, between locations. It has a great deal of power.

Of the six generations, while the taxi companies have a very good product, they are still behind the TNCs, primarily because their product is distinct to one form of transportation, whereas the TNC product crosses multiple distinctions, vehicles and prices. If you look you will see that the Uber app allows one to slide between vehicles of different types, without any particular awareness of the distinction of licensing and legality that such choice results in.

Alex Rowley (Cowdenbeath) (Lab): I have spoken to people who tell me that the bill does not reflect the transformed market. What does the bill need to do to reflect that market and are there examples of legislation in other countries that we can consider?

Dr Cooper: There are examples of legislation, in a transformed market, that exist post-app development; I point you to the Washington DC, chapter 31 regulations and the code in Houston, Texas. A significant difficulty arises in the testing and assurance of driver safety and vehicle safety. There are other issues around quality and age of vehicles. Those will often be handled by external third parties, against the will of the licensing authority and the traditional taxi industry. The taxi industry fits in a very distinct niche—this is how we do it and this is what is legally required—and tends to see the newcomer as not following the same rules, at a significantly lower cost. It is a competitive issue as well as a legislative issue.

The Convener: Would it be fair to say that in Scotland we have not yet entered what you call a transformed market?

Dr Cooper: That is a fair comment. I believe that Scotland is on the brink of entering the transformed market and will develop exceptionally quickly, once it starts.

The Convener: You say “on the brink”, but do you have any idea when the transformed market is likely to happen here?

Dr Cooper: I understand that Uber Britannia has applied for licences in Glasgow and Edinburgh. They will be granted and that company will begin to operate a variety of services in Scotland, starting with those that fall under private hire car legislation, but rapidly expanding into other forms of Uber—that is what evidence from other locations suggests.

Uber is not a single product, but is about seven different products. London, for example, has five Uber products, including something that it calls UberTAXI. The most contentious product is uberX, in which the private individual provides transportation; uberX gives me most concern in terms of its legislative standing and the power that it has to change the market to the greatest extent. The timescale from launch to uberX is probably six months.

Cameron Buchanan (Lothian) (Con): Do you consider that the underlying reasons underpinning the need for the licensing of taxis and private hire cars are necessary? You said in your submission that we should probably recast the legislation. Does that mean that we should abandon the proposals that are before us for the moment, because the technology is moving too fast? Have we covered only half the problem?

Dr Cooper: If we wait until the market is settled, we will have five or six more generations. The problem is that the technology will continue to change; what we see now will be followed by innovations that might involve planned ride sharing. The simple answer is that, in my view, there should be current legislation. However, that current legislation should provide sufficient power and regulatory authority to address changes that are currently foreseen.

Cameron Buchanan: What are the advantages of the two-tier system that we have at the moment, with private hire and hackney carriages? Are there any advantages?

Dr Cooper: Today in 2015, yes; tomorrow in 2015, no.

Cameron Buchanan: Right—that is what I thought. Should we be recasting the proposed measures or slightly changing them? Should we take them out of the bill and reform or tighten the provisions?

Dr Cooper: I certainly agree that they need tightening. I do not have an alternative text for you, for which my apologies.

The single-tier/dual-tier system question is significant. In effect, it may become irrelevant—however many tiers you choose to have—if some
people ignore the tiers altogether, which is where things are going. The current dual-tier system serves, and has served, a purpose very well. That purpose and the reasons for the distinction will remain.

There is then a need to ask why we regulate in the first place. What is the purpose of having regulation? In a purely commercial market there is very limited control, but the taxi market has not operated in that way for hundreds of years, with good reason. The question is why we control it, what potential benefit there is to maintaining it and what potential disbenefit there is in the loss of that control.

Cameron Buchanan: Given that technology is moving so fast, if we do not remove the provisions from the bill, should we make them a bit looser, so that they cover all aspects? That is what I really meant earlier regarding the future.

Dr Cooper: It is appropriate to cover all aspects. It would be a loss of opportunity not to address the aspects that we foresee as being relevant in transformed markets elsewhere.

One of the fundamentals of taxis is street hire, or applying for hire, and operating in a restricted market in some locations. There is a question around the validity of tests being applied for maintaining that market once the market has transformed. We view that as the significant unmet demand test. Even if the industry were to move, as suggested, from taxis alone to taxis and private hire cars, that would require significant renovation in order to remain valid, and even further renovation in a fully transformed market with players that do not abide by it anyway.

John Wilson (Central Scotland) (Ind): Bearing in mind the transformed market that you have described, surely the issue around the legislation is to ensure that all cars and all drivers are licensed. Would that not be a way of getting round Uber and UberX? It would be a matter of saying that, if someone is providing a service for profit, the car should be licensed and the appropriate insurances should apply to the delivery of that service, rather than just moving towards a transformed market in which anybody can use an app and hail a car to come and pick them up. The individual does not know whether the driver or the car is licensed. They do not know whether the car is fully equipped to deal with its passengers or, more important, whether it is insured in the event of an injury or other incident arising from its use.

10:00

Dr Cooper: I need to preface my answer by saying that it is essential, in the public interest, that vehicles are insured and tested and that drivers are safe, insured, licensed and controlled. I have no hesitation in saying that that is the correct outcome of a licensing and regulatory regime. That is the role of Government and its regulators.

I say that as a preface because I have observed multiple cities—too many to count—where the belief was that regulation and laws were sufficient to their purpose; in effect, they were saying, “My city has laws that are sufficiently good. Why would anybody break them or attempt to twist them?” Time after time, that has been proven wrong. There are determined companies with huge resource that seek to achieve reform or change that reduces and makes unenforceable the legislation of that city.

I give you the example of Houston, Texas. A year or a year and a half ago, Houston’s view was that its regulations were strong enough. The regulations were effective and strong in an industry that chose to follow them. The moment that a player came in with a massive number of operators—2,000, 3,000 or 10,000 private individuals—that law became unenforceable simply through the mechanics of its enforcement regime. If the same thing were to happen in Scotland, with Police Scotland seeking to prosecute tens of thousands of drivers and a company that was prepared to cover the fines applied to those drivers, it begins to paint a picture of a less enforceable regime.

It is a perfect storm, if you like. It is one that we cannot solve while we have an entity that chooses to go a different route. That is why so many cities answer the problem by changing their laws to reflect the demands of the incoming player, much to the complaint of existing players—who have done nothing wrong—and indeed much to their harm. When we have an incomer that takes up to 40 per cent of the market, the traditional market will be different. It will be a poorer market. The quality of services will be poorer. One of the outcomes of regulation as it stands is that we have very high-quality taxis in this city and others in the country. The impact on users of that service will be negative.

I could talk about relative qualities of service. In Scotland, there is a large advantage to the traditional taxi trade in that it is much better than its US counterpart. However, that in itself may not be a sufficient distinction to maintain the market share that it enjoys currently.

John Wilson: You referred to the current enforcement regimes and the fines applied. You said that Uber had picked up some of the fines that had been imposed on drivers in other jurisdictions. Are the fines sufficient? Do you think that there is a way under the present regime of international legislation of fining Uber itself?
You said that Uber claims to be a technology company but it contracts drivers to deliver a service for the company, so I do not regard it as a technology company. I regard Uber as a business that uses drivers. Are we tackling the issue correctly by fining drivers? Should any legislation that is introduced be able to target the company, which is, in effect, undermining the existing legislation of a region or area? You also said that Uber is a new entrant to the market, but you are giving me an image of a company that is undermining legislation and acting illegally, and will do so for future legislation.

Dr Cooper: I certainly agree with your stylisation of what Uber does, but I am not sure that it would agree with it. My perception is that Uber does a job that is no different from that done by a traditional radio taxi circuit in Scotland at present; the only difference is the way in which bookings are done—Uber will make a distinct difference.

There are examples of the company—Uber Technologies Inc—being indicted and prosecuted. The most recent example was in Spain, but a more relevant example might be the one in Germany, where the company was found to be in breach of regulations but was let off on a technicality, to use an American term, in that the wrong company was prosecuted. I have to make it clear that there are a number of Ubers and others: it is not simply one company. Authorities need to be aware of that and ensure that the prosecution goes to the right company, which I believe is Uber Technologies Inc Amsterdam, although I might be incorrect.

The problem that I have seen in the United States is that the value of the fine that can be imposed is not harmful or punitive for the company, but it can be very harmful and punitive for the driver. In some instances, the driver has their vehicle removed as well as receiving a fine. A fine for the company, which is unbelievably huge, is nothing to it and the company could interpret it as a cost of market entry. However, a fine is very significant to the driver and, were Uber not to pick up the fine, there would be a change in behaviour.

Do I believe that legislation can do something to tackle Uber? I believe that that is possible, but I do not think that it would be easy. The extent to which an enforcement regime would need to go after multiple individuals would make it very hard for enforcement to work.

John Wilson: Thank you.

The Convener: We talked earlier about safety checks on both drivers and vehicles, but it seems that Uber and the like do not have to comply with safety checks in many of the areas in which they operate or that they force licensing regimes to dilute the nature of their safety checks. As well as having an expectation of safety when we go into a cab or a private hire car, we have an expectation of knowing how much we are likely to pay. We expect to know how much we will pay per mile and for waiting times. Maybe I am a bit naive, but what is the arrangement for payment with Uber cabs? How could anybody be sure that they were not being conned? How could we deal with that in terms of legislation?

Dr Cooper: I highlight the fact that private hire cars do not have the same regulatory requirements as taxis, but the point is absolutely appropriate. Uber publishes its fare and decides it on a competitive basis—it often sets a base fare that is below that of taxis. In fact, it makes a point of being lower than the taxi tariff. A tariff is a very fine system for taxis, because it is a distinct and clear measurement of cost and is unequivocal. Uber’s fare seeks to mirror that, at least in the first instance, in which it is based on a defined distance and time cost. Actually, it differs from taxi tariffs in that the customer pays on the basis of distance and time, whereas the taxi tariff is based on distance or time, depending on the circumstances.

Uber, however, also practises something that it calls surge pricing. To give a brief description, that is a change in price above the tariff or base fare. Uber describes that as a method of ensuring supply—that is its claim. Surge prices are not just a little more; they are many multiples of the base fare. There are many references in press statements to a price of seven times the base fare. People are not obliged to accept that, so they are not being conned, but it is the price of accepting the service. People accept it or they do not get a trip—it is that simple.

If we compare the claimed driver income—Uber almost says, “Work for us and you get this amount of money”—with the number of trips and the base fare, it appears that a driver would not make the money that is suggested. In other words, at some point, there will be a requirement for surge pricing to be put into effect. Therefore, it is not an accident of supply. It appears to be an intentional policy to massage the market to profit maximise on the basis of the ability to do so. That is purely an interpretation. It is reasonable for fares to differ at different points of demand—that is the basis of night-time fares. Tariff 2 is an additional fare in the taxi industry and is related to the assurance of supply. That is not an unreasonable argument but, in practice, it appears to me to be not only a necessary application but one that seeks to profit maximise.

The Convener: You said at the beginning of that answer that the charging regime for private hire cars is not the same as that for hackney cabs. However, in the city of Aberdeen, which I
represent, if I order a taxi by phone, I might get a yellow-plate hackney cab or a red-plate private hire car but the charging regime will be exactly the same. Will you clarify that? Do you mean that there might be differences in the charging regime in some areas but not in others?

Dr Cooper: That is the correct interpretation—

The Convener: At present, it is up to each individual licensing area to decide on the situation in that regard.

Dr Cooper: Yes.

The Convener: Does that in itself cause difficulty?

Dr Cooper: I believe that local regulation of fares is appropriate, as the fares reflect local circumstances and costs. We have a regime that bases the fare on a measured consideration of the costs of production. By definition, that is a local activity. We might choose to define “local” as meaning a city or a country, but the issue is still related to the measurable costs.

One aspect of costs that might be worth touching on briefly is that the taxi fare models of which I am aware, particularly those in Glasgow, Edinburgh, Inverness and, I believe, Aberdeen, include an element called driver’s wages, which is the amount that the driver takes home after everything else is gone. In any instance where that model exists and a market shift occurs when somebody else joins the market, any additional service that reduces income is likely to result in an increase in tariff to maintain that level.

10:15

The Convener: I have one other question about local flexibility before I bring in Willie Coffey. It is about the distinction that exists between hackney licences and private hire car licences in most areas whereby a private hire car licensee would not have to sit a knowledge test yet a hackney cab driver would of course have to do so. In Aberdeen, if someone applies for a private hire car, they also have to sit that knowledge test, which means that there is really no distinction between a private hire plate and a hackney plate. Does that happen anywhere else in the country? Does that local distinction cause any tensions at all?

Dr Cooper: I am not aware of the approach of every authority so I cannot give you a definitive answer. I believe that the primary distinction between taxis and PHCs relates to street pick-up. The knowledge test or the ability to control drivers of any vehicle type appears to be an appropriate power of any authority.

The only place that I can identify where there is conflict is on the boundary between one authority and another, where someone’s trip may cross an authority boundary and therefore give them a choice of one system or another. It is my belief that assurance of driver safety and ability is a very logical and desirable outcome. Whether that requires a knowledge test sits in the power of the authority making the regulation. I am not sure how I can answer better than to say that that should be based on the circumstances of the location.

The Convener: Thank you.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, Dr Cooper. As a former software engineer, I look at things such as applications as being a positive development for the customer, so it would come as a worry to me—and, I am sure, to others—if the application of the technology was providing opportunities for loopholes or illegality. Is that what you are saying is happening? What are established taxi companies doing to catch up and deploy the variety of technologies that we have heard about this morning? Would that be a way for them to overcome the threat that you have described?

Dr Cooper: I agree that the technology itself is a good thing. It provides access that has not existed before, it makes this market sector more attractive to its users and it increases the number of trips that are being made in the sector. All those developments are very positive.

The taxi industry was slow to respond—it was a late entrant to the application concept. Although local companies have a quality product, mirroring many of the benefits of the market leader, the market leader has one legal distinction and one less legal distinction that make it an advantageous choice to the user.

The legal distinction is that it is a multinational product that works across cities regardless of where you are. You get off your train or your aeroplane and your app works. The user does not need to seek out a local app, which would be a cost to them. The slightly less legal distinction is that the app allows access to a variety of service types that the traditional taxi company’s app does not. That is the case whether you sit in the PHC or the taxi or the ride-share TNC category. The user may well not be aware of the legality of the choice that they make, and I believe that that may be intentional.

Willie Coffey: How would we overcome that? Would we have to define the types of use for which such applications can provide services?

Dr Cooper: One of the greatest marketing coups in the debate on these apps is the categorisation of pundits—those providing commentary—as either loving or hating the app and having an emotional attachment to it. I love many apps and they do a lot for me, but emotion
does not fit in to the discussion. I make that comment because many responses fall into the categories of “I love it” or “I hate it”, which courts could style as being anti-technology, and even anti-free market. The question becomes a fundamental one that lies at the core of the market’s operation. The response of preventing access—as in the most recent response, in Spain—raises large question marks about the ability for a free market to operate. The authorities in Spain, for example, took such an extreme measure because it appeared to be the only measure that would have any effect.

I caution against the outright banning of something that brings benefit, but I cannot see a very good intermediate step, because so far most intermediate steps have been ineffective.

**Willie Coffey:** That is certainly food for thought.

I want to switch the conversation slightly to take advantage of Dr Cooper’s experience. There is an example in the media this morning of a driver of dubious reputation, let us say, who was able to move from one authority to another to evade the record that he had acquired in the first authority. He basically lied about his prior circumstances and was able to gain a licence in another authority. How could we—and should we—close that loophole to protect the public?

**Dr Cooper:** One of the strongest opportunities for ensuring that there is no licence tourism is for services to maintain a relationship with Police Scotland through the fit-and-proper-person test and the ways in which we identify criminal backgrounds. That is a correct and proper outcome of the regulatory structure as it stands. I am not aware of the instance to which Willie Coffey refers but, as part of the structure in which an authority is designated as the competent authority to determine, the test is at least possible, even if it is not always applied effectively.

When we lose control to third parties, that opportunity and that certainty are lost. You may hear arguments that the third parties do a better job, and we have certainly seen that in some United States cities, where an authority will seek a Federal Bureau of Investigation fingerprinting check. However good they may be, the third parties need to have some relationship to regulation that is sustainable, and I do not believe that that is where they are at this point in time.

The short answer is that the competent authority must be associated with and approved by government, even if it is not government itself.

**Willie Coffey:** The problem in the instance that I mentioned occurred because the person sought to evade his past record. Is there an opportunity through software, applications and so on for that kind of information to be shared among licensing boards so that a person cannot evade detection and has to reveal their past history?

**Dr Cooper:** There is a great deal of opportunity, but I am not sure that the will to use it is there. In this instance, the issue is not just the technology as we currently see it but its potential to provide a linked-up service.

As a researcher, and in my role on regulatory commissions, I would strongly seek to have information from the applications fed to me or to the authority. Although there is one case where it is getting a bit more friendly, so far the new technology companies have not provided any such feedback, despite the obvious benefit of feedback being made available.

**John Wilson:** I will follow up on that. Dr Cooper, You referred to the competent authority. Mr Coffey’s example was a good one. Suppose that someone applying to operate a licensed car decides not to apply to one authority because they have been told that its licensing regime is tough and takes cognisance of, say, reports from Police Scotland, whereas the licensing committee in a neighbouring authority may not be as stringent. What would you say about those circumstances? How can we ensure that there is a level playing field across Scotland?

**Dr Cooper:** The example that you give seems to me to be of a failure of one of the licensing authorities to fully take advantage of national information on drivers. I am not aware of any instances that fit the example.

**The Convener:** Is the authority in the example failing to fully take an opportunity or is it failing to comply with what it should be doing legally?

**Dr Cooper:** I do not know.

**John Wilson:** I will try to clarify the point. My understanding is that, at present, if a Police Scotland report appears before a licensing committee, the committee can take cognisance of the report or set it aside. Is that the situation?

**Dr Cooper:** I can only assume that it is, from what you say. I do not know the extent to which a report can be put aside; I am not aware of that.

To the question whether we can level the playing field for other groups, the answer is no. We are in the best position that we can be where there is a Police Scotland report of which cognisance is taken. Where that decision is given or assumed by a party that does not go through licensing, there is no way of ensuring a level playing field.

**Clare Adamson (Central Scotland) (SNP):** Thank you, Dr Cooper, for helping sort out what we have covered already this morning.
The Scottish Government has stated that it believes that services run by the community, social enterprises and voluntary services, such as cancer transport services, should still be exempt from the hire car licensing regime. Do you agree with its position on those organisations?

**Dr Cooper:** I have no view that I can give you helpfully. The only comment that may be helpful is that, were those services to be contracted to the taxi or private hire car industry, I see no reason why those taxis or private hire cars should not abide by all existing regulations.

**Alex Rowley:** Would it be fair to distinguish between the urban and rural areas of Scotland in terms of demand? For example, the evidence that we have received has generally welcomed the removal of the exemption for cars that are contracted for 24 hours or more, but the Convention of Scottish Local Authorities notes a division between urban and rural authorities. Rural authorities are more concerned that it could lead to a withdrawal from the market. That is what I want to touch on. Is there a major difference between urban and rural areas? You talk about Glasgow, Edinburgh and the other big cities, but there is not the same demand and, therefore, supply in rural Scotland.

**Dr Cooper:** Urban and rural areas are not the same—they are different, and their markets are different. Historically, that is why rural locations have one form of taxi-type service and urban locations have two.

From the evidence that I have on market entrants and TNCs, I believe that there will be very limited movement into rural areas by the TNCs simply because the market is not there for them—it is not a profitable venture.

As to whether differences will result from the removal of the exemption for cars that are contracted for 24 hours or more, that is not an issue that I have had in the forefront of my mind, and it is one on which I do not have a prepared answer—I apologise.

**Alex Rowley:** We can perhaps follow up on that at a later stage.

**The Convener:** Thank you very much for your evidence, Dr Cooper. It has been extremely useful.

I suspend the meeting for a few minutes to allow for a change of witnesses.

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10:31

**Meeting suspended.**

10:36

**On resuming—**

**The Convener:** We move to our second panel of witnesses. I welcome Kevin Woodburn of Edinburgh City Private Hire, Les McVay of City Cabs and Bill McIntosh of the Scottish Taxi Federation. Would you like to make any opening remarks, gentlemen?

**Bill McIntosh (Scottish Taxi Federation):** I am not entirely sure what we have come here for today. I assume that we are giving evidence with regard to issues arising from the new bill on civic licensing. I will be brief in that respect.

As you know, there is an option to remove clause 22(c) of the Civic Government (Scotland) Act 1982, which allows vehicles and drivers to be hired on a 24-hour basis. We fully support removal of that clause because we have seen attempts by groups and bodies—including one body, in particular, that is publicly funded—to use such vehicles in an effort to get around the restrictions that are placed under licensing. As long as there is a loophole to allow unlicensed activity, some people will be willing to take the opportunity to drive a coach and horses through it. The Scottish Taxi Federation strongly supports removal of that clause.

We do not have any firm feelings on the option to extend driver training to private hire car drivers, although in our view that is unnecessary and would become burdensome for the local authorities involved. My local authority in Glasgow struggles to accommodate the number of taxi drivers who apply to take the test before they are granted a licence, and the situation would only get worse if the private hire sector was included. I know that it is intended to be an option and that councils may not choose to do that, but I understand that quite a high percentage of councils were in favour of it in their responses to the Government. I believe that it would slow up the feed of drivers into the private hire sector and, from there, into the taxi business.

The issue that concerns us most is the option to allow councils to limit the number of private hire cars. It is not that we object to limiting the number of private hire cars. We are concerned that, because of the way in which the option is structured, it has been decided that, rather than have unmet demand, there is to be overprovision. In his evidence, Dr Cooper alluded to the fact that there is, at this time, no measurement available—it is difficult to imagine how there could be any
measurement—of whether there are too many private hire cars in any one area.

Section 60 of the bill seems to take its approach from the Licensing (Scotland) Act 2005. It is fairly simple to walk down a street in any city, count 10 public houses and conclude that the street does not need another pub; it is an entirely different matter to try to measure the number of private hire cars that might be available.

Our major concern is that the financial memorandum says that although there are likely to be many more court challenges in respect of overprovision, there is nothing to worry about, because the costs will be recovered through the licence fees that the taxi and private hire trade are charged. I do not think that we should pick up the tab for an inept piece of legislation. The Government needs to find some other way of protecting councils from being dragged into court at every opportunity.

The Convener: Okay. We will tease out some of that in questioning, Mr McIntosh. Mr Woodburn, do you want to make opening remarks?

Kevin Woodburn (Edinburgh City Private Hire): No, I just want to thank you for inviting us to give evidence. I am very interested in answering the questions that members pose.

The Convener: Thank you. Mr McVay?

Les McVay (City Cabs): I echo that. I have been asked to give a more local view: Dr Cooper gave a more global view. I hope that I can give a more positive picture of the measures that are being taken in the taxi trade to generate competition and ensure that our drivers and vehicles meet a certain standard.

The Convener: Do you want to give us a brief overview now?

Les McVay: One of the things that Dr Cooper said was that we were slow to take up the app. We were offered the app by our service provider and we signed up the following day. We have used it for about two years now. We actively advertise it on the radio and in the back of the taxis, and we had an advertisement on the local Edinburgh Scottish Television channel recently. The number of jobs that come from the app has grown from zero to about 6,000 a month, but it is something that the public has to take up.

Another issue that was raised was the level of checks on drivers. Along with Central Radio Taxis, we put all our drivers through the protection of vulnerable groups process every three years, so we get a report back every three years for every driver who works with City Cabs. I know that Central Taxis does that, too, and I believe that Edinburgh City Private Hire does it, so two thirds of the Edinburgh trade checks drivers every three years.

The Convener: People are going above and beyond the current legislation.

Les McVay: Yes.

The Convener: Let us think about the current legislation and the proposals in the bill. Are the current differences in licensing requirements between taxis and private cars justified?

Les McVay: I have been the service manager for Edinburgh airport’s public rank for the past seven years. Two years ago, City Cabs was successful in winning the contract for five years—perhaps seven. We sit alongside the private hire cars. Before the contract was awarded, the private hire cars sat behind the fence. Onward travel was run by ComCab, on the premise that people would book a private hire car from a portakabin. However, bookings were never made—it was a sham. Because it was behind the fence, no one saw.

This time round, when the contract was renegotiated the private hire cars came out from behind the fence to sit alongside the public hire taxis. The public has a choice. We have a rank, and the private hire cars have an area where they rank up—they cannot officially call it a rank. It suits people to have a choice. Someone might come into Edinburgh and want a black taxi and a driver who has the knowledge, but if they are on their way to Gleneagles with golf clubs and suitcases they might want a people carrier or a saloon car, which is perceived to be a little more comfortable. People have a choice, which is what Edinburgh airport required.

The Convener: That is the Edinburgh perspective. Will Bill McIntosh give a national perspective? It can be difficult for the public to get their heads round the two regimes. Are the current differences justified?

10:45

Bill McIntosh: As I am sure you are aware, the situation that you describe evolved with the advent of the 1982 act and has been in place since. Over that period, a lot of confusion has built up, not the least part of which is caused by the media, who constantly refer to everything as a taxi, because they see the word “taxi” as a generic term. My colleague mentioned freedom of choice. The current two-tier regime gives the public choice. For that reason, above all else, I feel that we are justified in hanging on to where we are now.

Kevin Woodburn: The honest answer is that it hinges on where you are coming from, in that there is a distinct difference between the two trades. There is a two-tier licensing system and,
although there are areas of convergence and similarities between the jobs, there are distinct differences.

You have to understand the historical differences that come to the forefront for drivers every single day out on the streets. A lot of the differences hinge around what we wanted from a two-tier licensing system. If we could go back in time and speak to the people who put the legislation in place originally, we could ask what was their purpose. Was it to have two forms of transportation and two forms of taxi-like situations? If that were the case, why has the whole thing been eroded over the years?

My comments may be slightly controversial to my two colleagues on either side of me, but the situation now is that there are public hire vehicles—taxis, to all intents and purposes—that were originally designed to ply for hire, and there are private hire vehicles, which were brought in because they cannot ply for hire. That is the difference between the two trades. If one sector of the trade is pre-booked hires only, why would the other sector, which was designed as public hire, be allowed to do pre-booked hire work?

That is where the whole thing got blurred and changed. We have continued down that path over the years and we are now being asked whether there should be a single-tier or two-tier licensing system. The truth is that I do not think that it matters that much any more, to be honest, because at the end of the day the market and the public will dictate. With all due respect to the committee, and to the various committees that I have sat in front of and been questioned by, what gets lost in all this is that it is about the public. The public will decide what they want. We can talk all day long about apps and about what we do as companies, but the public will decide whether to use us. The public are not stupid; they make decisions based on the factors that are important to them in whatever area of the country they live in, whether it be a rural area or the centre of Glasgow or Edinburgh. They decide based on what is on offer to them.

The Convener: You said that the market will decide and Mr McIntosh talked about provision in the bill for the limitation of private hire car licences. However, without the bill having been passed, a number of local authorities are already using the 1982 act to limit the number of licences, maybe to the detriment of the general public, who are not being fully served.

I ask all of you whether you think, in the light of Kevin Woodburn’s comment about the market deciding, that that is often not the case because of the limitations that are put in place by a licensing authority. Are any areas—I know that you can probably talk only about your own locales—not being particularly well served because of possible misapplication of the 1982 act? Might the new legislation help in that regard? Alternatively, do some of the things that are in place, or that could be in place, make the entry of Uber and others easier because the market is not being served?

Kevin Woodburn: I will try and remember the various points that you made in that one question.

The Convener: I am sorry, it was very long.

Kevin Woodburn: At the end of the day, the market is being served in respect of the proposals in the bill to change the ceiling—for want of a better description—on private hire. It is not necessarily a bad thing for local authorities to have the power to decide whether private hire should have a ceiling. Colleagues in the private hire sector would probably disagree with me, but I am giving you my personal opinion. Much of what you have heard so far today, without being too nasty about it, is scaremongering, which there is a lot of in the taxi and private hire trade. I am thinking of the things that have been discussed today, in relation to the app, for example. There is a lot of misunderstanding out there.

Mr Wilson pointed out something very relevant earlier on. We seem to be targeting Uber and the apps as the big bad wolf coming over the hill, but nobody has asked the big bad wolf whether that is what they are. If Uber wants to come into the marketplace and do some of the nasty things that are being suggested, why has it even applied for a booking office licence? Why has Uber not just decided to start taking bookings and to not comply with the current legislation? It has applied for a licence.

A lot of what goes on is scaremongering and the trade is as guilty as anybody for causing the situation. Legislation is already in place. A company that takes bookings must have a booking office licence and if it has one but then supplies unlicensed vehicles the licence will be taken away by the relevant authority, whether it be the City of Edinburgh Council, Glasgow City Council or West Lothian Council, whose representative is at the committee today.

We need to change legislative problems in some respects, but in others the problem is how legislation has been twisted over the years. Going back in time and asking the people who enacted the legislation in the first place what they were trying to do might give everyone a clearer picture.

Les McVay: I disagree that there is any scaremongering about Uber by Edinburgh taxi companies or the public hire trade. I am aware of Uber; I know their working practices and their strengths and weakness. One of their weaknesses will be price surging. I know of two examples of that from Sydney. When the Sydney siege was in
progress there was a surge in requirement for vehicles, whether public hire, private hire or Uber. Uber’s system has an algorithm through which if demand goes up to a certain level the surge price kicks in and, as Professor Cooper mentioned, it goes up and up. In Sydney regular customers were charged up to four times the normal price to take them away from the siege area.

On hogmanay, I was sent an email from a guy who lives in Sydney who uses Uber. Prior to the hogmanay celebrations, all the Uber customers were sent an email, with a graph, which warned them when the price surge would come into effect—it was from half past eleven right through to four o’clock. The warning said that a normal $30 fare would go up to more than $100. The email asked them to form groups to share vehicles. That is the level that Uber is coming into the market at, and that is how it prices.

I have seen the guy who runs Uber, Travers Kalanick, justify surge prices along the lines that if someone books a hotel at peak times the price goes up. He also tries to justify it by getting vehicles from outwith an area to travel to the area and pick up fares. I do not think that the Edinburgh public will take it too kindly if they are charged two or three times the normal amount just because the service is failing them. The taxi trade is quite strong in Edinburgh.

I will give another example. An Uber driver is charged 20 per cent: when someone books a taxi, they pay up front with a credit card and Uber keeps 20 per cent, while the driver gets 80 per cent. Currently in Edinburgh there are two strong associations, Central Taxis and City Cabs, and all the drivers are part of that, or the members own a share of the company. They are non-profit organisations. Our arrangement is flexible and depends on how many hours a driver works, but we try to work it out so that a driver will pay 10 per cent of every fare that they get from City Cabs or Central Taxis. However, a driver will pay 20 per cent to Uber.

The taxi sector in Edinburgh has moved on considerably over the past few years. We have become more responsible and adaptable. We incorporate all the latest technology—for example, we were the first ones to get GPRS—general packet radio service. This is maybe not an answer to your question, convener, but while I have it in my mind I want to point something out—again, in a positive way. If Uber comes in and starts taking drivers, if there is an incident regarding a passenger or suchlike, who will be responsible? At the moment, if there is a police inquiry about an incident, the police come to the taxi company’s door at whatever hour of the day. We give them full access to all our information, because every taxi is tracked and monitored, and we know every turn that a taxi driver makes. We have been involved in solving quite a few crimes in the Edinburgh area in recent times. I know that Central Taxis and ComCab offer the same service as us in that regard. However, who would do that if the company involved was Uber?

**The Convener:** Mr McIntosh?

**Bill McIntosh:** I am afraid that I have lost the thread of your the question.

**The Convener:** It was about the market deciding at the moment. Given the restrictions that can be put in place by local licensing authorities, does the market really decide? Do such restrictions make it easier for the likes of Uber to enter the market?

**Bill McIntosh:** It could be argued that they are making it easier for Uber to enter the market. You will be surprised to hear that I disagree with my colleague when he says that we need a different type of system. I think that the one that we have just now is tried and tested; it has worked very well since 1982 and is still working very well. Taxis supply both radio and street services. The street service is unlikely to discontinue, so I can see that there is going to be a need for the foreseeable future to retain a two-tier system—that is how I would like to see it go.

**The Convener:** Okay. You represent a national body, but you operate in Glasgow and the other two gentlemen are from Edinburgh. Do you think that the market is well served by the current licensing regimes in each of the 32 licensing authority areas?

**Bill McIntosh:** The short answer is yes, for the most part.

**The Convener:** Thank you.

**Cara Hilton (Dunfermline) (Lab):** Bill McIntosh just said that the current system is “tried and tested”, but what are the panel’s observations on Dr Cooper’s comment that the market is transforming in such a way that the two-tier licensing regime may be very difficult to enforce in future and that we could be heading towards a monopolistic provider?

**Les McVay:** Does “monopolistic” refer to Uber or to private hire or public hire taking over each other? I think that the two tiers work well. Uber will come, but I ask that, as Mr Wilson mentioned, it be allowed to use only licensed drivers and vehicles. In some areas in America, Uber just uses people who download its app, who are unlicensed and use an unlicensed vehicle. That is just a horror story, as far as I am concerned.

As I said, Uber will come, so it is up to us to pull up our socks and be on our toes to provide a better service—nobody is looking for a monopoly.
Again, it is up to the drivers, whether public hire or private hire. City Cabs has a taxi school, and about 40 per cent of the people coming to us to sit their test see the school as the way to the next level because they want to be public hire drivers.

I do not know whether Kevin Woodburn will agree with this, but drivers go into private hire because it is easier to do that, as they do not have to sit for their brief. They might have no knowledge of Edinburgh city, but they can study for their brief while driving for private hire. Some stay with private hire, and we have guys who have left public hire and gone to private hire because it suited them.

In terms of choice, there is sometimes a line where the choice between public hire and private hire becomes confusing for people. We see that at the airport every day, where some people like the choice but others get confused. I do not know how you would legislate against that.

11:00

Kevin Woodburn: My view is very similar to Les McVay's. I referred earlier to Uber—it is coming and whether we like that or not is, frankly, irrelevant. It is a company that is coming to the Edinburgh and Glasgow areas, and as long as it plays by the same rules as everybody else and the relevant legislation applies, that is fine—it is competition.

Uber is different from every other company out there in that it does not have any vehicles on its circuit, if you like. It comes to a city and tries to attract all the vehicles that are already working in the city—I am referring to private hire vehicles, not hackney cabs. It tries to get those drivers to associate themselves with the Uber app. We have around 500 drivers in our company. All of those 500 drivers could join Uber and stay with us. Drivers could feed into both systems—us when we were busy and Uber was quiet; and Uber, when it was busy and we were quiet. In effect, that is what the app is about, as far as drivers—rather than the public—are concerned. As long as the rules are the same, licensed vehicles are supplied and licensed drivers are used, I do not think that we will ever get a monopolistic situation.

As Les McVay said, the issue will come back down to price. There are parameters in the pricing structure, and there are things that can be done on both sides of the trade; it would be entirely up to individual companies whether they wanted to do them. I very much doubt that the public would ever allow there to be a monopolistic situation if there were surge pricing, for example. Would anyone in the room pay four or even seven times the normal price? We would not, because we all know that there are choices. The fact that we use a company once does not mean that we will use it 10 times over and that we must pay whatever it wants to charge us, because we all know that there are choices out there, and that is the way it should be.

On whether there should be a single or a two-tier licensing system, it could be argued that choices are available because of the two-tier system. The situation might or might not change; there are reasons why it should change and there are reasons why it should not. What happens will come down to choice, which will relate to the availability of different types of vehicles. Does the legislation allow for the market to decide? That is a very difficult question to answer.

Bill McIntosh: I disagree with Dr Cooper's view that Uber or any other app company will have a monopoly. What we should be more concerned about is that the app suppliers comply with the current legislation. From the various bits of information that are available on YouTube and other sites, it would appear that they do not comply with the legislation in other countries. The situation might well be different here, but the main concern that the taxi industry has is that such companies create huge potential for unlicensed activity. The Government must find some way of legislating to deal with that.

We have already suggested that one way of tackling the issue might be to use the booking office legislation. That legislation would not necessarily have to be changed; more mandatory conditions could be created that would bring companies such as Uber under it.

The Convener: I want to touch on an issue that I raised earlier. Mr Woodburn, Mr McVay said that some of the private hire drivers use your training school because they want to complete the knowledge test. In Edinburgh, private hire drivers do not have to complete a knowledge test. Is that correct?

Kevin Woodburn: They do not have to.

The Convener: There is no obligation on them to do so. Is that the situation in most local authority areas?

Kevin Woodburn: To my knowledge, yes. I think that the situation might be different in Aberdeen.

The Convener: Aberdeen is the anomaly, and that is causing me difficulties. As far as the application of the 1982 act is concerned, Aberdeen is the only place that makes private hire drivers sit the knowledge test.

Kevin Woodburn: Yes—it is the only place that makes private hire drivers sit the knowledge test, but there are other areas of the country where companies get their drivers to do the knowledge test. For example, my company has its own
Kevin Woodburn: We choose to train our drivers; we choose to take them to whatever standard we feel is appropriate for the marketplace that we are in.

When it comes to the legislative side of things, my company has no fear of there being legislation on the training of drivers. My slight concern would be if we were talking about training a private hire driver to the same level as a taxi driver. If that is the case, is it just about knowledge or is it as much about the other modules that a taxi driver may have to look at, such as the law on health and safety, disability discrimination and other things? All those things are important in training, if that is what we are talking about. As far as I understand it, the bill is talking only about knowledge training.

The Convener: Thank you. That is very useful.

Cameron Buchanan: You touched on the fact that you want a level playing field. What do you think of the two-tier system? The differences with private hire are that drivers do not need to have the knowledge in the same way and that there is no buying or selling of a plate, as is there is with hackney cabs. Would you favour any changes to the system? I could not gather that from your reply, although you said that you wanted competition. Should things be altered in any way?

Kevin Woodburn: I am trying to sit on the fence.

Cameron Buchanan: I gathered that from your reply.

Kevin Woodburn: It is a difficult question to answer, because there are parts of the legislation where a two-tier system currently works well, but there are other aspects that I would not necessarily agree work well. It is not clear exactly what is being proposed, for example, in relation to the numbers game and allowing local authorities to cap the number of private hire cars in a given area. That is fine, depending on the test that is applied to get the number correct, if everyone in the area agrees that that is the correct way to decide the numbers, but what is the next stage? Does the plate then become transferrable? Are we talking about the incorporation of private hire plates that can then be sold on for a price, or are we saying that that is not to happen for private hire, taking us back to a situation in which private hire and hackney cabs are treated differently? What concerns me about all the proposals is that they rely on local authority interpretation of what happens next.

Cameron Buchanan: Do you think that it is a good idea to keep control within the local authorities, or would you suggest some other arrangement?

Kevin Woodburn: There is a case to be made for keeping it under the control of the local authorities, because they know their own local environment best, as long as those local authorities are not concerning themselves with the vested interest groups that are lobbying them more strongly than other groups. I have concerns about all those things, but that is perhaps slightly more controversial.

The Convener: The 1982 act does not allow for capping, but we already see the capping of private hire licences in certain local authority areas, do we not?

Kevin Woodburn: No, not to my knowledge.

The Convener: Is it not the case that Aberdeen has a cap?

Kevin Woodburn: I do not have intimate knowledge of the situation in Aberdeen.

The Convener: I am being a bit parochial.

Kevin Woodburn: I do not think that a local authority can legally put a cap on the number of private hire licences at present. It cannot say that it will not issue any more licenses. That is not my understanding of the current legislation.

The Convener: Thank you, Mr Woodburn.

Cameron Buchanan: Just to be clear, did you say that local authorities cannot legislate as to how many private hire cars they license?

Kevin Woodburn: Today, no, not to my understanding—not when it comes to private hire licences.

Cameron Buchanan: The bill proposes that, but at the moment it is not the case.

Kevin Woodburn: The test would be to pick up the phone now to Aberdeen City Council and ask, “Can I put a private hire plate on?” If the reply is yes, there is your answer.

John Wilson: I want to pick up on a couple of the responses that we have heard so far. I seek clarification from Mr Woodburn about the issue of private hire drivers signing up for Uber. You gave the impression that private hire drivers could sign up for Uber as well as being members of Edinburgh City Private Hire. Is that what you were implying?

Kevin Woodburn: I am stating that Uber works by coming into a marketplace and attracting drivers who are already in the marketplace but who are perhaps with other companies. Our company has two different types of drivers—owner-drivers, who own their own vehicles and pay us a fee for the work that we provide them, and what I would class as rental drivers, who drive company vehicles that we supply to them.

The difficulty for us with the Uber scenario is that there is no way in which I could easily enforce
a rule to prevent an owner-driver from covering work for Uber—or for any other company, for that matter. I have a slightly stronger hand in relation to our vehicles that we supply to drivers, as we can specify that they cannot work for anybody else. However, under the legislation as it stands, a private hire driver can work for 10 companies if he chooses to; the only issue is gaining access to the work that those companies have. Alternatively, he can work just for himself and not for any companies. He can take bookings himself without needing a booking office licence.

**John Wilson:** I thank Mr Woodburn for that clarification. However, our understanding—which might be a misconception that arises from the material that is publicly available—is that Uber comes in and recruits non-licensed drivers—

**Kevin Woodburn:** They did—

**John Wilson:** Let me finish, Mr Woodburn.

**Kevin Woodburn:** Sorry.

**John Wilson:** Uber comes in and recruits non-licensed drivers with non-licensed cars. The examples that we have heard about in other jurisdictions worldwide show that Uber tends to attract individuals who are not existing drivers—private hire or hackney cab drivers—to operate the service. Would it not be a major worry for the black-hack companies and the private hire companies if Uber were to come in and say, “We’re not going to recruit or use any of the existing licensed cars or drivers; we are going to recruit publicly to build our own business that has no current association with any of the licensed cars or drivers”?  

**Kevin Woodburn:** Would that be a concern? Yes, of course it would. I suggest that it would be more of a concern to the public than to the trade, because I do not honestly believe for one second that the public would stand for unlicensed drivers and unlicensed cars running around the city picking them up at 2 or 3 o’clock in the morning. I genuinely cannot see that happening.

Again, I do not want to sit here and sound as though I am a fan of Uber—I am trying hard to sit on the fence and be objective. At the end of the day, however, my understanding is that Uber or companies like it would come in to a marketplace and try to recruit—for want of a better word—licensed drivers with licensed vehicles. Were that not to be the case, we would all be standing here objecting vehemently to the idea of allowing into the sector any company that runs unlicensed drivers and unlicensed cars. We would be the first to stand up and object to it, but I think that the public would be very close behind us.

**John Wilson:** Mr Woodburn, you referred to the booking office scenario, and said that Uber would have to operate a booking office. My understanding is that, at present, someone who operates a taxi firm—whether it is a private hire or a black-hack firm—has their booking office in the premises from which they are licensed to operate by the local authority.

Uber, as I understand it, would not, as an app system, have 32 booking offices throughout Scotland to coincide with the licensing authority areas. It would, if it had a booking office at all, have one operational centre and apply the app to the whole of Scotland. How does that fit in with the current legislation, and with the proposed legislation whereby booking offices are associated with the licensing authority?

**Kevin Woodburn:** If you are correct in saying—I am not suggesting that you are not, as I do not know the facts, but I can tell you what I think the situation is—that Uber would come in and run one centre encompassing all 32 licensing authorities, that would be a huge problem. I think that the licensing authorities themselves would have a major problem with that.

However, that is not my understanding of what will happen. As far as I am aware, at this precise moment in time, Uber has applied for a booking office licence for Edinburgh to run an office somewhere on George Street, and for a licence for Glasgow. That suggests to me that if Uber was seeking to come into other areas of Scotland, it would apply for booking office licences in those specific licensing authority areas. However, I am not Uber, so it might be a good idea for you to speak to it. That is my understanding, anyway.

**John Wilson:** Mr McVay or Mr McIntosh, do you have any comments?

11:15

**Les McVay:** My understanding is that Uber has to apply for a booking office licence in any city in which it operates. That is the current legislation. If it were to start using unlicensed vehicles and unlicensed drivers, I would have thought that that would be a major concern for Police Scotland. You would have a gradual movement, over time, of no one going into the private hire sector.

We have a very good, competitive market in Edinburgh at the moment. No one is queueing up for public or private hire licences. I would suggest that that is market forces—that is what everyone is looking for. It is a good example of what can happen. If there is a surge anywhere, people will come in and look to buy public or private hire licences. At the moment, there is no movement. There are various reasons for that. The City of Edinburgh Council employs Halcrow to do surveys of unmet demand every three years. I do not want
to bang the drum for Edinburgh, but it is a very
good, healthy market.

I am aware of Uber and its strengths and
weaknesses. The Edinburgh trade—private and
public hire—has to step up and meet the
challenge. That is where the real situation will
develop. As Kevin Woodburn said, the public will
decide whether they want to get into a vehicle and
be charged three or four times as much. In the
festive season in Edinburgh—Christmas and new
year—we implement a tariff 4. We lose work
because of that tariff 4 because it goes up to a
certain level. It was introduced several years ago
to try to bring the supply up to meet the demand.
All that it has done is to reduce demand during
that period. Through the tariff review, we are trying
to bring that tariff 4 down to a reasonable level to
get our customers back. At a time of year when
our customers most need us, we are overpricing.

The Convener: Mr McIntosh?

Bill McIntosh: Sorry, could you repeat the
question?

John Wilson: It was that long ago that I have
forgotten it. It was about Uber coming in, and the
location of booking offices, and other issues, such
as the recruitment of unlicensed drivers and cars.
Is that an issue for your members?

Bill McIntosh: It is obviously an issue for our
members; I would imagine that it would also be an
issue for local authorities. Booking office
legislation is quite clear—it applies to every local
authority in Scotland. It is difficult to see how Uber
would be able to operate in Dundee from an office
in Edinburgh. That would be a major concern. In
Dundee at least, it would be breaching the
regulations.

John Wilson: How is a booking office
registered with the licensing board? My fear is that
Uber could say, “We’ve got one operator operating
from a housing estate in Dundee and that’s the
booking office,” and registers that. It does not
need anyone at the end of a telephone because the
computerised system will do all that for it.
Should guidance or regulations be put in place to
say that a booking office should operate in a
certain way? Most of Uber’s bookings will be done
through the app. The drivers will use a
smartphone rather than a radio control system.
How do we ensure that 32 people employed
throughout Scotland is not the limit of Uber’s
operation, or that of any similar company, in 32
licensing board authorities?

Bill McIntosh: That is a difficult question to
answer. I hear what you are saying. Uber could
have booking offices in 32 areas that are, in effect,
not operating. The fact of the matter is that Uber
could probably run its operation from the
Netherlands or anywhere else if it chose to do so,
because it is all done in cyberspace. It is very
difficult for me, as an ordinary individual, to say
what legislation is required.

Kevin Woodburn: I agree with Bill McIntosh, to
an extent. We are so-called experts in our field
because of our 25 to 30 years’ experience in the
sector—some would say that we are dinosaurs
rather than experts. At the end of the day, our
expertise is based on the fact that we have had
that length of time in a certain trade.

When it comes to the specifics of the question,
there is nothing in the checks and balances that
are already in place in each licensing authority to
ensure that the rules are being applied. The
stupidity, if you like, of the situation that we are
currently in is demonstrated by the fact that local
cab inspectors can do nothing about a situation
that they know is going on if the company involved
is not a licensed company. The inspectors do not
have a remit even to go and speak to that
company because it is not licensed.

In response to Mr Wilson’s hypothetical
situation, I would say that there are great concerns
about whether such things might apply in the
future. As trade people, we just have to hope that
the legislation that is in place is enforced and that,
if it needs to be changed, it is changed quickly. My
concern is that we are still working under the
provisions of the Civic Government (Scotland) Act
1982 and are talking about little changes here and
there. I fully understand that in the greater scheme
of things in the country, taxi and private hire
licensing is nowhere near the top of the tree—of
course, it should not be—but it is at the top of our
tree.

The Convener: At this moment, it is at the top
of our tree as well, Mr Woodburn.

Kevin Woodburn: I will get off the tree, then.

Les McVay: We applied for a booking office
licence and received a visit from the council and
Police Scotland. We have had two checks since
then, over the past four or five years. We do get
site visits from the police, who look at our system,
but they know it anyway, because they are up
there every second weekend.

Uber has been quite responsible in having
applied for a licence. There is a company called
Get Taxi that is currently going round the ranks in
Edinburgh, trying to get our drivers to download its
app and get work in that way. I do not think that
there has been much take-up, although I imagine
that some street cars might trial it during this quiet
period; it is a matter of choice. However, that
company does not have a booking office—that is
the problem. That is where cyberspace comes in.
Get Taxi has not made any effort to get a booking
office licence, which the legislation requires, yet it
is going round the ranks at the moment.
We have seen that happen twice before over the past year to 18 months, with companies trying to get drivers to use them. There has been very little take-up. Two thirds of the public car drivers in Edinburgh belong to a circuit—City Cabs, Central Taxis or ComCab. Street cars are street cabs for a reason: they do not want to be part of a radio-controlled company or an app-controlled company. It is a matter of choice. The difficulty is that Uber has applied for a booking office licence and Get Taxi has not. The two companies that previously went round the ranks promoting their business disappeared as quickly as they appeared.

**Kevin Woodburn:** Was one of them Hailo?

**Les McVay:** No, it was not Hailo.

The Convener: The other companies are not relevant to us, although if you want to send us that information later that would be fine.

**Les McVay:** No, I am just giving you an example. Uber has applied for a licence but the other app companies do not apply. For me, it is about market forces and how the current suppliers respond to the new guys who are coming in.

**Clare Adamson:** I want to take us back to an earlier part of the discussion in which we talked about the knowledge test. Given that we are also talking about apps, and given that most cars and smartphones now have satellite navigation systems, is the knowledge test still fit for purpose?

**Bill McIntosh:** Absolutely, it serves a purpose. Taxi drivers are hired instantly at the taxi stand. Very often, they pick up people who have come from abroad and who do not know how to get where they are going or where it is. The taxi driver needs to be able to instantly plot the journey, mostly in his head. I am sure that you will be aware that, in London, it takes up to two years to learn the geographical knowledge, although the situation is not quite so bad in Edinburgh or perhaps Aberdeen and Glasgow. Nonetheless, the test serves a useful purpose because, if drivers do not have the knowledge for that instant hire, when someone gets in the door there and then, where are we? They will be sitting pressing buttons on a satellite navigation unit. The test is definitely required.

**Kevin Woodburn:** That is a controversial question for me. At the end of the day, there is a need for a knowledge test for the hackney trade. For the private hire trade, a knowledge test is not a bad thing as a form of training for private hire drivers. Anything that raises the standard of drivers has to be a good thing.

That might or might not be controversial for other people in the private hire sector, but I do not see why training of drivers should be a negative thing. My concern is the same as the one that I mentioned earlier: it is not necessary to have the same testing of knowledge of streets for private hire drivers as is applied to taxi drivers. That is because, as Bill McIntosh stated, a public hire driver—a taxi driver—takes there-and-then hires in a public place. Without boring you to tears on the current legislation, that is my stance on the matter.

**Les McVay:** Definitely, yes. As Kevin Woodburn says, the test shows commitment and sets a standard for people coming into the trade. We have to have knowledge of routes and the whole thing if it is not going to be a casual trade. At our taxi school, we teach about all types of situations that drivers will get involved in. I am sure that, if we made the system more casual, everybody who got into taxis in Edinburgh would start complaining if drivers did not know where they were going or had to turn on their sat nav to find out. We have had instances where guys have followed the sat nav, perhaps because new briefs have come in, and we have had to sit them down and go over things again because they have gone round the bypass and that has added an extra £5 or £6 on the fare. The drivers have to have the knowledge—that is a key part of our service.

**Willie Coffey:** On that last point, I want to share with the committee an unfortunate experience that I had in Edinburgh a couple of years ago.

**Les McVay:** There is always one.

**Willie Coffey:** Aye. This particular taxi driver did not have a clue how to get to Easter Road stadium. I mean, it is quite a big structure that has been there for quite a while. He charged me 20 quid for the pleasure of driving round in circles and he still could not find it.

**The Convener:** He maybe supported Hearts.

**Les McVay:** Was it a black taxi?

**Willie Coffey:** I cannot remember.

**Kevin Woodburn:** I hope it was a City Cab.

**The Convener:** Let us not deal with Willie’s stadium problems now, anyway.

**Willie Coffey:** I want to tease out the idea of protection of the public and to connect that to the issue that John Wilson raised about unlicensed taxis and drivers appearing on the scene. What do we do in those circumstances? Do we need to tighten up the legislation, or is the solution to improve public awareness? When a car turns up at 2 in the morning, people do not look out the window and say, “Oh, there is no plate on that car, so I am not getting in it.” What should we do to advise the public about their rights and obligations and to protect them? To go back to the issue of apps, which we have been talking about all morning, can an app not somehow signal to the customer that the car that is coming to get them is
My concern with all these things is that over the think, that is surely what all the legislation is about. Ultimately, regardless of what the trade might answering questions about public safety.

Those of you who have more technical skills than me can add all sorts of technical innovations that can be added into apps to make them more public-safety oriented. When a response is sent via an app, a picture of the driver and his badge is sent with it. There are all sorts of technical innovations that can be added into apps to make them more public-safety oriented.

I am delighted that we are sitting here answering questions about public safety. Ultimately, regardless of what the trade might think, that is surely what all the legislation is about. My concern with all these things is that over the years we have lost track of why we are doing what we are doing.

Bill McIntosh: You have asked a very difficult question. We have been trying to educate the public since 1982, and the message still has not got across. There are so many people in the cities at weekends who will jump into anything that has four wheels, as long as they get home—that is their only objective. They do not look to see whether the car has a licence number or whether it is for pre-booked hires only or is a taxi; they just want to get home quickly. I really do not know how to answer that question. It would take a major media campaign to achieve what you are looking for.

11:30

Kevin Woodburn: I totally agree with Bill McIntosh. If you go into any city centre on a Saturday night you will find a multitude of different vehicles picking people up left, right and centre, whether they are licensed or unlicensed. Let us not pretend that Uber coming into the marketplace is the start of potentially unlicensed vehicles going out on a Saturday night plying for hire. It already happens in every city across the country every Saturday night in life. There are public hires, if you like, and there are unscrupulous private hire operators who will ply for hire on a Saturday night. The private hire companies can do their best to tell their drivers what they must not do, but once the drivers are out there driving around the streets, it is virtually unenforceable. That is the problem.

Mr Coffey is right that it comes back to educating the public. I do not know how you do that—good luck with that—but at the end of the day, it is the only answer. You have to start with the younger ones and work your way up eventually to the dinosaurs like us.

I am not saying that young guys are not vulnerable, but young females out at the weekend are probably the most vulnerable of all. We have all heard examples of people jumping into what they think is a private hire car or taxi. We must consider things like better and more appropriate signage.

We have talked about apps. It could be that when a response is sent via an app, a picture of the driver and his badge is sent with it. There are all sorts of technical innovations that can be added into apps to make them more public-safety oriented.

I am delighted that we are sitting here answering questions about public safety. Ultimately, regardless of what the trade might think, that is surely what all the legislation is about. My concern with all these things is that over the
have asked Colin Keir to try to get the campaign going the week before the office parties instead of the week after the office parties.

**The Convener:** I am sure that he will read the *Official Report* and get on to that, Mr McVay.

**Les McVay:** I just wanted to highlight that.

**Willie Coffey:** I have one last question, again on public safety. If a taxi turns up and a customer is unhappy about the circumstances, from the benefit of your own knowledge and experience, is the customer at liberty at that point to reject the transaction—or the contract, if you like? At what point does the contract become valid? I just want to make the public aware that if they are not happy with a car or a driver, they can reject the transaction.

**Les McVay:** Any time a customer is not happy, for whatever reason, they can reject the car or the driver. They can do that at any time.

**Willie Coffey:** When is the contract complete? When you have made the journey?

**Les McVay:** The contract is made after the journey is complete. If the driver fails to complete the journey for any reason—if the car breaks down, for example—he cannot charge.

**Willie Coffey:** Or if he could not find where he was supposed to be going.

**Les McVay:** You have had some bad experiences, haven’t you? It is very much in the customer’s favour. The customer can call off the transaction at any time for whatever reason.

**Willie Coffey:** So a taxi driver cannot say to a person, “You’ve rejected the booking but you still owe me the money.”

**Les McVay:** Tomorrow, I am going down to Pentland Security and I hope to be the first taxi driver in Edinburgh who puts closed-circuit television cameras in his taxis. We have tried for this for five, six or seven years and we have always fallen at the last hurdle, but hopefully it will happen tomorrow. I have the variation of licence—the licence holder acts as data controller—and it all meets the requirements of the City of Edinburgh Council. We will have a CCTV unit in the back of the taxis with a forward-facing camera on the driver and a camera on the back for the customers.

**Kevin Woodburn:** I agree with Les that the contract can be cancelled at any point prior to the journey commencing. There is a cancellation charge within the tariff sheet; there are elements of treating it as a proper contract, so a cancellation fee can be levied. However, the circumstances are unique and individual to each and every journey. It is probably impossible to have a policy in place—whether it be a company policy or a legislative policy—that will cover every possible eventuality. I think that what is already in place serves pretty well.

**Bill McIntosh:** I do not have a lot to add to what has already been said except to say that in my opinion, when a member of the public hires a taxi, whether it be in the street or through a dispatch company, they have the right to terminate that at any time. It then becomes a civil matter between them and the driver concerned and I do not know of any driver who would pursue the loss of a fare through the courts, so as far as I am concerned, customers can terminate at any time if they have good cause.

**Cameron Buchanan:** I declare that I have a contract with Edinburgh City Private Hire. I have sometimes had a problem with the drivers’ lack of knowledge of English. Do you give the drivers an English test as well as a security test?

**Kevin Woodburn:** Is that a hypothetical question?

**Cameron Buchanan:** It is.

**Kevin Woodburn:** I just wanted to clarify that it was a hypothetical question.

**The Convener:** We are straying into strange realms that are completely and utterly outwith the scope of the bill. You can have that conversation with the gentleman afterwards.

**Cameron Buchanan:** Can I ask another question?

**The Convener:** If it is on another matter, you can ask it.

**Cameron Buchanan:** Does the bill have major flaws? Does it go far enough?

**Les McVay:** I think that it probably goes far enough. We have best practice guidance that councils work within. You cannot legislate for every area, whether urban, rural or in a city; it has to be flexible enough for every area. The guy who is operating in Pitlochry does not necessarily need to meet the same requirements as the people in Edinburgh. It is difficult to legislate for every single taxi or private hire service in Scotland. It has to be flexible.

Regulation and restriction are good, but only if the taxi firms do not try to hide behind them. Meeting the requirements of the public and the demands in relation to competition are where regulation and restriction come in, and that maintains a standard. As I say, it is very difficult to bring in laws to legislate for every single taxi enterprise or private hire business in Scotland.

**Kevin Woodburn:** I do not know the politics behind the provisions in the three sections of the bill that are relevant to our trade. I am not
suggesting that there is any politics behind them; but if there is any, I do not know the reasoning behind it. The question is very difficult to answer. Do the provisions go far enough regarding the three points that are covered in the bill? They probably do, yes.

Should there be some form of training? Yes. I would like to drill down into the specifics of that, and I would also like to drill down into the specifics of the numerical capping of licences and the formula that will be used in each individual authority area to achieve that. Is it a bad thing that capping is potentially allowable? No, I do not think so.

I am happy enough with the three things that are covered in the bill. Could it go further? Could more things be added? Probably, yes. Again, however, without going into the politics of it all and without knowing the motivation behind the three sections, it is difficult to add anything more.

Bill McIntosh: As we stated earlier, we have concerns regarding the overprovision measures, mainly because there is no measurement of which I am aware that councils can use to ascertain whether there is an appropriate number of private hire cars or not. I have no doubt that that will be challenged by some sharp lawyers, and that councils will end up in court on a regular basis by refusing. There is a cost factor to that, and the cost will end up on the back of the cab and private hire industry. That is our concern. The matter is by no means closed.

We suggested a controversial solution to the Government, although it did not find much favour with it. Our proposal was that the burden of proof of whether there is unmet demand—whether there is overprovision or underprovision—should rest with the applicant, not the local authority.

John Wilson: I have a question about unmet demand. Mr McVay intimated earlier that the City of Edinburgh Council does a survey every three years. Mr McIntosh, do you know of any other authority that does a survey about unmet demand?

Bill McIntosh: A lot of local authorities carry out their own surveys. How they do that I have no idea. The only other councils that carry out surveys on a regular basis as far as I am aware are Dundee and, to a lesser extent, Stirling. I am not saying that others do not do it, but it is a very costly exercise.

The Convener: Is there enough in the current and proposed legislation dealing with disability access issues?

Kevin Woodburn: That is a difficult issue for me to delve into deeply. Given how the current legislation on disability sits and because private hire services must be pre-booked, there is a dearth of wheelchair-accessible vehicles in the private hire sector, other than the ones that are currently used for local authority school hires, for example. It is extremely difficult for me to go into detail or comment too much on the disability aspect, because there is not a lot of manoeuvrability in the private hire sector. It is probably better if the two taxi guys respond on that.

11:45

Bill McIntosh: There remains a difficulty in respect of access because there are so many different disabilities. People in wheelchairs are now well catered for; there are plenty of wheelchair-accessible vehicles in major cities such as Edinburgh and Glasgow. However, there are many other disabilities that affect people and the wheelchair-accessible vehicle might not be appropriate for their needs.

As I said in my letter to the committee, the cost of the vehicles is prohibitive as it stands. If we were to try to supply a vehicle that would meet every disability, the cost would be such that no one could afford to buy it or hire it. There are many difficulties to be understood and overcome.

Les McVay: Edinburgh was the first city in Britain to supply a fully wheelchair-accessible fleet, back in the mid-1980s. Every public hire vehicle on the road has a wheelchair facility. Again, that is fine in Edinburgh, but for rural areas where there may be only one wheelchair fare a month or whatever, the cost of putting in a wheelchair-accessible vehicle would be prohibitive, as Bill McIntosh said. It has to be driven by economics, rather than by legislation.

Is Glasgow not fully wheelchair accessible, like Edinburgh?

Bill McIntosh: Yes, that is right.

Les McVay: Glasgow is the same. I do not know what the situation is in Aberdeen, where they have saloon cars. You would have to legislate for different situations and ratios of wheelchair-accessible cars to saloon cars. In Edinburgh, all the hacks, or public hires, are wheelchair accessible.

The Convener: Thank you, gentlemen. I will suspend the meeting for a few minutes as I suspect that you want to talk to members about Easter Road and various other things.

11:46

Meeting suspended.
11:56

On resuming—

The Convener: I welcome our third and final panel of witnesses: Audrey Watson, managing solicitor at West Lothian Council, who was here a few weeks ago—welcome back; Douglas Campbell, assistant managing solicitor for licensing at Renfrewshire Council; and Tom Berney, chair of the Scottish Older Persons Assembly.

Would any of you like to make any opening remarks?

Douglas Campbell (Renfrewshire Council): Thank you for the opportunity to come along to address the committee on behalf of Renfrewshire Council. By way of introduction, I note that we are the authority that covers Glasgow airport. We have a numbers limitation in relation to taxis and we have a fairly high number of private hire cars. It might also be helpful for members to know that we have a taxi knowledge test and a wheelchair accessibility policy.

Tom Berney (Scottish Older Persons Assembly): In case people do not know, I explain that the Scottish Older Persons Assembly represents all the major voluntary organisations for older people in Scotland. We hold an annual assembly and we also go round the country inviting older people to tell us what they think is important. We then lobby Government on those issues. I confess that we have not done too much of that on taxis, but maybe I will say more about that later.

Audrey Watson (West Lothian Licensing Board): Thank you for inviting me back. I am happy to answer any questions on West Lothian’s submission. We are near an urban area, but we are not quite an urban area. We are a semi-rural area.

The Convener: Thank you. What do you consider to be the advantages and disadvantages of the current two-tier licensing system? Please include in your answer whether you think that there are benefits for service users who have additional needs. Mr Berney, do you have an opinion on that?

Tom Berney: It is a little bit different for us, because we are concerned about the service that old people receive from taxis. There is more concern about that than about the structure of how they are organised, but I have comments on that as well.

If I may say so, this morning, Dr James Cooper and Kevin Woodburn talked about what seemed to me to be a free-market free-for-all for hire cars, which seemed quite scary. As you touched on earlier, we are putting vulnerable people—into potentially hazardous situations, so we are naturally in favour of licensing and regulation in principle, and we think that all hire-car people should be trained.

12:00

Perhaps I can give the committee a wee anecdote. Once when I was in London, I asked the people at my hotel to get me a taxi. A minicab turned up and I asked the driver to take me to the Department of Trade and Industry. He did not know where it was, so I said, “Victoria Street”, but he still did not know where it was. I said, “It’s near Westminster abbey”—and still he did not know where it was. When you get a driver who does not have a clue, you realise just how vulnerable you are.

You asked about the importance of knowledge testing. It is very important indeed, because people want to be confident that their driver at least knows where they are going. We are concerned that a lot of people who use taxis and hire cars are taking a step into the dark, because they are not too sure of their rights or the sort of service that they can reasonably expect from their driver.

Drivers should be thoughtful; for example, they should take note of the passenger’s condition and treat older people as if they were their own mother or father. Our concerns are about the driver and his or her performance, and it seems to me that the only way of achieving what is needed in that respect is through regulation, testing, authorities licensing drivers and so on.

Little things make a difference. For example, a lot of older people who get a cab might have arthritis, or they might have just been picked up from a hospital, but drivers sometimes drive over speed bumps, which will be quite painful. There needs to be consideration for the passengers.

I am going to give you a list of problems that we—

The Convener: We will hear that list of problems as we move through the questions. I suggest that we stick to the specific question, and you will get an opportunity to go through all the other problems that you referred to, Mr Berney.

Tom Berney: What was the specific question?

The Convener: It was about the impact of the two-tier licensing system on service users with additional needs.

Tom Berney: I think—

The Convener: I think that you have already given us a fairly lengthy answer, Mr Berney. We will come back to you, but for the moment let us hear from Mr Campbell.
Douglas Campbell: The principal advantage of moving to a one-tier system is that there will be no issue with illegal ply for hires, as everyone will be able to ply for hire, but I am concerned about the disadvantages that such a move could bring. For instance, Renfrewshire has a wheelchair accessible vehicle policy for taxis, but private hire cars can be saloon cars, estate cars or hatchbacks—or even bigger vehicles such as multi-purpose vehicles, which we ask to be wheelchair accessible. In such scenarios, operators might well wish to carry more passengers.

As far as taxis are concerned, we have a separate set of conditions in a number of areas, but principally for wheelchair accessibility, and I am concerned that, if that distinction was removed, the question of who would run the saloon cars and the wheelchair-accessible vehicles would arise. After all, one is cheaper than the other. Having a wheelchair accessibility policy means that we have sufficient numbers of wheelchair-accessible vehicles to serve the travelling public, and particularly disabled people, who need them.

Audrey Watson: I echo Mr Campbell’s comments. The policies that West Lothian Council has put in place over the past few years allow taxis and private hire cars to complement each other. If someone wants a specialist vehicle to carry a heavy wheelchair, they can book one of our type 2 private hire cars, and from the end of this month, they will know that a taxi that they hail in the street or queue up for will be an accessible one, because it will have to meet the accessibility standard.

In the past, we have found that the private hire trade was using bigger vehicles that were eminently suitable as wheelchair-accessible or disabled-accessible vehicles, but there was nothing to compel the operators to meet the requirements that would allow disabled people to access them easily.

The Convener: With regard to knowledge testing and the other points that Mr Berney highlighted, do you as licensing authorities try to ensure that taxi or private hire car drivers take into account the needs of the folks who use their services, or do you consider that to be a matter for the individual operators or companies?

Audrey Watson: I feel strongly about that. We are in a world that is quite regulated. The last time that I came to the committee, we were talking about liquor licensing. Almost everyone in liquor licensing needs to pass a test, and everyone in the hire car sphere should have a certain level of expertise. In West Lothian, most of those people are self-employed, so no employer will come along and tell them that they need to sit a particular test.

In that situation, the Government should set a standard.

West Lothian is one of two councils that worked with the Scottish Government on looking at training and testing for hire car drivers. We worked with People First, which set up modules covering customer service, accessibility, pricing and the law, and that was well received. We would like to put that in place, but we would like the Government to say that it should be in place for all areas.

Douglas Campbell: On assisting the travelling public in general, we have a condition for taxis that passengers should be given reasonable assistance with luggage. We also have a knowledge test, and I agree with Mrs Watson that such tests should be encouraged. However, there is a resource implication for local authorities, because the tests have to be invigilated.

The Convener: Is there a knowledge test for hackney cabs and private hire drivers?

Douglas Campbell: No, the test is only for taxis. If the provision were to be introduced, it would give authorities the discretion to introduce such a policy. The numbers are bigger in relation to private hire cars; we have 214 taxis in Renfrewshire, which is our limit, but there are more than three times—there are almost four times—that number of private hire vehicles. That would have to be accommodated.

Knowledge tests differ throughout the country, but section 13 of the 1982 act is geared towards topography and knowledge of the streets in an area, plus “such other matters” as the council thinks appropriate.

I accept what Mrs Watson said about the People First training, but there are difficulties in having that as a mandatory system, given the current provision. The difficulty with extending the training and making it wider is that, although the legislation states that it can cover “such other matters” as the council thinks appropriate, it may be a moot point as to whether that would include child protection and so on.

Tom Berney: We would prefer that private hire drivers also had to be licensed and undergo knowledge testing. I have heard comments today about regulations varying around the country and arrangements varying between different companies in the same area, but people want clarity about what they are getting into when they hire a car, whether it is a taxi or a hire car. We recommend that there is some kind of taxi passengers charter.

Mr Woodburn said that the important thing is to educate the public about the use of private hire cars. It is one thing to have regulations, but the
public should know what the regulations are and what they are entitled to under them, in terms of both the price that they will pay and the service that they can expect from drivers. Rather than just talking about the detail of the regulation and how it will work between the two different sectors, I would like us to publish guidance for drivers and the public about the type of training that is done.

We have heard that drivers do training modules on disability and various other things. I did not know that, and it is something that the public should know. The public should know that every driver has been trained and should understand what type of training it was and the kind of service that they should be given.

I am not saying that all taxi drivers are bad, by any means. Most are very good, but we get the odd case where a driver seems not to accept that they have some responsibility for the passengers. I would like to see something that makes that clear. It could be press adverts saying what the charter is between the hire company and the passenger and what they are entitled to, or there could be little notices in doctors’ waiting rooms and community centres to try to get across to the public how the licensing process works—

The Convener: Do you think that the public are interested in how the licensing process works?

Tom Berney: No—that is what I was going to say. They want to know not so much how the licensing process works but the implications of that for what they are entitled to, which cars they can use, how much they can be charged and what type of service the driver should provide. They want to know what kind of cars they can have and whether they should have ramps.

The Convener: I will stop you there. I am going to play devil’s advocate. I always say—my fellow committee members are probably bored of me saying it—that sometimes we cannot legislate for common sense. We could create lots of different things, but the charter that you talked about and all the advertising and booklets would have to be paid for through the fees that are charged to the trade, which would be reflected in the fares that the public had to pay. Would what you suggest be welcomed by the public if they were likely to be charged for it?

Tom Berney: Mr Woodburn talked about the free market and said that the market will decide and that people have a choice, but people do not have a choice unless they have an informed choice. People want to know how one company is different from another. For example, some companies advertise that they are women friendly because they have particular concern for women. Why not also have companies saying that they are age friendly and that they will have particular concern for older people? That is the type of thing that I am talking about.

The Convener: Is that not up to individual companies, which will gain—or not—from what they do? Again, that is a market scenario.

Tom Berney: That depends on your view of what the Government should do. Some might say that we can have a public service—that is what taxis come down to, in the end—that is run solely on the basis of what individual companies decide, but I believe that as part of the licensing arrangements there should be Government oversight of the service and the commitment that companies give to vulnerable groups.

John Wilson: Mr Campbell said, I think, that 214 taxis is the upper limit or the maximum number of taxis, but he said that there are about three times as many as private hire cars. Do you have an upper limit for private hire cars?

Douglas Campbell: Sorry, but I said that there are more than three times as many private hire cars because we do not have an upper limit. I take the view that we cannot have an upper limit at present.

John Wilson: Why is it the authority’s view that you cannot have an upper limit for private hire cars but you can have one for taxis?

Douglas Campbell: Section 10 of the 1982 act specifically allows authorities to refuse an application for a taxi licence where there is no significant unmet demand for taxi services in the area. There is no provision on private hire cars. One provision is made explicitly, but it is not replicated in the act for private hire cars.

John Wilson: I am trying to find out why you feel that an upper limit can be applied to taxis but not to private hire cars when the lines are being blurred in the distinction between the two.

As I said earlier to a couple of colleagues, I was on a licensing board in 1980, and I vaguely remember that part of the reason for the change in the legislation in 1982 was that it was felt that there was an adequate number of taxis in local authority areas but that private hire cars could be used to help to service peak-time demand. Your authority says that the maximum number of taxis is 214, but you make no distinction in terms of private hire cars. How do you make that distinction between how a private hire car operates and how a taxi operates?

12:15

Douglas Campbell: I will explain some of the context. We have a numbers limitation on taxis. The view that we have taken of the legislation is, I understand, the view of other authorities as well.
Because the provision is explicit for one but not for the other, it would not be competent for us to introduce a policy at the moment. Obviously, that would change if the provision in the bill was enacted.

Any decision on that has to be evidence based. Because we have the power in relation to taxis, we have an external survey produced from time to time, and we boost that evidence on a voluntary basis with taxi stance observations by our civic enforcement officer. Because there is no provision in legislation at present, it is not something that we have sought, and I have to add that it would come at a considerable cost to get the evidence to inform such a policy.

I add that, although there is a bottleneck and an issue of peak time demand, the case law under the 1982 act seems to say that there will be periods when demand reaches a peak and there may be an element of waiting time at ranks. The guiding principle, as I understand it, relates more to a general demand by the public for services.

John Wilson: I understand that, Mr Campbell. I am picking your authority in particular because of the distinction that it has made between taxis and private hire cars. How often are the surveys carried out by your authority? Given that Renfrewshire Council is the authority responsible for taxi ranks at Glasgow airport, has any account been taken of the increased demand that might have arisen because of the increased number of passengers arriving at the airport? Moreover, do you have any indication of unmet demand, or demand peaks, during the Commonwealth games and other such events that the local authority could have taken into account to increase the number of taxi licences?

Douglas Campbell: With regard to how often the surveys are carried out, I think that the last update, which was done externally, was done in 2010. Civic government enforcement officers make periodic inspections, and I know that stance observations have been done from time to time, but I am not sure that there was any particular examination during the Commonwealth games. We have to work to general demand as well; there will be times of peak business, and obviously private hire cars, too, can service the market.

With regard to the process, I should point out that even if a report on numbers from an external organisation indicates that we have reached our numbers threshold, that does not bar people from applying for a taxi licence. A person is entitled to make an application, and it will be considered by our regulatory functions board, which is effectively our civic licensing committee.

John Wilson: Just for clarification, Mr Campbell, if you have reached your maximum number of operational taxis in Renfrewshire, and somebody makes an application, will that application be rejected?

Douglas Campbell: No, we cannot do that. There is case law, in particular from the mid-noughties, with regard to residual discretion. Having a policy does not mean that we can rigidly adhere to it; we have to be able to listen to people and make exceptions. I am not able to project what the board might consider to be a successful application, but we have to put any applications that we receive before it. Initially, it will be flagged to the applicant that we have reached our threshold and that, as a result, there is a risk that their application will not find favour with the board, but ultimately it is a matter for councillors and it is not a reason for an officer to bounce an application.

The Convener: Can I take you back a little bit? You have said that, under section 10 of the 1982 act, you cannot put a cap on the number of private hire cars. If a local authority were to put a cap on private hire cars, would it, under the current legislation, be in breach of the 1982 act?

Douglas Campbell: Not explicitly. There is a specific provision for taxis that has not been replicated for private hire cars. I do not know what a court would make of that—I am not sure whether the point has been taken up before.

The Convener: I know that you will probably not be able to answer this, but how many local authorities that you are aware of have a cap on private hire?

Douglas Campbell: I am not aware of any, but there might be some.

The Convener: Ms Watson, what is your interpretation of section 10 of the 1982 act with regard to a cap on the number of private hire cars?

Audrey Watson: I agree with Mr Campbell—I have always thought that no authority had a limit. I certainly think that, if an authority had such a limit, it would be challengeable on appeal under the current legislation.

John Wilson: I am still trying to understand the remit of the licensing committee in Mr Campbell’s authority. Are you saying that, if the cap has been reached and someone makes an application, the licensing committee can adjust its thinking and grant a taxi licence? If the licensing committee agreed to grant another licence, your limit would go up from 214 to 215, so is there really a cap?

Douglas Campbell: The limit would still be 214. If the situation that you are describing arose—and it is not a situation that we face at the moment—the limit as far as the policy was concerned would remain at 214. However, we would de facto have
made an exception, which would take the number of licences that had been issued to 215.

The point that I am trying to make about the application process is that although we have a policy, someone can still make an application. The wording of the 1982 act is such that we “may” refuse a licence when we consider that there is “no significant unmet demand”. It does not say that we “shall” refuse a licence if we find that there is no such demand.

John Wilson: As I have said, convener, I am just trying to get my head round the flexibility that exists for licensing committees to exceed an upper limit that has already been set.

The Convener: I think that the answer is that the licensing committee or board will set the limit but will still consider applications that might breach that limit.

Douglas Campbell: We must consider applications. Every application is considered on its own merits, and the board has discretion, which, as the courts have made clear, cannot be fettered. It is not to say that a good case might not merit an exception.

Cameron Buchanan: I presume that, when you used the phrase “significant unmet demand”, you were talking about somewhere outwith the reach of the centre of, say, West Lothian. Is that what you meant?

Douglas Campbell: No. I think that the test is that we can refuse an application for a taxi licence if we are satisfied that there is “no significant unmet demand”. I apologise if I did not make that as clear as I might have done.

Cameron Buchanan: So it is the other way round. Thank you.

Alex Rowley: Does determining whether there is overprovision involve significant costs? Do the kinds of surveys that you have to do to establish whether there is overprovision of private hire have major cost implications? A previous witness raised the question of how you can determine what constitutes overprovision of private hire cars.

The Convener: We will start with Ms Watson this time.

Audrey Watson: In 2009, West Lothian Council decided to do away with its limit on the number of licensed taxis for two reasons. First, we did not think that there could be no unmet demand if new private hire cars were being licensed every day. The market must work; these people need to find work in order to remain licensed, and the number of private hire cars has gone up steadily over the past few decades. We therefore thought that the situation presented a difficulty.

Secondly, having a cap creates a black market for licences. Licence plates change hands for money. The legislation provides that a licence comes to an end when the holder dies, but we found situations in which Mr A no longer wished to operate his taxi, so he leased it to Mr B, who might otherwise have provided a new vehicle. When Mr A died, the licence came to an end. We did not think that that was right, so we did away with the limit.

Douglas Campbell: There are substantial costs even for doing a taxi survey. I broadly welcome anything that gives discretion to local licensing authorities, but there is a different test for private hire cars and I am not sure whether the costs of surveys would double if an authority decided to go down that route on the question of overprovision. I cannot release any figures on how much we spend—I am not aware at the moment what those figures are—but even a single survey of taxis would cost a substantial amount.

Measuring private hire cars is perhaps more difficult than measuring taxis; after all, you can measure taxis at ranks. I am not sure how you would establish overprovision of pre-booked cars. As far as the proposed legislation is concerned, that would also require an examination of demand.

I do not understand how the proposal would work in practice. With liquor licensing, there are clear licensing objectives that the legislation seeks to achieve, such as crime prevention, securing public safety, preventing public nuisance, and health. I am not sure whether overprovision, as opposed to unmet demand, necessarily sits well with taxis. It would be hard to say whether there were too many cars to take people home at the end of an evening.

The Convener: We are talking about demand. Ms Watson has described an approach in which the authority lets the market decide—even though you are paying for surveys and so on—and Mr Campbell has just referred to surveying demand. Local authorities survey residents quite a lot and in various ways. Would it be wise in those surveys of residents, whether they take place with citizens panels or whatever, to survey the general public on what they think about taxi and private hire car provision in their areas?

Tom Berney: That is a good point. Of course, I come here with a different remit from the other members of the panel, as I do not represent a local authority and I am not a taxi owner; we come from the point of view of the customer. I presume that, at the end of the day, the reason why you are tidying up the regulations is to make life better and safer for customers and the general public. I do not think that you can really do that unless you tell them what you have done and what you have
achieved. One of the things that I was asking for—and I do not think that I am winning here—

The Convener: You’re nae losing, either, Mr Berney.

Tom Berney: If, in order to be licensed, drivers must have disability training, discrimination training, health training and so on, it would be helpful for the public to know that. I also think that it would be interesting to know whether taxi drivers must have that training but private hire car drivers do not. If that is the case, that is wrong. I think that anyone who is being paid to drive the public around ought to be properly qualified, and part of that qualification ought to be some training in how to deal with disabled people and so on.

The Convener: Mr Berney, I know that you have views on all of those things, and we will get to them. However, the specific question was: do you think that local authorities should be asking the public about demand in their area and whether the provision of taxis and private hire cars in their areas is enough?

Tom Berney: Yes, certainly. We are organising another series of meetings around the country. If you want, we can make that one of the issues that we discuss with our people.

The Convener: That would be extremely useful. We would be grateful for anything that you could feed back to us.

Douglas Campbell: Perhaps for the first time today, I will be brief. Bluntly, I think that it would be wise to survey the public. To put that in context, I should say that we carry out external surveys of taxis from time to time. Those surveys are quite detailed and thorough; ultimately, all of this is challengeable in the courts, so we tend to produce evidence that is robust.

12:30

Audrey Watson: In our submission, we mention a lot of the changes that West Lothian Council has brought in since 2009. In our 2008 survey, we got a very good response rate—more than 40 per cent, which is quite incredible. The biggest response was on disability issues, so the council decided to set up a consultative group with representatives from key stakeholders, and that is where our changes came from.

The biggest fault was the lack of disabled-accessible vehicles. Some people told us that they had had a very good response from the local operators that they used, but the vast majority of respondents said that there were not enough vehicles that were accessible to them. It is not only people with wheelchairs who need accessibility, but those who are hard of hearing or cannot see properly and people who need ramps and steps.

Drivers need to be trained as well, and we believe that it is important that the Government introduces such training for all drivers.

The Convener: What did your survey show with regard to demand? Did the results lead to any policy changes, or were your changes already in place?

Audrey Watson: The survey told us loud and clear that there were not enough accessible vehicles, so it was a no-brainer: our policy restricting the number of accessible vehicles that were licensed—and therefore the overall limit on taxis—had to go. Over the past five years, taxi numbers have stayed at almost the same level, but the number of private hire cars has gone down and the number of accessible vehicles has gone up.

The Convener: Thank you. That was extremely useful.

Willie Coffey: I want to take some advice from my local authority colleagues on the issue that I raised earlier of protecting the public. I used the example of a taxi driver who had moved from one authority to another, but the second authority did not know that a substantial number of complaints about the driver had been made to the first authority. How can we improve that situation to ensure that the public are protected?

Douglas Campbell: Our application forms ask whether applicants have applied to other authorities, which covers one aspect. Obviously, all applications are sent to Police Scotland, which will comment on them, and those comments can highlight convictions and non-conviction conduct that has not gone as far.

I appreciate the point that you have made. The situation might depend on the strength of the information that is available to the police, and ultimately on the presentation to the board. There will always be differences in the approach taken by any board of elected members, because the legislation entrusts them with discretion. Local authorities are certainly concerned about the issue that you have raised, but as I have said, we ask applicants whether they have applied to another authority and we take into account information from the police.

On a related point that was raised earlier, the board would not set aside the police letter. It would exercise discretion in deciding how much weight should be given to certain information that came before it.

Willie Coffey: If the person was intent on concealing and lying about his or her personal circumstances, how would the second authority find out? I am not talking about your particular authorities, but how would you know? Is one
Nevertheless, limousine companies that had

Douglas Campbell: I am not absolutely certain about that. The application form that asks that question is passed on to Police Scotland, which sometimes highlights that, for example, the applicant applied to Glasgow for a licence and was refused. That happens.

Audrey Watson: Our application forms say the same thing. It probably works fine for criminal matters, but if we are talking about low-level conduct, I am not entirely sure whether we would know that a driver had had problems in other areas short of their being suspended.

Willie Coffey: So an authority would not necessarily pass on to neighbouring authorities information that substantial complaints had been raised about a particular driver. They would not naturally share that information, would they?

Audrey Watson: I am not a data protection specialist, but I can see issues with that.

The Convener: Okay.

Do you welcome the removal of the contract exemption? What might the practical implications of that be? We have heard that some rural local authorities are concerned about the withdrawal of the exemption because the additional cost might cause some hire car operators to withdraw from the market and because there might be an adverse impact on councils’ procurement of transport to take children to school and older folk to lunch clubs or whatever, for example. Do you have a view on that, Mr Berney?

Tom Berney: No. I do not have a comment to make on that.

The Convener: Do you have a view, Mr Campbell?

Douglas Campbell: I am not involved in the procurement process, but I think that it is part of our standard framework that those who have contracts hold such licences anyway, so I do not know whether there would be any implications for Renfrewshire.

In broad terms, I welcome the proposal to remove the exemption, as I indicated in our consultation response. It is an enforcement lacuna because, unless a driver is monitored 24 hours a day—which cannot realistically be done—and they say that they take only one hire a day, that gives them a potential loophole. Ms Watson cites a couple of cases in her response, and I accept that there may be merit in an exemption in such cases, although I did not argue for that in our response. Nevertheless, limousine companies that had limousines with eight or fewer passenger seats could say, “You can’t license us.” It is an issue, and I think that there could be more control if the exemption were to be removed, as is proposed.

Audrey Watson: In my consultation response, I said that it would be quite difficult to identify the top end—the chauffeur-driven vehicles. How would Police Scotland know whether they were taking someone on a hire car journey? There would have to be some sort of signage, and that would have to differ from the private hire signage. As you have heard this morning, a lot of steps have been taken to ensure that the public know the difference between a taxi and a private hire car. In West Lothian and in Edinburgh there are door signs, but I do not imagine that the top end of the market would want that. However, if the top end did not have that signage, how would anyone identify what was the top end? What markers would there be? I worry about how that would work in practice. In England, private hire cars have plates in the boot that passengers can check to make sure that the vehicles are licensed, but I do not see how enforcement officers could check that.

The Convener: Okay. That is useful.

Do you share the Scottish Government’s view that services that are run by community groups or charities and that are not for profit should continue to be exempt from the licensing regime?

Tom Berney: I know that some local communities have been running their own services, and that worries me a bit because I would want to feel that the people who were doing that had had some testing before they were allowed to do it. It is one thing for me to say that I can give somebody a lift to the hospital occasionally, which I do, but it is another thing to run such a service. In some cases, those services are being used to cover up the lack of public transport, and that is a worry. I would prefer there to be some sort of testing for people who run those services, too.

The Convener: You think that community groups and charities that run services should be included in the licensing regime.

Tom Berney: I think so, although it could be a less-restrictive licensing regime. It worries me that someone could just start replacing the local bus service. I know a couple of people who are doing that down in Dumfries, and it is a bit worrying. I would want people to know that they had at least a public service vehicle operator licence or something and that they were properly qualified to run such a service.

Douglas Campbell: Coming at it from a regulation perspective, I take the protection of the public as a starting premise. I understand why the
view that has been described would be held, but I do not feel that I can comment further on that.

Audrey Watson: I imagine that most hires would be covered by the Protection of Vulnerable Groups (Scotland) Act 2007, which protects people from the drivers. I am simply not aware of whether there have been issues with vehicles that are not in a good state of repair being used to take people around. We certainly would not want to be involved in licensing vehicles if they did not need to be licensed.

The Convener: Do you have any concerns about the operation of the licensing regime that are not being addressed in the bill?

Audrey Watson: On the checking of previous convictions, if someone is a taxi or private hire applicant no offences are spent unless they are offences that have been dealt with by alternatives to prosecution, which are the fixed penalties that were introduced a few years ago. I would like to see those not becoming spent for taxi and private hire car drivers, because we are seeing some fairly serious offences, such as violent disorder and drugs offences, being dealt with day and daily by ATPs. Some of them become spent immediately they are issued and some within three months. It means that, if the police want to bring forward a person’s entire history, they have to do what is known as a two-stage test. That can become quite legalistic and I do not think that it is necessary for members of committees to deal with that. They first have to say, “There is something that is not here that we want to tell you about. Will you let us tell you about it?” Then they need to say what it is if it passes that test. If someone wants to transport the public, their whole record should be before the committee so that it can decide whether they are a fit and proper person. A lot of the offences that I have concerns about are drugs offences.

Douglas Campbell: I echo Ms Watson’s thoughts. The two-stage test becomes quite complicated when we get into different regimes, because there are exclusions and exceptions in relation to drivers of private hire and taxi vehicles. As I understand it, that can in effect disable boards from looking at offences that have become spent, either immediately for fiscal warnings or after three months in the case of fiscal fines.

The Convener: We have heard concerns about companies such as Uber and Hailo entering the market. Do you have concerns on those fronts and, if so, what are they?

Tom Berney: I am sorry. I did not catch the question.

The Convener: I was asking about Uber and Hailo, the app companies that we were talking about earlier. Do you have any concerns about them entering the market?

Tom Berney: As I said at the beginning, I have an app on my phone, like most people do, and I can contact the local taxi company. That is relatively secure. The worry is about the possible explosion in the market that Dr Cooper described. If there are a few local companies, people can get to know their reputation, but if there is a complete free-for-all with dozens of companies and people are not sure who they are getting, that could be worrying. Dr Cooper’s paper outlined the difficulty of keeping track of that type of thing, but it is important that the local authority takes a grip of the situation to ensure that anyone who provides a service is a properly qualified driver. I can see the problems involved in that. If someone picks up their phone and dials a number to get a car, how do they know? As I said, the important thing will be to let the public know what the situation is with those companies.

Douglas Campbell: There is widespread concern about the points that Dr Cooper raised; he certainly raised considerable concerns. All that I would add to those concerns—Dr Cooper is probably best placed to speak about them in detail, given his knowledge of the technology and his specialism—is that we have level 2 fines in civic government where offences are committed by people not having licences and so on, whereas there are level 5 fines for liquor licensing. Perhaps, at some point, the levels of those penalties might be looked at.

12:45

Audrey Watson: I was interested in what members of the previous panel said about booking office licences. Mr Campbell and I had a quick look at the legislation when we were sitting in the public gallery. As far as we could see, the evidence that you heard was not correct. Firms do not need to be licensed in their area to have a booking office. We have a booking office that operates vehicles from the Falkirk area, which is licensed in West Lothian. There is nothing to say that the booking office, the vehicles and our drivers have to be connected.

Most people in the cities work for one of the big companies, but that is simply not the case outwith the cities. Lots of people there are self-employed, they might have their own vehicles and they might not be involved with any booking office at all. As far as I can see, it may not be the case that Uber would need booking office licences. If someone had a booking office in England, I do not think that they would need a licence. That should be tightened up immediately.
The Convener: That is extremely useful information.

Tom Berney: Regarding the situation that Dr Cooper described, I am worried that, given how the internet works, I could launch a website tomorrow, for instance, inviting people to put forward their names to be drivers. They could put their names on my website, someone would consult the site and the job would go to one or other of the drivers. How can it be ensured that such things are properly regulated, rather than our just having that kind of random system, to which the internet lends itself? That is the type of thing that Dr Cooper described as being difficult to control.

Douglas Campbell: I am not quite sure on this point. I take Ms Watson's points entirely. We had a discussion, and I agree with what she said. However, I am not sure how things would work if the office was outwith Scotland altogether. That might be theoretically possible, although it must be relevant vehicles that are registered at booking offices, so it is perhaps less likely that they would be registered in England.

In Renfrewshire, we have a local condition, in addition to the mandatory conditions, regarding booking offices. It states:

“The holder of a taxi licence shall not have installed in his taxi a two way radio or similar device the base of operation or control point of which is situated outwith the boundary of Renfrewshire Council.”

That was introduced when the booking office regime came in. It may be that, given that there are other mandatory conditions for booking offices, such measures could be considered.

Audrey Watson: That would be an excellent idea. My issue is that we do not have a condition like that. I am not satisfied that that is a reasonable condition that would stand up to scrutiny in the appeal court. However, if such a condition was in the guidance, it certainly would.

Things have moved on very quickly, as Dr Cooper said earlier. The mandatory and other conditions and the guidance all need to be scrutinised to ensure that they are completely up to date.

The Convener: There are no further questions from members. Thank you very much for your evidence.
Scottish Parliament
Local Government and
Regeneration Committee

Wednesday 28 January 2015

[The Convener opened the meeting at 10:00]

Air Weapons and Licensing (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the fourth meeting in 2015 of the Local Government and Regeneration Committee. I ask everyone present to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Because we provide papers in digital format, some committee members might consult tablets during the meeting.

Agenda item 1 is our seventh oral evidence session on the Air Weapons and Licensing (Scotland) Bill. Today we will take evidence from the British Transport Police and Police Scotland on the provisions on scrap metal dealing, alcohol licensing, taxi and private hire car licensing and sexual entertainment venue licensing. Before we start, I should point out to the witnesses that they do not need to press the buttons on their microphones as they will be operated by the sound engineer.

We will start the session with questions on scrap metal dealing. As the British Transport Police witnesses will take the lead on that, we should direct our questions to them. Once we have exhausted those questions, they will step down from the table and we will continue the rest of the session with Police Scotland.

I welcome from the British Transport Police Chief Superintendent John McBride, divisional commander for Scotland, and Superintendent Alison Evans, national metal theft task force; and from Police Scotland Assistant Chief Constable Nelson Telfer, head of policing, west of Scotland, and Chief Inspector Morag Stewart, liquor and civic licensing policy. Chief Superintendent McBride and Superintendent Evans, do you wish to make any opening remarks on the scrap metal provisions in the bill?

Superintendent Alison Evans (British Transport Police): Yes, convener. I will provide evidence on the activity that has been undertaken in England and Wales.

The Scrap Metal Dealers Act 2013 came into force in December 2013 as part of a suite of measures that we have undertaken on metal theft, the aim of which is to make metal harder to steal. That involves putting protections in place and trying to work with industries to ensure that we make metal as safe as possible, either by marking it or by increasing and enhancing the protection around it. Our other aim is to make it easier to catch offenders, so we have taken enforcement measures as part of the task force, and we are ensuring that activity is joined up between the Home Office forces, the BTP and, importantly, other agencies such as the Environment Agency and local authorities, which have a huge part to play.

It is important to put the Scrap Metal Dealers Act 2013 in that context and to see it in the round as part of that activity. The legislation was hugely important, and it has been very necessary and very helpful, but it forms only part of the activity that has been undertaken.

The results speak for themselves. In 2012-13, England and Wales saw an overall 43 per cent reduction in metal theft. That figure is for all types of metal theft including theft of power cables, media cables, lead from church roofs and catalytic converters. We need to talk about the metal that is stolen in the round and ensure that we do not think about metal theft just in terms of the cable with which it is usually associated.

That reduction was matched in the BTP figures; in 2013-14, the BTP saw a further reduction of 36 per cent. We do not have the overall figures for England and Wales for 2013-14. Although they are due to be published imminently, unfortunately I have not had foresight of them, but we have been told anecdotally by the forces that we are working with that, over the year, they have seen a similar reduction. Therefore, in the round—and certainly for the BTP—we are looking at an 80 per cent reduction.

Although one might expect that there is no way that such decreases can continue, we have seen in the period since April 2014 another reduction of 48 per cent in both live and non-live crimes. By live crimes, I mean the theft of cable that affects the running of the railway. For example, the theft of the cable that is part of the signalling equipment can stop trains running.

There are also thefts from depots and from line side that do not necessarily affect the running of the railway but which still have a huge impact on and financial cost to Network Rail. Although I cannot say that the figures that I have mentioned are completely reflected in England and Wales as a whole, the effects of the Scrap Metal Dealers Act 2013, particularly the cash ban and the licensing requirements, are indicative of its success.

We have worked closely with the Local Government Association and individual local
The Convener: Does Police Scotland have anything to add?

Assistant Chief Constable Nelson Telfer (Police Scotland): Not at this point, convener.

The Convener: We will move on to questions. The committee has heard a fair amount of evidence about the impact of metal thefts. I am looking at a press report from the *Hamilton Advertiser* about thefts from Aitkenhead farm, Tannochside, of 200m of cable carrying 11,000 volts. It is quite unbelievable to think that folks would risk life and limb for that, but that sort of thing seems to be quite commonplace. Incidents galore have been listed, and we know that there have been major impacts on the railways over the piece.

The police submissions suggest that a national register of metal dealers be created. Why do you think that there should be such a register?

Chief Superintendent McBride: A national register would be really helpful from a number of points of view. For a start, it would certainly help members of the public who are looking to dispose of household waste metal if they were able to identify recognised, bona fide scrap metal dealers.

From an enforcement point of view, there are good opportunities for sharing information and intelligence among a number of law enforcement agencies that have jurisdiction over this issue. It would be really useful if we, SEPA and local authorities—which have some locus in this—could share information on a business-by-business basis when we visit scrap metal dealers, and it would also be very useful to have clarity and visibility around who has registration and licensing in which local authority areas, not just for scrap metal dealers but for itinerant mobile collectors.

The Convener: Does Police Scotland have a view on the national register?

Assistant Chief Constable Telfer: We support Chief Superintendent McBride’s comments about regulation and the sharing of information and intelligence. We would welcome that, and we support our colleague’s position on it.

The Convener: You mentioned itinerant dealers, Chief Superintendent McBride. The committee has heard about waste dealers who deal in smaller amounts of metal. How do we deal with those folks and ensure that they stay within the law? We have heard from others that that might be much more difficult to police.

Chief Superintendent McBride: Something that would strengthen regulation would be a definition of dealers, which should include those who buy or sell. Such a mechanism would allow us to catch a number of itinerant or mobile collectors within the legislation. From operations...
that have been carried out in Scotland—the experience will be very similar in England and Wales—we have found that, although itinerant and mobile collectors do a social good in uplifting scrap metal, there is considerable evidence that an element of them steal metal. Of course, that gets into the chain of being sold to unscrupulous dealers and, as a result, harm is done to local communities. There is, for example, evidence of garden furniture and trampolines being taken out of gardens.

There has been a proliferation of metal collectors, because the value of metal has been such that stealing it has become a good, low-risk, high-reward crime to get involved in. If the legislation as the committee scrutinises it could be strengthened to include itinerant and mobile collectors, that would be really valuable, because it would prevent a fairly significant section of this industry from sitting outwith the legislation.

The Convener: How have itinerant dealers been dealt with in England and Wales?

Superintendent Evans: Each mobile collector is required to have a licence for the local authority area in which they collect, and there has been some discussion about the display of those licences. Mobile collectors have said, “If we collect in several areas, how are we meant to display the licences? We would have licences all over our window and it wouldn’t be safe.” That is a slightly ridiculous argument, because they are required to display the licence only for the area in which they are collecting at that time.

Some local authorities have gone down the photographic route. That has been really helpful, as it means that people cannot swap their licences with other people. It also gives the public great reassurance. If the licence is on display, the public can check whether the person who comes to their door asking for metal is genuine and legitimate.

Displaying licences also makes our life easier when we do road-side stops, because we can see immediately that the person has one. We can check their records, and if they are keeping the appropriate records, they can go on their way. We make sure that we focus our activity on the people who are totally contravening the law or who might also be contravening environmental legislation. We are working with partners on the road-side operations that Mr McBride has described to ensure that we have all the parties at the table and that if someone is not keeping appropriate records we can seize loads or whatever as necessary.

10:15

Cameron Buchanan (Lothian) (Con): Good morning. Your submissions say that you are interested in a national register, a requirement to display identification and the banning of cash payments. Will those things help a lot? Some witnesses have highlighted the problem that someone could just get a cheque instead and then go next door to cash it.

Chief Superintendent McBride: There is no doubt that the availability of cash in the industry leads—if I can put it this way—to poor business practice. Given the good evidence that we have of industry scams that are probably driven by the availability of cash, I support the prohibition suggested in the bill, as it will take away some of that temptation.

A more important point is that the availability of cash in some ways greases the wheels of criminality. It does not allow for any traceability in transactions, and where record keeping is poor or is designed to wrong-foot investigations, it provides anonymity. Those two things ease criminality, and it would be useful if we could prohibit the use of cash by introducing a mechanism that allowed some traceability, either through non-transferable cheques or electronic payments.

Cameron Buchanan’s point is very well made: people might very well go to a cheque-cashing outlet to cash a cheque. However, that takes us into the area of money service bureaux and businesses, and that brings with it a considerable amount of regulation from HMRC and the know your customer checks, in which identification is required to create that kind of relationship. In some ways, the know your customer regulations and requirements are much more stringent than anything we have ever seen for registration and record keeping in the scrap metal dealing industry. I fully support a prohibition on the use of cash to buy or sell scrap metal.

Assistant Chief Constable Telfer: I emphasise our full support for our BTP colleagues and their position. I have nothing further to add.

Cameron Buchanan: You are keen on photographic ID, which I would have thought should be essential. As far as the display of licences is concerned, I believe that you said that only the licence for a particular area requires to be displayed.

Chief Superintendent McBride: That is right.

Superintendent Evans: Yes.

Clare Adamson (Central Scotland) (SNP): Chief Superintendent McBride, you talked about tightening up the definition. The phrase you used was someone who “buys or sells”. Should that become “buys and sells”? I am conscious that there might be a point at which an ordinary householder would be required to have a licence if they were just selling.
Chief Superintendent McBride: I worded that carefully, because it is intended to capture everyone who is involved. We talked about itinerants and mobile collectors, who do not always buy on the doorstep; they may be given things. It is important that it is not “buy and sell”, because such people do not always buy; it could create a loophole in the legislation for people who are of a mind to step around it.

Clare Adamson: At what point would a householder who is selling trampolines or used garden furniture require a licence? Would it be based on the sales at a particular time, the value of the sales or what?

Chief Superintendent McBride: I see what you mean: your question is just about householders. There are provisions in England and Wales that cater for that and I do not think that anything suggested in the bill would make us any different in that regard.

The Convener: Ms Adamson is trying to make the point that sometimes in our lives we might get rid of excess, whatever it might be. Do the England and Wales provisions have something about the regularity of the buying and selling being the thing that requires a licence, or if we sold a bit of garden furniture or whatever as a one-off, would we suddenly find ourselves in breach of the law?

Superintendent Evans: The England and Wales 2013 act talks about someone “carrying on business as a scrap metal dealer” who, in their role in that business, buys or sells. Therefore, it would exclude me or you selling something as a one-off or irregularly. There is a business proposition, if you like. We would like the bill to say “buy or sell” so that it includes the mobile collectors who do not buy but definitely sell.

Chief Inspector Morag Stewart (Police Scotland): If the records are kept better and we are allowed the power of entry and inspection, we will be able to ascertain whether somebody who does not have a licence is going quite frequently to a scrap dealer and we will be able to address that. That would deal with that element as well.

The Convener: As it stands, the bill says:

“This section applies where a metal dealer or an itinerant metal dealer (‘the dealer’), in the course of the dealer’s business—

(a) acquires any metal (whether or not for value), or

(b) processes or disposes of any metal (by any means).”

Is that similar to the English and Welsh legislation?

Superintendent Evans: Yes.

John Wilson (Central Scotland) (Ind): Good morning. My first question is for you, Superintendent Evans. Earlier you said that, in England and Wales, mobile itinerant collectors are registered in every local authority in which they operate. Is that correct?

Superintendent Evans: That is right, yes.

John Wilson: As I understand it, under the current legislation in Scotland, they need to be registered in only one local authority area but can collect in other parts of Scotland. Do Police Scotland or the British Transport Police have any comments on whether it would be appropriate to introduce a national licensing regime to ensure that any itinerant mobile collector is covered? That ties into the convener’s question about a national licensing regime. As has been asked previously, if someone who is licensed in Glasgow is stopped in the Highlands, how would their licence be checked out?

Superintendent Evans: If you had a national or Scottish register, anybody who stopped somebody with a licence from Glasgow in the Highlands would be able to check the register to ensure that the licence was legitimate.

Chief Inspector Stewart: The situation is similar to the way in which the pedlar’s certificate operates. Although the police issue that certificate, pedlars are allowed to operate throughout Scotland. In England, they are licensed on a local authority basis, which might keep tighter control of them.

John Wilson: I ask for clarification, Chief Inspector Stewart. At present, the police in Scotland issue pedlars’ licences. Is that correct?

Chief Inspector Stewart: Yes.

John Wilson: Have there been any discussions with Police Scotland about issuing the itinerant mobile collectors licence?

Chief Inspector Stewart: No, the local authority would issue that licence.

John Wilson: I am just trying to work out why the police would issue pedlars’ licences and not the other ones.

Chief Inspector Stewart: A pedlar’s licence is given for the sale of goods and wares whereas a metal dealers licence is specific to a dealer in metal as opposed to other ancillary items.

John Wilson: So you already have a national register for pedlars in Scotland.

Chief Inspector Stewart: We have records of those who have been issued with licences.

John Wilson: Thank you.

Scrap metal dealers have told us that if we cut out the ability to pay cash for scrap, there might be an increase in fly-tipping. However,
Superintendent Evans said that the BTP had not seen any relationship between the introduction of the new legislation in England and Wales and levels of fly-tipping.

**Superintendent Evans:** When we worked with local authorities and the Home Office to draft the 2013 act, we did not even think that that might be an issue, as far as I am aware.

It is good that the issue has been raised here and that you are considering it—it is something that we need to take back. However, in talking to individual local authorities and national bodies—the Local Government Association and the Environment Agency—nothing has been raised at all to suggest that that has occurred. However, I am happy to take the issue back and to ask those questions, and I will perhaps submit written evidence to the committee if that would be helpful.

**The Convener:** That would be extremely useful, if possible.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** I want to ask about how well the cash ban has been working in England and Wales. I presume that cash transactions are now criminalised in England and Wales. Is there any evidence from data gathering on criminal activity to show how that is proceeding? It might be a wee bit naive to think that no cash transactions are taking place because of the legislation down there. How has that panned out? Have there been any prosecutions in relation to cash transactions?

**Superintendent Evans:** Yes, there have been prosecutions in various parts of the country for dealing in cash, not keeping appropriate records and not checking people’s identification. Therefore, all parts of the legislation have been enforced. Part of our work has involved educating the judiciary on how important the cash ban is, so that those who have contravened it have had more serious fines, although we have not had any imprisonment sentences. The fines for contravention have ranged up to £1,000.

**Willie Coffey:** Has that made the biggest contribution to the impressive reduction in the number of metal thefts?

**Superintendent Evans:** It has removed the ability of low-level offenders to process metal with no risk and to get an immediate reward. That was what was so easy for them previously. Metal is relatively untraceable and is prevalent in our communities, so it is difficult to make it much harder to steal. Therefore, we had to think of another approach. Our approach has been to look at the middleman and to get the co-operation of the scrap metal dealers to make those enhanced checks. Through the identification checks, the dealers are almost policing the issue themselves. We had to get the legitimate industry on board, and to do that we had to show it that we will take enforcement activity against those who contravene the law.

Our thinking is that, as legislation has been introduced, we really have to show the legitimate industry that we are doing something and taking out the bad guys, because otherwise the legitimate industry will not have any faith in us and will not keep giving us intelligence. We do not have that many resources, so we have to focus them on the people who are taking stolen metal through the dealers. The cash ban is hugely important, therefore, because it takes out that immediate realisation and puts another step in the way. It also gives us another way of identifying people who hand in stolen metal. It creates another hoop that people have to jump through before they have cash in their hand for metal.

**Chief Superintendent McBride:** It might be helpful to share the fact that when a cash ban was introduced in France, the evidence was that the level playing field between those who operate legitimately and within the law and those who operate outwith it meant that reporting from within the industry in France increased, which allowed the police to target those who were operating outwith the law. The experience has been similar in England and Wales, where competitors, through their intelligence networks in the industry, have been reporting instances of people not operating within the law. We expect a similar experience here if the bill becomes law.

**Willie Coffey:** I have a question for the British Transport Police and Police Scotland on the requirement to keep metal on site for 48 hours. Both organisations have said that they would prefer to retain the requirement, but we have heard in previous evidence sessions that the police are perhaps not always able to investigate metal theft within 48 hours. Will you give us your advice on that?

**Chief Superintendent McBride:** Our minimum standards of investigation have been written up by BTP and shared in England and Wales and with our colleagues in Police Scotland. When there is a metal theft attack on the railway, part of our minimum standard is to visit the three closest scrap metal dealers, to look for the stolen metal. The 48-hour requirement would be very helpful to us in such cases.

In reality, the BTP understand the pressures on the industry. It is heavily regulated by SEPA—and rightly so, to prevent environmental pollution—and there is no doubt that the longer that metals are left on the ground, the greater the danger of soil pollution, so I understand that pressure. I also
understand the pressure on throughput and that keeping stacks of metal for 48 hours might be problematic for the industry. From an investigative point of view, the retention period would be helpful, but I understand the business considerations and environmental impacts that it might have.

Assistant Chief Constable Telfer: I would echo those comments. I understand that in lesser cases, in which scrap metal is going through dealers, we do not get there in 48 hours, but such is the gravity of some theft cases now and the volume of metal involved that we take those cases seriously and expedite their investigation. We are suggesting that we keep the 48-hour retention period, which provides a good balance between our approach to investigating the more serious metal thefts and the business concerns that John McBride has just highlighted. We support keeping the 48-hour requirement.

Willie Coffey: The bill proposes a requirement to improve record keeping. Would that be any compensation if we were to lose the 48-hour requirement? Would you prefer to keep the 48-hour requirement?

Assistant Chief Constable Telfer: In the most grave cases of metal theft, it is beneficial for us to retain the best evidence, and the 48-hour window of opportunity is particularly beneficial in getting that evidence. To do away with it would be to do away with our opportunity to gain the best evidence and to recover stolen property.

Chief Superintendent McBride: There is a balance to be struck. If the bill becomes an act, there will be new provisions requiring better record keeping and identification, which will help to reduce anonymity. If the ban on cash transactions is enacted, it would improve the traceability of suspects.

I agree with Mr Telfer about the best evidence. If you have been in a scrap metal dealer’s, especially one of the bigger ones, you will know that the reality is that there is metal all over the place. We would need some fairly good processes that the dealers signed up to to keep the 48-hour stock—which they obviously want to keep moving—in such a way that when we go in looking for any stolen metals after a crime has occurred, it is fairly clear to us where it will be.

I am trying to say that there are several ways in which they could get round the issue by not having the 48-hour stock in the 48-hour pile where we might expect to see it. It is all a balance.

Alex Rowley (Cowdenbeath) (Lab): It is about trying to strike that balance. I appreciate what you say about best evidence, but how often do the police use the power? The scrap dealers who came to give evidence, particularly the larger ones, were saying that it was very difficult for them to keep metal for 48 hours. As you say, their processes involve moving stuff on. Will the other provisions that are being put in place, around cash, record keeping, photo ID and so on, not compensate for losing the 48-hour requirement?

Where is the balance? Do you feel strongly about the matter or, although you might not get the best evidence, can you agree to it if all the other procedures are put in place?

Chief Superintendent McBride: It is difficult, because there is the business need, which we have talked about, the environmental need, which SEPA would certainly and rightly be concerned about, and the need for best evidence in investigations. If the metal is there and we can find and identify it, given some of the challenges that Alison Evans outlined, that would definitely be the best evidence, which would help us. Some of the safeguards that might come into being as the bill progresses might help us as well, and they might offer a compromise.

The Convener: Superintendent Evans, there is no 48-hour requirement in England and Wales. How does that work there? Is the fact that you do not have it in place an impediment?

Superintendent Evans: In an ideal world, we as enforcement agencies would have everything in place that we possibly could. The 48-hour rule would help considerably. We do not know how much our not having it impedes us, because we do not have it. The BTP’s minimum standard is to get to the closest three scrap metal dealers within 24 hours. Each provision that is put in place is a step towards improving the traceability of stolen metal. The requirement for 48-hour retention is another step that would assist us. However, we have consideration for BMRA colleagues, so we recognise that it could prove very onerous for some of the smaller operators to have to comply with that as well as with the Environment Agency requirements that are placed upon them. We understand the business objections. However, in our world, we would prefer to have as much assistance as possible to trace the metal.

The Convener: What is Police Scotland’s view?

Chief Inspector Stewart: Given the gravity of some of the incidents of metal theft, the time when it is reported, the multiple locations involved, and the need to identify what dealers the metal has been taken to—they can cover the whole of Scotland—I suggest that 48 hours is a minimum to allow enforcement agencies to make any positive inquiry. If we did not have that, it would certainly impede any investigation. People will not necessarily go to the nearest scrap metal dealer to process the metal. The thefts could come from multiple locations—we do not know. The
investigations take time. The removal of the 48-hour provision could be significant.

**The Convener:** Alex, do you want to come back in?

**Alex Rowley:** The trade is quite concerned about the 48 hours, particularly the larger dealers. Their view is that there is no practical benefit and that record keeping can be just as effective. Would you dispute that?

**Chief Inspector Stewart:** I can understand where they are coming from, but it would be effective only if the record keeping is up to standard and the dealers are checking identification. As I have said, there are difficulties for any police inquiry, from when the incidents occur to locating the stolen items. Having 48 hours to identify where the metal is is not a long time for the police. Beyond that, the metal is gone and it is easily disposed of. If the records have not been kept and there is no closed-circuit television, that makes it even more difficult for us to trace it. In my opinion, the requirement provides a compromise between allowing the enforcement agency time at least to try to make inquiries and start an investigation and considering how long dealers can keep the metal and comply with SEPA’s requirements.

**Clare Adamson:** Like my colleague Willie Coffey, I was impressed by the figures that you quoted on the reductions in England and Wales. As well as the licensing legislation there, there is also a considerable amount of work with different industries. Have you seen similar reductions in heritage thefts? Is the work that you do with the industry paralleled in Scotland at the moment?

**Superintendent Evans:** We work very closely with English Heritage and Ecclesiastical Insurance, which is the main insurer for churches and which looks at the theft of lead from church roofs. We get evidence from a variety of sources about the increase or decrease in thefts.

English Heritage will tell us that it has seen an incremental decrease in such thefts, and the number of claims that Ecclesiastical Insurance has had from churches for the theft of lead from their roofs has decreased between 2011 and 2014—the period of the task force—by around £2 million to £3 million. We can definitely say that we are seeing the decrease not only in the rail networks and the power networks, and in stories in the media; we see it across the piece. The only gap is around the theft of catalytic converters, which is probably a side issue in relation to what we are discussing today.

**Cameron Buchanan:** On the issue of the 48-hour period, a scrap metal dealer we visited said that it would be quite easy to hide some of the stolen metal and just give up a bit of it. However, they were not keen on storing metal, because it takes up valuable space. Would anyone like to comment on that?

**Chief Superintendent McBride:** Those points are true. I have been in a number of scrap metal dealerships and I understand the challenges that they face in relation to the storage of material.

I imagine that, as the industry’s representative body, the BMRA might have raised the other point. The BMRA would suggest that the proportion of processed materials that are stolen is incredibly small when you consider all the recycling that is done in the industry. It would make a perfectly valid argument that 99 per cent of its processed material is legitimate and is not stolen and that having to store it would impose disproportionate burdens on its members. It is hard to argue against that.

With regard to some of the evidence that the committee has received on some of the more major or more impactive metal thefts—when hospitals have had their power cut, tens of thousands of houses have had their electricity supply affected and so on—those are the cases in relation to which it is critical that we are able to get into the yards around the locus of the crime and further afield to find the metal and take the inquiry forward. That is when the pressure is on us.

**The Convener:** Does Police Scotland have anything to add to that?

**Chief Inspector Stewart:** As previously articulated, the only other way around the concern about the 48-hour period would be to further tighten the bureaucracy involved. However, I would be concerned about the removal of the time period, given the time required to undertake a police inquiry, particularly in significant situations in which the metal will be moved on quickly.

**The Convener:** I thank the representatives of the British Transport Police for giving evidence today. We will continue to take evidence from Police Scotland in relation to other aspects of the bill after a short suspension.

10:43

*Meeting suspended.*

10:46

*On resuming—*

**The Convener:** We continue the session with Police Scotland, focusing on alcohol licensing, taxi and private hire licensing and sexual entertainment venue licensing. I intend to deal with this section by section, beginning with alcohol licensing.
Assistant Chief Constable Telfer: Thank you for the opportunity to present evidence to the committee today. I will deal with alcohol licensing first. As the committee is aware, the purpose of licensing and regulation is to maintain standards and control activities that have the potential to be harmful. An effective licensing regime provides safeguards, promotes public safety and reduces the risk of criminality. It also reduces the risk of those who are linked with serious and organised crime being able to exploit legitimate enterprises. That is an important aspect of licensing.

The cost to society from poorly managed licensed activity, ranging from the sale and supply of alcohol through to the theft of metal as we have been discussing, should not be underestimated. It can place undue burdens on both the public and private sectors.

Recent case law, such as Brightcrew Ltd v City of Glasgow Licensing Board, which I am sure that we will cover, has frustrated the ability of both the police and local authorities to tackle issues that are not directly linked to the sale and supply of alcohol in licensed premises. The regulation and management of licensing is a key priority for Police Scotland. It is pivotal to our prevention and intervention strategy. We welcome the proposals in the bill that seek to enhance the Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982, which will enable us to tackle the impact of licensing within our communities and to keep people safe.

There are key elements in relation to part 2 of the bill, which seeks to improve regulation pertaining to the sale and supply of alcohol, but I will skip over those just now.

It is estimated that the excessive consumption of alcohol costs the Scottish economy about £3.6 billion per annum. That figure includes costs incurred by the police, the Scottish Ambulance Service, the national health service and social work services, to name just a few. In times of budgetary constraints, it is of real concern that the public purse and the Scottish economy suffer such detriment as a result of the misuse of alcohol. Many factors, such as availability, accessibility and cultural attitudes, underpin our poor relationship with alcohol. I am sure that we will discuss those.

The bill outlines proposals to assist licensing boards in identifying areas of overprovision. It includes a provision to include a whole board area as a single locality and for terminal hours to be considered as part of a board’s determination. However, one of the main aspects for Police Scotland is the irresponsible sale and supply of alcohol being a contributory factor to other crime. Daily, my officers encounter incidents of violence, disorder, antisocial behaviour and domestic abuse that are often linked to the overconsumption and sale of alcohol. From a national perspective, 23.2 per cent of young people who engaged in rowdy and disorderly conduct had consumed alcohol. I have some stark additional figures on that, which we could discuss later if members wish.

There is a particular problem regarding children and young people. As the committee is aware, alcohol is an age-restricted product. It is often supplied to children and young people through agent or proxy purchase by unscrupulous adults. Drinking dens and alcohol-related youth disorder remain a big concern for local communities. Alcohol consumption by children and young people has an exponential impact on their health, educational attainment and future employability. It is imperative that we have the ability to address youth drinking and its results.

Under current provisions, the licensing objectives refer only to keeping children safe. We welcome the extension to include young persons. That will provide clarity to licensing boards and enforcement agencies around the sale of alcohol to young persons in relation to reporting and the preparation of reviews.

As members are aware, there is a new offence of supply of alcohol to children and young persons. Currently, it is not illegal to supply alcohol to a child or young person. The new offence will allow us to take more robust measures to tackle the supply of alcohol to underage drinkers and will create a new offence of supplying alcohol to a young person or a child in a public place.

I move on to the fit-and-proper-person criteria and spent convictions. Briefly, provisions relating to those areas were removed from the Licensing (Scotland) Act 1976. The bill proposes to reintroduce a fit-and-proper-person test in respect of licensing applications, transfers, renewals, reviews and revocation of licences. It also outlines a proposal to repeal section 129 of the 2005 act on spent convictions and foreign offences. That is a positive move, which will allow the police to supply details of spent convictions and foreign offences, thus providing greater information regarding individual conduct for consideration by licensing boards. We welcome those proposals, but it remains to be seen how they will operate in practice and how the proposed fit-and-proper-person test will correlate to the licensing objectives.

On part 2 of the bill, section 40A of the 2005 act provides that

"a person is an interested party in relation to licensed premises if the person is not the holder of the premises licence nor the premises manager in respect of the premises but—

(a) has an interest in the premises as an owner or tenant, or
(b) has management and control over the premises or the business carried on on the premises."

Although section 40A has never been commenced and the bill sets out measures for its repeal, our position, having considered the matter, is that it would be advantageous to maintain and enact the legislation, which would afford greater opportunities for the police to identify and disrupt serious and organised crime's involvement in the licensed trade.

The Convener: That was pretty comprehensive. I move on to an area that has not yet been mentioned. The committee has heard concerns relating to club licences and occasional licences. Do you have any concerns about the current regime on such matters? Does that area need tightening in any way?

Chief Inspector Stewart: I am aware that occasional licences are often used to circumvent the need to obtain a personal entertainment licence for larger events. An occasional licence is relatively cheap—about £10—and can be used to operate music events and so on. Local authorities have expressed concern about the frequent use of occasional licences.

Occasional licences have also come to the fore in the context of serious and organised crime and terrorism, where an individual can obtain an occasional licence in order to fundraise for the particular faction that they support. However, that is based on intelligence and it is on-going work. Nevertheless, I appreciate that the main concern that may have been raised by the Society of Local Authority Lawyers and Administrators in Scotland was the abuse of the occasional licences and some anomalies with the clubs.

The Convener: Occasional licences are interesting for us, and we have not heard that before. Are you saying that they can be used by terrorist organisations to raise funds for what they are trying to do?

Chief Inspector Stewart: Yes. I would not say that such use is widespread and I do not want to raise any fear or alarm, but there have been occasions on which people with known links to organised crime have obtained an occasional licence under the pretext of a charity or fundraising event. Obviously, there is concern about that.

Assistant Chief Constable Telfer: To clarify, the terrorism that Morag Stewart mentioned is mainly domestic and relates to the terrorist groups that are normally affiliated with the Northern Ireland situation; as you are aware, they sometimes infiltrate the west of Scotland for fundraising events.

The Convener: That brings something new into the equation. It would be extremely useful for the committee to get some written examples of that—without compromising any on-going operations, obviously. More detail about that would be very useful for us.

We have heard from those in the licensed trade that they feel that the clubs’ uses of their licences and occasional licences allow them to get round the law that others have to comply with. Does Police Scotland agree with that and does it cause you difficulties?

Chief Inspector Stewart: That has not come to the fore with me.

Assistant Chief Constable Telfer: I am not aware of that, but I am happy to take it away and see whether I can provide further information.

Alex Rowley: I would like to come in on the question of overprovision. How could that be used for benefit? Some of the evidence that we have heard has suggested that a large supermarket could come along and locate in a certain area, and that the attraction of jobs means that it will not have any real problem in locating there and providing a massive alcohol outlet. Do the police have a view on overprovision in relation to off-licences, pubs and other outlets? How could the proposals on overprovision help?

Assistant Chief Constable Telfer: There is a balance to be struck. You mentioned the attraction of job opportunities, but that has to be balanced with current businesses that are in place. The example of a supermarket is a good one. At the planning stage, local authorities scrutinise thoroughly the additionality of a big supermarket and how it will impact on local businesses. Recently, I saw an example of a supermarket planning application being knocked back because of overprovision, in relation not only to alcohol but to other aspects of life.

It is important that overprovision is looked at in each local authority area, and I am glad that the whole local authority area will be taken into consideration in those terms, because the availability of alcohol needs to be regulated. The knock-on effect of alcohol being overly available is there for all to see; I could certainly substantiate that with some figures for offending behaviour and public health issues.

An important aspect for us is that premises where alcohol is available, whether they are off-licences or on-sales premises, should be regulated by each local authority. We are involved in those discussions.

11:00

Alex Rowley: Is there a trend? If we take underage drinking, for example, are supermarkets better regulated? Are corner shops the problem?
Are there other things that can be done, regardless of the legislation?

I remember a test purchasing operation in Fife. Young people went round visiting shops and if they were able to buy alcohol, the police were right there. Will legislation contribute to reducing the numbers of young people who are accessing alcohol, or are there other things that the police need to be doing?

**Assistant Chief Constable Telfer:** The legislation will certainly contribute. Any further safeguards that we can put in place are very welcome. We still carry out test purchasing operations, throughout local authority areas. I have tended to find that our off-sales are very compliant, and that there are few cases in which they have failed and have had to be reported to a licensing board.

Availability of or access to alcohol is a big issue for children and young persons. Access happens mainly through agent purchase or by proxy. The additional offence of supplying alcohol to children and young persons in public places is very welcome, because there has been a gap with regard to 16 and 17-year-olds. There has also been a gap when it comes to how we can address public space drinking dens and antisocial behaviour, because until now we have been able to seize alcohol only where an 18-year-old is supplying to younger people. The additional offence will assist us in addressing the public space aspect of the problem.

Unfortunately, accessibility to alcohol occurs in private spaces and dwellings, too. That will continue to be a problem for us with regard to children and young people being able to access alcohol within the home. Carers or parents have responsibility there. As things stand, if we come across something like that, we have to deal with it under the Children and Young People (Scotland) Act 2014, under provisions relating to neglect and so on.

The new legislation in relation to public space is very welcome, but there will still be issues in relation to private space.

**Cara Hilton (Dunfermline) (Lab):** I want to link into Alex Rowley’s question about overprovision. In your submission, you raise specific concerns about home delivery services. Can you outline your concerns about services that supply alcohol outside licensing hours? Is that a big or growing problem? Do you have any suggestions on how the law could be altered to better regulate such sales?

**Chief Inspector Stewart:** At present, alcohol that is purchased for home delivery must be purchased during normal off-sale hours. However, the alcohol can be delivered up to 12 o’clock at night and as early as 6 o’clock in the morning. In effect, that extends the period of time in which people have access to alcohol. It would be better if the sale, supply and purchase of alcohol in home deliveries were coterminous with current off-sales provision. That would mean that it would not be possible to have home deliveries after 10 o’clock at night or at 6 o’clock in the morning.

In addition, we are looking at the issue of home deliveries, particularly for those that are not licensed. There is scope and provision to tighten up the situation and make it coterminous with off-sale hours.

**The Convener:** Do you have anything to add, Mr Telfer?

**Assistant Chief Constable Telfer:** I would say only that dial-a-booze—as it is commonly known—is becoming a significant problem. I have just come from an operational environment, and in the division that I was covering there were a few instances involving such deliveries. Tightening the legislation around that would be very welcome.

**The Convener:** It is a new one on me.

**Cara Hilton:** It was a new one on me, too; that is why I asked the question.

**John Wilson:** To follow up Cara Hilton’s question, who is the supplier of alcohol after 10 o’clock at night and from 6 in the morning? I am aware of the issues that ACC Telfer raises to do with certain sales of alcohol. An issue that was raised in my local area is that, when you buy your curry carry-out, you can also order up a couple of bottles of the local brew that is consumed in Lanarkshire. Who is supplying alcohol from 10 o’clock at night to 12 o’clock and from 6 in the morning?

**Chief Inspector Stewart:** The legislation permits the delivery of alcohol at those times by those who have a licence. I anticipate that it would be supermarkets delivering weekly shopping along with whatever alcohol has been purchased, with the checks and balances in place to check identification. The situation in Lanarkshire that you referred to, of fast food accompanied by alcohol, would tend to involve premises that were not licensed to sell alcohol, which is what Mr Telfer was referring to. They are unlicensed, so they fall out of the scope of the legislation.

**John Wilson:** I was just asking for clarification. It is interesting that, if you go into a supermarket, you can buy alcohol only between 10 am and 10 pm, but you are saying that if someone makes an order and asks for it to be delivered after 10 pm, they can include alcohol in that order. It is useful to get that on the record.

**Chief Inspector Stewart:** The purchase has to be made within—
The issue of occasional licences came up earlier. I will not go into that discussion, but it raised the question of Police Scotland’s relationship with licensing boards in Scotland. Chief Inspector Stewart, you mentioned the intelligence that the police have on applications that are being made, and ACC Telfer referred to premises for which people apply for a licence but which belong to someone else or some other organisation. What is the feeling regarding the current relationship between licensing boards and the police? Are licensing boards taking full account of the information being provided by the police before they grant licences?

**The Convener:** Who will take a crack at that one first?

**Assistant Chief Constable Telfer:** I will certainly speak on that. I respectfully suggest that the relationship between Police Scotland and licensing boards has never been stronger. I say that having just come from a police division in Scotland. Licensing boards take full account of our observations and we are represented at each of their sittings.

I will bring my answer to a quick conclusion by saying that I am very heartened by the way in which things are moving on licensing. Aspects of the bill will add to that, but in my opinion relationships have never been stronger. I am sure that Morag Stewart can speak from a central perspective.

**Chief Inspector Stewart:** I concur with Mr Telfer. The relationship that Police Scotland has built with licensing boards continues to develop and grow. However, we must remember that licensing boards are a distinct legal entity.

**John Wilson:** In previous evidence sessions, the issue was raised of whether police intelligence could be presented to licensing boards and whether licensing boards would take account of it. We heard that some boards would take evidence-based decisions rather than intelligence-based decisions. What are your views on those issues? You gave the example of occasional licences, but most decisions on occasional licences would be intelligence-based, rather than evidence based.

**Chief Inspector Stewart:** It does not come down to poor relationships; it comes down to uncertainty in licensing boards about whether to use intelligence and risk legal action or a challenge to their decision. Discussions are taking place about what kind of intelligence can be used and the format and form of words, so that information rather than intelligence as such is presented. Some licensing boards are looking to establish the provenance of intelligence, such as whether it has come from a covert human intelligence source. A short-life working group has been set up, which includes the crime division, licensing clerks and solicitors and the Convention of Scottish Local Authorities. We hope to work through the issue and, together, come to an agreement about what intelligence can be used in submissions to licensing boards.

**Clare Adamson:** You mentioned that you welcome the additional crime of supplying alcohol to young people. However, we have heard evidence about the lack of enforcement of current legislation and the few prosecutions that have been made for selling alcohol to an intoxicated person. You mentioned all the social and crime problems relating to alcohol, of which we are all aware. Will you comment on how the legislation is used?

**Chief Inspector Stewart:** To clarify, are you talking about the selling of alcohol to intoxicated patrons within licensed premises?

**Clare Adamson:** Yes.

**Chief Inspector Stewart:** That is difficult to prove, and there is no definition of intoxication. It is difficult to ascertain who provided the alcohol and what stage the person was at when they came in. However, from a policing perspective, it comes down to further informing and training our officers on what their powers are, what they should look out for when they go into licensed premises, how to conduct an inspection and how to work with the trade. It is about awareness raising. However, there are difficulties to do with the definition of intoxication.

**Assistant Chief Constable Telfer:** To expand on Morag Stewart’s comments, another aspect is training and awareness raising in the licensing trade, on which we work quite furiously. That is the proactive aspect. However, the point that the member raises is an issue. The reactive aspect is that, if an incident that occurs in licensed premises appears to be the result of alcohol being sold to an intoxicated person, we will take the necessary executive action and bring that to the attention of the licensing board. Once we have established what has happened, we will take the necessary action. There is a proactive stage, which is about training our officers and those in the licensing trade, and there is the reactive stage, when unfortunate incidents occur.

**Willie Coffey:** What are your views on the fit-and-proper-person test? In your submission, you welcome it, but would you like it to be further defined and should there be guidelines? Who
should determine what information is used in a fit-and-proper-person assessment?

Chief Inspector Stewart: I absolutely welcome the reintroduction of the fit-and-proper-person test, which will mirror provisions in the Civic Government (Scotland) Act 1982. In the 1982 act, the test is not defined or prescriptive, and that is the best approach. It is best left to whatever regulatory committee deals with the issue, whether that is liquor licensing or in the civic world, to determine what is fit and proper, based on previous convictions. That will be further enhanced, in that spent convictions will be able to be considered.

The only issue that I have is that the test will still be linked to the licensing objectives on the sale and supply of alcohol. It remains to be seen how that will work out.

11:15

The Convener: Mr Telfer, do you want to add to that?

Assistant Chief Constable Telfer: Although I agree with Morag Stewart’s point about difficulties that might occur because of the correlation with the licensing objectives, I think that the five licensing objectives probably cover all aspects of anything that might happen in licensed premises.

I reiterate that the reintroduction of the fit-and-proper-person test is very welcome and will assist us on a number of fronts, in relation to not only what actually happens in licensed premises but who has management and control of premises. There might well be links to serious and organised crime. That has been proven to be the case in the past. The approach in the bill will enable us to have an impact on that front.

Willie Coffey: Thank you.

The Convener: It says in my briefing:

“Police Scotland has called for the provisions requiring notification of ‘interested parties’ (those with a general commercial or other interest in the licence) to be retained. Witnesses could be asked to outline their concerns if this requirement is removed from the 2005 Act”.

Do you want to comment on that?

Chief Inspector Stewart: Section 40A of the 2005 act relates to interested parties, but the provision has never been commenced and would be repealed by the bill. We think that it would be advantageous to retain the provision. Quite often, an interested party is a tenant. When we look at issues on licensed premises, we are able to take action against the licence holder and designated premises manager—we know who they are—but if there is no provision that covers who the tenant is and the tenant’s involvement, there is not much that we can do to hold the tenant to account or check that they are a fit and proper individual. In the context of organised crime involvement in licensed premises, in particular, the repeal of the provision could impede our ability to tackle issues.

The Convener: What about the vicarious liability aspect, which might muddy the waters?

Chief Inspector Stewart: I appreciate that the definition of “interested party” is being amended, so that in the context of vicarious liability the interested party becomes the designated premises manager. Currently a designated premises manager has to have a personal licence, and it is the police who do the background checks and report back to licensing boards. I am quite content with the vicarious liability aspect.

Let me give an example of why we would want a tenant to be an interested party. A building’s owner might lease the building to a business, which would be the licence holder. The licence holder then leases the building to another person, the tenant, and puts in a designated premises manager—I know, it gets a bit confusing.

The Convener: You are explaining it very well.

Chief Inspector Stewart: The police are able to take action if the designated premises manager does not have control of his premises and there have been numerous incidents, and if the licence holder is culpable, they could be taken to a review. However, the tenant remains out of the scope of the action, because the section 40A provision has never been commenced. Quite often, the tenant could be linked to criminality, including serious and organised crime, or they might simply be involved in the poor management of the premises, but we cannot take further action in that regard. If section 40A is not enacted and is repealed, that could hinder progress in the area.

The Convener: Some folk have argued that there are difficulties in making a person liable for offences committed by their employees. What do you think about that?

Chief Inspector Stewart: A DPM does not have to be on the premises, so I understand the issue from a certain perspective, given that they will have vicarious responsibility, as an interested party, under the amended legislation. However, it is a DPM’s duty to make sure that everyone is fully trained. I do not have further comment to make on that.

The Convener: Do you want to add anything, ACC Telfer?

Assistant Chief Constable Telfer: I have nothing to add.

Cameron Buchanan: When the holder of a licence for a public house, for example, has his...
licences taken away, can he get it back reasonably quickly? What happens to the premises if the licence is not in anybody's name? At the moment, a licence has to be in somebody's name, does it not?

Chief Inspector Stewart: They would not hold a licence. Under the 2005 act, the premises have a licence.

Cameron Buchanan: Is it not the person?

Chief Inspector Stewart: The person applies for the licence, but the licence would remain in perpetuity. It could be transferred over.

Cameron Buchanan: It could be transferred to another person without penalty.

Chief Inspector Stewart: Yes.

Assistant Chief Constable Telfer: There have been issues with transferring premises, as they may well fall into the hands of someone who is involved in serious and organised crime. There were practical examples of that in a major city, in which four pubs were closed after we cottoned on to that. There is a long, unwieldy process for transferring premises and it is a loophole that we are looking to close.

The Convener: We will move on to taxi and private car hire licensing. Do you have any opening remarks on that, Mr Telfer?

Assistant Chief Constable Telfer: You will be pleased to know that these remarks are very brief compared with my previous ones.

We welcome the proposals to improve training in respect of private hire car licences, which will undoubtedly improve standards and public safety and facilitate greater consistency. Police Scotland also welcomes proposals to remove exemptions that currently apply to vehicles that are being used for the carriage of passengers under a contract for exclusive hire for a period of not less than 24 hours. In our opinion, that will facilitate greater consistency in this business area and allow the police to provide comment and present information to the regulatory body, to ensure that the applicant is a fit and proper person, to further promote public safety and to act as a deterrent for those involved in serious crime.

The Convener: There are supposed to be quite big differences between the licensing of taxis and the licensing of private hire cars, but from the evidence that we heard it seems that some local authorities, including Aberdeen City Council, which covers my constituency, treat taxi and private hire car licensing in exactly the same manner, which does not follow what is written in the Civic Government (Scotland) Act 1982. Do the different regimes cause Police Scotland any difficulties in policing licensing across the country? It must be difficult for your officers, who are now working across local authority borders, to deal with different aspects in different places. Does that cause you trouble?

Chief Inspector Stewart: No. When a licence—whether for a taxi or a private hire car—is applied for, as consultee to the regulatory committee we will receive the application. We will scrutinise applications in the same way and report back. Are you referring to operational issues, out on the streets?

The Convener: I am talking about application and operation. In some places, private hire car licensing and its policing, by you or by the local authority, seem to be exactly same as taxi licensing and its policing, rather than there being the two regimes that most definitely exist in other places such as Edinburgh or Glasgow.

Chief Inspector Stewart: It does not present us with any difficulties. The same scrutiny is applied to any application, whether it be for a taxi or a private hire car. On operational matters, the difference between a taxi and private hire car is that a taxi can uplift somebody from the street.

Assistant Chief Constable Telfer: From a national perspective, greater consistency on the application of the regulations on both taxis and private hire cars would be welcome. I take your point, convener, and I understand the difficulties that there may be if licensing regulations are being applied differently in different parts of the country. We would welcome greater consistency across the country.

Willie Coffey: My question is related to yours, convener. At last week's committee meeting, I raised a case that had received some media coverage. A taxi driver moved from one authority to another and although the first authority received a string of complaints against him, those complaints were not made known to the second authority. What are your views on that, and how can we close down that problem?

Chief Inspector Stewart: I can understand how that has been a problem—it is perhaps down to communication between each policing or local authority area. However, we are developing a national information and communication technology licensing system called Inn Keeper, on which will be every licence, whether it is a premises licence for alcohol or a licence for a taxi or private hire car. The system will be available to every police officer in Scotland. When an application comes through, any details, such as those to which you refer, will be on the system, and the system will flag up those matters and inform the response to the relevant local authority.
Willie Coffey: Will the details include, for example, complaints against a person that might not have gone right through the process and therefore might not have been determined?

Chief Inspector Stewart: Yes, if the complaints have been received by the police. However, if a complaint has gone to a local authority, it is the authority that will hold the information. Therefore, it is down to the authority to communicate that to the police to investigate.

Assistant Chief Constable Telfer: On Inn Keeper, we are in dialogue with every local authority to establish whether they want to embrace that approach.

Willie Coffey made a point about complaints being made to local authorities. That is a big sales point for me: we need to share and record information that is disclosed to various agencies.

Willie Coffey: How soon do you expect the new software to be in place?

Chief Inspector Stewart: We hope that it will be in place between May and June.

Willie Coffey: Will every authority be able to feed into that?

Chief Inspector Stewart: Local authorities will send us applications, which we will check. We will keep that information. It is a police database. However, I am aware that a working group is looking at a single system for local authority licensing. It would be ideal if that could interface with our system, so that any request from a local authority could be sent directly to the system electronically. That would be a more comprehensive approach and would improve communications between the police and local authorities.

Willie Coffey: Good.

The Convener: Will Inn Keeper interact in any way with the police’s i6 software system, or is that beyond your ken?

Chief Inspector Stewart: I am not a technical person, but I believe that Inn Keeper can be bolted on to i6, which will be of considerable benefit. That will make us much more efficient when doing background checks and responding to local authorities.

The Convener: On the interaction between local authorities and the police, have you come across any data protection issues that have stopped the required level of communication and may even have led to criminality?

Chief Inspector Stewart: No, not that I am aware of. There are information-sharing protocols between the police and local authorities. In addition, the police are a statutory consultee for civic and liquor licensing. That exchange of information happens only when it is pertinent and applicable; we would not provide information on anything if it would be wrong to do so.

Assistant Chief Constable Telfer: I am certainly not aware of any instances where that has occurred.

Alex Rowley: In evidence, there have been mixed views about the number of unlicensed operators—those who just operate on the streets. One of the taxi operators said that, in our major cities and particularly at the weekends, a lot of such activity goes on. What is your view, and how do you police that activity?

Chief Inspector Stewart: Information is provided by legitimate taxi and private hire car operators. On a number of occasions, I have had dialogue with Glasgow TOA Taxi, a hackney taxi provider, in which it has raised that issue. It is about getting that intelligence and information so that we can proactively target that area for enforcement.

That would be in addition to the intelligence that police officers and our partners obtain, and I know that there have been a number of operations in conjunction with road policing to target individuals who purport to have private hire cars and who pick up individuals in the night-time economy, which is an area of particular risk.

11:30

Assistant Chief Constable Telfer: Alex Rowley is right that the issue of unlicensed operators, who operate mainly in the big cities at the weekends, has been on-going for a while. Targeting the area is built into every city centre policing plan for the weekend night-time economy. Our cops are well briefed on what to look out for and they make the necessary interventions when they suspect that an unlicensed operator is picking somebody up off the street.

Alex Rowley: My other question is about the proposal to give licensing authorities the ability to limit the number of private hire car licences in their area. We had a mixed response to that proposal. West Lothian licensing board said that it basically leaves the matter to supply and demand. It suggested that, at the end of the day, supply and demand would govern any decision. Is there a need for the proposed provision?

Assistant Chief Constable Telfer: In my opinion, taxis or private hire vehicles serve a purpose in keeping people safe at the weekend: they get the patrons of licensed premises and people who have gone out socialising home safely. The way that we operate taxi ranks and safe zones has been very beneficial and has
reduced the number of victims of crime in the city centre. The question is difficult for me to answer, because I welcome the presence of taxis and private hire cars on our streets as they get people home safely, but I understand the balance: people have to make a living and the supply-and-demand issue must also come into play. I have probably not answered your question, other than to say that taxis and private hire vehicles are a good resource for us as they help to keep people safe at the weekend.

Chief Inspector Stewart: I agree. However, it is entirely up to the local authority. It would be quite hard to determine a limit, although limits can be imposed on taxi licences.

Clare Adamson: I return to your point about information sharing and the local authority working group. I want to get an idea of the scope of that work. Obviously, given that, with Police Scotland, there is now one policing body, it is easy for you to cover the whole of Scotland. Would COSLA be involved in the working group? To be 100 per cent effective, the 32 local authorities would need to sign up. Is there any indication of the buy-in to the process?

Chief Inspector Stewart: The short-life working group is still very much in its infancy. There was one meeting last year—the next is its first since then. We want to try to get a bit more momentum behind it. We appreciate that others will need to become involved, such as the BTP. I envisage that we would have to go out to get agreement on the working group’s work. COSLA would cover most of the local authorities, and we would get input from the licensing clerks through SOLAR. We would also invite the Society of Local Authority Chief Executives and Senior Managers. We are doing things incrementally. We need to get agreement, although we will not always get agreement with every board area. Where we can get agreement, that will give us an opportunity.

Clare Adamson: Thank you.

The Convener: I always worry when I hear the words “short-life working group”.

John Wilson: I want to follow up Alex Rowley’s question about private hire cars. There is an issue with unlicensed operators, particularly app-based operators such as Uber, coming into the market. Does Police Scotland have any views about unlicensed drivers and unlicensed cars operating in the streets of Scotland?

Chief Inspector Stewart: I think that this follows on from what Mr Telfer previously articulated. Anybody who is unlicensed and unregulated is a concern, because we do not know who they are and whether the vehicle that they are driving is safe. Whether an operator is app based or is quite simply not licensed, that is a concern. We will take robust action, based on whatever information and intelligence is to hand.

John Wilson: What robust action can you take? I know that in other countries there have been challenges to the operation of Uber-type organisations. At present, what robust action can you take against someone who uses an app to get an unlicensed car or driver to pick them up? What legal enforcement action is available to you to take against such operations?

Chief Inspector Stewart: I have become aware of Uber in a licensing context. I know that it operates in London and that it has recently been banned from operating in France, Germany and India. There will be a variety of reasons for that. One reason might be that it presents a threat to other taxi and private hire car operators in the sector. Another reason might be its operating plan and business model, where it engages drivers to pick people up and car share. Effectively, Uber acts as a broker, which means that it can avoid having an operator’s licence or a booking-office licence. We are looking into that.

The example of Uber has been highlighted to the national policy group for licensing, on which I sit. We have had discussions with the licensing department in St Andrew’s house, because of the concerns about unregulated drivers picking people up, the condition of the vehicles and the question of what checks Uber has made of the drivers whom it has engaged. Those drivers are classed as self-employed because they have not been hired by Uber.

There are a number of issues. I would be happy to come back to the committee with more information, once we have pulled it all together.

John Wilson: As part of our examination of the bill, we are trying to ensure that it is as future-proofed as it can be. Do you have any recommendations about how we ensure that we have in place legislation that can stand the test of time—even if that is a short time—rather than legislation that could become unworkable within weeks of being enacted?

The Convener: Mr Wilson is putting you on the spot there. You can write back to the committee if anything comes up that you feel could help us.

John Wilson: I am sure that Chief Inspector Stewart can answer the question.

Chief Inspector Stewart: I understand where you are coming from. At the moment, we have a similar situation, to a more diluted degree, of a booking office that takes online bookings from people who stay outwith the area. The difference is that we can challenge that, because a company is allowed to operate only in the area for which the
local authority has granted its booking office a licence.

It seems to me that Uber is bypassing that because all it has is one office although it will have taxis operating across Scotland via the app. We are looking into the potential ramifications of that across Scotland. I would be happy to report back to the committee on that in due course.

The Convener: You have said something that contradicts evidence that we heard last week, when we were told that a booking office did not have to be in the area in which its taxis operate. We were given an example of a booking office that was on the border between local authority areas, with the company operating in another local authority area. Is that not allowed under current legislation?

Chief Inspector Stewart: My understanding is that a company has to have a booking office licence in the local authority area where it has been licensed to operate. I would have to check that and get back to you. I believe that there is relevant case law.

The Convener: I think that we need clarification, because some of the licensing authorities said that what I described was possible.

Chief Inspector Stewart: I can include that in the report on Uber.

John Wilson: Given the evidence that we have heard, what is Police Scotland’s definition of a booking office? At a previous meeting, I put to the witnesses a scenario of a booking office that was one person sitting in a room in their house with a computer and a smartphone. As far as Police Scotland is concerned, could that be defined as a booking office?

Chief Inspector Stewart: According to the legislation, a booking office is defined as a place from which you operate more than three cars and organise the hire of vehicles and so on, regardless of where it is.

John Wilson: So I could sit at night in my house with a smartphone and, as long as I was operating more than three cars, I could register that as a booking office.

Chief Inspector Stewart: You would have to apply for a licence, and the licensing authority would determine whether that was a booking office. A booking office does not tend to be someone in their house with a smartphone. However, it is up to the local authority to license booking offices.

John Wilson: Thank you very much.

The Convener: I will ask about the licensing of cars and drivers. It is obviously of concern to the committee if operators are unlicensed and perhaps have unsafe cars with dubious people behind the wheel. As the situation stands, before any of these new operators enter the market, how much criminality has arisen from unlicensed cars and drivers, and what kind of criminality are we talking about?

Chief Inspector Stewart: I do not have any figures with me, but I can provide them to the committee. Mr Telfer will no doubt be able to add more from his experience in Glasgow city centre, but the intelligence that we hold shows that the crimes that you are talking about are often committed by sexual predators or opportunists—it goes from one extreme to the other. However, if operators are not regulated, we do not know whether an individual driver is a fit and proper person to carry passengers. Further, any passengers might be vulnerable due to the effects of alcohol, given that such operators tend to target the night-time economy because that is when most money can be made. That is a concern.

The Convener: It would be useful if we could get the figures, because I believe that some extremely serious crimes have taken place after folk have gone into unlicensed cars thinking that that is an easy way to get home.

We move on to sexual entertainment venue licensing. Does Mr Telfer have some opening remarks?

Assistant Chief Constable Telfer: I do, convener. Thanks very much.

Sexual entertainment venues such as lap-dancing venues are currently licensed under the Licensing (Scotland) Act 2005. The subsequent case law that I referred to previously, Brightcrew Ltd v City of Glasgow Licensing Board, which dates from circa July 2011, has significantly impacted on the ability of Police Scotland and the licensing boards to address on-going issues with such establishments and, indeed, other premises licensed under the 2005 act, unless the issue is directly related to the sale and supply of alcohol.

The bill seeks in part to remedy the situation in respect of the licensing of sexual entertainment venues. The bill advocates a dual licensing system, whereby the premises will require a liquor licence and a civic licence in order to operate. That will provide the police and the local authority with greater scope to ensure compliance in this business area and will remove some of the barriers that have resulted from the Brightcrew judgment. That will better enable the police and partners to ensure the safety and wellbeing of those who work in such premises and to pursue enforcement activity where it is required.

In principle, Police Scotland is supportive of the measures outlined in the bill. However, there
remains uncertainty about how dual licensing will operate in practice. Licensing boards and regulatory committees have separate and distinct responsibilities for liquor and civic licences, so a situation may arise in which a liquor licence is revoked and the sexual entertainment licence remains in effect. It would be beneficial if a mechanism existed whereby each regulatory body communicated and agreed matters such as terminal hours.

Two different inspection regimes will also be in place, which may impact on local authority licensing standard officers or the proposed civic licensing standards officers. It would be advantageous if their respective powers were cross-transferable.

The regulation of sexual entertainment venues should also be mandatory rather than subject to a resolution, as it is in the bill. It should not be left to the discretion of each local authority. Such a situation would encourage regime shopping, whereby there might be a disproportionate presence of sexual entertainment venues in an area where they are not a licensed activity.

We also believe that consensus needs to be reached on the definition of adult sexual entertainment, which would subsequently inform conditions of licence to improve standards in the industry and enable robust mandatory conditions that outline what is and is not acceptable and promote a consistent approach across Scotland.

11:45

The Convener: Thank you. Let us discuss the point that you made about communication between, say, a licensing board that may revoke an alcohol licence and a licensing committee or other regulatory committee that may deal with the sexual entertainment aspects. You say that there would be difficulty if one part was revoked but not the other. Another thing that we have heard in evidence is that advertising outside the venues comes under another regime, usually planning. That seems to be a real problem. Should there be holistic regulation of sexual entertainment venues under one regime rather than regulation being split all over the place?

Chief Inspector Stewart: Advertising directly outside premises could be taken into consideration in the dual licensing regime. The problem that we have thereafter is flyposting and other communications elsewhere. We need to consider more fully who would take responsibility for that.

The Convener: In terms of flyposting and leaflets, I suppose you are saying—

Chief Inspector Stewart: There may be advertising directly outside the venue—posters, for instance. We need to consider the content of that, and there might then be flyposting in the surrounding area.

The Convener: Surely there are other pieces of legislation that can stop flyposting—

Chief Inspector Stewart: Yes, but it is the content.

The Convener: —and if leaflets are offensive, surely similar actions can be taken in that regard.

Chief Inspector Stewart: That is what I am saying. There are two distinct things—the advertising directly outside the premises and the advertising elsewhere.

The Convener: We are looking at advertising round about the premises. Any other illegal activity in that regard does not come within the scope of the bill. However, I get where you are coming from on those behaviours.

Would it be good to bring all the regulatory regimes for these venues into one?

Assistant Chief Constable Telfer: I certainly take your point, convener. Things need to be joined up, and the best way to do that is to have one regime. Whether that is achievable is another matter, but that would be utopian, as far as we are concerned. It would join things up and enable one body to have an overview.

Alex Rowley: What would be the problem with licensing boards having that responsibility?

Chief Inspector Stewart: Sexual entertainment venues are currently licensed under the Licensing (Scotland) Act 2005. There have been difficulties and frustrations because of the Brightcrew decision, which means that licensing boards cannot tackle ancillary conduct that is not linked to the sale and supply of alcohol. Licensing boards are allowed to deal only with the sale and supply of alcohol. That is where the issue has arisen. I imagine that they are looking for the bill to be enacted so that they can tackle issues with sexual entertainment venues outwith the sale and supply of alcohol.

The Convener: Cameron, is your question on the same point?

Cameron Buchanan: No.

The Convener: Let us continue on the same theme, then. Chief Inspector Stewart, you mentioned that licensing boards can deal with alcohol licensing only. What would the situation be if a licensing board had a difficulty with a casino, for example? The board might be worried about the operation of a casino that provides something else, and the board’s concerns might not involve the alcohol aspects. Does that create a dilemma
under the current legislation about what a licensing board could and could not do?

Chief Inspector Stewart: In a recent example in Glasgow, it basically came down to the alcohol side of things, and that is why it was dealt with. The Gambling Commission would be able to consider incidents in premises such as casinos. That might cause some difficulty.

The Convener: That was a bit of a left-field question anyway—sorry about that.

John Wilson: You have introduced a fourth element of the licensing regime, potentially. There is a casino in Glasgow that is a large venue, and it is hired out to various organisations for parties and other things. What would stop the casino being hired out or used as a venue for adult entertainment on a Friday or Saturday night, allied to the other activities that take place there?

The Convener: That takes us to my next line of questioning anyway, so you can respond to all these points in a oner. This concerns premises that hold sexual entertainment on no more than four occasions per year. That might involve the casino that Mr Wilson has just mentioned, where the venue has no need, in some regards, to follow the normal licensing regime. Do you have enforcement concerns about that? What are Police Scotland’s views about occasional licences for one-off sexual entertainment events—or four-off events, as the case may be?

Assistant Chief Constable Telfer: That certainly throws up some concern and is a potential loophole. Morag Stewart has previously commented on the potential for roadshowing and for a particular group that provides adult entertainment to travel the length and breadth of the country but only to have events in venues once or twice, thus exploiting a loophole. I would have concerns about the definition, which allows three or fewer events in any particular premises.

Mr Wilson’s point about the potential for a casino to host adult entertainment, with all the various regulatory bodies having oversight of their particular areas, suggests to me that it might all become quite messy. That goes back to the original point about one body overseeing sexual entertainment venues and adult entertainment. We do have concerns about the point that you raise.

The Convener: You described a round-Scotland tour, which could be organised using occasional licences. It would be much more difficult for you folks to police what happens on such a tour. Have there been difficulties in the past around such scenarios, as far as you are aware?

Chief Inspector Stewart: Not that I am aware of, but it was one of the considerations when we were examining the proposals in the bill. As Mr Telfer articulated earlier, licensing is about keeping people safe. That includes the people who work at the venues and those who attend the premises as customers.

If there was an exclusion because of a restriction to three or four occasions, whether or not that was in the operating plan for the licence—as I anticipate it would be—the issue comes back to the Brightcrew decision, which means that we would not be able to regulate or challenge the arrangements effectively, unless the matter concerned the sale and supply of alcohol. It would be better if that provision was not there, so that we were able to tackle such situations—as long as what happens is catered for in a licence.

The Convener: Will your Inn Keeper system be able to keep track of occasional licences for alcohol as well, or will that fall out of the remit because you might not be aware of the occasional licences that are granted?

Chief Inspector Stewart: The occasional licences would be contained on the Inn Keeper system and would be linked to the premises. However, I would rather that there was not an exemption and that, if the premises wanted to undertake that activity, it had to get a licence for it so that we would know that it was happening and that it was also outlined in the operating plan for the liquor licence. That means that the information would be joined up.

Cameron Buchanan: This seems to be a bit of a minefield. There is an anomaly with places of sexual entertainment on an occasional basis, for example if someone phones up and books a stripogram or something like that. Have you got concerns about that? If that were happening regularly in a premises—weekly or monthly—privately but for financial gain, would you be concerned?

Assistant Chief Constable Telfer: That goes back to the final point in my opening remarks about the definition of adult sexual entertainment. That definition needs to be quite concise. If stripograms are being booked every weekend for stag and hen parties, so be it, but we need to have some dialogue about what falls within the definition.

Cameron Buchanan: There is no simple answer to it, realistically. You have concerns but there is no answer that you can enunciate.

Assistant Chief Constable Telfer: There is no particular answer to the question at this moment in time. We have concerns about it although there have been no particular examples of the type of stag and hen parties situation that you spoke about throwing up any significant issues. There is no evidence for including that type of situation, but
it can be quite contextual; it depends on the situation. As you say, it is really quite a grey area.

Cameron Buchanan: Are you saying that action would be discretionary as far as you are concerned?

Assistant Chief Constable Telfer: There needs to be an element of discretion but, as I say, we need a concise definition of adult sexual entertainment because that will help us in policing. Most issues that arise from lap dancing are about the vulnerability and exploitation of some of the employees. That flies in the face of the Scottish Government’s approach to the victimisation of women. That is what we have been most concerned about in the past.

The Convener: There have been lots of allegations that adult sexual entertainment venues attract a criminal element. Does Police Scotland agree with that? Is the level of criminal activity in those venues that much different from that in nightclubs?

Assistant Chief Constable Telfer: It is certainly an area that attracts certain elements of criminality because of its nature and its potential for generating income for organised crime. It could happen in various licensed establishments. It is just another opportunity for organised crime and it has been shown in the past that some establishments are linked to a particular crime group that is exploiting the venue for illegitimate purposes such as laundering money.

The Convener: It might be useful for the committee to get an idea of the police figures for some of those places so that we have an indication and can make a comparison with others.

Assistant Chief Constable Telfer: There are certainly difficulties with the administration of such venues and, as we have highlighted previously in relation to other issues, different areas take different approaches. We will do our best to provide those figures.

The Convener: Grand. I thank you for your evidence this morning. I ask the witnesses to keep their seats for a few seconds.
Scottish Parliament
Local Government and Regeneration Committee
Wednesday 18 February 2015

[The Convener opened the meeting at 10:00]

Air Weapons and Licensing (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the Local Government and Regeneration Committee’s sixth meeting in 2015. I ask everyone present to switch off mobile phones and other electronic devices, as they interfere with the broadcasting system. However, some committee members will refer to tablets, because we provide papers in digital format.

Agenda item 1 is our eighth oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We will take evidence from local authority witnesses on general licensing provisions. I welcome Andrew Mitchell, community safety manager with the City of Edinburgh Council, and Peter Smith, senior licensing officer with Glasgow City Council. Gentlemen, would you like to make any opening remarks? Maybe you could tell us a little about your jobs.

Peter Smith (Glasgow City Council): On behalf of Glasgow City Council, I again thank the committee for inviting us to give evidence. My role in the council's licensing team is in essence to oversee the service delivery aspect of the business and to ensure that we deliver the correct level of service to our customers and our communities.

As we have outlined in previous evidence sessions, the council supports the proposals in the Air Weapons and Licensing (Scotland) Bill. We will take evidence from local authority witnesses on general licensing provisions. I welcome Andrew Mitchell, community safety manager with the City of Edinburgh Council, and Peter Smith, senior licensing officer with Glasgow City Council. Gentlemen, would you like to make any opening remarks? Maybe you could tell us a little about your jobs.

Peter Smith (Glasgow City Council): On behalf of Glasgow City Council, I again thank the committee for inviting us to give evidence. My role in the council's licensing team is in essence to oversee the service delivery aspect of the business and to ensure that we deliver the correct level of service to our customers and our communities.

As we have outlined in previous evidence sessions, the council supports the proposals in the bill in and of themselves, although we give a caveat or qualify that by again raising the issue that the licensing system and in particular the Civic Government (Scotland) Act 1982 are not fit for purpose—consolidation or revision of the act is required to improve the licensing service that is delivered to the businesses and communities that we serve.

The Convener: What is your role?

Peter Smith: I oversee service delivery in the licensing section. That involves dealing with the legal aspect of the business and the operational side, such as dealing with agents and businesses and ensuring that applications are processed timeously and that the legal and administrative processes of the role are fulfilled by the team.

Andrew Mitchell (City of Edinburgh Council): Thank you for inviting me. I am the City of Edinburgh Council’s community safety manager. I have responsibility for the council’s licensing functions, from policy through to the administration of processing applications. I am also responsible for the council’s regulatory functions that relate to licensed premises, which includes managing the licensing standards officers.

The council broadly welcomes the bill, but we take a similar view to that of Glasgow City Council, in that we believe that the 1982 act has probably passed its sell-by date. Quite a few other bits of legislation out there that deal with licensing need to be tidied and brought into a consolidated act. We are particularly interested in the training of private hire car drivers, which is essential. We are also concerned about the provisions in the Licensing (Scotland) Act 2005 that relate to occasional premises. I am happy to go through the details of those issues to help the committee. We broadly support the bill as far as it goes.

The Convener: You have both said that the 1982 act is outdated and no longer fit for purpose. What are the main flaws in that act and how will the bill resolve some of those difficulties?

Peter Smith: We have to begin with the fact that the 1982 act was drafted more than 30 years ago. It deals with a variety of activities that require to be regulated, from obvious things such as taxis and private hire cars to more obscure things such as window cleaners and boat hire licences.

The act has served its purpose over the years but, as Scotland has moved on and business has changed, the provisions have not kept pace. The 2005 act represents what is probably the benchmark for how licensing should work in 21st century Scotland. When we compare the two acts, we can see that the 1982 act is deficient in several areas.

The lack of licensing objectives is a major concern about the 1982 act. We are charged with granting licences and setting conditions, but those conditions do not go as far as setting objectives for licence holders. We might condition a licence. For example, with scrap metal dealers, we might be given the power to condition a licence for non-cash payments, but that is not backed by a requirement for the licence holder to meet objectives such as preventing crime and disorder and securing public safety.

I guess that I am talking about the technical minutiae of how the two acts work, but the lack of objectives is a major concern for us. The 2005 act creates an expectation about how licensing authorities should deal with businesses and we do not have the same powers under the 1982 act.
Specific provisions in the 1982 act for things such as street trading were drafted to deal with burger vans and people selling hats, scarves and badges at football matches. We have to use that legislation in 21st century Scotland to regulate everything from car washes to pedicabs, and it is clear that the 1982 act was never intended to regulate such activities. As we move on, it becomes more apparent that the act is not suitable for dealing with that type of thing.

Andrew Mitchell: I can give the committee an example of what the public think. The 2005 act and planning legislation contain quite a sophisticated system for neighbour notification, but there is no equivalent in the 1982 act. One of the most common complaints that we get from residents and members of the public is that premises spring up beside them and they have very little chance to become aware that premises are likely to apply for a licence before they open. Such examples show how, when compared with other pieces of legislation, the 1982 act, which was passed more than 30 years ago, has fallen well behind what one would expect for public involvement and people’s awareness of what is going on in their community.

The Convener: What do you consider to be the advantages and disadvantages of creating a new civic licensing standards officer role?

Peter Smith: The advantage is that the role creates a single point of contact for communities that are concerned about activities that are licensed under the 1982 act. At the moment, officers in councils are spread across different teams, such as trading standards and environmental health, and they deal with aspects of activities that are regulated under the act. There is no single point of contact for someone who has an issue with a licensed premises, so creating the role is helpful for dealing with a specific issue.

In reality, I am not confident that every local authority will create a specific licensing standards officer role for civic licensing. The responsibility might simply be divided up and given to the different officers who deal with different aspects of licensing. An environmental health officer might also be a civic licensing officer, rather than an individual position being created. We will not know whether that will happen until the provisions are put in place.

On disadvantages, the creation of a civic licensing standards officer creates an expectation that someone in the council can deal with licensed premises issues. The reality is that the officer would not be able to do that. They would be charged with dealing with breaches of licence conditions. Because there are no objectives under the 1982 act, if the premises were creating a public nuisance, a civic officer could not deal with that. They could deal only with a breach of a specific condition under the act, because there is no overriding objective to which businesses have to adhere.

There are advantages to creating the role, because it will give communities comfort that there is someone for them to contact. At the same time, I am concerned that such a role might create the expectation that a local authority can deal with issues that it is not charged with dealing with.

I will give an example to contextualise that. If a street trader suddenly swung up outside someone’s front door with a burger van, the civic licensing standards officer could deal with a breach of that street trader’s conditions, but if the community did not want the street trader to be there or if the street trader was creating a public nuisance, the officer could not deal with those issues, because there is no objective to tie them to. The officer could deal only with the physical licence conditions—for example, does the trader have suitable bins for any waste that they are producing? Are they operating within the licence’s terms?

I have mixed feelings about the creation of the civic licensing standards officer role. Overall, I think that it is a good idea but, in the context of the 1982 act, there are flaws.

The Convener: Basically, you are saying that the public’s perception will be, “Yes, we have these new officers, but they are not going to deliver what we want.” Is that right?

Peter Smith: The officers will be able to deliver aspects of what people want, but they will not be able to deliver the overall service that the public would expect them to deliver.

The Convener: Will the officers be able to help the public and guide them on dealing with objections to licences in the future?

Peter Smith: Yes—absolutely.

The Convener: Will they help with objecting to a burger van being in a specific place or whatever it may be?

Peter Smith: Not with the burger van because—unfortunately—there is very little chance under the 1982 act that the community would know that the burger van was going to turn up before the licence was granted.

The Convener: Under the new provisions, will the public be more likely to know about the licence application of the said burger van?

Peter Smith: The public might be more likely to know, but that is not guaranteed under the provisions. We come back to what the officers will be able to do, compared with people’s expectations of what they will be able to do.
The Convener: So we might be boosting the public’s confidence in all this only to dash their confidence when it becomes a reality.

Peter Smith: That is well put.

Andrew Mitchell: Local authorities across the piece will take different views on civic licensing standards officers. Smaller authorities might struggle to find the resources to create the role. My authority has put all the expertise in dealing with the area in one team, and we would be likely to assign an existing officer such as an environmental health officer to carry out the functions.

It is important that the bill envisages a mediation role. Most local authorities try to mediate to resolve difficulties between the public and licence holders. However, like my colleague Peter Smith, I do not think that the officer role in itself will solve every problem under the 1982 act. To go back to my point about neighbour notification, it is highly unlikely that the officer role as it has been created would resolve that difficulty to any great extent.

Cameron Buchanan (Lothian) (Con): Good morning. I was interested in the example of the burger van, not per se but in terms of who would deal with it. Would people be able to phone the police to ask them to get rid of such a van if it was outside their house or causing a nuisance in their area? What party would deal with those issues?

Peter Smith: There is no party—that is one of the 1982 act’s fundamental flaws. Once the licence is granted, unless there is a breach of conditions—or a criminal matter, when the police can get involved—there is no route for communities to say, “This is a public nuisance and we want the committee to reconsider whether this application should be granted.”

If there was an issue about food smells, we could ask environmental health to look at that or at a breach of conditions, but the overarching idea that a licence holder who is creating a public nuisance can be dealt with is wrong. That cannot be dealt with. Under the 1982 act, there is no provision to deal with that.

Cameron Buchanan: Will the new bill close that loophole?

Peter Smith: No. Really addressing the issues would involve going back to the beginning and looking at the 1982 act on a fundamental level. If that was done, something that was much more like the 2005 act would probably be created in the end. Many of the activities that are regulated under the 1982 act could move to a model like the 2005 act or even become part of the 2005 act.

That would create a system that was more in line with the one that operates in England and Wales, where a premises licence comes under one licence that licenses multiple activities. That licence includes a sensible level of objectives that the licence holder and the local authority are tied to ensuring. Without that—if we continue with the 1982 act—the problems will continue.

10:15

Andrew Mitchell: In practical terms, the only realistic opportunity that the community would have to object in the situation that has been described would arise when the licence came up for renewal. If the community became aware of the renewal—that is a big “if”—it could seek to object at that point. However, if the operation had been there for the previous year or however long without any problems or breaches of conditions, I would have thought it unlikely that, even at the renewal stage, the committee would take the view that renewal was inappropriate.

John Wilson (Central Scotland) (Ind): Given those responses, what is required to be included in the bill to satisfy Edinburgh, Glasgow and potentially other local authorities throughout Scotland that what we are doing will deliver the public’s expectation and make that a reality? What I have heard and what I picked up from Mr Smith is that the bill does not go far enough to meet the public’s expectations, which we might be raising, as the convener said. What do we need to do to meet those expectations?

Peter Smith: Any change would have to be substantial. I am teetering on the brink of saying that I do not think that enough amendments could be made to the bill to address the issues. The fundamental issue is that the 1982 act has been in place for more than 30 years. It has served its purpose; it has had its time. It needs to be rebuilt from the ground up, in line with the 2005 act, and to set out an entirely different framework for how we approach licensing.

The provisions that would have to be put into the 1982 act to implement objectives, the removal of fixed-term licences, the missing review procedures that would allow people to bring issues to a local authority at any time, and annual fee proposals instead of three-year fixed renewals—that is, all the provisions that exist in the 2005 act—would require changes that were so substantive that you would almost be writing a new piece of legislation. That is why Parliament would have to go right back to the beginning and start again with the 1982 act, so that it could pass legislation that is fit for purpose in a modern Scotland.

Andrew Mitchell: I agree. The City of Edinburgh Council’s view is that introducing a form of the licensing objectives is essential if the 1982 act is to be retained. The act has been amended
so many times that it has become a question of how many times Parliament can keep on amending it.

I will give an example of how far behind other bits of legislation the 1982 act is and how it hampers local authorities’ ability to deal with problems. We can revoke a licence under liquor legislation, we can revoke a house in multiple occupation licence and we can even revoke a sex shop licence, but there is no power to revoke a licence under the 1982 act. A council can suspend a licence for the unexpired portion but, even if someone can say that there is a problem or that there has been serious misconduct by the applicant, there is no power under the act to revoke a licence, which is fairly fundamental. That shows how far that act has drifted behind other pieces of legislation.

The Convener: Willie Coffey appears to be desperate to come in.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I want to ask about burger vans and where they can and cannot operate. My understanding is that East Ayrshire Council, which is my local authority, applies conditions on where businesses such as burger vans can operate. For example, it does not permit them to be located within a specified distance from schools. Is not the solution to the problem in the conditions that the local authority can apply to prevent such things from happening—to prevent someone setting up outside a person’s front door or window? Councils have the powers, through the conditions that they can set, to be a bit more prescriptive about where such businesses can operate.

Peter Smith: I suppose that the answer is yes and no. Conditions are applied to a licence once it is granted, so that councils control their operation. The local authority could set policies around not wanting licences to be granted near schools or particular establishments, but how legally sound those policies would be is open to debate. Street trading is a very good example of—

The Convener: You say that the legality is open to debate, but how many times has Glasgow City Council faced challenges in relation to such policies?

Peter Smith: I do not have an exact number, but over the past 30 years, the council has been challenged hundreds of times in respect of policies and conditions.

Street trading is dealt with in four paragraphs in the 1982 act. No two authorities in Scotland approach street trading in the same way: some authorities license street traders on a mobile basis, some license for localities, some license in specific locations and some license individuals or businesses. There is an incredible mix, and traders who operate across Scotland face multiple different licensing regimes.

Conditions and policies can tackle some issues, but it is entirely conceivable that a person could apply for a licence that does not fall within policies, that the consultation might just be with the police, and that the licence would be granted and the business would start to operate suddenly, which is the point at which the community would ask why the business had been licensed.

The activities of street traders are dealt with under the 1982 act, but there is no mechanism by which to take a licence away if it is causing a problem, unless it is a matter of criminality or there is a breach of a specific condition.

That situation is not analogous with the powers that we have under the 2005 act, which give communities, the police and local licensing standards officers powers under the review procedures to bring an issue to the licensing board at any time, whether it is a breach of conditions or of the licensing objectives.

The Convener: Why would you want to remove a licence if there had not been a breach of conditions?

Peter Smith: That would be about public nuisance. A community may not want a licence that has been granted to remain in force, because the business is causing definable public nuisance, so it is right that communities should have the power to bring the issue to licensing authorities and allow them to make a decision. At the moment, communities do not have that power, but they have a similar power under the 2005 act, in respect of licensed premises.

The Convener: I like playing devil’s advocate on the committee. A number of years ago, my father had an ice-cream van, which was dealt with under the licensing legislation. The van served several communities, as defined in the licence. There were one or two individuals who did not want an ice-cream van in their area, so time and again they would report a breach of the conditions on use of chimes—in relation to a van that did not actually have any chimes.

Can you give me an idea of how many complaints about licences there are from individuals who may not reflect the views of entire communities?

Peter Smith: The lack of a review process in the 1982 act means that we do not deal with many complaints in relation to licensed premises, because at the initial inquiry we realise that there is nothing that we can do. However, we deal with objections regularly, through the application process. It is probable that 10 per cent of licence applications garner some form of objection. That
process allows individuals to bring a matter to the licensing authority and for the licensing authority to deal with it. If an individual does not represent their community, the licensing authority can establish that through the application process, and can determine the relevant weight to attach to that individual’s view.

If we had a review process, the authority would have the ability to treat repeat complainers as frivolous or vexatious and so would not have to deal with them continually. That is an example of where the 1982 act does not have the robust provisions of the 2005 act to deal effectively with repeat complainers.

It is, of course, important to balance both sides. Communities need a route to raise issues about licence holders and licensed activities, but effective legislation will also contain measures to ensure that, where complaints are repeated or vexatious, or are raised by one individual and are not representative of the community’s view, that can be established and appropriate mechanisms can be put in place to address the issue. We have that broadly in the 2005 act, but there are no equivalent provisions in the 1982 act.

Andrew Mitchell: Our local experience is that we receive quite a large volume of complaints about licensed businesses and how they interact with individuals. It can be difficult for the licensing authority to come to a view about the point at which somebody’s individual grievance with a particular licensed premises that they happen to live next door to or above becomes representative of a wider community concern about an impact on the community. The grounds for refusing under the 1982 act, which in essence are the grounds on which we could consider taking action such as suspension, are fairly limited. There is a fairly high standard.

I welcome the introduction of mediation as a means for civic licensing standards officers to resolve issues. I do not think that it will resolve all the issues, but it will at least give us a formal route that is similar to the one that LSOs use under the 2005 act to mediate between individuals and licensed premises.

The Convener: What kind of licensed premises are most complaints about? Is it hot food takeaways, for example?

Andrew Mitchell: That question is quite topical. We use street-trading provisions to license pedicabs. Individual pedicabs are not a particular issue, but we now have a problem in the city with the volume of pedicabs in areas where they operate at night, which is causing significant community concern. We are struggling to use the powers in the 1982 act to control the collective impact of those licences. Individual licence holders might technically be breaching the act, but the problem is the cumulative impact. In certain streets in Edinburgh at night, there is a congregation of pedicabs blocking pavements and so on. The 1982 act is not particularly adept at dealing with that kind of issue.

The Convener: That is interesting.

I will be devil’s advocate again. How many times do you find that somebody moves into a community and then starts moaning about a licence that is in place? For example, someone might buy a house above a Chinese takeaway and then suddenly start moaning about noxious smells. I ask about that because, many years ago, in my old council ward, a woman moved into a house next to a playground and then started a campaign to remove the playground.

Peter Smith: More often than not it is the other way, in my experience; community councils and established residents who have lived in an area for a long time complain about new licensed activity that springs up in their area. Any licensing authority will have examples like the one that the convener mentioned of somebody moving into an area and then complaining. In that situation, part of you thinks that the business was there beforehand, so it should not come as a surprise to that person. Because of the lack of community engagement and because the legislation does not really empower communities to shape licensing, we are not empowered to do anything about such issues when they spring up.

Andrew Mitchell: The City of Edinburgh Council sees a similar pattern, although we also see issues such as the convener raised. For example, a topical issue for us is the impact of live music in premises that are licensed under the 1982 act and the 2005 act. There is an issue about the impact of the noise on neighbours in residential premises. Music promoters have raised concerns with the council that those who complain are often people who move into areas where there are long-established venues that have been there for many years. In some circumstances, the pattern that the convener outlined exists in our city.

10:30

Cameron Buchanan: I want to take up the issue of pedicabs, without going into too much detail. Who are you licensing? Are you licensing the cab or the driver? Are there many problems with them? They seem to be prevalent in Edinburgh; are they prevalent in other cities? The committee has not dealt with the issue to any great degree before.

Andrew Mitchell: For pedicabs, we use the street trading provisions—I know that Glasgow
takes a very different approach. We license the pedicab operator and the individual pedicab drivers—I say “drivers” for want of a better word. For us, the problem is the volume of them; we now have several hundred operating in the city. Standards of behaviour are also an issue—some operators have recently been called to the licensing sub-committee to discuss the standards of behaviour of the drivers with regard to issues such as blocking of pavements. There is a zone within which they are supposed to operate—roughly speaking, it is the world heritage site map—but they can often be found outside that area. That is a clear breach of their conditions, although I suppose that they are going where the market takes them.

Cameron Buchanan: Are you limiting the amount of pedicabs? I have not used them myself, but they seem to be providing a service.

Andrew Mitchell: We take the view that we have no power to limit them, so the issue is how we manage what we have.

John Wilson: For a burger van, a community council would, as a statutory consultee under planning legislation, be notified if a planning application was submitted and considered by the council, and neighbours within a certain distance would be notified that a planning change was taking place. Do you see any value in a neighbour notification condition or statutory consultee condition applying to the issuing of licences for things such as burger vans in particular areas?

Andrew Mitchell: Certainly, that is worth exploring. There is an issue around how that would be administered and the associated logistics, but that aside, we would advise the police of the burger van application and we would, as a courtesy, tell elected members and community councils, even though we are not under a statutory obligation to do so. Beyond that, for members of the public who happen to live beside the potential site of a burger van, unless they check our online registers or happen to see the site notice, there is no way of knowing that an application has been considered, up to the point at which a licence is granted and the burger van becomes a reality in their street.

Peter Smith: I absolutely agree with my colleague’s comments on that. We would welcome a statutory requirement to ensure that community councils and local elected members were engaged. The neighbourhood notification is technical and complicated but, again, we can make statutory provision to do that work. It would certainly help with regard to engagement, which would be helpful within the application process. Of course, that does not address the other side, which is that once a licence is granted there is not much in the way of powers to deal with issues that arise.

Willie Coffey: In a situation in which neighbours within a certain radius must be notified, there is nothing preventing the authority from also notifying people outside that radius. A common fault that is raised with me in complaints that I receive concerns situations in which someone who is five steps over the line received no notification. Surely local authorities have the power to extend the area in which notification is given to cover people whom they decide might be impacted on by a new shop or other facility. Councils do not need an amendment to legislation to enable that; they can use discretion to decide that neighbours will be impacted on and will therefore be notified. Is that your understanding of the position?

Peter Smith: Our solicitors would shift uncomfortably if they heard that suggestion.

The Convener: Do they not always?

Peter Smith: They can be reasonable sometimes.

On that specific issue, we are always conscious that we have to work within the lines of the legislation. Where we might say that it would be reasonable to go outwith those lines, we run the risk of seeking objections and overstepping our boundaries as a body that is dealing with an application in an open and transparent way. If we go seeking objections, does that not taint that process?

The Convener: Why would providing notification amount to seeking objections? If I hark back to my days as a councillor, there were probably times when I—I am sure that other members who have served on councils would say the same—told folk in large swathes of an area about applications that had come in without telling them whether they should object or what they should do. What is so wrong with simply letting people know what is happening?

Peter Smith: I am looking at the issue from the perspective of the licensing authority. There is legislation that instructs licensing authorities on what they should do. If an authority goes beyond what it should do, an assessment has to be made about whether that authority is seeking objections.

If we pass the matter on to the local members for the ward—

The Convener: Do you do that?

Peter Smith: Yes—in some instances we pass such issues on to local members and community councils for them to take further, but if we have legislation that says that we should only consult within 4m and we decided to extend that to 5m for some applications, the solicitors who are prone to
shift uncomfortably would say that that would be overstepping the mark and seeking objections.

Andrew Mitchell: Notwithstanding legal issues, there is no mechanism in the 1982 act for neighbour notification, so if local authorities were to provide neighbour notification, they would be doing so entirely voluntarily. The biggest barrier would be cost; the authority would have to find the staff to work out which premises to notify, to prepare the letters, to send them out at cost—

The Convener: Let me play devil’s advocate again. If you notified people more widely, might not that save on complaints and officer time in the long run? Extending the notification process might end up saving you a great deal of money.

Andrew Mitchell: Under the 1982 act, there is no neighbour notification obligation, so it is not a question of providing further notification. To answer your question directly, in my experience the more we make people aware of such premises, the more likely we are to get complaints and objections.

The Convener: At the beginning.

Andrew Mitchell: It happens at any point in the process. If an authority were to advertise that an application or a renewal was pending, I suspect that it would get complaints and objections.

I will give an example. Houses in multiple occupation are not dealt with in the 1982 act, but we have people who have complained about individual HMOs for 10 years in a row. They complain year after year, despite the fact that the committee has heard their complaints and ruled on them. I would certainly advocate some form of neighbour notification, because it would deal with some aspects of the public’s disengagement from the licensing system. However, it would generate a volume of work. To go back to Mr Coffey’s question, I think that that is probably the biggest barrier to local authorities choosing to do that.

The Convener: John Wilson has a supplementary. Could you be brief, please? I want to move off this topic.

John Wilson: Yes. The financial memorandum says that local authorities would be able to recover any costs associated with applications through licensing fees. In the situation that you outlined, surely any additional costs to do with consultation could be recovered through the application process.

Andrew Mitchell: Absolutely—that is where the costs would be recovered. The costs would translate into a cost on business, because the applicants who pay the fees would have to pay extra in order to pay for neighbour notification.

The Convener: Do you have anything to add, Mr Smith?

Peter Smith: From Glasgow City Council’s perspective, if the legislation were to impose neighbour notification requirements on the authority, we would implement them—we would engage with communities, which would help to raise their awareness. The costs would be passed on to business, but the legislation is structured such that that is how the model works. If it was the will of the committee that we should engage in neighbour notification, we would be able to do that.

The Convener: The Convention of Scottish Local Authorities has suggested that licensing standards officers should be given additional enforcement powers under the Gambling Act 2005. Would that be helpful?

Peter Smith: I would not find that helpful at all. The Gambling Act 2005 is United Kingdom-wide legislation, but certain regulations were enacted to give local authorities in Scotland specific powers. However, the regulations to give local authorities the power to inspect gambling premises were not enacted correctly and local authorities do not have any powers to do that. To extend the remit of those officers to deal with gambling would be somewhat pointless, as we have no powers to inspect gambling premises in Scotland.

The Convener: Because the legislation was written wrongly.

Peter Smith: Yes. There was misdrafting in one of the regulations.

The Convener: Thank you. Mr Mitchell, do you agree with that?

Andrew Mitchell: I am not sure how we got here, because I am not particularly an expert on gambling, but we are finding that we are having to do the work and go out and check the premises in the absence of explicit statutory powers. Anything that can be done to address that would be useful.

There are some issues with the powers in the 1982 act. For example, only the police have powers in relation to unlicensed premises. If you are creating a new role, I suggest that that needs to be looked at, because the police may or may not pick up on unlicensed premises. To create a role for council officers to deal with licensing issues without giving them powers to deal with unlicensed premises seems to be an obvious gap.

The Convener: Okay. I move on to how information is shared between the council’s various licensing functions. Are there formal links in your councils between the licensing board and the licensing committee?
Peter Smith: They are both administered by the same team, so there is an underlying—

The Convener: Sometimes that means nothing. They may be administered by the same team, but often information is not shared within teams. Is there sharing of information in Glasgow?

Peter Smith: Absolutely, at the administrative level. I am not sure whether there are specific examples that you could give me—

The Convener: I could probably give you numerous examples, but I will not do that, Mr Smith. I am just interested to hear what you have to say on the issue.

Peter Smith: On the administrative side, committees and boards tend to be dealt with by teams that will be integrated to some extent. In Glasgow, there is complete integration; it is one team, and that information is available to both. When we go out with that, we find different set-ups in different local authorities, with enforcement teams and licensing standards teams. As my colleague explained, Edinburgh has an integrated model. In Glasgow, our taxi enforcement and licensing standards teams sit within entirely separate services in the council, and if we have civic licensing standards officers, they will sit in an entirely different part of the council.

We have well-established links to share information and we continue to make sure that they are improved so that there is a level of joined-up thinking, but in essence the administrative side of licensing will hold the information and it is our responsibility to ensure that there are effective links to the enforcement teams to share that information—and that there are suitable links to give external bodies such as Police Scotland that information as well.

The Convener: We have heard from folks that members of the public who call to try to get a problem resolved will be moved from pillar to post and from one person to another. Does that happen in Glasgow with the situation that you have there?

Peter Smith: That will happen in every local authority, given the licensing set-up and the fact that local authorities deal with so many disparate parts. A good example is the licensing standards officers who deal with alcohol, especially when we bring Brightcrew Ltd v City of Glasgow Licensing Board into the mix. If someone has a problem with noise coming from a licensed premises, they will contact either the licensing board or licensing standards officers. In either case, they will eventually be directed to licensing standards officers, but those officers in Glasgow may take the view that it is a noise issue, and there is specific legislation to deal with noise, so the matter then has to be transferred to the noise team, which will deal with the noise issue. It might then bring the case back to licensing standards if it believes that a licensing issue is contained within the noise issue, and the case might then come back to the board.

Certainly people will be directed from pillar to post; it is a complicated system. Liquor and civic standards officers are a good idea and would give the public a single point of contact to engage with the process, but the reality is that they may still be directed elsewhere. If someone contacts a civic enforcement officer about an issue with late-hours catering premises, and it is a food complaint, the issue will have to be transferred to environmental health to be investigated.

As you understand, councils are large structures. It is important to give people single points of contact to come into the processes, but sometimes the reality is that once they engage with the council they will have to be directed elsewhere.

10:45

The Convener: Should the single point of contact not be the liaison for the entire process, so that the matter can be dealt with in a single manner? The committee has heard about complaints about sexual entertainment venues. In some cases there have been licensing board and licensing committee matters, and beyond that there have been advertising matters that fall within the remit of the council as the planning authority. Would it not be much easier if there was a single point of contact, which acted as the sole liaison to deal with the complaint? Further than that, maybe it would be wise to bring sexual entertainment venues, for example, under one regime—maybe the licensing board, rather than all the rest of it. Do you have a view on that?

Peter Smith: That is entirely sensible. To achieve that would require that to be in legislation and to have the statutory guidance that supports that legislation. Without that clear guidance, local authorities will not consistently take that view.

As I said, the enforcement teams in the council do not sit within the licensing remit, so even if I did share your view, dealing with complaints in the manner in which they are dealt with is the decision of a completely separate part of the council. I can certainly understand the frustration of a community that engages with a licensing standards officer, perhaps on a noise complaint, and is told that the issue must be dealt with by the noise team. However, without clear guidance on the Brightcrew case or what a licensing standards officer should do with a noise complaint—which is something that I imagine will be dealt with fairly regularly across Scotland—there will be different
approaches between councils. That could be addressed through the guidance.

Andrew Mitchell: Across Scotland, different authorities will take different views. Part of the reason why Edinburgh put all the licensing functions under one service grouping and one manager was to address some of the issues that you have outlined, convener. I say honestly that we are making progress, but I would not say that we are all the way to making it a streamlined system.

Adult entertainment and sexual entertainment are an interesting example. I would take the view that the adult entertainment provisions are fairly much redundant, post Brightcrew. Our experience in Edinburgh is that licensing standards officers are trying to manage a regime with very few powers to do so. We are one of the authorities that have had complaints about adverts and the impact of these types of premises on the community, and I can honestly say that communities are probably frustrated partly because there are very few powers—planning, trading standards, licensing or otherwise—to deal with those types of issues, outside of what is being proposed in the bill.

The Convener: That is extremely useful. The public often feel that they will contact someone and get very little response, which is commonly known in the north-east as the slopey-shoulder scenario: it is not my job; I will pass it on to somebody else.

If we can move on, I will ask you—

Clare Adamson (Central Scotland) (SNP): Sorry, convener.

The Convener: Clare, I am sorry—I did not notice you. On you go.

Clare Adamson: Will the bill’s provisions make any significant change to the way that sexual entertainment is dealt with? Will bringing together the granting of alcohol licences and sexual entertainment licences under one body help with some of the problems that you have experienced?

Andrew Mitchell: I take a slightly different perspective from that of my colleague, because I think that licensing boards are not suited to dealing with such issues. The City of Edinburgh Council’s view is that local authorities are best placed to do so, and we welcome the provisions regarding sexual entertainment venues and the use of schedule 2. It needs some updating but it is certainly more effective than most other things that we have at present. For example, schedule 2—if that is where sexual entertainment will be dealt with—would allow us to control the form and content of adverts by means of condition and whether or not people can see into premises. I do not think that the adult entertainment provisions have been at all successful, partly because boards exist largely to regulate the sale of alcohol and are not suited to deal with such wider community issues. However, that is just my personal view.

The Convener: Why could they not be adapted to cover all the issues?

Andrew Mitchell: I suppose that they could, and Parliament will have to make that choice. However, our view is that local authorities have a broader base of responsibilities and are more accountable to the community for sexual entertainment venues. That is why we suggest that the licensing of those venues should be part of a council’s function and that the boards should be left to get on with licensing alcohol.

The Convener: Yet, from the evidence that we have taken, it seems that communities do not feel that councils have done what they need to do to deal with the issues that communities have raised with them.

Andrew Mitchell: At present, councils have no powers. The creation of the new licensing scheme would, for the first time, give councils—as opposed to boards—the power to deal with such premises.

The Convener: Mr Smith, do you have a view on these issues?

Peter Smith: I do. I think that we need one licensing authority. There is no real need to have two distinct licensing authorities—a licensing committee and a licensing board. In Glasgow, we have racked our brains for many years to understand why there is a licensing board and why there is not just one licensing function.

On the specific issue of alcohol and sexual entertainment venues, the reason that you are having to introduce sexual entertainment licensing is the Brightcrew decision that the Licensing (Scotland) Act 2005 is about regulating just the sale of alcohol and not the other activities. You would not have to introduce sexual entertainment licensing if you fixed Brightcrew. If you created a licence scheme that dealt with not just the sale of alcohol but a range of activities flowing from a premises, you could easily regulate alcohol and sexual entertainment under one licensing scheme and one licensing body.

It comes back to the fact that the overall system is just not right. You would have to go back to the beginning and create something that was singular and coherent. There is no real need to have two licensing bodies.

John Wilson: In a previous evidence session, I said that I had served on a licensing board and on the licensing committee of an authority. They were two separate bodies but the same members were on both bodies. One would make decisions on
licensing applications and the other would deal with, for instance, private hire car and taxi licences. What would be the problem in bringing those two functions together? I understand that the licensing board was seen as a quasi-legal body whereas the committee was seen as just one of the council’s committees. What would be the practical difficulties in bringing all the licensing under one body, whether that was a licensing board or an authority’s licensing committee?

The Convener: In Aberdeen City Council, those were deemed to be quasi-judicial bodies.

Peter Smith: I agree that they would both have been quasi-judicial. I imagine that they would not have treated an application for a private hire licence any differently from the way in which they would have treated an application for an alcohol licence. They would both have been considered in the same way under the legal frameworks.

I do not want to give an off-the-cuff answer and say that it would be easy to amalgamate the two bodies; I think that there would probably be a lot of legal issues in the minutiae of how that would work. However, as an overall concept, from a local authority perspective, it is unclear why we have two distinct licensing bodies—a committee and a board—dealing with two different aspects of licensing. If they were merged into a single, coherent structure with the right regulatory framework around it, that would be a far better model than what we have at the moment. I feel that the licensing board is a historical thing that has been kept going for years and years.

Andrew Mitchell: My perspective is probably similar. I am sure that licensing board clerks up and down the country will be quite agitated at this point.

The boards are a separate legal entity and have been for a number of years. For practical purposes, the same council staff and councillors deal with the licensing board and, in our case, the regulatory committee and the licensing sub-committee. We have a number of councillors who sit on both. My experience is that that is not well understood by the public. People think that their licensing board is just another council committee, whereas in law it is not. The only practical difference is that the council can formulate overall policy to which committees should have regard, and that does not impact on the licensing board because it is entirely separate.

The Convener: The bill would remove some of the connections between the licensing requirements that are placed on second-hand dealers and metal dealers. Do you have any concerns about that?

Peter Smith: No, those specific aspects are well drafted. I return to my comments that they are trying to fix a system that is, for want of a better word, broken. I do not have any concerns about the interrelationship that those changes will make.

Andrew Mitchell: The strengthening of the metal dealer provision is long overdue. Some of the current aspects cause concern. For example, a metal dealer who is above a certain financial threshold is exempt from the requirement to obtain a licence. I have never quite understood why that particular legislation was set up in that particular way. Anything that strengthens that part of the legislation would be welcome.

The Convener: Willie Coffey has a brief question.

Willie Coffey: I wanted to ask the witnesses for their views on taxi licence applications. An example was covered in the media in which a person who had had a string of complaints and allegations made against them moved to another local authority area and made an application for a taxi driver’s licence without that information being brought to the table. How do we resolve a problem like that?

Peter Smith: In the past couple of years, Glasgow City Council has looked at the integration of enforcement teams across different local authorities to ensure that they work in partnership so that if a driver from Renfrewshire comes into Glasgow, or a driver from Glasgow moves into Renfrewshire, that can be dealt with. Moving on from that work, we need to look at better sharing of information between those processes.

The 1982 act is structured in such a way that an application will go to the police and, if there is a query about a conviction, or intelligence to some extent—let us not go there—the issues can be brought to the committee. There is probably a gap between local authority enforcement teams when it comes to a concern being passed from one team to another. As we move forward with integration and look at new technology solutions, we will look to address that.

However, I do not think that there is a mechanism in place to address that problem right now. It is about looking at cross-border enforcement of that sector and at technical solutions to ensure that the information can be shared. There might be challenges if the information is not about a conviction but about something that is being investigated by another local authority; questions could be asked about how much weight can be attached to that enforcement but, as we move forward and technology advances, it is only right and proper that we ensure that local authorities have such information available to them when they make decisions in future.
Andrew Mitchell: The move to a single police force has helped in some ways, but there are still variances across the country. A police team might object in one part of the country but not in another.

We have a particularly high turnover of private hire car drivers and we recognise the phenomenon of people from England and Wales, for example, who have been refused licences by their authorities. They are almost shopping around and trying to obtain a private hire car driver’s licence so that they can move to where that licence to work operates. Local authorities’ powers in relation to private hire car drivers do not help. For example, because we choose to put taxi drivers through an element of training, that discourages people who are not serious about moving to an area. We recognise that there is a problem because local authorities’ powers in relation to private hire car drivers are relatively weak.

Willie Coffey: Thank you.

The Convener: Thank you for your evidence today, gentlemen. It has been very useful.
The Convener: Agenda item 2 is our ninth and final oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We will take evidence from the Cabinet Secretary for Justice, who is accompanied by officials from the Scottish Government’s bill team.

I plan to take questions on each part of the bill in turn. We will start with air weapons and move through the bill in order. I hope that we can conclude the session by about 12.30 at the latest.

I welcome the Cabinet Secretary for Justice, Michael Matheson MSP; Quentin Fisher, bill team leader; Peter Reid, senior policy officer; Walter Drummond-Murray, policy officer; and Keith Main, policy manager.

Would you like to make an opening statement, cabinet secretary?

The Cabinet Secretary for Justice (Michael Matheson): No, convener. I am happy to move straight to questions.

The Convener: That is grand.

It has been suggested that the introduction of a licensing regime for air weapons will do nothing to reduce criminality or increase public safety, because those who choose to misuse such weapons would not apply for a licence. What is your response to that suggestion?

Michael Matheson: I do not necessarily agree with that because, as a result of creating the licensing provision, we require individuals who wish to have, or have, an air weapon to have a licence for it. It is worth keeping in mind that air weapons are lethal weapons that can kill or seriously maim individuals. Therefore, it is important that we have a regime in place that allows us to deal with some of the risks that are associated with them.

It is clear that there will be people who will choose not to have a licence. If they choose not to have a licence, they will be committing an offence. We are providing the police with the necessary powers so that, if they deem it appropriate, an individual will not be given a licence to hold an air weapon. Equally, the police will have powers to take action if an individual holds a licence and uses the air weapon inappropriately or in an unsuitable way. That is an appropriate mechanism that can assist us in preventing some of the criminality that is associated with air weapons.

The Convener: Thank you.
Clare Adamson (Central Scotland) (SNP): Inevitably, comparisons have been made between the licensing of shotguns and what has been proposed, and there is certainly a great expectation among people such as those in the League Against Cruel Sports that the bill will make a significant difference. The licensing of shotguns compelled behavioural change in respect of where weapons are stored, but with the licence in question as it stands, the individual airgun will not be identified and there will be no limit on the number of airguns that can be applied to a licence.

Do you have any concerns that the bill does not go far enough and that the police will still have problems in identifying who owns a particular airgun if it has been used in a criminal situation?

Michael Matheson: There are slightly different provisions for shotguns and for firearms. All firearms have to have a registration number on them, but not all shotguns do, and as things stand, air weapons do not have registration numbers on them either. The approach that we have taken is to license the individual and assess whether it is appropriate for them to have an air weapon. We have also tried to ensure that the licensing regime that we are introducing for air weapons is broadly similar to that for firearms and shotguns.

We are trying to do it in a proportionate way, and the bill tries to strike that balance. I believe that it has got the balance right by focusing on the individual and associating the licence with them. If we were to get into a situation where each individual air weapon was licensed, all air weapons that were manufactured and produced would have to have a serial number on them. That is simply not how they are produced at present. The system that we are introducing reflects the position with shotgun licensing? My understanding is that it is not the individual shotgun that is licensed. The individual shotgun is registered with the licence holder. A person does not apply for an individual licence for a shotgun. They apply for a licence to be a shotgun holder, and then the individual weapons are registered with the police. Is that correct?

Michael Matheson: Yes. That is my understanding. As I mentioned, the serial numbering of shotguns is different from that of firearms.

John Wilson: The committee has discussed how we could get individual markings on air weapons. We hope that the Scottish Government will look at some way of having individual air weapons marked so that, given that people register for an air weapons licence, weapons can be identified and traced to an individual owner.

Most of the production of air weapons takes place outwith the United Kingdom and most manufacturers do not put individual identifiers on weapons as they are manufactured. However, it would be useful if we could get some consideration of the marking of the individual air weapons that registered holders register with the police so that, if there are any incidents involving them, the police can easily identify the owner.

Michael Matheson: I fully understand where Mr Wilson is coming from on the issue. The challenge is to create a system that does not lend itself to being misused. The benefit of the serial number process for firearms is that there is numbering at the point of manufacture, and it is a system that is much more difficult to tamper with. It would be a much wider issue for us to try to deal with air weapons by having serial numbers embedded into them. That would go well beyond Scotland and would probably have to be taken forward on a Europe-wide basis, because there are also European regulations on firearms.

I appreciate the purpose and intent of what you would like to achieve, but it is outwith the scope of what we are doing at present. That is why we have taken what we believe is the pragmatic approach of licensing the individual in order to try to improve the way in which air weapons are held within the community.

John Wilson: I move on to the cost of applying for a licence. We know that the Scottish Government is keen to go for full cost recovery, and that the UK Government is considering the cost of registering firearms and shotguns.

The figures that have been presented include a UK figure of £88, but last night I read Association of Chief Police Officers in Scotland figures that indicate that the follow-through cost to the police of registering a firearm or shotgun will be in the region of £196. That equates to a subsidy of £146 for every licence that is applied for. If, as ACPOS says, shotgun licences cost £196 to process, and the UK Government controls the fees for licensing shotguns, if we go for full cost recovery of air weapons licensing, will it not, in effect, cost double to license an air weapon what it would cost to license a rifle or a shotgun?

Michael Matheson: Not necessarily. To be clear, we do not control the setting of the fees that are charged for firearms and shotguns, both of which are £50. The Home Office is looking at the possibility of increasing that figure; I do not think that it has been increased for some time and there is a general view that it should have been. Whether it will go to full cost recovery is a matter for the Home Office to determine, although I
understand that it is looking at two types of costs: one for shotguns and one for firearms.

The checks that will be undertaken for the purposes of licensing an air weapon will not be of the same degree as those for the licensing of a firearm. The work that the police will do will not be as onerous as it is when someone applies for a firearms certificate. A large part of it will be consideration of the application and the police may do a quick check—almost a disclosure check—of whether anything in the person’s background suggests that they should not be allowed to have an air weapon, and a check on where the person stays and the purpose for which the air weapon is intended. The process is unlikely to involve to any great extent home visits, inspection of the device’s location and so on. The nature of the regime for air weapons licensing will not be as onerous as the nature of the regime for firearms. Therefore, it is reasonable to expect that the cost will be significantly less as a result.

We must wait for the outcome of the Home Office’s decision on what the rate for firearms and shotguns should be. Once it has determined that level, we will be able to consider what level the fee should be set at for an air weapon licence here in Scotland. That will be taken forward through secondary legislation.

John Wilson: Are you, or is anyone in your department, involved in negotiations with the Home Office regarding the setting of fees for firearms and shotguns? You said that you would await the outcome of the Home Office’s deliberations on licence fees for firearms and shotguns, which may impact on the fees that will be charged for an air weapon. Is the intention to go for full cost recovery for the licensing of an air weapon, rather than just to base the fee on a comparison with the licence fee for a shotgun or other weapons? Are we looking to have some kind of comparator for the fees that are charged for shotguns and other weapons and the fees that are charged for air weapons?

Michael Matheson: We have indicated to the Home Office that we believe there should be an increase in the fees for firearms and shotguns. Ultimately, it is for the Home Office to determine what the fees will be.

On air weapon licensing, we would like to get as close to full cost recovery as we can, but we have to wait to see how far we can pursue that, as it will be dependent on the approach that the Home Office takes to setting fees for firearms and shotguns. As I am sure members will appreciate, it would be difficult to put in place a fee for an air weapon that was significantly higher than the fee for firearms or a shotgun. We should try to get as close to full cost recovery as we can; we will have to wait for the Home Office’s determination on this matter, but we have indicated to it that we want the fees for firearms and shotguns to be increased.

10:15

Cameron Buchanan (Lothian) (Con): Good morning, cabinet secretary. We are concerned about group licences for triathlon clubs and so on that use airguns off premises. It is not very clear, but is it your intention that the whole group be licensed or that one person in the group be the licence holder? After all, it is often younger people who have these guns at home or in other places for use in triathlons, tetrathlons or whatever it is. Are we going to license the club, the manager of the club or the person who has the gun?

Michael Matheson: I will try to clarify that and then ask officials to give some more detail on specific aspects of the bill.

The general approach is for not only the club to have a licence as a shooting club but individuals who hold an air weapon to have an individual licence. In other words, anyone who wishes to purchase an air weapon will be required to have a licence for that purpose. As you will be aware, the bill contains a number of provisions under which under-18s from the age of 14 upwards can have a licence, but there are specific conditions on the circumstances in which the air weapon can be used, such as in shooting clubs or on private land. Those under 14 can use a weapon on private land as long as they are with an adult, by which we mean someone who is 21 or older.

That broadly mirrors the approach in firearms legislation, but it might help if I get my officials to give you a bit more detail about how the group provisions will work in practice.

Keith Main (Scottish Government): The bill contains a reference to the approval of clubs. Next month, we will meet the Scottish Target Shooting Federation and the Scottish Air Rifle and Pistol Association, and we are having discussions with them about how clubs will work in practice. The bill outlines an approval process that mirrors that for existing rifle clubs. A club can apply for a licence for set premises, and the police will look at the premises and approve the application if they consider that public safety will not be compromised.

Schedule 1 to the bill contains a series of exemptions, and there are also provisions governing permits for events. For example, you mentioned tetrathlons. If there is a Pony Club event or a Highland games at which air weapons are being used, the event organiser can apply for a permit, and individuals will be able to shoot within the conditions of the event without requiring their own licence.
As the cabinet secretary has said, it is a decision for individuals. Anyone who wants their own air weapon can apply for an individual licence, but there is an exemption for those who are shooting at an approved event or in an approved club.

Cameron Buchanan: My question was actually about a situation in which someone shoots for a shooting club at a match, tetrathlon or whatever in premises in, say, Carlisle or somewhere in the south that are not particularly licensed. However, you have made it clear that you are speaking to the organisations about that.

Keith Main: We are talking to the clubs about how exactly that would work, and our thinking is that, as we work through the issue with the federation and other organisations, we will set out the exact processes in secondary legislation and/or guidance.

Cameron Buchanan: Thank you very much.

Michael Matheson: It might be helpful if I explain that part of the reason for putting some of these things in secondary legislation is to allow us to tweak the system in response to any unintended consequences or difficulties that might arise. It just gives us a bit of flexibility to make some changes.

The Convener: That was useful, cabinet secretary. Thank you.

Cara Hilton (Dunfermline) (Lab): Let us return to the resourcing of the bill. It has been suggested that the introduction of the licensing scheme will have a significant impact on the resources of Police Scotland. Can you reassure the committee that Police Scotland will have the necessary resources at its disposal to administer the scheme? That is particularly a concern given that it could be dealing with tens of thousands of applications.

Michael Matheson: We have discussed with Police Scotland the best way in which we can manage what will be a significant increase in the number of licences that will have to be issued as a result of the bill. I found it interesting that there are significant peaks and troughs in firearms and shotgun registrations. There are periods when the police are busy with them and there are periods, over a couple of years, when it is quiet. They happen to be going into a busy period at the moment, as the 2015 to 2017 period is when there is a peak in the re-registration of firearms.

We have discussed with the police how we can shift much of the air weapons stuff to the periods when they are quieter, and part of the work that we are doing with them is looking at how we will commence implementation of the bill, including the lead-in time for people needing a certificate. We want to move the registrations to a quieter period for the police in order to level out their workload. We are working with the police to achieve that, and some of the commencement provisions in the bill also seek to achieve that in order to reduce the burden that the police may face over the next two years as the licensing of air weapons is added to their workload. We are keen to work with the police, and we are already engaged with them in looking at how we can achieve that most effectively.

Cara Hilton: I have a wee supplementary question. The cabinet secretary has hinted at an answer in his response.

Police Scotland has suggested a number of steps that would smooth the application process and avoid peak pressure points. You have already talked a bit about that, cabinet secretary. Would you be amenable to lodging appropriate amendments at stage 2 to give effect to the smoothing proposals that Police Scotland has suggested?

Michael Matheson: If there is a reasonable way in which we can achieve that. Some of the provisions on the commencement of different aspects of the bill can assist us in achieving that as well, through setting a lead-in time. I am open to working with the police on that.

The database system that the police use for the registration of such things is called Shogun, and they have said that it is more than capable. It is a recently developed piece of software. The legacy forces operated different systems, but we are now down to a single system for the whole of Scotland for the registration of firearms and Police Scotland has confirmed that the system is fit for purpose to deal with the registration.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, cabinet secretary. Let us turn briefly to the issue of people who fail to get a licence and who perhaps go on to commit further offences with airguns. The expectation is that prosecutions for licensing offences are likely to be picked up in the investigation of other crimes. Do you have in mind a penalty for a person who fails to register an airgun and who is apprehended or investigated for some other crime?

Michael Matheson: Prosecution would be a matter for the Crown Office and Procurator Fiscal Service, and the sanction that was applied would be a matter for the courts. I am reluctant to say what any penalty would be, as that would be for the courts to determine independently of Government.

One of the things that we are looking at, in the context of the commencement of the bill, is what would be a reasonable period of time for someone who has an air weapon to get it registered in. A
public information campaign will ensure that those who currently own an air weapon are aware that they need to get a licence for it. There is also an element for the procurators fiscal and the Crown Office in working with us to take that forward.

The determination of the sanction would be a matter for the courts, and prosecution would be for the COPFS. It is important that we have a good information campaign to ensure that the owners of the potentially half a million air weapons that are out there are aware that they have a responsibility to have their weapons licensed—and, if they do not, that they could be committing an offence and could find themselves prosecuted. It would then be for the courts to determine the most appropriate sanction, depending on the individual circumstances.

Willie Coffey: I suspect that you will say the same thing, but I will take the question further. Should a person, as you indicated in your opening remarks, commit an offence with an air weapon—which can be particularly serious and can lead to death—would a different outcome be imposed on the person who commits such an offence and does not have a licensed weapon, or is that something that you would rather not speculate on?

Michael Matheson: If they do not have a licence, there is the offence of which they have committed in which they have injured someone with an air weapon and there is also the offence of not having a licence for the weapon. I would expect the courts to take that into account when any case is brought before them. There would be the potential for more than one offence to have been committed in such a case. It would not just be a case of their not having a licence; if they have injured or killed someone, there would be another offence for which they could be prosecuted. If they do not have a licence, that could be one of the factors that they could find themselves being prosecuted for.

Clare Adamson: I have a very brief supplementary. My original question, and that of Mr Coffey, concerns what the criminal element of this will be. The police said in evidence that a misuse of plinking can be dealt with under current legislation, and any animal cruelty elements are also seen as criminal activities at the moment. However, there is the issue of how ownership of a weapon is determined in the situation in which there is no link between the licence holder and a particular air weapon. What would be the criminality of someone not having a licence, and how would that be identified? If there is no compulsion for a licence holder to store a weapon at a particular address, could someone not just say that they had borrowed it?

Michael Matheson: It will be an offence to have an air weapon that does not have a licence. If a person does not have a licence for the weapon, they will be committing an offence from the outset. For example, the police might turn up at a property because of a domestic dispute and, while they are there, they might see an air rifle sitting in the hall. At present, they are powerless to do anything about that, and they have no knowledge of what the weapon might be used for. Under the bill, the police will be able to ask whether the person has a licence for the weapon. If the person does not have a licence, they will be committing an offence.

When someone applies for a licence for an air weapon, they will have to explain to the police the purpose for which they want the licence—how they intend to use the weapon. For example, is it for vermin control? Is it for sporting purposes? Is it for plinking? If it is for plinking, the police would consider the circumstances, finding out where the person lives and where the plinking might take place. The purpose for which the air weapon is held will be part of the check when someone applies for a licence. For example, if someone is applying for an air weapon to do plinking and they stay in a tenement with a back garden that is shared with the rest of the folk in the tenement, the police will be allowed to say that they do not think that it is appropriate for that person to have an air weapon to undertake that plinking in the shared back garden of their tenement. That is the approach that the police will be able to take under the bill.

Linking a particular incident to a particular weapon will always be a challenge. It can be a challenge for firearms and for shotguns, too. Earlier this week, the British Transport Police put out another call for evidence on a railway worker who had been shot with an airgun in High Bonnybridge, in my constituency. That is the type of thing that people continue to experience.

We are providing the powers for the police, when they see an air weapon, to check that it has a licence. If it does not have a licence, a person has committed an offence and the weapon can be seized.

The Convener: We move on to alcohol licensing. We have heard quite a lot about the Brightcrew Ltd v City of Glasgow Licensing Board court decision. What effect has that decision had on licensing decision making generally? What steps, if any, does the Government plan to take to address the matter?

10:30

Michael Matheson: Our general view about the Brightcrew decision was that it confirmed the purpose of an alcohol licence for premises. There was clearly an issue about the way in which the case was conducted and about how the licensing
board of Glasgow City Council sought to use the licence for other entertainment that was taking place within the establishment.

The Brightcrew case probably provides a reason why we have chosen to take a position on licensing provision for other types of entertainment that can take place in such premises; we have made additional provision within the proposed legislation for a further licensing measure to be taken by a local authority, for example for sexual entertainment that is offered within a premises. Licensing authorities will now be able to have a stated policy in that respect.

**The Convener:** We will come to the sexual entertainment aspects later. You are obviously making provision to close loopholes. We have taken a fair bit of evidence in correspondence from the police about members’ clubs. We know that members’ clubs are not included in an assessment of overprovision and cannot be refused a premises licence or a variation on those grounds. They are under no requirement to have a designated premises manager—DPM—or to have safe and supply of alcohol authorised by a personal licence holder. Furthermore, we have heard that there is a fair amount of use of occasional licences in members’ clubs.

Do you think that those legislative loopholes should be closed and that the same rules should apply to members’ clubs as apply to other licensed premises?

**Michael Matheson:** I am aware that there are some issues. When the Licensing (Scotland) Bill—the eventual Licensing (Scotland) Act 2005—was being scrutinised, Parliament decided that members’ clubs should have some extra provisions. That was largely reflective of the nature of such clubs in some of our communities: they could be associated with particular companies or businesses, including factories that used to be based the community; they could be social clubs; or they could be sports clubs that have a members’ club attached. Parliament took the view that members’ clubs have particular value within communities and so the licensing regime should reflect that. It was considered that such clubs should be given some exemptions under provisions in the 2005 act.

I am still of the view that such clubs have an important part to play. Any changes would have to be very carefully considered, bearing in mind the potential negative consequences on members’ clubs, many of which do not operate commercially—they are not full profit-making businesses, as others are. I am open to hearing and considering the committee’s views on the matter, if there are particular aspects that you believe could or should be addressed, but I would want to be very careful about introducing any changes that could have unintended consequences.

There are more points to make about occasional licences. First, occasional licences should not be abused; it is important that local licensing boards ensure that that is the case. Where there is evidence that they are being misused, whether by members’ clubs or others, I would expect the local licensing board to take appropriate action to ensure that that does not happen. There is absolutely no reason why local licensing boards cannot take action if they believe that occasional licences are being misused by particular members’ clubs or any other party.

**The Convener:** It has been suggested by a number of witnesses that occasional licences become almost permanent licences, because it is the norm for a club or another body to apply for the same thing again and again. Do you feel that that is an abuse of the occasional licence system? How do we ensure that licensing boards do not continue to sign off occasional licences that have become the norm?

**Michael Matheson:** The purpose of the occasional licence was to provide flexibility for local licensing boards. There are provisions in the existing legislation for voluntary organisations, for instance. In any period of 12 months, the total number of days for which an occasional licence is issued may not exceed 56.

If there is clear evidence in a particular local authority area of misuse of the provisions of the 2005 act in how occasional licences are being granted, we can consider that in our engagement with the clerks of licensing boards. If necessary, we can consider whether any further guidance needs to be issued to them on how such licences should be used and when they should not be used. If there is clear evidence of misuse, I am more than happy for our officials to consider that.

**The Convener:** Does the Government currently analyse the number of occasional licences that are issued by each board?

**Michael Matheson:** I am not aware of that. Peter Reid is probably better placed to advise you.

**Peter Reid (Scottish Government):** We collect figures on premises licences and personal licences. Unfortunately, we do not currently collect figures on the number of occasional licences. We believe that a considerable number are applied for.

There is an existing order-making power that would allow us to impose a limit on the number of occasional licences that can be applied for related to a premises licence or personal licence. That power has not been used yet, but the limit is
something like the 56 days relating to voluntary clubs. It could be applied, if necessary.

**The Convener:** It seems from the evidence that we have taken that granting of occasional licences is a major problem for some areas. It might be wise to collect and analyse figures so that you can see whether there is a real problem in certain places. It may be that some folk are overegging the pudding, but that does not seem to be the case.

**Michael Matheson:** Let us take that issue away. We can consider what further work can be done to get a better handle on the figures in various licensing board areas, and what further measures could assist in addressing some of the concerns that the committee has heard.

**Cameron Buchanan:** I notice that the term “voluntary organisation” has not really been defined. Do you intend to define it a bit more clearly in relation to occasional licences?

**Michael Matheson:** I am not sure where that is within the existing legislation, but I presume that it is tied in with the statutory provision for voluntary organisations.

**Peter Reid:** It is correct that voluntary organisation is not currently defined. My understanding is that that expression has been in the existing legislation since it was introduced. I was looking at a paralegal handbook the other day, whose author says that he is not aware of any particular abuse of the lack of a definition, which you have pointed to. If we become aware of such concerns, we can certainly look into the matter.

**Cameron Buchanan:** Some people have said that the term “voluntary organisation” should be more closely defined—I think that that was in the submission from Police Scotland.

**Michael Matheson:** As Peter Reid said, if there is an identifiable problem, we can consider addressing it. The most obvious way to do that is to tie the matter into registrations of voluntary organisations. Voluntary organisations have a legal responsibility to register. We can address the issue if necessary, but I would be keen first to see evidence of a problem.

**John Wilson:** We have heard from health and other organisations that we should be trying with the bill to address overprovision and the effects of alcohol on many communities throughout Scotland. The suggestion is that licensing boards should be more proactive—that it should be ensured that a clear statement is made by the local authority or licensing board about overprovision and that that is monitored very carefully. However, some licensing clerks have said that the legislation that is in place does not allow them to be as proactive as those organisations would like them to be. Do you see the bill and the advice or guidance that is given to licensing boards and clerks leading to a sea change in overprovision of licensed premises?

**Michael Matheson:** I am always interested, when someone says that legislation does not go far enough, in giving them guidance. I have found that one licensing board can take a very proactive approach on overprovision while a neighbouring licensing board takes a less proactive approach. I am not entirely convinced that the ability to address overprovision is to do with legislation itself.

We must ensure that public health is one of the five key principles on which licensing policy is founded and should be taken forward. A big part of this is to make sure that local licensing policy is properly reflective of that, and that there is good engagement among stakeholders, particularly in terms of colleagues in public health commenting. The legislation already makes some provision for that.

One thing that we are doing with this bill is giving licensing boards more scope to consider overprovision in their wider areas and not just within small localities, including scope to look at issues such as hours for licensed premises within their area. Greater scope will give them more flexibility to consider a wider range of issues related to overprovision.

As a former Minister for Public Health, I say that this is an area where we can make more progress, and I would like to see more progress being made. Some licensing boards have been enlightened and much more proactive than others; I would like to see more of them being proactive. It is important to make sure that local licensing policies are more reflective of public health.

I am keen for us to look at any further measures that we can take forward at national level, whether through guidance or through work with licensing board members themselves, to make sure that the whole issue of overprovision and how it ties in to public health is seen as an important part of their responsibility and how they take forward their policy.

**John Wilson:** I welcome that statement. The difficulty is, as you just outlined, the discrepancy that seems to exist in terms of interpretation of the powers that licensing boards have under the current legislation. Given the discrepancies in interpretation among boards, what assurances can you give us that there will be greater clarity in the application of this new legislation? As you mentioned, in your previous role as Minister for Public Health, you saw for yourself examples of overprovision—particularly of off-licence sales—
having a dramatic effect on the health and wellbeing of many communities. What assurances can we have that the health impact on communities will be addressed through the bill?

**Michael Matheson:** We are giving licensing boards additional scope in terms of the range of things that they can consider when it comes to overprovision. As I mentioned, that scope is around establishments’ hours of operation and around boards’ ability to look at the wider area and not just a locality. The bill will allow wider scope to take in those factors.

The other part is about some aspects of the alignment of the local licensing policies and how boards arrive at that. There has been some difficulty, for example, with the way in which the policies have been taken forward and how they align with local government elections. We are taking forward some measures to assist in achieving that.

One thing that struck me in my previous role is that good practice is not always as widely disseminated as it should be. There are things that we do at national level involving different stakeholder groups, and there are events that are aimed at trying to spread and embed some of that good practice.

I accept that there is still a significant way to go. I do not think that it is just about legislation; some of it is about the policy approach, and some of it is about making sure that overprovision is seen as a much higher priority by the boards that do not prioritise it as highly as they should. Part of that is about the guidance and direction and what we do with licensing boards and other stakeholders to ensure that the matter is seen as a priority.

**10:45**

The other issue is to ensure that local territorial health boards are proactive in the local licensing forum and in responding to the new applications or major variations that they must be consulted on. They should make their positions very clear and respond appropriately in order to inform licensing boards.

Trying to get everybody to move in the same direction at the same time is never easy. There is a range of things in the bill to ensure that the issue is seen as a major priority that people need to be more proactive on, and we are doing work that can assist us in helping to achieve that.

**John Wilson:** Thank you.

**Clare Adamson:** I have a couple of questions about personal licence holders. The bill seeks to remove the automatic five-year ban for people who have not retrained for personal licences, but quite a number of people will be caught up before the eventual act’s introduction. Obviously, that ban would have a detrimental effect on their employment prospects. Can the Scottish Government do anything to alleviate that situation before the bill becomes law?

**Michael Matheson:** We would require primary legislation to alter that. There is no quick fix by which we can deal with the issue. The provisions in the bill that will address it will help to restate it.

A tremendous amount of work has been taken forward to ensure that refresher courses are available in the trade and through the licensing boards, but it is clear that some people have missed out on them, for whatever reason.

The five-year period for which people are prevented from having a personal licence is too long. Once the bill is through Parliament, we can look at how quickly we can commence the provision in the bill to try to address the matter as quickly as possible. I have asked officials to look at that. Once the bill is through the parliamentary process and has the consent of Parliament, we will try to commence the provision as early as we can to address the issue. MSPs have written to me with various options that they think may be available to try to address it. We have looked at the legal issues, and we cannot use those options: primary legislation is required. I have outlined the quickest way for us to deal with the matter.

**Clare Adamson:** Obviously, when personal licence holders were introduced, there were definite intentions with regard to selling alcohol. We took evidence from a council legal representative who was concerned about the lack of prosecutions of licence holders who sell alcohol to people who are drunk. Obviously, the antisocial behaviour aspect of people being drunk in the community is the big consideration for many people. Police Scotland said in evidence when I asked that that is very difficult to establish, so it does not use that part of the legislation. Does it concern you that there is maybe a gap where there was an intention that it would be more difficult to sell to people who were already drunk, and that licence holders would need to be more responsible. The intention is not currently being enforced.

**Michael Matheson:** Was there an issue about a lack of prosecutions or a lack of reporting?

**Clare Adamson:** I am pretty sure that the representative from Midlothian Council—I think—said that the problem is the lack of prosecutions. Basically, the police said that it is very difficult to establish what “drunk” means and who was responsible for selling alcohol to a person who was involved in antisocial behaviour or a public display of drunkenness afterwards.
**Michael Matheson:** Obviously, there are two aspects. There is reporting a matter for the police to investigate, and there is reporting to the procurator fiscal. Decisions on prosecution are for the Crown Office and Procurator Fiscal Service. We cannot direct that.

I would be interested to know whether it is being said that cases are being reported to the Procurator Fiscal Service but not being prosecuted, or whether the police are saying that in such circumstances there is not sufficient evidence to put a report to the procurator fiscal.

It is important that the power exists, although I think that it is more appropriate in relation to a regular pattern emerging in a particular establishment. I am sure that members have at various times had representations from communities about particular local issues. There will be better scope to look at taking that forward.

However, there is a distinction to be made between cases that the police think are difficult to prove or demonstrate and therefore to report to the procurator fiscal, and cases that are reported to the procurator fiscal, who chooses not to prosecute them. We need to clarify that.

I am more than happy for us to discuss with the Crown Office what particular issues are arising and what could assist it in deciding which cases should be prosecuted. We can take that away and discuss it with the Crown Office.

**Clare Adamson:** That would be very helpful.

**Cameron Buchanan:** At one of our meetings we discussed the plight of personal licence holders who had lost their licence and for whom it would take a long time to get it back. I understood that that would be dealt with in secondary legislation.

**The Convener:** I think that the cabinet secretary has just said that that could be done only in primary legislation.

**Cameron Buchanan:** Yes—he said that, but we had been told that it could be done in secondary legislation. What is the issue?

**The Convener:** Cabinet secretary, perhaps you could just reiterate what you have just said to Miss Adamson.

**Michael Matheson:** There have been representations suggesting that the issue could be tackled in secondary legislation; those are being considered. The legal advice from our officials is that we need to amend primary legislation to deal with the issue. The provisions in the bill will do that. We are looking at trying to commence the relevant provision as early as we reasonably can in order to deal with the issue.

**Cameron Buchanan:** Thank you.

**The Convener:** At the moment, 11 out of 40 licensing boards have not published licensing policy statements and 17 have not published overprovision statements. What action can the Government take to address that situation and ensure that the system works properly for the people of Scotland?

**Michael Matheson:** By their very nature, licensing boards are quasi-judicial bodies, which, to a large extent, sit to the side of the local authority, given that local councillors sit on them. It is important that we provide them with the right support and assistance.

Peter Reid can perhaps explain some of the work that has been undertaken to try to ensure that the licensing boards are taking forward the licensing policies and updating them, as well as the measures that we have taken to encourage them to produce overprovision statements.

**Peter Reid:** The licensing policy statement is a relatively recent innovation in licensing. The intention is to provide a shift to a more policy-based regime that can be adopted by licensing boards. The regime would be more akin to something like planning regimes, in which there is an overall strategy within which decisions are delivered. The licensing policy statement is intended to be a tool to assist boards in deciding how they want to deliver the overarching strategy. Within that, the overprovision assessment gives them a strong ground to refuse a licence or major variation should they choose to do so. I see it as a tool to support boards in decision making. It is unfortunate that some licensing boards have failed to be proactive, or as proactive as they should be, and have not grasped the opportunity to use the licensing regime in that strategic way.

**The Convener:** You said that some boards “have failed to be proactive”, and the cabinet secretary talked about “enlightened” boards. Is it fair to say that by not having plans in place to ensure that they are able to have a say in what is going on, boards are not carrying out their duty to serve the public in their area? Does the fact that boards do not have policy statements or overprovision statements in place mean that it is much easier for them to be defeated in court?

**Peter Reid:** In part, yes, but we accept that licensing boards face a wide variety of circumstances. The sort of issues that we might discuss in relation to overprovision and some of the other material that would be included in the licensing policy statement might be more germane to and faster moving in some areas.

I am not seeking to tar all areas with the same brush. There are major issues in some areas while...
others are at more of a steady state and there is less change from year to year. It is absolutely appropriate that some licensing boards are not so proactive in updating the documents because they have probably not much need to.

**The Convener:** Are they not proactive or are they damned useless?

**Peter Reid:** That is not for me to say.

**Michael Matheson:** The convener made a fair point about the fact that some licensing boards have been less proactive. Clearly, the committee is concerned about the issue, so I would be more than happy to consider the committee’s views on how that could be more readily addressed and on particular measures that the committee believes would achieve that. We could consider whether there is further work that we could take forward to deal with boards that are not being as proactive as either the committee or I would like.

**The Convener:** Thank you, cabinet secretary. We move on to taxi and private hire car licensing.

One of the things that we have found while taking evidence is that this is an ever-moving feast in terms of new technologies. We are keen to hear about how we can future proof or come back to the issue in the future if need be. There are app-based company models in place in many parts of the world, and only today we see reported in *The Scotsman* that a company hopes to establish a presence in Edinburgh and Glasgow. How do we ensure that we continue with the regime that we have here, which means that the car is licensed and the individual is licensed to deal with the public?

I always look at this issue by asking whether I would be happy for one of my nieces to step into a car. The current regime, which means that there are licences for vehicles and licences for drivers, pacifies me. How do we ensure that that continues and that any of the new companies that enter the market do not get away with not having both their transport and drivers licensed?

**Michael Matheson:** Someone who is operating a taxi needs a taxi licence and someone who is operating a private hire car needs a private hire licence. We have in place a legal framework that covers when someone orders a taxi using an app, which some taxi companies and private hire companies use and which I have no doubt we will see more of in the years to come.

Anyone who operates a private hire car without a private hire licence is committing an offence. The regulatory regime that is in place says that no matter how someone orders their taxi or private hire car, it has to comply with the licensing regime. If a company uses an app that allows private hire cars to operate without a private hire licence, that company is committing an offence. There is also licensing of booking offices.

We have a fairly robust system in place and we can alter it in the future through secondary legislation as necessary. It is important to ensure that the legislation is appropriately enforced.

**The Convener:** Does a booking office have to be in the local authority area in which the company is operating, or is it possible to have a booking office for the whole of Scotland? There seemed to be some debate about that with regard to the provisions of the Civic Government (Scotland) Act 1982. Also, what is the definition of a booking office? Could a booking office be established in somebody’s front room or the cupboard under the stairs?

11:00

**Michael Matheson:** That would be an interesting place to have a booking office. Peter Reid is probably better placed to tell you where the booking office has to be based for the purpose of the licence.

We have in place a robust legislative framework and, even if new technology is being used, that still has to be complied with. It is important that we enforce that and make that clear.

**Peter Reid:** We were interested in the conversations that were had at the evidence-gathering sessions and the various views that were expressed. The booking office regime is entirely in secondary legislation. It has been created under secondary legislation and we could also amend it in secondary legislation. Therefore, it is not something that we would be compelled to amend within the scope of the bill.

From looking at it quickly, our view was that the premises would have to be licensed where the order was taken. However, if genuine difficulty and confusion in relation to licensing is being experienced by licensing authorities, it is possible for us to amend the relevant order to clarify that.

**The Convener:** But now that there are apps and so on, how can you define where the order is taken? It is not as though I am phoning up and talking to someone in an office. It is a different world now.

**Peter Reid:** Yes, you make a good point. Clearly, when it was drafted, the original secondary legislation envisaged somebody sitting somewhere receiving a phone call and taking the order. That notion does not translate quite so well to a smartphone app existing in the ether. We would be happy to consider that further.

**The Convener:** And will you do so? You suggested at the beginning that you might do it,
but I think that it is something that has to be considered further.

Michael Matheson: What we are confident about is the licensing regime that we have. We can adapt to developments in new technology if particular circumstances arise that need to be addressed. That is why we deal with these issues through secondary legislation. As and when issues are presented to us that indicate that there is a need for us to alter the secondary legislation, we can respond to that at that point.

The Convener: Thank you.

Willie Coffey: During our discussions about this matter, a case arose in the media about a taxi driver who had had a series of complaints made against him and did not make that information known to a neighbouring authority when he applied for a taxi driver's licence there. How can we help to protect the public from those types of risks, and is it possible to share that level of information between licensing boards if it has not already made it on to, for example, the Police Scotland database system?

Michael Matheson: It is possible for the information to be shared between licensing boards if they consider that appropriate. For example, if someone is applying for a licence to a particular local authority for a taxi and private hire licence and that authority knew that the person had been operating somewhere else, it would be reasonable for that authority to contact the other authority to see whether there was any information that should be brought to its attention. There is also the possibility to get further information from the police and to have a case checked to see whether there is something on their system.

Local authorities can undertake quite a significant level of checking, as they see fit, in particular circumstances.

Willie Coffey: Is it a discretionary matter for the local authority that is being applied to? It is not always going to be certain where the person has operated previously. It might be the local authority area in which they live, but it might not be. Is there any central way of accessing that information, much in the way that Police Scotland has national access to that kind of information?

Michael Matheson: Certain information will have to be disclosed at the time of application for a licence, but the undertaking of any wider checks would be at the discretion of the local authority and its individual application of the law. Some information will have to be provided and local authorities will have the discretion to carry out further checks on an individual, but there is no mandatory requirement for that.

Willie Coffey: Thank you.

John Wilson: During the evidence sessions, the issue has been raised of the discrepancy in the licensing of taxis and private hire cars. The representative of one local authority said that it applies a cap on the number of taxis that can operate in the area but not on the number of private hire licences that it issues. They claimed that the authority is using the 1982 act to impose a cap on the number of taxis but that that act does not give it the power to impose a cap on the number of private hire cars. The issue is whether it is fair practice to have a cap on the number of taxis that are operating in an area without having a similar cap on the number of private hire cars.

Michael Matheson: These are difficult things to measure. Because of the way in which a taxi operates—it can be hailed or ranked—demand can be measured more readily. It is more difficult to measure the demand for private hire cars, which are not ranked and cannot be hailed. We have taken two different approaches in how licensing authorities can measure demand in order to give them the scope to address that.

I am not entirely sure whether there is provision in the 1982 act for what you describe.

Peter Reid: At present, there is an unmet demand test for taxi vehicle licences. The Air Weapons and Licensing (Scotland) Bill proposes an overprovision test for private hire car vehicle licences. As the cabinet secretary points out, the tests are slightly different because the two types of vehicle operate in slightly different ways.

Michael Matheson: The bill will provide a mechanism for local authorities to measure overprovision of private hire cars, and we will undertake some work with local authorities on how they can do that and what that process might look like. It is more difficult to measure demand for private hire cars given that they operate in a different way from taxis, which can be ranked and hailed and, therefore, measured more readily.

The Convener: It has been suggested that a cap on the number of private hire cars already exists in certain parts of the country, including in my city of Aberdeen. Is that allowed under the 1982 act?

Peter Reid: I had a word with somebody in Aberdeen City Council. It does not apply a cap on the number of private hire cars, but I recall that there are very few private hire cars in Aberdeen. The regimes are different throughout the country and look quite different.
The Convener: Do you think that there are fewer private hire cars in Aberdeen because there is an unofficial cap?

Peter Reid: My understanding is that there is no cap. Maybe people prefer to operate as taxis rather than private hires. If the licence fees are about the same, it makes sense to apply for a taxi licence.

The Convener: Could you better monitor the different ways in which local authorities handle and interpret the legislation? Do you think that you will be able to apply the new legislation better than you are able to apply the current legislation in terms of monitoring?

Michael Matheson: The idea behind the new legislation is to give local authorities more flexibility in how they can measure such things, and we will do some additional work to assist them in that. What we have not tried to do is create a one-size-fits-all approach. The approach taken in Aberdeen is not necessarily the approach that should be taken in Inverness, so we try to allow a level of flexibility for local licensing authorities to determine how many taxis they should have to serve their purposes—and the issues around that—and what mechanisms they have in place to deal with private hires. We are trying to get a balance between allowing local flexibility and having in place a regime that people can have confidence in and which helps them assess the issues at the local level.

The Convener: Apologies, John, but I had to get the Aberdeen issue in.

John Wilson: No problem, convener.

Cabinet secretary, I raised the issue of taxis versus private hire cars because, in many taxi ranks in Scottish towns and cities, you will find taxis sitting there, not getting any business, whereas outside major supermarkets you will see private hire cars regularly picking up shoppers, because they have direct lines to some of the private hire companies.

My question is whether we are getting the balance right between unmet demand and overprovision. Should we have more taxis operating or should we allow the ever-increasing growth of private hire cars that seems to be happening in many areas in Scotland? As you are well aware, private hire cars do not have the same restrictions on them as taxis have, in terms of the knowledge, the licensing of the car and the other issues that apply to a taxi operator. Would it not be fair to bring some of the private hire car operators into line with some of the restrictions that we apply to taxis?

Michael Matheson: It is not for the Government to set what the percentage should be of taxis and private hire cars in a local authority area; it is local licensing authorities’ responsibility to reflect local need. We are providing a mechanism for the consideration of the issue of overprovision. Some of the work that we will do off the back of the bill will assist in how that can be applied locally. It will then be for local authorities to determine how they want to take that forward at the local policy level.

I recognise the point that John Wilson makes, but we would get into very dangerous territory if the Government started to try to set some of the limits around these matters. We are providing a mechanism and the scope for local licensing authorities to determine things at local level, depending on local circumstances, and we will do support work to help them to achieve that as effectively as possible.

John Wilson: Will you assure me that the Government will work closely with local authorities on identifying overprovision? Earlier, when you spoke about overprovision and unmet need, you raised the issue that there are clear difficulties in measuring that in the private hire car sector rather than the taxi sector, given how the private hire car sector operates and how it records journeys.

Michael Matheson: We are providing a legal framework for local authorities to assess those matters, and we are giving them the support that they need to interpret that at the local level. We are not going to get into the situation where we start to set limits nationally on how things should be applied locally, because rural areas have different needs to urban areas.

I can assure you that we are going to do some work on the overprovision assessment with local authorities, regarding how they can apply that and interpret it locally, in order to determine policy.

The Convener: It has been suggested that a number of rural authorities may be concerned about the impact of removing the contract exemption. Would you consider making the power to do so discretionary?

Michael Matheson: Before we remove the contract exemption, we are going to work with local authorities to understand how that would apply to their circumstances. We can address some of the concerns through secondary legislation. Before we go ahead with the removal, we will take forward some aspects that will allow local authorities to provide exemptions as they see fit. We will deal with that through secondary legislation.

11:15

The Convener: Thank you.

We move on to metal dealer licensing. During the evidence taking, there was quite some
discussion about the definition of a metal dealer. We heard from some of the folk from the industry that waste dealers can deal in metal as well. How can we ensure that the bill works properly and prevents people who might not currently be defined as metal dealers from dealing in stolen metal?

Michael Matheson: We are trying to achieve an approach that does not mean that a plumber who deals with a bit of discarded metal, such as copper, is classified as a metal dealer. The definitions that we have set out in the bill try to achieve that balance as best we can. The licensing regime that has been put in place for metal dealers assists us in achieving that. It is not our intention for a plumber who might have some scrap copper from his work to find that he needs to register as a metal dealer. The bill’s provisions should guard against that happening.

The Convener: I understand that. It is the commonsense approach. However, we heard from folks in the industry about waste dealers who are licensed by the Scottish Environment Protection Agency and often deal in metal. In many cases, they were referred to as itinerant dealers. How do we ensure that they are covered by the regime?

Michael Matheson: If those people deal in waste, they obviously have to be registered with SEPA, but was the view that they should also be required to register as scrap metal dealers?

The Convener: The scrap metal dealers felt that waste dealers were given much freer rein than they were, although the waste dealers often deal with substantial amounts of metal.

Michael Matheson: I am more than happy to take that issue away and consider whether we can do something further on it. I do not know whether there is any further scope to do anything in the bill, but we were generally of the view that the current definition of metal dealers and the registration scheme for them were sufficient. Walter Drummond-Murray might be able to say a bit more about that.

Walter Drummond-Murray (Scottish Government): The bill does not amend the definition in the 1982 act. That definition has been in operation for 33 years and, on that basis, cannot be miles away from being right. However, we are aware of the concerns that the dealers raised in their evidence. We have had discussions with them and are happy to consider whether amendment of the definition is required at stage 2.

As the cabinet secretary mentioned, it is a question of balance. We want to catch some of the people who are on the margins, such as the itinerant dealers who only collect door to door but do not make a payment for the metal and, in effect, only sell. They would not be caught at the moment, so there is a suggestion that we should change the definition of a dealer from somebody who buys and sells to somebody who buys or sells. We are happy to consider that while trying to maintain the balance of not capturing people who are very peripheral, a plumber being the classic example.

The Convener: Just because something has been in place for 33 years does not necessarily mean that it is right, Mr Drummond-Murray. The matter certainly seems to worry the scrap metal dealers, who obviously want to co-operate. They feel that others are in the same business but not facing the same regulatory regime.

During the evidence that the police gave on the licensing of metal dealers, it came to light that they deal with the licensing of pedlars on a nationwide basis. Instead of licensing scrap metal dealers at a local level, would it be wiser to license them at a national level and bring the itinerant dealers into that regime too?

Michael Matheson: It is possible to do that. I am not entirely sure how extensive an issue it is or how much of a problem it is. The important point is that we are trying to take a proportionate approach. We do not want to inadvertently draw people into the registration process whom we had not intended to draw in through the provision. I recognise your concern, but I am not entirely sure how extensive the issue is and whether it would require further registration to deal with it.

The Convener: Okay.

Willie Coffey: Cabinet secretary, we heard in evidence that some of the greatest gains that were made down south were due to the removal of the cash payment system. One of the proposals in this bill is to remove the requirement to store metal for 48 hours before processing and we also heard in evidence that some people felt that it was unlikely that the police would be able to respond and inspect premises within 48 hours. If we remove the 48-hour requirement but the police have difficulty in inspecting premises within that timeframe in any case, how effective might that be in aiding the detection of metal theft?

Michael Matheson: Again, that is an example of trying to take a proportionate approach. Once a metal dealer holds certain types of metal for a particular period of time, they have to get into registration from SEPA and so on, which can add a significant burden to the process. There are particular time thresholds for certain metal types. Once people pass those thresholds and they have to have that certification from SEPA, how the metal is stocked has to change as regards individual piles and so on. Many of the scrap metal dealers just do not have the space to be able to accommodate that.
Again, we have tried to take a balanced approach. We need to recognise the possibility that we could push the burden so far that, for many metal dealers, it would become unsustainable and they would not be able to operate their businesses because of the additional regulation that they would face for holding certain metals and because of how those metals would have to be stored.

We need to balance that possibility against trying to ensure that we have a reasonable enforcement regime that is able to deal with metal theft, which is—and has been—a big problem. It is about trying to balance those factors as appropriately as we can. The timeframe is a reflection of that.

Willie Coffey: Will the greatest gain for us be in the removal of the cash element? That seemed to have a significant effect down south, according to those who gave evidence from the relevant jurisdictions.

Michael Matheson: That has now been in place for a year or two down south and it appears to have made a significant impact. I think that it will work here too because it creates an auditable trail that can be pursued. The removal of the cash element will also challenge those who may have got metals illegally—it will place them in much greater difficulty as regards being able to dispose of those metals because of how payment will have to be carried out. I think that it will act as a deterrent and that it will assist us in being able to investigate cases and pursue cases in which metal has been gained illegally.

Cameron Buchanan: I think that you may have already answered my question—I wanted to ask about the advantage of a national licence system. I am not sure whether you think that it is a good idea to have a national licence system.

Michael Matheson: It is about trying to take a proportionate approach at a local level. I am keen for local authorities to be able to take things forward in a way that best fits their areas. I think that the regime that we have set out can best help achieve that, rather than a move to a national registration scheme.

John Wilson: Cabinet secretary, in one evidence session, we heard from some of the power companies regarding the cost of scrap metal. In effect, they were arguing that the pieces of metal or wiring or cabling that are stolen have fairly insignificant value but the cost of the damage that is done in stealing it could run into thousands or even hundreds of thousands of pounds and could endanger life in the affected area.

How would you like to see us incorporate not just the value of the metal stolen but the overall cost of the damage that has been caused to the energy companies, households and others when individuals are before the courts for the theft of cabling or metal?

Michael Matheson: It is really for the courts to determine that. It would not really be appropriate for the Government to set down what it would expect the court to do in dealing with the costs. I am sure that members are aware that when it comes to determining a sentence, courts will look at the full range of circumstances, including the associated costs, the relative damage and the danger that someone committing metal theft may have caused. The final determination would be a matter for the courts.

I have heard of cases of metal theft in which those carrying out the theft not only have caused others to be put in danger but have put themselves in significant danger in order to get the metal, as well as causing a lot of other people significant inconvenience, including by causing power cuts. I suffered a power cut a number of months back as a result of a metal theft—or attempted metal theft—that was taking place in what I think was a Scottish Power facility.

It is a serious issue, and some of the additional measures that we are taking recognise that, in order to deal with it much more effectively. I have no doubt that courts will take these things extremely seriously, but it is not for me to start determining what the courts should do. I would be very reluctant to go down that route, given courts’ independence.

John Wilson: I am well aware of the independence of the judicial system in Scotland and the UK, but I am keen to ensure that when the police and the Procurator Fiscal Service take forward cases, they look at the total cost of the damage that has been done to a community by the theft of cabling or other metals, so that when someone appears before the courts, not just do they answer for the theft of £200 or £1,000 of cabling, but the other factors, including the cost of repairing the damage, are taken into consideration, so that the courts can fully understand not just the final cost of the metal stolen but the other issues caused.

Michael Matheson: I would expect that when a case is being prosecuted in the courts the overall cost would form part of the case. I would expect that the prosecution would make sure that it was brought to the attention of the courts and that it would be part of the facts presented. How much weight an individual sheriff or judge gave that would obviously be for them to determine, but I would certainly expect it to be part of the information that is put before the court when a case is being prosecuted.
Cara Hilton: We heard evidence that changing the law in itself does not reduce crime; in England and Wales it seemed to be specific enforcement action that made the difference. I would be keen to hear more about what plans the Scottish Government has to encourage and resource enforcement action to support the new licensing regime when it comes in.

Michael Matheson: A major part of the enforcement is for Police Scotland to take forward. I am confident that it has the resources to be able to do that effectively. The other measures that we are putting in place assist Police Scotland to investigate these matters more thoroughly. The provision that one is not able to pay cash for metal and the requirement to take down details will create an auditable trail, which will allow anyone in the police who is investigating something to be able to trace things much more effectively and to see who was involved in procuring the metal in the first place. The measures will assist us in tackling some of that, but I am confident that Police Scotland has the resource to be able to take forward appropriate enforcement measures as it sees fit.

The Convener: I return to Mr Wilson’s comment about the offence. The bill states:

“a person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.”

My understanding is that a level 5 fine is not that high.

Michael Matheson: We can give you some details on that.

Walter Drummond-Murray: You are right that in our view the penalties are probably inadequate. That is something that we may seek to address at stage 2.

The Convener: Okay. Thanks very much. I suggest that we take a very short comfort break before we move on to the final couple of furlongs. I suspend the meeting for five minutes.

11:30

Meeting suspended.

11:35

On resuming—

The Convener: We move on to the provisions that deal with sexual entertainment licensing. In taking evidence, we found frustration among members of the public about the different bodies that deal with the various aspects of such licensing. The Brightcrew case highlighted the alcohol aspects. Some elements are dealt with by licensing committees rather than boards. We have also found that planning authorities are responsible for advertising outwith premises, which seems to be a major problem. We realise that certain aspects are being brought together, but would it not be better to bring together all the aspects of sexual entertainment licensing and advertising under the remit of one body so that the public know where to go if they have a complaint about a venue?

Michael Matheson: I can see the attraction of that, although licensing boards have a specific statutory function to undertake, which is somewhat different from but similar to that of local authority licensing committees. I would be reluctant to go down the route of having a single committee or board that was responsible for all the licensing provisions. There might be a practical challenge with taking forward some of that work at local level for the licensing body members who would deal with all that.

There are particular specialities. One benefit that we get from licensing boards is that we have a group of elected members who have had additional specialist training and have developed expertise in and understanding of alcohol licensing. We should value that.

I am inclined to retain the current approach, although that is not to say that there is no scope for improving how the system operates. When an individual wants to complain to a local authority—whether about alcohol or some form of entertainment—they should be put through to the relevant officer, who will pursue that for them. That applies to any matter in a local authority. I do not think that having one committee or board to deal with all the issues would necessarily improve that process.

The Convener: I agree that people should be able to go to one individual in a local authority and get the service that is required, but that is not happening. The other week, we heard from licensing officers, who suggested that the reason why some of the regimes are split is more to do with tradition than anything else. That is why some places have a licensing board and a licensing committee. My experience of the local authorities that I know about is that the licensing teams of solicitors and officers are the same for the licensing board and the licensing committee, and many of the members who serve on the licensing board also serve on the licensing committee.

It is difficult for the public to get their heads round what the difference is. In fact, it has been difficult for this committee and some of the folks who support us to get our heads round the different terminologies. I wonder whether we do the things that we do more out of tradition than logic.
Michael Matheson: There are situations where that is the case, but I am not persuaded that moving to a single body to do all the work at local level is the best approach. You were a councillor in Aberdeen, so you have first-hand experience of some of the challenges but, given the licensing purposes that the different bodies have, there is benefit in having two separate bodies. If the view in the future is that—for whatever reason—the licensing regime could be delivered more effectively by one body, that could be considered, but at this stage I am not persuaded that there is sufficient reason for us to move to a single body.

The Convener: Could sexual entertainment licences be dealt with by one body rather than the gamut that exists, which seems to be leading to frustration?

Michael Matheson: A venue needs a licence for the entertainment that it provides and a licence for selling alcohol on the premises, if that is what it intends to do, so that is one issue. I recognise that some individuals feel that there are unnecessary complications in the process, but my general view is that the system operates fairly well. There are always areas in which it could be improved, but it serves us pretty well.

The additional measures in the bill will improve the licensing regime for sexual entertainment venues and will provide local authorities with additional powers to deal with the issues more effectively. We are improving the existing legislation, but I am not persuaded that moving to a single committee or board would improve things further.

The Convener: It was clear in the evidence that we took that those who are pretty pro sexual entertainment and those who are very anti sexual entertainment share the view that it would be more logical for all the elements to be brought under one regime.

Michael Matheson: I appreciate the view that it is worth moving to a single committee that deals with all the aspects, but the system largely serves us well. I am reluctant to change it without sufficient evidence to suggest that the arrangements are not operating effectively, which I do not think is the case.

The Convener: In the Brightcrew case, one regime tried to deal with an aspect that was controlled by another regime, and all of that fell foul of the law. Am I right in saying that, if all the elements had been dealt with together appropriately, that situation might not have arisen?

Michael Matheson: No—I am not entirely sure that that is correct. The Brightcrew case was about an attempt to use a provision in the 2005 act for a slightly wider purpose than that for which it provides. As a result of that decision, the bill provides for civic licensing of sexual entertainment venues.

Having one board or committee dealing with matters would not necessarily have changed the outcome in that case. The Brightcrew decision reflected the fact that the 2005 act was not sufficient for the purpose for which those involved tried to use it, which is why we are creating a new licensing regime. That case was about the interpretation of the legislation rather than the structure, which is why we are making additional provisions in the bill.

The Convener: Would taking a commonsense approach to structure by bringing everything together and creating the required legislative framework not be the way to proceed? It would be easy for one body to deal with all the aspects of that one legislative framework to ensure that venues were up to scratch in every regard: alcohol, advertising and the entertainment.

Michael Matheson: If we moved to a single licensing regime for civic and alcohol matters, we would have to go back to the beginning. It is worth keeping it in mind that the Civic Government (Scotland) Act 1982 was reviewed just 10 years ago. It was considered in great detail and found to be fit for purpose. The 1982 act is flexible enough to allow us to add to and amend it as circumstances change, which has happened over the years. The Nicholson committee also considered the whole issue of licensing, which led to the 2005 act.

11:45

We would have to go right back and redo licensing for alcohol and for civic purposes if the idea was that we should move to a single unified piece of legislation for both aspects. That would be a significant piece of work and a significant undertaking, and it would be well outwith the scope of the bill that we are considering. There is a debate to be had, but I highlight the work that has been undertaken on licensing for alcohol and on civic licensing in the past 10 years.

We have new licensing legislation for alcohol, and the 1982 act has been found to be fit for purpose. I would be reluctant to change the system, given that the legislation seems to be operating effectively and is flexible enough for us to add to it and change it as necessary.

Cameron Buchanan: There is a certain logic to having the same licensing regime. Apparently—I emphasise the word “apparently”; it is what we were told—sexual entertainment or strip clubs make real money only when they sell alcohol, which suggests that the licensing regime should be the same.
Michael Matheson: I confess that I am not entirely au fait with the business model of such venues.

Cameron Buchanan: Nor am I.

Michael Matheson: I do not recall whether the money is made just through alcohol, but the point brings us back to the Brightcrew case, in which trying to use the alcohol licensing regime to manage other aspects created difficulties. That is why we have brought in a requirement for further licences for such venues. We want to give local authorities the scope to regulate venues in a meaningful way that allows them to engage with other stakeholders and consider a range of factors before they decide on their local policy for such venues.

Clare Adamson: It is proposed that a venue that has been used for such entertainment on no more than four occasions would be exempt from the requirement for a licence. What is the justification for that? Given that there is quite a lot of opposition to the provision, could an alternative, like the occasional licence for alcohol, be considered? Are you considering tightening up that aspect following the evidence on the bill?

Michael Matheson: The provision was considered in quite a bit of detail before the bill was drafted. We were trying to strike a balance. In our approach to licensing sexual entertainment venues, we recognise that such facilities operate in only a handful of local authority areas—about four or five. We want to take an approach that will allow them to develop policy in a way that best reflects their local circumstances. That is why we have made the provision discretionary rather than mandatory. It does not demand, for example, that local authorities that have no such venues in their areas have to implement a particular policy.

We recognise that some form of sexual entertainment might be provided on occasion at a particular event in a particular venue. It is difficult to regulate that because of issues with knowing where those venues are and when events are happening and with assessing the full extent of the activity.

In England, the approach is that venues can hold 12 events a year—or one a month—for which, technically, they would need a sexual entertainment licence if such events were happening daily. We thought that 12 events a year would be too many, and we arrived at the figure of four a year. Of course, I am open to hearing the committee’s views on whether the right balance has been struck.

The exemption was included largely to reflect the fact that there could be unintended occasions on which a venue finds that it might have required an additional licence. It would be difficult for us to regulate such situations or to understand the full extent of that activity, and the exemption provision is an attempt to strike a balance.

Clare Adamson: My only concern is about ambiguity. Under alcohol licensing, someone cannot sell alcohol unless they have an occasional licence or a full licence. If premises knew that they had to have a sexual entertainment licence, that would provide more clarity, but I would be happy to hear your thoughts on that as the bill progresses.

Michael Matheson: I am more than happy to listen to the committee’s views. If members feel that the balance that we have struck is not quite right, I will be happy to consider that at stage 2.

The Convener: Would the Government consider issuing guidance on how existing sexual entertainment venues should be treated if a local authority sets a lower limit on the appropriate number of venues in the area?

Michael Matheson: We will provide guidance to assist local authorities. They must go through a number of stages before they set a limit and they must consider a range of factors. We will take forward work to provide them with guidance on interpretation in that area.

The Convener: That is grand.

John Wilson: The committee heard evidence from theatre group representatives who were concerned that their artistic expression might be impacted on by vexatious complaints or by individuals who used the bill to shut down theatrical productions. Can you give any assurances to theatre companies whose productions might contain nudity, for example, that they could be exempted from the relevant provisions of the bill?

Michael Matheson: That is a fair point to raise. It is reasonable for some establishments to have such concerns. That is why we will produce guidance to give specific direction about the premises and productions that would be exempt in such circumstances. An example would be a performance or a series of performances by a theatre company that involved some nudity. We will address that through the guidance and through secondary provisions that we will put in place to ensure that situations of the kind that you describe do not come about.

John Wilson: Another issue, which the convener has raised, is about a local authority wanting to reduce the number of premises that provide sexual entertainment in an area. You said that guidance will be issued to local authorities. Some authorities might decide to go for a zero-tolerance policy, which would involve a blanket ban on sexual entertainment venues in their areas.
What would happen if, say, the City of Edinburgh Council or Glasgow City Council adopted a zero-tolerance approach? How would that fit in with what some in the industry argue are grandfather rights in relation to the continuing provision of such premises?

**Michael Matheson:** In setting the number of sexual entertainment premises that are desirable in an area, local authorities will have to go through a rational decision-making process that involves consultation and engagement. They will not have an unfettered power—they will have to show that they took a rational approach in coming to a final determination.

When local authorities set the number of sexual entertainment premises that are desirable in their area—that number can be zero—it will be important that they go through that process. The guidance that we will issue will give them some direction on and understanding of what that process should involve. If they do not go through the proper process, they will find themselves the subject of a legal challenge for applying a measure for no rational reason or for not considering the issue proportionately.

**Willie Coffey:** One of the issues that came up during discussion was the employment of under-18s in these establishments, albeit in ancillary roles such as cleaner. The evidence that we heard was very much against permitting that to continue. Do you have a view on that, or is it outwith the scope of consideration for us as an employment rights issue?

**Michael Matheson:** It can be dealt with through the licensing provision because, as it stands, under-18s are not allowed in premises where sexual entertainment is taking place. It would be possible, though, for an under-18 to be in the premises at other times. An example would be the case of a cleaner who was in the premises in the morning. They would be able to be in the venue for the purposes of undertaking the cleaning of it when sexual entertainment was not taking place, but they would not be allowed to be in the premises at any time when sexual entertainment was taking place.

**Willie Coffey:** Thank you for clarifying that. That was the nature of the discussion—whether it was appropriate, even in those circumstances, for youngsters or young adults of that age to be working in those premises, even outwith the times of the licensed activity. The only evidence that I can recall hearing was very much opposed to continuing to allow that. What is your view?

**Michael Matheson:** That would be banning under-18s from being cleaners in venues that are used for sexual entertainment. I think that the challenge would be to achieve that within the terms of this bill. Given the nature and intended purpose of such a provision, we would have to consult more widely on what the implications would be. First of all, it would be interesting to know how many venues employ under-18s as cleaners. My suspicion is that it would be very few, if any at all. I understand the point and where it comes from, but I do not think that it is something that we can address within the scope of this bill.

**Cara Hilton:** Looking at the wider issue, given the Scottish Government’s recognition of the harm that is caused by commercial sexual exploitation to the position of women and girls right across society, why is it that the Scottish Government has not decided to ban those types of venue, instead of licensing them?

**Michael Matheson:** What we are doing is giving local authorities the power to license the venues and to determine what the number of them should be. If a local authority believes that the desirable number is zero, there is a process that it can go through in order to achieve that. Rather than the Government determining those matters, we are allowing local authorities to determine them. I think that that is the most appropriate way for something of this nature to be taken forward.

**The Convener:** We now move to the civic licensing aspects of the bill. After our call for evidence and in some of the oral evidence that we have had in committee, licensing officials from Edinburgh and Glasgow gave a detailed critique of the legislation. In fact, they ripped into certain parts of the 1982 act, including the fact that it gives no powers to review or to revoke a licence. There was also a major discussion about the lack of notification. Does the Scottish Government have any plans to review the 1982 act or to address the specific concerns about the way that it operates?

**Michael Matheson:** We have no plans to fundamentally review the Civic Government (Scotland) Act 1982. As I mentioned, it was reviewed only some 10 years ago and found fit for purpose. What we are always willing to do is to listen to concerns and issues that are raised by local authority colleagues about where they feel that there is a deficiency in the legislation that we can address in addressing if there is a need to do so.

For example, you mentioned the issue of being unable to revoke a licence under the 1982 act. That is something that we are considering. It is worth keeping in mind that, although a local authority cannot revoke someone’s licence, it can suspend it, which can have the same effect. We are considering where further measures can be taken in relation to revoking licences, and if we can improve the way in which the system is operating for local authorities we are more than happy to consider that.
The Convener: Another issue that was discussed related to notifications. The example that was given by officers related to a burger van and the fact that they could only notify folk who were within 4m of the stance for the van. Do you think that that is giving the public a fair deal in being able to find out what is going on in their patch and to engage with licensing authorities about any objections that they may have?

Michael Matheson: I do not know about the technical aspect of a 4m notification radius for a burger van. I would be concerned if communities felt that they were limited in terms of making representations when a burger van was establishing itself. We could consider modernising the notification process.

I think that that could be dealt with through secondary legislation. Would it require primary legislation?

Walter Drummond-Murray: It would have to be done at stage 2 of the bill. There are requirements in the schedule of the 1982 act that local authorities have to publish applications for licences. It is quite archaic and the requirement is currently met by publishing a notice in the local library or something like that. It is not terribly fit for purpose in the modern world. We could certainly look at that.

Michael Matheson: We can look to improve that, but there is nothing to prevent local authorities from being more proactive in the way in which they engage with local communities that are affected by such things.

The Convener: Can I stop you there, cabinet secretary? We have covered that in a huge amount of depth, and we know that many local authorities are risk averse and that—I will be controversial here—if you put two solicitors in a room you will get six different opinions. When it comes to risk aversion, it seems that this is one of the worst aspects.

We specifically asked the witnesses about informing people beyond the levels specified, and there was huge reticence. We have knowledge round the table of this: as a local councillor I used to inform entire neighbourhoods about things, but it would send the solicitors at the council into a huge panic; Mr Coffey has had similar experiences. The legislation is not fit for purpose.

The committee is currently looking at the Air Weapons and Licensing (Scotland) Bill, but we are also considering aspects of the Community Empowerment (Scotland) Bill. The reality is that what we have here is not empowering communities but actually impeding some of the good work that the Government wants to see done in other areas.

Michael Matheson: I do not accept that it is not fit for purpose, because it can be changed. There are aspects that relate to local policy and the approach that local authorities take.

You have referred to the fact that, when you were a local elected member, certain things happened in your ward and you took the opportunity to inform the whole area. That happens in other areas, too. Local authorities can be more proactive. I recognise that they can be risk averse, but just because local authorities are risk averse it does not mean that the legislation is deficient. However, if there are ways in which we can improve it, in order to help to engage and push greater engagement with local authorities, we will look at trying to achieve that.

Local members—as you will be well aware in Aberdeen, convener—are the ones who should be setting the course of direction for officials in how they take forward local policy, rather than officials at local level always determining what the policy should be.

The Convener: I understand that all too well, but the evidence that we have heard shows clearly that many local authorities feel that they are restricted in what they can do.

One thing that the licensing officials said was that they want a link to licensing objectives, as is the case in the 2005 act. Is that possible?

Michael Matheson: The purpose of the 2005 act is very different and the five objectives within the 2005 act were set after considerable consideration. I am conscious that officials want to have objectives set within the Civic Government (Scotland) Act 1982. What will that lead to them doing differently?

The Convener: I cannot answer that question; that is a matter for the licensing officials.

Michael Matheson: But that is the point. I often hear that it would be better if we put something in the legislation but sometimes the issue is not a deficiency in the legislation; sometimes it is about proactive policy at a local level.

The Convener: They felt that dealing with public nuisance aspects would be easier if there were some changes. Beyond that, they argue that some of what is currently in legislation seems to be nonsensical, including, for example, those 4m notifications. All that a burger van would need to do would be to park well over 4m away from something and be all right.

Willie Coffey: I just want to take this opportunity to say something about the notification process. I have had some experience in the past in which the
authority did not and would not notify anyone outside the radius of the particular application, despite there being a clear view that there it would impact on the public beyond that. The fear was that local authorities might be challenged for seeking objections beyond the limits of the notification distance that was in place. They were fearful of such legal challenges thereafter.

The feeling among members was that we needed to think more about the impact on the community rather than the distance from an application. That would be much more in tune with public perception and would receive public support.

Michael Matheson: Clearly, part of the issue is down to interpretation within a given local authority area and to officials deciding to interpret a law in a particular way. If the legislation can be improved to address some of those concerns, I am open to looking at that. However, I do not think that a good way to go about doing things is to put something in legislation because some council officials do not like or do not want to do something. There is a balance to be struck.

When a reasonable case is made that improving the legislation could help to improve engagement with local communities and that can be justified, I am open to looking at that. I have experienced such difficulties in my own constituency. I must confess that I can be a bit sceptical about some of the excuses that council officials give about why they do not do things when it would be reasonable for them to do so because of their particular interpretation of a particular piece of legislation when those in another local authority area have chosen to interpret it much more liberally.

We should be careful that we are not just legislating for those local authorities that tend to be less reluctant to take forward proactive policies to engage with communities.

The Convener: Thank you for that, cabinet secretary. Could your officials have a look at the Official Report of the evidence from the licensing officials? I share your frustration about the interpretation in certain local authorities being different from that in others, but the key issue for the committee is that we have to make sure that the public is served and feels empowered about certain of these decisions. It seems to me that certain things in the 1982 act fly in the face of common sense, so I urge your officials to go back and have an in-depth look at what licensing officials said at the committee meeting because it seemed to be entirely logical to me.

Michael Matheson: I give you the commitment that we will do that, convener. We will also consider the concerns that the committee has raised, notwithstanding my frustration at the approach that some local authorities take on these matters.
WRITTEN EVIDENCE TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

1. Richard Hill
2. Steven Wolf
3. D. Garvin
4. Jack Hutchison
5. Gary Gibb
6. Fiona Dove
7. Katherine Griffiths
8. Anonymous
9. Craig Short
10. Alex Pearson
11. Firearms UK
12. Duncan Rogers
13. Andrew Cox
14. Siobhan Murphy
15-19. Highland Licensing Board
20. Michael Brunsdon
21. Anonymous
22. Civil Service Shooting Club
23. Anonymous
24. Grant Murray Architects Ltd
25. David Lind
26. Anonymous
27. Anonymous
28. Anonymous
29. ChildEyes UK
30. Robert Sandison
31. League Against Cruel Sports
32. Grant Webster
33-38. SOLAR Licensing Working Group
39. Anonymous
40. Highland Violence Against Women Partnership
41. Scottish SPCA
42. National Licensing Standards Officers Group
43. NHS Greater Glasgow and Clyde
44. The Scottish Licensed Trade Association
45. Anonymous
46. Anonymous
47. Anonymous
48. Andrew Cockburn
49. City of Edinburgh Council
50. Scottish Police Federation
51. West Lothian Council
52. Gareth Adamson
53. Anonymous
54. Anonymous
55. Anonymous
56. Anonymous
57. Anonymous
58. Hold Fast Entertainment
59. Anonymous
60. Anonymous
61. Anonymous
62. Anonymous
63. Borders Alcohol and Drugs Partnership
64. Callum Cheshire
65. SHAAP
66. Gun Trade Association
67. Calor Scotland
68. Zero Tolerance
69. British Hospitality Association
70. The Highland Council
71. Kelvin Smith Insurance Brokers Ltd
72. Elite Scottish - GB Athletes
73. Dumfries and Galloway Council
74. Competition and Markets Authority
75. SP Energy Networks
76. BASC Scotland
77. Scottish Women’s Convention
78. Energy Networks Association
79. Co-operative Retail Trading Group
80. Scottish Grocers Federation
81. National Metal Theft Taskforce
82. Anonymous
83. West Lothian Licensing Board
84. Aberdeen City Council
85. British Metals Recycling Association
86. Federation of Scottish Theatre
87. Scottish Air Rifle and Pistol Association
88. Scottish Tetrathlon
89. Unite the Union
90. British Shooting Sports Council
91. Scottish Countryside Alliance
92. Scottish Pistol Association
93. Stephen Pringle
94. British Transport Police and Police Scotland
95. Rosefield Salvage Ltd
96. Cats Protection
97. D&S Metals
98. Anonymous
99. Institute of Licensing
100. Young and Partners LLP
101. Renfrewshire Council
102. Motor Vehicle Dismantlers Association
103. Renfrewshire Licensing Board
104. UKLPG
105. Association of Licensed Adult Entertainment Venues Scotland
106. The Scotch Whisky Association
107. Aberdeen City ADP
108. William McDonald
109. Dr Graham Wightman
110. ASH Scotland
111. Scottish Saltires Modern Pentathlon
112. East Lothian Council
113. Morag & Tim Liddon
114. The Law Society of Scotland
115. Ashley O’Donnell
116. City of Edinburgh Licensing Board
117. Anonymous
118. North Ayrshire Council and North Ayrshire Licensing
119. Alcohol Focus Scotland
120. White Ribbon Scotland
121. NHS Ayrshire and Arran
122. Wine and Spirit Trade Association and the Scottish Retail Consortium
123. SPA National Coach
124. FSB Scotland
125. Scottish Beer & Pub Association
126. Scottish Churches Parliamentary Office
127. Edinburgh Alcohol and Drug Partnership
128. Scottish Borders Council
129. Spittal Street Womens Clinic
130. M J Raeburn
131. Glasgow Licensing Board
132. Glasgow City Council
133. COSLA
134. SSE
135. Police Scotland
136. Network Rail Infrastructure Limited
137. Gary Sutherland
138. Midlothian Licensing Forum
139. Prof Phil Hubbard
140. Students from Abertay University
141. Gun Control Network
142. Stephen Dalton Scrap Metal Merchant
143. Uber
144. The Gambling Commission
145. Scottish Taxi Federation
146. Dr James Cooper, Edinburgh Napier University

Supplementary written evidence

British Metals Recycling Association
Glasgow City Council
Scottish Business Resilience Centre
SEPA
Stephen Dalton Scrap Metal Merchant
Supplementary written evidence relating to oral evidence sessions

Following the evidence session on 3 December 2014, the Committee wrote to Police Scotland for clarification of fees for licenses:
- Committee letter to Police Scotland - 19 December 2014
- Police Scotland response - 9 January 2015

Following the evidence session on 10 December 2014, the Committee received supplementary written evidence from the Institute of Licensing:
- Institute of Licensing - 22 December 2014

Following the evidence session on 17 December 2014, the Committee received supplementary written evidence from Alcohol focus Scotland:
- Alcohol Focus Scotland - 15 January 2015

Following the evidence session on 29 January 2015, the Committee received supplementary written evidence from British Transport Police:
- British Transport Police - 3 February 2015
Dear members,

I write to you as one of the 22,000 people who signed the petition against the proposed airgun licencing in Scotland, and therefore suggest that these views are not only mine but those of the majority of the 22,000.

As was reported in the news in May, it seems that the SNP and Kenny MacAskill in particular, has decided to continue with its badly thought out, unneeded and likely very costly proposal to licence airguns. As I am sure you are all aware, as well as the 22,000 people who signed the petition, 87% of responses to the public consultation on Airgun Licencing opposed the measure outright. Many of the comments described this proposal as "disproportionate" "unjustified" and "attack on individual liberty". Many senior members of the Scottish Police Service responded to the public consultation and they commented that the proposal was ill thought and was totally unmanageable.

I would like to ask that your committee and the Scottish Government does not ignore the aforementioned people and reconsiders this proposal and cancels all plans to adopt a licence once and for all.

Publicly available statistics show that all firearms crime including airgun crime has fallen massively since 2006. Last year there were only 171 offences. To put this into perspective this is less than 0.04 offences per airgun in Scotland and less than 0.004 for head of population. Around 12.4% of cars registered in Scotland are involved in an offence each year. It is also my understanding that there were more injuries caused by dog bites admitted to one hospital alone in Scotland than airgun offences (which do not always include injury) for the whole nation.

There are already 30 laws directly relating to airguns and punishing misuse as well as countless others than can also be used to punish offensive behaviour.

I am a Health & Safety professional and in my line of work, we look at finding the root cause of accidents/incidents to try and prevent them from reoccurring. It is too late when you are mopping up the blood from an injury. The Government needs to look at the root cause as to why someone would want to misuse an item to cause harm to others and spend the money in educating them. They would also probably find that a combination of bad parenting, lack of good family values and low self worth causes the issues in the first place. However, because these things are harder to solve, the soft option is once more heralded - attack the law abiding because they will comply and Governments can say 'look what we have achieved'. Well I'm sorry, but you won't have achieved anything at all.

Using figures obtained from the Association of Chief Police Officers for the cost of processing shotgun certificate applications (£195) and estimates on the number of individual airgun owners in Scotland(up to and likely over 500,000), simple mathematics would say that this could potentially cost nearly £100,000,000 to implement. The Association of Scottish Police Superintendents has also voiced concerns over potential costs.
Airguns are a vital tool used in pest control and preventing damage to crops and other land, especially where shotguns and more powerful rifles are unsuitable for use due to lack of backstops, livestock, other farm workers having to share the working area, etc. According to a report sponsored by the Scottish Government rabbits alone cost £56,000,000/year in damage to crops in Scotland. This type of pest control is often carried out with airguns free of charge. If a licence is introduced additional costs may put people off from providing this service or they may have to charge for their services. This again adds unnecessary costs to law abiding people. An often little known fact is that airguns are often used to carry out pest control on Scottish golf courses as they are low powered and safe for use. Many people are unaware of the hard work airgun owners put in to help ensure courses are kept in prime condition. Airguns are also commonly used as a form of pest control which helps protect native wild life such as controlling the Grey Squirrel population to conserve the native Red Squirrel.

It is often thought that airguns are cheap at around £100 but many are actually between £500-1000 which some as high as £2-3,000. If people are unable to obtain a licence the Scottish Government should pay out compensation to people who have had to give up their sport. My two rifles alone cost £450 each.

The proposal also intends to ban recreational shooting (plinking) in one’s own back garden. I and many other people find this a gross violation of people’s private property rights. Plinking is perhaps the most common form of air gun shooting and is carried out safely by thousands of people. There are already laws in place to punish any irresponsibility in this area. Many Scottish sporting champions will have started out shooting in this manner and stopping this may be hindering Scotland’s future sporting success.

UK law states that it is an offence to fire an air rifle within 50 feet of the centre of a highway if this results in someone being injured, interrupted or endangered. These offences could be committed, for example, when someone is shooting in their garden close to a road and the pellets ricochet onto the highway. The definition of a highway is a properly constructed (tarmacadam or similar surfaced) road. As long as people take necessary precautions to prevent their pellets from straying (backstop made of an energy absorbing material), what harm are they doing?

The greatest effect of this proposal will be on law abiding airgun owners, especially those who are on lower incomes and do not have the money to spare for the additional costs of this scheme. It is more than just the cost of a licence, many people face having to travel several miles to find a club. This places additional costs in terms of fuel and travel time. It also has an environmental impact due to the extra traveling.

The driving force behind this legislation seems to be the tragic death of Andrew Morton, and in fact Mr MacAskill and many others often quote this incident in the press when the subject arises. However I would like to point out that in addition to the perpetrator being caught and properly punished by the courts, a licence is unlikely to have changed his behaviour or prevented the incident.
There will be no effect whatsoever on the very small amount of crimes committed with air rifles. The law abiding citizens who shoot air rifles and can afford the costs of the licence will apply and pay for them, with the poorer law abiding citizens giving up their hobby. The real criminals (the very few) who use their air guns for malicious purposes will carry on as normal and will not register their ownership.

Licencing does not and has not ever had the effect that you propose. A bank robber does not apply for a SGC (shotgun certificate) and register his shotgun on that certificate in his own name, nor does he buy a car and register it in his own name/address at the DVLA, to then use in his bank robbery. Both items would be illegally held and not registered. The huge majority of firearms used in criminal activities are illegally held and not registered, so how would this new legislation change that?

There was an incident where a young child was beaten to death with a golf club yet we do not see the same attitude towards golf clubs.

Good legislation should be proportionate, effective and objective. The facts in this case are airgun crime is very low and has been falling for the past 7 years, this proposal is disproportionate, expensive and will affect many more law abiding people than it does criminals.

I also find that the Scottish Government is very hypocritical – they are currently pushing the Yes vote for independence and freedom for the nation, but that freedom doesn’t extend it seems to the freedom of the individual to practice his chosen past-time without beaurocracy and unnecessary burden and cost.

Yours Sincerely

Richard Hill

BASC Member
BFTA Member
Airgun Shooter
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

Name: Steven Wolf

Organisation:

Address 1:

Address 2:

City/Town:

Postcode:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

x Yes

3 Please confirm whether you are content for your name to be published with your submission:

☒ Yes

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

x Personal

☐ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

x Yes
*6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☒ No

*7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☒ Air Weapons

☐ General licensing issues

☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

It will not reduce crime at all since criminals will not register their air guns. All it will do is penalise law abiding airgun owners with higher fees, having to join a club, restrictions in lawful use and a reduction in airgun ownership. All countries which have implemented some form of gun or airgun licensing regime or another has not seen a reduction in gun crime. We only have to look at the Handgun ban in 1997 to see how handgun crime has actually gone up after the ban. Similar things will happen if this licensing regime for low powered airguns is introduced.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?

No there isn't. Half a million airguns with a lot of owners. The new bill doesn't allow for the gun to be shot in the back garden in what is termed as "plinking" so tens of thousands of people will have to join an airgun or a gun club, for which there is no capacity. This will effectively result in a de-facto ban on some airgun owners, who either can't afford to join an airgun club or who live too far away from one to be economically viable to join one. Think of someone living in the Scottish highlands, who will be in a ridiculous position of having to travel say 100 miles to an airgun club to use their airgun while being prohibited from shooting on their land, in a remote location with the nearest neighbour tens of miles away. Effectively legislation like this will likely be ignored, meaning extra police will have to be drafted to prosecute this new “criminal class”. Law abiding people who their only fault is owning some inanimate object without some license.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
In a bad way. It will:

- restrict where you can use the airgun, no garden plinking

- increase cost due to having to join airgun club.

- make airgun shooting harder for people in remote areas.

- double the paperwork load on police departments for licensing.

- create a new class of criminal overnight. People who might not be aware of the law or might disagree with the law will be prosecuted for daring to own an inanimate object without a license.

- make it harder for youngsters to get into the sport.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

It would restrict their participation depending on what age groups a license will be issued to. In the rest of the UK (England, Wales and Northern Ireland), an airgun cannot be bought or possessed by anyone over 18, with an adult needed to be present to supervise people under this age.

This will put a strain on youngsters starting shooting with airguns. Since shooting with airguns from a young age leads onto further shooting in later years with more powerful firearms, this licensing regime for airguns will impact real gun ownership in Scotland in the future. Youngsters not applying for airgun licenses due to cost/hassle will unlikely use shotguns or rifles in the future when they become adults. This licensing regime is a calculated stifling of not just air gun ownership but future firearm ownership in Scotland and that is outrageous!
17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

Firstly with a license, it will mean that the police will have to approve each bit of land that a license holder wants to shoot over. Until that is done, to shoot on that land with an airgun will be breaking the law which will lead to airgun license revocation, penalties and even prison time.

This will impact of course commercial shooting on farmland where often farmers who only control small game such as rats/pigeon will have to get a license to control the same vermin they have done safely and lawfully without a license. This will of course increase their costs.

Airgun ranges operating for tourists might not be able to do so hassle free, due to the fact that they will have strict guidelines to obey and all shooters might have to join a club as probationary members rather than have an informal shoot with air rifles or pistols in a controlled environment.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

It will affect Scotland in the future when youngsters will find it much harder to start up airgun shooting than before the licensing regime. With a drying pool of young talent, less scottish people will take up shooting sports therefore ensuring less sports shooters in the future.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No a fee should be refunded if a license is not granted. However I already said that I am against this licensing proposal.
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

Negative effect. More work for police both in licensing and in prosecuting which were otherwise law abiding people. Police already are short staffed when dealing with the current system for shotgun and firearm licenses. What is going to happen when an estimated 50-100 thousand people apply for an airgun license? More work for courts and the judiciary when people get refused an airgun license and decide to fight the decision in the court to get one issued.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

All of the above I mentioned, not to mention people might just give up airgun shooting and just apply for a shotgun or firearms license instead, if the hassle for applying for one will be the same. I know the Scottish Parliament is generally anti-gun so I am sure they would not like it if due to the fact that they will introduce an airgun licensing system as they say for public safety. Well that will spectacularly backfire if instead people will apply for more powerful guns.
22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

I am totally against it and I believe that Mr Kenny McAskill doesn't give a damn what the people of the UK think. I have personally written to all the Scottish Parliament on this issue. They have said to me concerning this consultation: Most replies against the previous consultation were from England and this shows that the 87% of people against the licensing regime is not based on pure scottish support. I say this:

Scotland is still part of the United Kingdom and until they vote for independence I will consider myself BRITISH first and Scottish second so of course it matters if English people post their opinion on this Bill. Also the licensing regime wants to introduce visitor permits for people from England, Wales or Northern Ireland visiting Scotland with airguns, therefore they have just as much right to comment on this Bill since it will impact them directly.

Last and not least, me being a libertarian I am actually against all gun licensing I believe that airgun and gun control is not about airguns or real guns, ITS ABOUT CONTROL!

That is all I have to say, thank you very much for reading this!
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

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*1. Please supply your name and contact details:

Name: 
D Garvin

Organisation:

Address 1:

Address 2:

City/Town:

Postcode:

Country:

Email address (if no email leave blank):

Phone Number:
* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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* 5. Do you wish your email to be added to the Committee's distribution list for updates on progress of the Bill:

☐ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes
☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☒ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.
12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

It will not. Criminals will continue to misuse airguns and the law-abiding airgunner, who is not responsible for criminal misuse of airguns, will pay the price. Crime will not be reduced and public health will not be advanced.

This policy is a gross over-reaction to a public nuisance whose scale has declined very significantly in recent years without licensing. It will not be effective and represents a waste of public money and police time.

This policy has a political dimension to its origins, in that Mr MacAskill has publicly allied himself with anti-airgun campaigns and campaigners, and does not seek to represent the whole community, which includes sporting and casual airgunners, who are overwhelmingly opposed to licensing.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?

No comment.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
It will be a deterrent to the lawful use of airguns.

By prohibiting the casual use of airguns in private spaces, known as ‘plinking’, it will restrict a harmless activity that is already governed by laws to protect the public. It therefore represents an intolerable infringement of privacy.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

No comment.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

No comment.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

At very least it will reduce the pool of those who enjoy shooting airguns casually, from which competitive shooters are drawn.
19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

It will have a negative impact in so far as it will cost police time with no foreseeable gain in improved public order.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

It may have an impact on the numbers of visitors to Scotland.

It will encourage a sense of an over-wheening, intrusive government that acts on behalf of small but vocal sections of the population and rides roughshod over less vocal sections of the population.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?
Scottish Parliament: Local Government and Regeneration Committee: Call for evidence on the Air Weapons and Licensing (Scotland) Bill.

Submission Name: J. Hutchison
Submission No: 4.
Submission on: Air Weapons

To whom it may concern.

I am an airgun owner currently residing in England, and whilst this law will have little effect on me, I still wish to lend my support of my fellow shooters north of the border by making my opinion known.

I do not agree with this proposed law in the slightest. Air guns do not present a danger to the public in Scotland, despite a relatively high number of unregulated airguns in circulation (500,000 according to estimates), deaths and injuries from such weapons remain an absolute rarity. Clear proof in my opinion that the overwhelming majority of Scots in possession of these weapons are entirely trustworthy and responsible. As for the irresponsible minority, laws already exist to deal with those who misuse airguns (though they are often not properly enforced). I believe a rigorous campaign against the misuse of airguns and strict enforcement of existing laws will be far more effective than licensing.

Licensing will only affect and inconvenience the law abiding. It is utterly laughable to think that the criminally motivated will willingly turn in their airguns to the police or apply for a licence. Furthermore, what is to stop criminals from simply buying airguns in England or Wales and taking them back to Scotland? Virtually nothing, considering there is no border control.

I am also curious to know how the government will enforce this legislation and cover the costs. 500,000 airguns (and that number could well be even higher) in circulation, nobody knows where they are or who has them. Ensuring that every single one goes on a licence or is turned in for destruction will be a logistical nightmare for an already overstretch police force and legal system.

In conclusion, at best I see this law as little more than political posturing and vote buying. At worst, yet another sinister attack on individual liberty and an attempt to further disarm the public and create a total state monopoly on bearing arms. A disturbing prospect to one such as myself who has studied political history extensively and knows what can happen when a state has such disproportionate power over a populace, but that's another subject entirely. I sincerely hope the Scottish government sees sense and shelves this ill thought out law, but I won't hold my breath. King Salmond seems to have made up his mind on this one. So much for democracy.

J. Hutchison.
Scottish Parliament: Local Government and Regeneration Committee: Call for evidence on the Air Weapons and Licensing (Scotland) Bill.

Submission Name: J. Hutchison
Submission No: 4.
Submission on: Air Weapons
To whom this may concern,

Firstly let me thank you in advance for taking the time to read this email. I have just read the questions put to the SNP government, Kenny McAskill in relation to this draconian bill currently being put to parliament. Mr McAskill put this to public consultation and I believe somewhere in the region of 87% rejected these plans to licence Air Weapons, yet this man ignored the public's wishes, the same public that voted him in and no doubt will vote SNP out at the next election.

The questions that have been put to parliament are valid. I have no doubt that gun crime has been falling year on year, I have no doubt that should anyone commit crime then the law as it currently stands is sufficient to punish wrong doers. I question the motives of Mr McAskill as does other voters, of course the tragedy of young Andrew Morton in Easterhouse in Glasgow was a parent's worst nightmare, Mr McAskill keeps banging on about this incident, but fails to expand on the full background in relation to Andrews parents and indeed the shooter himself, who was as you know dealt with, a licencing system in my opinion would not have prevented this tragedy.

The same applies to the unlawful shooting of domestic pets and wildlife, a licencing system will not stop this or add anymore weight to the law. In my opinion it is a vote gathering issue by Mr McAskill But I digress. Those that act irresponsibly are dealt with, bringing in a licencing system will not detect or bring anymore wrong doers to justice than is currently achieved. It is the same as the old dog licencing days, those that bought licences did and those that didn't, didn't. You could argue that having these new laws will restrict ammunition sales, but oh, no, they can nip over the border into England and purchase airgun ammunition. On the subject of England, I also find it incredible that if this bill goes through our English counterparts can come north with their shotgun or section one firearm quite easily, but would have to apply for a visitor's permit for a sub 12 foot pound air rifle.

I myself am Ex Military having served Queen and Country for some 14 years. I hold my SGC and FAC. I am a qualified Range Officer through the NRA able to run Smallbore, Fullbore and Gallery Ranges respectively. I Deer Stalk holding Deer Management Qualification One. I carry out vermin control in the control of all relevant pest species, I use a sub 12 foot pound air rifle for these purposes. I am also the Secretary of a Small bore Rifle club approved by the Scottish Government, I liaise with Police Scotland in relation to new club members and run background checks accordingly. On the subject of the question of approved air weapon clubs in Scotland. There are NONE.

So in summary I am a law abiding citizen who will be further penalised and licensed unnecessarily to try and eradicate air weapon crime, which clearly will unfortunately never be eradicated. The law breakers will continue to do so. And THERE ARE sufficient laws currently in place to deal with these people. Licencing air weapons will put a further strain on what is currently a system that is over worked and ready to burst and will put undue pressure on the system.
I also believe in conservation and I am a fully paid up member of BASC, I don't go around blasting everything I come across, indeed I was trimming some trees today and uncovered a wood pigeon nest, the hen bird was brooding some young, I left her undisturbed and will finish the trim once the young have fledged, but again I digress somewhat. Introducing this bill will also have a major impact on the Scottish economy as air gun shooters, whether it be back garden plinkers, vermin control or target shooting contribute millions in revenue. On the subject of back garden plinking, within this bill Mr McAskill intends to ban back garden plinking. How much of any firearms incidents have involved rear garden plinking, I suggest very few. Back garden plinking is the entry point to most air rifle shooting, it's where I learned, and it's where I learned my children in a responsible manner. I have a pellet catcher and a good backstop. One could argue that not all take the same precautions as myself, but the statistics would suggest otherwise, as there are very few incidents in the rear garden.

I have written to various MSPs, MPs and have had the standard replies of wait and see or tough we are doing it no matter what you say even though you voted me in to represent you. I hope by the questions you are putting to parliament this bill can be seen for what it is, a sham, a waste of public money, a system that is against the wishes of the public, doomed to fail, and will not make any difference to the law breakers, who will continue to break the law, it will however further penalise the thousands of law abiding people like myself. I must once again thank you for taking the time to read this and hope that common sense will prevail.

Yours Gary Gibb... A proud Scottish Citizen.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #awlbill.

**1. Please supply your name and contact details:**

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<td>Name</td>
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Local Government and Regeneration Committee – Air Weapons and Licensing (Scotland) Bill

* 6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes
☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

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☐ Equalities, climate change and other Scottish Government objectives
☑ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

Please see above at (15). This age bracket are probably the ones who will be most adversely affected due to their lower incomes and lesser ability to travel to reach approved clubs to practise their sport.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

It is my belief that the proposed licensing system will adversely affect commercial/professional users due to increased operating costs. This will in turn knock-on to reduce profits or even, in the worst case, make the difference between making a living and making a loss.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

Traditionally, air rifle shooting is the main entry route for young competitive shooters to come into the sport. By imposing considerable costs on young shooters (travel, secure storage, license costs) it may prevent some people from competing at all.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

I do not think this is equitable. It would be more equitable to refund part of the fee, allowing for retention of sufficient funds to cover the cost of paperwork, background checks and inspections.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Katherine Griffiths
Organisation: 
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 7
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes
☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal
☐ Professional
☐ Commercial

5. Do you wish your email to be added to the Committee's distribution list for updates on progress of the Bill:

☐ Yes
☐ No
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☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
Name/Organisation: Katherine Griffiths

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.
12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

None at all as criminals will ignore the law. Crime committed using airguns in falling anyway so the Bill will have effect what so ever on crime.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

No there isn’t as all airgun clubs will have to be approved by the Scottish Government.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

It will almost kill the sport which is an Olympic Sport as plinking in the back garden will be outlawed and that is how most people get into air gunning.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

Please see answer 15

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

It will mean the end of those who use airguns for pest control doing so for free. They will start charging the landowners which will increase the farmers costs and put up food prices

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

It will mean less competitions and less people travelling to Scotland to compete in the matches which will mean a loss of revenue for Scotland. I for one will not even visit Scotland if this bill is given Royal Assent

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No it is not as it is not even equitable to have a licencing system for air guns
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

Negative

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

Reduction of visitor numbers to Scotland, loss of revenue and jobs. Shooting brings in £2 Billion to the UK economy. If Scotland brings in this Bill Scotlands part of this money will fall.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

The Bill is badly thought out and written and is based on one incident that committed using an airgun that had been illegally modified. 87% of those who responded to the original consultation didn’t want the Bill and yet it was pursued. Crime committed using airguns is already legislated for in the Firearms Act 1968 and its various Amendments and the Violent Crime Reduction Act 2006.
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

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

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

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

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?


29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?


30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?


Page 11 of 22
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?


32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?


33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?


34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?
38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?


39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?


6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

48. Are there additional costs or resource implications on theatres or licensing authorities?

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
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3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes
☒ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ No

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☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland's climate change commitments? Please explain.

   Relating to the airgun licencing components of the bill;
   
   There will certainly be an impact in that journeys made by Firearms Enquiries Officers to 328,000 individuals will use carbon releasing fuel.
   
   Individuals who are required to surrender their legal property will need to travel to approved locations to hand it in.
   
   Safe disposal of metal, including lead needs to be considered.
   
   Plastic components will require careful disposal
   
   Will wooden components be recycled?

9. Do you consider that the Bill has any implications for meeting Scotland's equality and/or human rights commitments? Please explain.

   The airgun licensing aspect of the bill will have a negative impact. You are restricting individual’s rights to use their own property within the bounds of their own land in possible breach of ECHR Articles 1, 8, 14 & 17 and UDHR Articles 2, 12, 17, 24 & 27.
   
   If you do not provide adequate compensation to those who have no criminal record that choose to hand in their airguns or are forced to hand them in I believe that the government is committing theft
   
   It is appalling that the Justice Secretary has so blatantly ignored the results of the Public Consultation where 87% of respondents were opposed to airgun licensing.

10. Do you consider that the Bill has any implications for preventative
spending and/or public services reform? Please explain.

I estimated that airgun licensing will cost in the region of £75,600,000. If you do not recoup the full cost of the licensing scheme and funds are required from the public purse there will be less money available for more worthy causes.

11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

Possible breach of ECHR Articles 1, 8, 14 & 17
Trade with European airgun manufacturers will be impacted
International airgun competition will be impacted

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

NO
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

Simple - It will not

There will be no reduction in airgun crime directly attributed to a licensing scheme. Existing legislation if properly implemented provides adequate controls against the misuse of low powered airguns. I believe that there will be an initial increase in airgun related crime. Not necessarily violent crime but inadvertent crime, e.g. being in possession of an airgun whilst not knowing that a certificate is required.

Money used to fund the scheme could be better used to advance public health, say by using it for hospitals, safer roads, driving education (bad driving kills far more than guns do), youth education etc.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

No there is not.

I estimate that there are in the region of 678,860 low powered airguns in Scotland. These are owned by around 378,073 people. I obtained these figures using the airgun ownership figures for England & Wales which gives 7.24% of the E&W population owning airguns (7,000,000 airguns owned by 4,000,000 people - Gun Trade Association 2010). 7.24% of the Scottish population based on 2010 numbers is 378,073 (ONS 2010)

A number of people use low powered airguns safely and responsibly in the gardens and on other land they have authority to do so. If “plinking” is to become “illegal” it is unlikely that there would be enough space in existing airgun clubs to cater for those who now have nowhere to shoot. Despite the government’s statement that it would encourage shooting at “approved” clubs, I doubt very much that the Scottish government would be willing to fund the setup of new shooting clubs given their well-known anti-shooting stance.

Even if 50% dispose of their property that still leaves a significant number of people looking for clubs that simply don’t exist.
15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

It will devastate the sport - which is the intention of the Scottish government.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

It will prevent new people entering the sport - a Scottish government intention.

It will make low powered airguns “special” and more attractive to young people who are intent on misbehaving and causing trouble. “Look I have an illegal airgun”.

I have found that young people involved in sports shooting are responsible and safe individuals. They tend to be more disciplined, responsive to instruction, dedicated and patient. All positive traits.

The Commonwealth Charter

“Importance of Young People in the Commonwealth
We recognise the positive and active role and contributions of young people in promoting development, peace, democracy and in protecting and promoting other Commonwealth values, such as tolerance and understanding, including respect for other cultures. The future success of the Commonwealth rests with the continued commitment and contributions of young people in promoting and sustaining the Commonwealth and its values and principles, and we commit to investing in and promoting their development, particularly through the creation of opportunities for youth employment and entrepreneurship”

Yet government constantly removes activities and opportunities from young people.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing
centre, entertainment sector etc.)?

**Pest Control**

Those who charge for pest control will probably put up their prices. Potential customers may decide not to employ pest controllers and may choose other method, perhaps illegal, to remove pests. Or perhaps they may not bother removing the pest at all. Perhaps they may acquire an "illegal" airgun themselves?

The cost of food may go up as pests are not being controlled to the same extent.

Perhaps less environmental friendly means of pest control will be used.

Rabbits and Rats are often controlled by shooting by airgun

“The Economic Cost of Invasive Non-Native Species on Great Britain” November 2010, sponsored by the Scottish Government (and others) states;

In Scotland Rat control costs £2,867,450 per year

Estimated annual cost to agriculture in Scotland
Rabbit £58,563,000
Rats £6,549,000

Estimated annual Yield Loss to Rabbits in Scotland £56,965,000

**Tourism**

There will be no airgun related tourism. Why come to Scotland if you have to get a Visitor permit, I’m sure they would rather spend their money elsewhere. Airgun shooting competitions will stop

**Fairs**

There is very little, if any, shooting at public fairs and events. The “anti-shooting” movement and anti-gun biased media have made a perfectly safe and enjoyable activity almost non-existent.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?
Those who compete at the highest level will probably continue to do so, however casual recreational competition will cease. Eventually high level competitive shooting in Scotland will cease as there will be no new talent entering the sport. Perhaps those who compete at international level will choose to represent other countries. They may be forced to train elsewhere, like GB pistol shooters have to.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

A non-refundable application would be disgraceful. People are being forced in to applying for a certificate for an inanimate item they have owned and used safely and responsibly for many years. If they don’t have land permission or are not a member of a club they will not be granted a certificate, therefore their application fee should be refunded in full.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

NEGATIVE

Scotland is already the laughing stock of the UK, Europe and further afield. People in the shooting community throughout the globe cannot believe the stupidity of such a scheme.

The Police do not have the resources to manage airgun licensing, they are struggling with the existing Firearms/Shotgun Licensing at the moment. There are still eight different licensing departments, with eight different interpretations of Firearms Legislation, within the single Police Force. Home Office guidance is NOT being followed and the personal opinions of Firearms Enquiries Officers is determining who does/doesn’t get a certificate and what firearms may/may not be permitted on the certificate. Firearms Legislation in general is completely mismanaged and a disgrace.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?
I don't believe that the Scottish government have any unintended consequences. They are anti-shooting and want to remove all "guns" of all types from civilian ownership and use.

Airgun licensing is the only area of Firearms Legislation that has been devolved and is therefore the first area the Scottish government can attack. The Scottish government is using this as a test run in order to get the systems in place (at massive expense) in case additional Firearms Legislation is devolved or should Scotland become independent (Heaven Help Us!). The Scottish government is intent on attacking the interests of law abiding shooting enthusiasts who are generally among the most law abiding people in the country.

However, to answer the question in the context that was meant; There may be Common Law implications; Under Common Law no crime is committed unless others are harmed or threatened, therefore using an airgun on your own property or having it on your possession and no person being harmed or threatened and no damage to property is NOT a Common Law crime.

You may find that enterprising people may go to England to purchase cheap airguns, hand them in and claim compensation from the Scottish government. I have yet to see figures on the estimated compensation bill, I expect it will run to millions.

How will the borders be policed to stop illegal importation of airguns?

**Breach of the IOC Olympic Charter**

"The practise of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play."

"Any form of discrimination with regard to a country or a person on grounds of race, religion, politics, gender or otherwise is incompatible with belonging to the Olympic Movement"

"Belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC"

**NOTE:** If Scotland remains within the United Kingdom, then Great Britain has two options;

1. No longer be a member of the Olympic movement as Scottish airgun shooters will be unfairly discriminated against in that they will face higher costs and restriction to where they can practise, whereas their English & Welsh counterparts do not have these restrictions. (Northern Ireland airgun shooters are also unfairly discriminated against).

Or....

2. Make the whole of Great Britain a level playing field by implementing an airgun
licensing for England & Wales (and amending the requirements in Northern Ireland). The estimated cost for an airgun licensing scheme in England & Wales is £800,000,000

Possible breach of ECHR, UDHR, Common Law, Claim of Right Act 1689 and Commonwealth Charter.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

A complete waste of tax payers (my) money.

All Police officers I have spoken with about the issue claim it will do nothing to reduce airgun crime.
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

24. Should a licensing system seek to regulate individual behaviour or communities of space (e.g. ‘city space’ etc.)?

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

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

You may respond to all questions or only those you have a specific interest in.
(Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill's provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?
38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers’ licensing regime to the extent that metal theft and related criminal activity is reduced?

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'? 
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

48. Are there additional costs or resource implications on theatres or licensing authorities?

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Dear Mr. Stewart,

I am a keen airgunner, 57 years old and shooting from the age of 10. I own over 100 airguns, many of sentimental value. I tend to shoot targets informally as do my family and friends. I used to shoot full bore pistol until they were banned. In my opinion, the proposed Bill will do nothing to prevent airgun misuse as those intent on misusing airguns will ignore any legislation, and my view is the laws already in place are robust enough. The extra expense and red tape in licencing will deter many from a sport that is an integral part of Scotland's rural life, and to suggest airgunners join a club is unrealistic due to lack of locations and the fact that most airgunners shoot at short notice and enjoy the solitude. I would urge the Scottish Government to reconsider implementing this Bill.

Yours faithfully,

Craig Short
Dear Mr. Cullum,

I am a keen air rifle user living in East Lothian, I work in country sports tourism and I am writing to you in regards to the proposed licensing of air rifles in Scotland. I obtained your email address from the Scottish Countryside Alliance so I hope you are the right person to contact (if not would it be possible to either forward this to the correct person or perhaps give me the email address of the relevant person/department).

I should start by saying that as far as I was aware the law to introduce licensing for air rifles had already been approved and was only awaiting implementation, if I am wrong on this matter I would be very happy indeed, sadly however I don't think I am.

I have already contacted my local MSP Ian Gray on this issue to which he politely replied. The reply I relieved was as I expected i.e. that the Scottish Labour party were in agreement with the SNP in favour of licensing air rifles with the strong proviso that those who have a legitimate use for an air rifle not be blocked from obtaining a license. Although this response was considered and polite it left no doubt that my local MSP would not be fighting against the imposition of licenses for air rifles.

With the response I received from my local MSP in mind I was very much heartened to read (via the BBC) that the Scottish government were now seeking opinions on the licensing of air rifles.

Ignorating the opinions of the Scottish people

As a starting point I must say I'm slightly bewildered as to why the government are once again seeking opinions on this matter, a consultation has already been held with the result being an overwhelming rejection of the proposal (87%). Shockingly the result of the consultation was totally ignored showing very clearly the nanny state "big brother knows best" attitude of the current Scottish government. What on earth is the point of holding a consultation only to ignore the results if they were not the results the government wanted to hear, it's a complete waste of tax payers money and shows the complete disregard the government shows for the opinion of the people of Scotland when those opinions don't match their own. The respondents of the consultation are those who are interested in air rifles and their use, those who actively use them for legitimate reasons such as sport, pest control or as collectors, these are the people who will be most affected by the necessity to license air rifles yet their voices were ignored.

Criminalise law abiding citizens

What this law will do is potentially criminalize a huge amount of law abiding citizens while doing absolutely nothing to stop people committing crimes with air weapons. If a person owns an air rifle and plans to use it for criminal purposes then the idea that they will come forward to obtain a license for that weapon is totally laughable. The case in 2005 of a toddler being murder by someone with an air rifle is truly shocking but this represents an infinitesimally miniscule minority of air owners; law abiding citizens should not be punished for the offenses of the criminal few (the murder was also a known drug addict). In response to this argument I'm sure figures will be wheeled out
concerning the amount of injuries cause by air rifles each year, these however will still represent a tiny proportion in relation to the estimate 1/2 million air weapons in Scotland.

**Air rifles as tools**

Air rifles are a tool as much as any other weapon, they are only as dangerous as the person that wields them, the overwhelming majority of air rifle users cause zero harm and will be financially punished by having to pay to license their weapons, those who do intend to cause harm will not be punished in any way, they will hurt innocent people and will probably do so regardless of whether or not they are in possession of an air weapon. Punish any offense that intentionally causes harm to the maximum extent of the law, do not punish the weapon. Air rifles are of course capable of inflicting injuries and yet so are knives.

Responsible adults who use knives for legitimate purposes do not need a license yet people who use air rifles for equally legitimate purposes will need a license. The Scottish Government should treat their citizens like responsible human beings and trust that they will act as such other wise (and I'm again reducing the argument to the extreme), what is next, compulsory knife licenses!? So again my argument can be reduced to "punish the crime not the weapon".

**Disproportionate consequences**

I, like many other people in Scotland, have owned air rifles for many years and have used them for sporting purposes and vermin control without causing an iota of harm or concern to anyone (I live in a very rural setting). The idea that in a few months/years (depending on how long it will take to enact the law) that I will have to apply for a license (with no grantee of it being granted) for something that I have legally owned for 10 + years is utterly ridiculous. It will be at my expense that any license will be issued, if I fail to apply, or fail to pay for or fail to be granted a license, my air weapons will have to be handed in to the police, not because I have done something wrong, but because a law has been enacted, a law that has been roundly rejected by the very people whose opinion's the Scottish government asked for.

The consequences for disobeying the new law are monstrously disproportionate, to put the unlicensed owner ship of an air rifle (which are currently limited to 12 foot pounds of pressure any way) in the same category as the unlicensed ownership of a shotgun or rifle is ludicrous. To suggest jail time could be imposed on someone for owning an air rifle (without causing harm to any one) without a license in madness of the highest order. The proposed law could see someone who was unaware there was an air rifle in the house (perhaps left in the attic by a parent etc.) go to jail, one could argue that this is reducing the argument to the absurd but the fact that this very scenario was mentioned in the original consultation shows the pen-pushing pedantry to which the Scottish Government can stoop.
A Waste of police time and resources

As Ian Gray MSP was so keen to point out, those with a legitimate reason to hold an air rifle will not be stopped from obtaining a license. Who is it that will decide what a legitimate reason for holding an air rifle will be? The answer is of course the police. The police force of Scotland have plenty to deal with as it is with the licensing of shotguns and other firearms, introducing a law that would require 1/2 million air rifles to also be licensed would be an unwarranted and un-sustainable use of their time and resources. It is my also my understanding that the police force are considering increasing the cost of firearms certificates in general, what further evidence does one need to show that licensing is expensive and cumbersome?

Plinking

Finally I noticed that the government were also taking aim at (excuse the pun) "plinking", the practice of target practice in people's back gardens. Now I can see why in a health and safety obsessed nanny state this might be an issue but again I go back to my previous point of treating people like reasonable human beings. Parents have been introducing their children to guns and gun safety for years by setting up targets in their back garden. Normal, sensible members of society will go to every length to ensure this is done in a safe and considerate manner, installing a solid back stop and pellet catcher, informing neighbours, making sure pellets don't stray across the boundaries of their property etc. As far as I'm aware there has been no recent upsurge in the amount of complaints about "plinking", no spate of tragic accidents cause by stray pellets and therefore there should be no need to legislate against it.

A large proportion of the gun owning population (be it air rifles, shotguns, 22’s etc.) learnt the basics of gun safety by using air rifles in their gardens under the watchful eye of their parents and therefore the good behaviour of Scotland's air rifle owners in, in-part, due to "plinking". To say that "plinking" is a dangerous and unnecessary use of an air rifle and therefore deny a large number of license applications under the new law is to deny children (under supervision) a safe, fun and cheap introduction to the correct use of guns.

Thank you for taking the time to read this, I hope it might be of use in the debate on the licensing of air rifles.

Kind Regards

Alex Pearson

07769119105

pearsonalexandre@gmail.com
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Dave Ewing
Organisation: Firearms UK
Address 1: 
Address 2:
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes
☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal
☐ Professional
☐ Commercial

5. Do you wish your email to be added to the Committee's distribution list for updates on progress of the Bill:

☐ Yes
☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:  Firearms UK

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

Airgun Licencing will have several negative effects for the Scottish environment.

As recreational shooting not be classed as good reason many people will have to join clubs or obtain approved land to shoot on. These people will then have to travel to these areas. I have been quoted by some people that a journey of up to 60 miles is required to get to their nearest club.

This increased road use will have a negative impact on the environment due to increased fuel usage and thus emissions. If the figures of E&W airgun owners are extrapolated for Scotland and an average of 10 miles total travel distance to clubs and back once a week is used this could be 65 Million miles travelled in a year because people will no longer be allowed to carry out recreational shooting on their own property.

(125,000 people x 10 miles/week x 52 weeks)

There may also be issues with costs and environmental impacts of disposing of a large percentage of the estimated 500,000 airguns in Scotland which law abiding people will have confiscated from them.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.
It will also have a greater negative effect on those with lower incomes who cannot afford the additional expenses of club membership/traveling etc. Changing a sport that was widely open to everyone to a sport for those with greater disposable incomes.

I have been lead to believe that this bill and other acts of Scottish and British parliament may contravene several acts of constitutional law. Including the Claim of Right, Bill of Rights and the ECHR.

Specifically relating to the ECHR this law violates article 1, Article 5 Article 8, Article 14

I also believe that although this is not technically a ban the Scottish Government should be require to fairly compensate air gun owners who have been forced to sell or destroy their airguns by this law. All airguns in Scotland will suddenly depreciate very quickly due to a flooding of the market with unwanted guns. Many people will lose a lot of money so it is only fair and reasonable that the Scottish Government compensates people up to a fair market value if this proposal goes ahead.

10. Do you consider that the Bill has any implications for preventative spending and/ or public services reform? Please explain.

We have estimated potential costs up to £100,000,000 but with a likely cost of around £75,000,000 in processing application fees alone. This does not take into account additional costs faced by public services.

If compensation is paid out this will also increase costs to the public purse.

A huge amount of money and public services time will be wasted that could be better directed to more worthy and effective efforts.

11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.
Please see response to question 9

“I have been led to believe that this bill and other acts of Scottish and British parliament may contravene several acts of constitutional law. Including the Claim of Right, Bill of Rights and the ECHR.

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12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

Since the Scottish Governments objectives appear to be the destruction of Firearms ownership and shooting sports in Scotland it would seem that this bill is well on the way to completing this.

However if the Scottish Governments objectives are promoting individual freedom, equality, sports and supporting people on low incomes this bill should be scrapped.

Shooting is an inclusive sport and firearms owners are amongst the most law abiding sections of society yet are being used as the scape goat by a Government keen to win cheap political points.

No other section of society would face the discrimination firearms enthusiasts face because of a very small minority of irresponsible people.
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

In my opinion it will have a negligible effect on crime prevention, public safety and possibly have a negative effect on public safety.

Airgun crime has fallen 76% since 2006. A massive drop. This legislation is being fuelled by exploiting the understandable emotions felt after the shooting of young Andrew Morton. However it should be noted that this was before the introduction of the Violent Crimes Reduction Act. The introduction of this act which toughened up regulations on air guns has corresponded with this huge drop. Alongside continued education and enforcement of current laws we should continue to see drops without the need for costly, discriminatory and disproportionate legislation.

The ratio of airgun offences to the number of airguns is less than 0.04% compared to motor vehicles which is approximately 12.4%. In 2012 there were more cases of injuries caused by dog bites admitted to one Scottish hospital than airgun offences for the whole of Scotland. Again the effect of airguns on public health is negligible and there are bigger problems at hand.

Public health could also be affected by a rise in pest species as airguns are a vital tool in pest control and land management. This service is often done for free by airgun owners who faced with rising costs or unable to meet the ridiculous requirements may choose to give up. This could result in increases in pest species spreading disease and damaging crops.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?
No there is not. There are an estimated 500,000 airguns in Scotland and if extrapolating this number using figures from England and Wales it would suggest that these guns are owned by 125,000 individuals.

Many people safely shoot recreationally on their own property; it is a popular pass time as there is no need for club membership or having access to land. Clubs simply could not cope with a huge influx of airgun members. I have also spoken with many people who shoot airguns and some face a 60 mile round trip to their nearest gun club.

This again increases costs to the individual and pollutes the environment due to increased road travel.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

As mentioned above many people who use airguns do so on their own property. It is carried out by tens of thousands of people every year safely and without incident. There are already laws placing responsibilities on the shooter to ensure best practice and provisions to ensure punishment if acting irresponsibly.

Many people will be forced out of their sports due to increased costs, or ridiculously high standards. They will lose out financially as they will also have to sell their airguns at a depreciated value due to the market being flooded by airguns.

Those that remain in the sport will also face the increased costs in travelling, fees and time.

In short every law abiding air gun user will be facing criminalisation overnight, the destruction of their sports/hobbies and a violation of their private property rights because of a very small minority of irresponsible people.

It must be repeated that the vast majority of airgun owners are responsible and law abiding and it would be unacceptable if any other group were punished in this disproportionate manner because of the reckless few.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

It will affect the ease of which young people can be introduced to shooting sports. Therefore it will have a negative effect on the number of people who take up shooting as a hobby or for sport. It will reduce the number of future sporting champions. It will affect the number of young people taking part in active outdoor pursuits.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

Those who use airguns for commercial or business reasons will have to face the additional costs but will no doubt be able to get a certificate.

However the biggest effect will be on those who carry out pest control for free. This service is carried out often free for charge. It is often used on farmland to protect crop damage, golf courses to protect course damage and in urban areas to control pigeon populations as their faeces is harmful to human health.

It cannot be underestimated how vital these services are to the Scottish economy if people have to pay money to acquire a certificate through club membership or obtaining the rights to land they may start to charge for their services or stop carrying them out.

Any increases in costs will be passed on to the Scottish consumer.

It is important to note that Airguns are often used for the purposes of Rabbit control. In 2012 rabbits cost £56,000,000 of crop damage in Scotland. This would likely increase airgun users are forced to give up.

In addition it would appear than some forms of soft air guns will be affected by this act thus potentially damaging the popular sport of skirmishing in Scotland.

I have spoken with many people who reside down south and come up for shooting holidays with friends. They have stated that they will no longer visit Scotland if they have to acquire certificates or visitors permits for their airguns.
18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

Competitive sportsmen and women will no doubt be able to continue with their sports with the added expense however the system will affect the number of people introduced to the sport and have a negative overall impact as the sport may begin to stagnate.

It is my understanding that the majority of airgun owners shoot for recreation on their own land not for competition and thus would not be eligible for a certificate. Thus being deprived of their property and pastime.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No if a certificate is refused a full refund should be given as is the case with a Shotgun or Firearms Certificate. However I believe that since certificates offer no value to the applicant/holder and are essentially forced upon us due to public safety concerns it should be a free as it is a public service. The majority of Firearms/airgun owners are taxpayers so are essentially paying for a certificate twice.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

This regime will have a huge negative effect on Police Scotland and its Firearms Licence Departments.

Countless man hours will be wasted policing this regime and affect the standard of service in dealing with Firearms and Shotgun Certificates. I believe that this may actually hinder public safety not improve it.

It is my opinion that the Scottish Governments estimates on costs are vastly underestimated. Using figures obtained from the ACPO and the estimated number of airgun owners in Scotland we believe costs could be anywhere from £25-100,000,000 in processing applications alone. This
21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

Although I do not believe it to be unintended the consequences will be a reduction in the number of law abiding people who are introduced and take part in shooting sports.

Many people are first introduced to shooting through airguns as there is no requirement for a certificate and it can be done in ones back garden.

Faced with rising costs and red tape many people may decide to give up their sports or never take part.

Many sporting champions first learned to shoot in this manner especially those representing Scotland at the Commonwealth games and it will affect the likelihood of future undiscovered talent being introduced to the sports and bringing glory to Scotland.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

The bill is disproportionate and will affect many more law abiding citizens than it does criminals.

As you are already aware a public consultation was carried out in which 87% of the responses were against the proposal. It has been argued that since there were approximately 1,100 responses this cannot be given as an indication of the General public’s view.

If the result were in favour of the proposal I doubt this argument would have been used by the Scottish Government. However there have been no major calls from the general public to ban/licence airguns. It is likely that most Scotsmen and women who are neither in pro gun or anti-gun camps do not have any great interest in the matter and many of those who will be
in favour of a licence will have been swayed by emotional rhetoric and not facts.

It is simply facts that should be looked at.

Those in favour of a licence rely solely on exploiting a tragic but very rare event, there is little evidence to back up their claims and thus they manipulate people’s emotions to gain support for their cause.

It is the duty of good Government to ensure that emotive knee jerk reactions are not allowed to influence law making. We have seen knee jerk reactions in the past and whilst it makes for good publicity for political parties it does very little for public safety or crime prevention.

This proposal has been criticized by various organisations including the Association of Scottish Police Superintendents on grounds of costs and manageability and the Regulatory Review Group of Scotland who have stated that proper impact assessments have not been carried out. This is in addition to the various shooting organisations that should be considered as experts in this field.

Messages of support from all over the world have been sent to the No to Airgun Licencing In Scotland campaign with many of the same sentiments that were heard in the original consultation. Indeed many are watching the Scottish Government/Parliament closely and are disturbed at the heavy handed draconian nature of this law.

Airgun crime is down 76% since 2006. This coincides with the introduction of the Violent Crime Reduction Act. This was not in place at the time of young Andrew Morton’s death.

All Firearms crime is at a 30 year low in Scotland. The mention of over half of offences involving airguns is just wordplay to justify this risible legislation.

There are already over 30 laws that directly and indirectly punish airgun misuse and should be enforced properly. If 30 laws do not deter people with criminal intent why will 31?
Additional costs may also be faced by members of the public indirectly as airguns are a vital tool in carrying out pest control on farmland, golf courses and inner city areas. These services are often carried out for free but rising costs may see people charge which will be passed on to consumers.

This proposal appears to be nothing more than populist politics that will have no effect of crime and is simply a way to achieve a backdoor ban on shooting sports.

**Further Correspondence Received 20/09/2014**

Dear Sir/Madam,

I have already provided written evidence regarding this bill however upon reading the Scottish Governments replies to the Committees excellent and very valid questions I feel I must highlight what I consider to be very serious issues with the Governments attitude and further emphasise why the committee should do all it can to stop this legislation.

In their response to Question 1, the Scottish Government accepts that airgun crime has fallen by a further 13%. Given the already miniscule number of airgun offences this is an excellent result achieved without licencing. Whilst the Government response uses wordplay by stating that airgun offences are 47% of firearms offences to make it sound serious that fact remains that out of the estimated 500,000 airguns in Scotland less than 0.04% are involved in an offence. Airgun crime is quite simply almost non-existent.

Regarding Question 2, it is unacceptable that Government or authority is able to define good reason as this can come down to opinion and is often left open to abuse. The Section 2 system for Shotgun certificates works very well as it provides a better balance between the rights of individuals to participate in sports but still allows the necessary checks to be performed by the police.

Scotland has a tradition of respecting individual liberty and excessive legislation requiring “good reason” is nothing to do with public safety and simply a way to exercise more
power over individuals who have committed no crime.

Regarding Question 5, Again the Government accepts that those who will knowingly misuse airguns will not apply for a licence. What then is the point of this process? The police already have the ability to confiscate airguns if they believe an offence has been or is about to be committed.

The Government also mentions people who will not apply for a licence because they do not meet the ridiculously high requirements. These people may not have any criminal intent to do harm or loss to another but are being criminalised by the Government because of this ridiculous law.

This law does nothing but create a victimless offence, hinder law abiding people, waste police time and leave a huge cost burden to the tax payer.

There are countless laws pertaining both directly and indirectly to airguns that allow the police to keep the peace and the justice system to punish misuse.

This law is another attack on law abiding firearms owners in an attempt to reduce their numbers and to achieve a “backdoor ban”. Shooting is worth millions to the Scottish Economy and firearms enthusiasts deserve to be treated better than this.

Kindest Regards,
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Duncan Rogers
Organisation: 
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 12
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☑ Personal

☐ Professional

☐ Commercial

* 5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
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☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation: Duncan Rogers,

1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?
I strongly feel that the creation of an airgun licensing system will have no beneficial effects on public safety, order or the reduction of crime or indeed on the advancement of any public health policy. Most of the airguns that this proposed bill is targeting are used (in the majority of cases) for target shooting and/or pest control. A small minority of people carry out illegal activities with airguns. These are the very (type) of person who will ignore entirely any legislation introduced and will continue to misuse these tools. These tools are not used, in the vast majority of cases, to create a public nuisance or a health hazard; and yet, to hear the Scottish parliament's Justice Minister speak on the subject, we are led to believe that they are an ever present scourge within our nation. This is patently NOT the case. Indeed, by the Scottish governments own figures publicly available, airgun crime is at an all time low.

A public consultation recently carried out by the Scottish governments agents, returned a resounding 87% NO vote on the question as to whether there should be any implementation of licensing for airguns. Despite this figure, Mr Kenny MacAskill initially responded by stating that despite this return figure the Scottish Government would be proceeding with the proposed legislation regardless.

Later, Mr MacAskill amended this statement to the effect that the original public consultation did not relate to the question of whether or not to licence airguns, but instead stated that it related to whether or not it would affect other parts of life in Scotland. This (last) is the most disgraceful piece of cherry picking of facts I have had the misfortune to listen to in many a year from a politician.

Our Justice Minister is clearly on a mission, and even at the expense of completely disregarding a public consultation; and completely disregarding his chief police officers, and completely ignoring his own governments crime figures, he is bent on this course and nothing will sway him.

I would suggest that this behaviour is not the behaviour of a democratically elected justice minister, but is rather the behaviour of a despot or an autocrat.

We have laws & rules aplenty to deal with miscreants who misuse airguns (or any guns)

Why not apply these laws more assiduously, instead of potentially at best, marginalising, and at worst criminalising a sizeable population of law abiding citizens in Scotland?

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?
There is certainly NOT enough capacity in existent clubs in Scotland to cater for (potentially) hundreds of thousands more users. I have personal knowledge of this as a former member (& New Member Secretary/range safety adviser) at Dunfermline Airgun Club. For decades, the club has held around twenty to twenty five members, and now? It is bursting at the seams with forty five members and only waiting space available. All of the clubs in Scotland are now in this position.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

It will be restrictive if introduced, the public perception that airguns 'are bad' has been pushed and further pushed by the Scottish Governments spin doctors, with Mr MacAskill at the helm. This perception WILL be fermented in future in order to further restrict the use of airguns for recreational use. Of this I have absolutely no doubt whatsoever. Eventually, the only places that can will be allowed for recreational use of airguns will be licensed clubs.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

It will put off the young from entering into a very enjoyable pastime. Their parents, who will be hoodwinked into believing the myth that airguns are bad, by our governments publicity system, will deny many the opportunity to partake of a thoroughly harmless and safe hobby. The sports participants will dwindle.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?
I personally carry out significant pest control activities on a number of permissions throughout central Scotland, Fife & Perth Kinross.
I own literally thousands of pounds worth of kit to enable me to do this safely and efficiently.
I personally remove thousands of prey species per year.
In addition to this service, I also monitor the permissions I shoot over and report concerns & issues to the landowners or their neighbours.
If newcomers are discouraged from this activity, who will, in future, control the depredations of rabbit, grey squirrel, rat and numerous other pest species that low powered airguns are the perfect tool for controlling?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

I used to participate in competitive shooting discipline, Field Target & Hunter Field Target. I spent many days and not a little money on this activity. Thousands of other shooters do the same. There are hundreds of thousands of airgun shooters in the UK.

Teams from all over the UK would visit each others nations, clubs and grounds to participate. How will visitors to Scotland bring airguns into Scotland if licensing becomes a reality?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No it most certainly would NOT be equitable to pay a non refundable fee in the event that a licence were not granted

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?
I suspect that implementation of licensing in Scotland for an unknown number of guns (estimated by the Scottish government's own figures to be anywhere to 100,000+ individual items) will be an organisational nightmare with no benefit.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

Criminalisation of a huge number of people, reduction in the pest control area and commensurate damage of structure, property, food and loss of revenue for farmers & food producers.

Also the loss of sales of shooting equipment (guns, sights, clothing, kit) will have a significant effect on many businesses throughout Scotland.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

I firmly believe this proposed Bill will do nothing but produce distress and hardship for a huge number of shooters & business owners in Scotland.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Andrew Cox
Organisation:
Address 1:
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City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☑ Professional

☐ Commercial

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☑ Yes

☐ No

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☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

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

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

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

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?
38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'?
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

48. Are there additional costs or resource implications on theatres or licensing authorities?

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

The term adult entertainment is more fitting although the dancing may be sexual to some people it is not everyone an example being groups on stag parties enjoy the entertainment but not in a sexual way.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

Yes, if this kind of entertainment is to be regulated it should be so 100% of the time to the same standard in every venue every time.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

It in effect allows an activity to be deemed acceptable in one city but banned in another although we all operate under the same laws of the country. It draws attention to the idea that dancers can work in Edinburgh but not in Glasgow when the dancing in Glasgow which is only topless is to be banned but full nude dancing is to be kept on and an authority on alcohol is the one to make this decision.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

It gives the local authority the power to close established businesses whose owners managers and staff have met if not exceeded every guideline, objective and code of conduct put to them.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

Having spent almost exactly half of my career in the licensing trade working in an adult entertainment venue I would like to take this chance to present to those who have little or no experience of these venues a truthful account of how the proposed ability for councils to limit or indeed to close this industry is affecting the people who work in it and give an insight into how the club / dancer relationship works while also explaining how terms such as ‘sex worker’ ‘sexual entertainment’ are inappropriate.

For the past few years I have lived and worked with the constant threat of having my job taken away from me. Unusually through not because of a failing business, technological change or being no longer needed. Instead it’s because in the opinion of a few people a totally legal and perfectly acceptable form of entertainment is to be demonised and taken away.

When I first met my partner I ran a nightclub and she was a part time dancer, now all of a sudden she’s to be a sex worker and I am employed to offer sexual entertainment. I find this hard to accept as nothing literally nothing has changed in our jobs. The club is the same, the hours are the same, the customers are the same and the dances given by the dancers are the same.

Unfortunately due to the shadow of unemployment hanging over us our living conditions also remain the same. Despite wanting to move to a house, get married have children etc. we remain living in a one bed flat able to commit to each other but unable to commit to anything financially binding.

I know sadly we are not alone in fearing the uncertainty this prolonged attack on our industry is causing. Many of the girls working in the club are in the same situation with their boyfriends and husbands.

The feelings of frustration felt are heightened by the pride in which the staff of the club have. The club is run very professionally we have no history of trouble or violence, no arrests or problems with the police. The club goes to great lengths to ensure the girls who choose to work in it are safe, happy and have the best facilities possible. In the same way as many jobs in which the work force is particularly skilled the club puts a great deal of effort into attracting the best dancers possible.

I would very much like to give evidence in person to the committee.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Siobhan Murphy

Organisation: 

Address 1: 

Address 2: 

City/Town: 

Postcode: 

Country: 

Email address (if no email leave blank): 

Phone Number: 

2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☑ Personal

☐ Professional

☐ Commercial

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☐ Air Weapons

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☑ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

I think the term sexual entertainment could be misleading to customers, as there is no form of sex available on the premises

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

I would not agree that lap dancing in any random venue would be appropriate. The clubs are licenced and have proper security and cctv in place therefore making it a safe environment for all staff and dancers.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

I cannot see any advantage of the existing number of clubs in Glasgow being zero. Lots of people out of work and no dancing bars for the clients to enjoy a night out. The dancers would be forced to travel to Edinburgh or Newcastle to work perhaps even further a field where the regulations of lap dancing are different from Glasgow.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

As far as I'm aware the licensing authorities licence alcohol and not pole or lap dancing.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

My name is Siobhan Murphy my stage name was [REDACTED] when I worked in [REDACTED] nightclub in Glasgow. I am twenty seven years old when I was dancing I worked in club for approximately two and a half years working mainly Saturday and the odd Sunday nights. I have a career as a hairdresser and work full time so the club offered me flexible shifts and a good way of saving money.

In the time I worked as a dancer I met lots of girls who were around my age I made friends with most of them and also met my boyfriend who is one of the managers in the club. It gave me a chance to make money to save as my wages from hairdressing are only just enough to live on and paying high rent on private lets and lots of bills is difficult so having extra money for dancing was helpful. There is a good social element to it also working along side friends and meeting new people.

The club had lots of staff and was a comfortable place to work there are lots of security and is a safe place to be. I did not mind the lap dancing as I was always in control I never felt under pressure and always made money for myself and for the club. Sometimes it could be quiet and if you did not earn enough to pay club fees they were always reasonable ensuring you never left the workplace worst off.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Alaisdair Mackenzie
Organisation: Highland Licensing Board
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

3. Please confirm whether you are content for your name to be published with your submission:

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☐ Yes
☒ No

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☒ Civic licensing – scrap metal dealers
☒ Civic licensing – theatre licensing
☒ Civic licensing – sexual entertainment venues
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

Highland Licensing Board agree that returning to a “fit and proper” test would allow greater scope to present information to Boards and give Boards the ability to consider a greater breadth of relevant information when determining an application for all licences. The “fit and proper test” is still used without problem in the non-liquor licensing regime in relation to licences issued under the Civic Government (Scotland) Act 1982, Houses in Multiple Occupation etc. Although allowing greater scope, tying it to the licensing objectives should mean that it cannot be used without relevance being established.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

If spent convictions are to be disclosed, it should be all spent convictions for relevant offences. There would be no logic in requiring disclosure of spent convictions only in respect of certain types of relevant offences and it would create confusion for applicants. The benefit of full disclosure would be to show whether there was any long-term pattern of recurring convictions for relevant offences.

It is assumed that the authors of the Bill are aware that in addition to repeal of section 129(4) of the 2005 Act, amendment to Schedule 1 to The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 will be required before spent convictions can lawfully be considered by Licensing Boards in proceedings before them.
34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

An opportunity has been missed to deal with a number of issues of concern to all involved in liquor licensing and which have been consistently made known to the Government before and since the 2005 Act came into force.

Consolidated Act

To find the law, one has to look in the 2005 Act which has been amended several times eg the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol etc (Scotland) Act 2010 and now the proposed new Act. In addition there are some 37 Statutory Instruments. It is difficult enough for solicitors to find out the law; it is even more so for “lay” persons and those involved on the trade side.

Transfers

Sections 33 and 34 can lead to difficulties in the buying, selling and leasing of licensed premises. This is particularly so with regard to the following areas:

1. Tenant doing a “runner”;
2. Company dissolution;

1. Most leases will include clauses to ensure that on termination the out-going tenant will be obligated to co-operate with a transfer to the new tenant or Landlord. This would usually happen under Section 33 and is fine when the lease termination is civilised and professional. However it is well known that in business it does not always work out that way. Landlords and tenants do disagree and two things can happen – The tenant disappears with the licence and cannot be contacted or traced, or the aggrieved tenant surrenders the licence to the licensing board.

In scenario 1, the landlord re-claims possession but they need to transfer the licence to themselves or a new tenant. They can’t transfer under Section 33, and none of the events in Section 34 have happened: the business carried on in the premises probably hasn’t technically transferred. The licence doesn’t cease to have effect so a new application can’t be made. This isn’t something theoretical, this happens fairly regularly and the Act provides no solution. The only way to get round it has been to work with the Board’s Clerk, who have to take a practical and pragmatic approach and allowed for transfers under Section 34 to be lodged. Now there may be technically no business transfer but to treat it as such is the only workable solution. This is clearly not acceptable and could lead the Clerk open to criticism or worse.

In scenario 2, if the licence is surrendered correctly, the Landlord is in a very difficult situation and has to lodge a new application. Clerks are under pressure to process the application quickly and to grant occasional licences in the intervening period, to allow the business to trade as soon as possible.

2. If a company is dissolved, a licence cannot be transferred under either section 33 or 34. Although the licence does not cease to have effect it means that the premises must stop selling alcohol. The assets of the
dissolved company fall to the Queens and Lord Treasurers Remembrancer who is unlikely to participate in a section 33 transfer. Administrative steps can be taken to have the company restored but if this is not an option then again there is pressure on Clerks to accept a section 34 transfer where strictly speaking there is no legislative authority to do so.

“Site only” Provisional Premises Licence
The 1976 Act allowed for two types of provisional premises licence: a site only without detailed drawings and the other akin to the position under the 2005 Act. This presented no great problems and would allow the principal of proposals to be tested without the need for detailed drawings etc.
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4. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?
38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

Greater consistency between existing section 10(3) of the 1982 Act (refusal of taxi licences where no significant unmet demand) and section 60 of the Bill (overprovision of private hire car licences) would be helpful.

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?
The proposal would have a serious effect on Council contracts. Particularly in the more remote areas, the general market for private hire is small but the demand for school transport (and some other Council transport) is significant. In some areas it can be difficult to attract competition for tenders. There is no benefit from requiring operators to go through a licensing regime but there would be an increase in cost and a reduction in the number of available operators. Contracting authorities are able to require and enforce standards appropriate to the contract.

There could be a case for withdrawing the exemption for >24-hour hires made by the general public, while retaining it for all contracts let by public or private sector organisations. Those bodies should be able to set and ensure standards. Another solution would be to allow exemptions from licensing only for those who operate contracts on behalf of the Local Authority or Government Agencies such as the NHS where robust contract conditions are in place to address public safety issues.

Contractors would be likely to object to increased bureaucracy if the exemption was withdrawn, and the costs of going through the licensing process would undoubtedly be passed on to Councils in higher contract prices. This would cause an increased workload.

More operators would require to go through the licensing process, with extra expense (which would be passed on to the contracting authority) but little perceived or actual benefit.

The control of vehicles and drivers used on contract and currently exempted by Section 22(c) should be improved, but still recognising the need for flexibility to allow those operated under robust contractual terms and conditions to remain outside the licensing system. Currently, licensed vehicles and drivers whose licences are suspended for whatever reason may continue to operate on “contract” work; this is clearly placing the public at risk.

On the other hand, many operators work under detailed and robust contract conditions which equate well with the protection offered by licence requirements, whilst allowing the contracting organisations the flexibility that meets their requirements but would be difficult to address within a licensing regime.

There should be no noticeable effect on passengers on Council contracts. Operators offering whole day excursions for holidaymakers currently enjoy the exemption; this has absolutely no justification.
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6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

It would always be a good thing for a dealer to achieve such accreditation and is something the public can use in deciding on the choice of a dealer. However to be of any use the system must be nationwide and not left to individual Councils. Clarification would also require to be sought as to who would be responsible for promoting/paying for any such system.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

This will create an unambiguous system where anyone dealing in metal will fall within the licensing scheme.
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

Yes, in principle it is agreed that the retention of metal requirements should be removed as a mandatory requirement of a licence, however Highland Council would be interested in the view of Police Scotland given that this condition would assist with the enforcement (tracing of metal) of the licensing scheme.

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

HC is of the view that no cash sales be permitted regardless of the size of the transaction.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

The Council does not believe the proposed record keeping requirements to be too onerous and it would make sense for similar requirements to apply in Scotland as well as England and Wales.
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'?
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6. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

There will need to be a transitional period to allow Councils to consider whether they wish to include the performance of plays as a licensable activity and, if they do, comply with the procedures set out in section 9 of the Civic Government (Scotland) Act 1982. 12 months at least should be allowed.

48. Are there additional costs or resource implications on theatres or licensing authorities?

There should be no significant costs or resources implications on either theatres or licensing authorities.

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
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6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

No adverse consequences are anticipated.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
It makes no sense that the licensing authority would have power to set a desired number of sexual entertainment venues for localities in their area as nil, but then have no means of stopping any number of premises in those localities from providing sexual entertainment provided they did so only once or twice a year. Separately, it removes the ability of licensing authorities to set conditions controlling the sexual entertainment provided at premises which provide sexual entertainment only once or twice a year. Conditions such as conditions for the protection of performers and conditions for the protection of children and young persons are surely as necessary at premises providing sexual entertainment once or twice a year as they are at premises providing such entertainment all year round.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?
It would be useful for the legislation to set out the matters which a Council could take into account in reaching such a decision or for the Government to provide guidance on this issue. It is unclear, for example, what, if any, difference there will be between the factors which can be taken into account in assessing the appropriate number of venues for the purposes of paragraphs 9(5)(c), 9(6) and 9(6A) of Schedule 2 and the factors which authorities may take into account under paragraph 9(5)(d) (grant of licence inappropriate having regard to character of locality, etc). Any such guidance should be produced as early as possible after enactment of the Bill, since authorities wishing to introduce licensing requirements for sexual entertainment venues will wish to carry out assessment of the appropriate number of venues for their area in advance of their resolutions under section 45B(1) coming into effect.

Secondly, the wording of paragraph 9(5A)(a) needs to be reconsidered. Paragraph 9(5)(c) will be amended to allow Local Authorities to refuse an application on the ground that “the number of sex shops in the local authority area or the relevant locality” is equal to or exceeds the number which the authority considers is appropriate for their area or that locality. However, paragraph 9(5A)(a) will then require authorities to determine, from time to time “the appropriate number of sexual entertainment venues for their area and for each relevant locality”.

If authorities are entitled to set the number of venues in their whole area as the existing level or zero, why must the periodic determination of the appropriate number of venues be both for the whole area and for each relevant locality? This will place an unnecessary burden on authorities who wish only to assess the appropriate number on a whole area basis. It is suggested therefore that paragraph 9(5A)(a) be reworded to read “from time to time determine the appropriate number of sexual entertainment venues for their area or for any relevant locality”.

Thirdly, it should be recognised that local authorities will be unable to rely on paragraph 9(5)(c) as a ground to refuse an application until they have made a determination under paragraph 9(5A)(a) of the appropriate number of venues for their area or for relevant localities. Ideally, therefore, authorities would wish to have their initial determination of the appropriate number of venues in place prior to the day specified in their resolution as the day on which Schedule 2 will have effect in their area.

However, if an authority makes a determination of the appropriate number before the day on which Schedule 2 will have effect, it could be argued that this was not a valid determination under paragraph 9(5A)(a) of Schedule 2 and cannot therefore be relied upon to refuse an application under paragraph 9(5)(c). It would be prudent, therefore, if section 45B contained specific provision to the effect that, notwithstanding the terms of subsection (2), a determination of the appropriate number of sexual entertainment venues for a local authority’s area carried out after the date of passing a resolution under subsection (1) but before the day specified in the resolution as the day on which Schedule 2 shall have effect shall be deemed to be a determination made under paragraph 9(5A) of Schedule 2.
53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

Yes, subject to the comments at question 52 above.

However, in paragraph 25, it is perhaps unclear what the position will be for persons using premises as a sexual entertainment immediately prior to a s45B resolution being passed, and who apply for a venue licence before the appointed day, but whose licence application is then refused on either of the grounds specified in paragraph 9(5)(c) or (d). In terms of paragraph 24(2)(b), there is no right of appeal against refusal on either of these grounds. Such persons presumably therefore cannot rely on paragraph 25(1) as allowing them to continue using the premises as a sexual entertainment venue until expiry of the 28 day appeal period etc, and would be committing an offence under paragraph 19 if they continued to use the premises as a sexual entertainment venue beyond the date of refusal of the licence application by the licensing authority. This should perhaps be clarified in paragraph 25.

54. Are there any barriers to licensing authorities operating the new licensing regime?

The Bill is silent on how premises with a Premises Licence under the Licensing (Scotland) Act 2005 which permits adult entertainment are to be treated.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
To the Justice Committee,

I write to you today to plead for common sense to prevail when the Scottish Parliament MSPs vote on the proposed airgun legislation.

Mr MacAskill, who is no stranger to controversial decisions, appears to have a personal dislike of any guns or shooting sports and seems to be completely intolerant of the views of those people and organisations that are interested in them.

To get it into perspective the airguns he proposes licencing include the pellet guns that have been used at fairgrounds for the entertainment of children and adults for generations. Current airgun legislation limits the power of an unlicensed air rifle to 12 f/lbs and pistols to 6 f/lbs. and these are the safe limits set by the competent authorities many years ago. I am a keen airgun shooter and enjoy shooting paper targets safely in the privacy of my secluded back garden. As an indication of the low power of these airguns I can, and do regularly, shoot my air rifle and pistol inside my house using no more than an old pair of jeans or a couple of magazines as a backstop to catch the pellets. Although they look similar these guns must not be confused with real firearms.

Mr MacAskill insists that even if licencing is introduced an airgun cannot be used on private property in an urban environment as he thinks it is “inappropriate” for airgun use to be seen as normal by the public. Apparently there is no objection to their use for pest control. Where I live in the southern suburbs of the city we are plagued by the grey squirrel and as you will be aware it is illegal to release a grey squirrel into the wild in an effort to control their ever rising population. It would appear even while licenced I cannot use my air gun to shoot these pests on my own property. An airgun is ideal for shooting pests in an urban environment as it is safe and quiet. Pest control in a rural environment would be more likely done with a shotgun or .22 rifle.

Sadly it is a fact that injuries do happen from time to time with airguns however numbers have fallen dramatically over the last few years without any licencing regime at all so there is no logical reason to introduce one now. If looking at injury statistics it is quite easy to see that over the whole country there are far more football related injuries than airgun or indeed firearm injuries but I don’t hear any calls to ban football.

If this licencing proposal goes ahead it will cost the tax payer an obscene amount of money to implement and maintain. This money would be better used if put into the NHS or helping the homeless or elderly where it is desperately needed and not squandered on needless legislation.

I understand Mr MacAskill is regarded by some to be a bully and does not take defeat lightly. Nevertheless I urge you to let common sense prevail and vote against this proposal.

Yours sincerely,

Michael Brunsdon
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1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

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

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

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

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person”
test assist with the implementation of the licensing objectives set out
in the 2005 act?

32. Have there been any unintended consequences arising from the 2005
Act, for example, in rural areas or the economic regeneration of
areas?

33. Which, if any, types of spent relevant offences should be required to
be disclosed and what do you think the benefits of disclosure will
be?

34. Do you have any other comments to make on the alcohol licensing
aspects of the Bill?
5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?
38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

48. Are there additional costs or resource implications on theatres or licensing authorities?

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

WILL INTERFERE WITH AN INDUSTRY ALREADY VERY WELL REGULATED AND LICENCED. WILL PUSH PERFORMANCES 'UNDERGROUND' AND AS SUCH LESS REGULATED AND BE DETERIMENTAL TO PERFORMERS. IT WILL Restrict FREEDOM OF CHOICE FOR CUSTOMERS AND INDIVIDUAL PERFORMERS.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

WILL TRANSFER PERFORMANCES INTO 'PUB BACK ROOMS' AT VARYING LOCATIONS AND WILL NOT BE IN INTERESTS OF PERFORMERS AND WILL THEREFORE BE VIRTUALLY UNREGULATED.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

| CLOSING DOWN ALREADY WELL REGULATED VENUES WILL HAVE A DETRIMENTAL ECONOMIC EFFECT ON THE CITY. NO EVIDENCE OF ANY BENEFIT WHATSOEVER OF TAKING THIS APPROACH. WHO WILL REGULATE THE MOVING SHOWS GOING FROM PUB TO PUB. COUNCILLORS OWN PERSONAL OR RELIGIOUS VIEWS MIGHT BE AT ODDS WITH THOSE OF THEIR CONSTITUENTS AND THIS COULD HAVE AN ADVERSE ON THE WELLBEING AND WORKING CONDITIONS OF THE PERFORMERS WHEN MOVED UNDERGROUND. |

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

IT SEEMS A VERY HEAVY HANDED APPROACH TO SOLVE A PERCEIVED PROBLEM THAT, IN REALITY, DOES NOT ACTUALLY EXIST. CURRENT VENUES ARE EXTREMELY WELL RUN UNDER CURRENT LEGISLATION AND NO EVIDENCE OF WIDESPREAD ABUSE OR EXPLOITATION HAS EVER BEEN PUT FORWARD BY THE AUTHORITIES. ANOTHER EXAMPLE OF TRYING TO BE POLITICALLY CORRECT AND IGNORING THE HARD WORK THAT IS ACTUALLY GOING ON WITHIN THE INDUSTRY.
Air Weapons and Licensing (Scotland) Bill: Introductory Questions

Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Alex Tulloch
Organisation: Civil Service Shooting Club
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 22
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes
☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☑ Personal
☐ Professional
☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes
☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation: Civil Service Shooting Club

1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

This will have no effect as offences are reducing with the existing conditions.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

There is not enough clubs catering for airgun shooters. Fire arms clubs may accept airguns but will only consider them inconvenient as the ranges airguns shoot are different to that shot by firearms.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

Airguns are a comparatively cheap way of shooting and if the cost of a license is added and shooting has to be done at a club using firearms it will only cause shooters to go the way of getting a licence to shoot firearms.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

Parent will probably have the job of transporting the shooters to the clubs as juniors are not allowed to carry guns in public.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

A licence will not affect commercial events as the additional cost will be passed on to the customer.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

As the air guns used for competitive shooting are expensive the cost of a license will just be an additional burden.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No.
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (e.g. The work of local government, public agencies etc.)?

The obvious effect will be to add an additional work for local authorities or police to implement the licences.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

If additional conditions are applied to a licence i.e. shooting in gardens, this will in my area lead to less grey squirrels being shot and more small birds killed by magpies. I also teach youngsters to initially train with airguns starting in my garden before using firearms at a club (for Duke of Edinburgh Award).

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

This licence appears to be unnecessary as airgun crime has and is reducing. The only effect it will have is to collect money and not all shooters will apply.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Anonymous
Organisation:
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliament's "Policy on the treatment of written evidence by subject and mandatory committees":

Yes

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Yes

No

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Professional

Commercial

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No
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☐ Yes

☐ No

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☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

IT WILL HAVE AN ADVERSE EFFECT BY DIVERTING POLICE RESOURCES AWAY FROM SERIOUS CRIME

PRESENT CRIMINAL & IRRESPONSIBLE USERS WILL REMAIN UNAFFECTED BY ANY NEW SYSTEM: AS THEY ARE ALREADY IGNORING THE PRESENT RULES, GOVERNING USE OF AIRGUNS, CONTAINED IN THE VARIOUS FIREARMS ACTS & OTHER LAWS.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

I AM NOT AWARE OF ANY PROVISION AT PRESENT FOR SUCH CLUBS, NOR MEASURES FOR ANY NEW CLUBS TO BE ESTABLISHED BY THE GOVERNMENT, TO ALLOW LEGAL OWNERS TO COMPLY WITH PROPOSED GOVERNMENT CHANGES

BEING ABLE TO PURSUE THE HOBBY ON PRIVATE LAND, AS AT PRESENT, IS FAR BETTER AND MORE COST EFFECTIVE THAN MAKING PEOPLE TRAVEL TO CLUBS WHICH MAY WELL HAVE LIMITED OPERATING HOURS.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

I PREDICT THAT THIS LACK OF FACILITIES WILL RESULT IN A HUGE NEGATIVE IMPACT ON THE LEGAL USERS OF AIRGUNS, WHO WILL BE DEPRIVED OF THEIR LEGAL RIGHT TO PURSUE THEIR HOBBY
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

THE PRESENT SYSTEM HAS BEEN IN PLACE FOR OVER 40 YEARS, AND HELPS TO PROMOTE RESPONSIBLE SUPERVISED LEARNING, IN A RELAXED HOME ENVIRONMENT – IF SO SUITABLE

THE NEW SYSTEM WILL JUST PRESENT MORE HURDLES TOWARD YOUNG PEOPLE WISHING TO TAKE UP A NEW HOBBY & HAVE ZERO IMPACT ON THE IRRESPONSIBLE YOUTHS MISUSING AIRGUNS AT PRESENT

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

MORE LAYERS OF GOVERNMENT INTERFERENCE/ BUREAUCRACY WILL BE ADDED – THEREFORE ADDING TO THE ADMINISTRATIVE COSTS BOTH FINANCIALLY & IN TERMS OF MAN HOURS

THE COSTS WILL BE ADDED TO THE END USERS

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

THE AFFECT WILL BE SIMILAR TO THE BAN ON INTERNATIONAL .22 PISTOLS, IT WILL KILL SPORTING USE: AS AT PRESENT PEOPLE CAN PRACTICE AT HOME AT A TIME THAT IS CONVENIENT TO THEM. THIS OPTION WILL BE TAKEN AWAY BY THE NEW SYSTEM & WILL ALL BUT END SCOTTISH SHOOTERS TAKING MEDALS IN COMPETITION

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
NO – IT IS NOT EQUITABLE, FAIR OR REASONABLE. THE LEGAL SPORTING USER SHOULD HAVE NO FEES TO PAY AT ALL, AS NOW

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

NEGATIVE IMPACT.
IT WILL BE SEEN AS DRACONIAN “BIG BROTHER” GOVERNMENT-FROM-THE-TOP-DOWN, AS POLLS ALREADY SHOW THE PUBLIC ARE MASSIVELY OPPOSED TO THE LICENSING SYSTEM

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

IT WILL BE EASIER TO BE GRANTED A LICENCE FOR A SHOTGUN THAN AN “AIR WEAPON” – SO PEOPLE WILL FIND IT EASIER TO TAKE UP SHOTGUN SHOOTING AS A HOBBY INSTEAD. THE ADMINISTRATIVE BURDEN WILL CRIPPLE WHOMSOEVER GETS TASKED WITH IT

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

THE BILL WILL BE A BIGGER WHITE ELEPHANT THAN THE EDINBURGH TRAM FIASCO & MAKE SCOTLAND THE MOST RESTRICTIVE COUNTRY IN EUROPE FOR THE SHOOTING SPORTS HOBBY...

IT WILL DIVERT RESOURCES AWAY FROM MAINSTREAM POLICING.

IT WILL HAVE A NEGATIVE IMPACT ON THE PERCEPTION OF HOLYROOD AS BEING THERE TO REPRESENT THE PEOPLE OF SCOTLAND.

PRESENT ILLEGAL USERS OF AIRGUNS WILL CARRY ON REGARDLESS AS THEY ARE ALREADY IGNORING THE CURRENT FIREARMS ACTS
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: John Murray
Organisation: Grant Murray Architects Ltd
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
* 2. Please confirm that you have read and understood the Scottish Parliament's “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☑ Yes

□ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

□ Personal

☑ Professional

□ Commercial

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☑ Yes

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- Yes
- No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

- All of the Bill
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- Air Weapons
- General licensing issues
- Alcohol licensing
- Civic licensing – taxi/private hire car licensing
- Civic licensing – scrap metal dealers
- Civic licensing – theatre licensing
- Civic licensing – sexual entertainment venues
Name/Organisation: Grant Murray Architects Ltd

6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

Yes! This could lead to a proliferation of “travelling” shows in the style of the Male Troupe, the “Chippendales”, which would be more difficult to “police” in terms of enforcing any expected standards.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

In the larger cities in Scotland there are only a handful of such venues. I believe that in a city the size of Glasgow or Edinburgh for instance, with their aspirations to be an international business/tourism centre, that the local Licensing Authority should not be able to set the level below existing or zero, when recreational or business visitors require as wide a range of activities as would be expected in an international centre.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Air Weapons and Licensing (Scotland) Bill: Introductory Questions

Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #awlbill.

*1. Please supply your name and contact details:

Name: DAVID A. LIND
Organisation: RETIRED
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER
Local Government and Regeneration Committee – Air Weapons and Licensing (Scotland) Bill

* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

γ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

γ Yes

γ No

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- Air Weapons
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- Civic licensing – theatre licensing
- Civic licensing – sexual entertainment venues
Local Government and Regeneration Committee – Air Weapons and Licensing (Scotland) Bill

Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

It will reduce the effects of opportunistic crime.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

Definitely not enough provision or encouragement for airgun target shooting in Scotland.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

People should be encouraged to use air weapons for recreational use in a safe environment as much as possible.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

Provided these youngsters are supervised by an adult of 21 – that should be fine but also remember children younger than 14 should also be given the chance to shoot in safety.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

Provided the people using air weapons for commercial reasons are bona fide licence holders and responsible I see no problems.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

People taking part in competitions should be legitimate licence holders.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

Yes as the work has to be carried out whatever the outcome.
Local Government and Regeneration Committee – Air Weapons and Licensing (Scotland) Bill

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (e.g. the work of local government, public agencies etc.)?

I would hope that air weapon licensing will have a positive influence on all aspects of life in Scotland.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

Air weapons will have to be kept in a safe locked place out of sight of minors and dangerous persons. I would think an internal cupboard with a secure lock would be sufficient.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

I hope that the more people appreciate the enjoyment of target shooting and therefore also the safe handling of air weapons the better.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Anonymous
Organisation: 
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

FOR OFFICE USE ONLY
SUBMISSION ID NUMBER 26
* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☑ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☑ Personal

☐ Professional

☐ Commercial

* 5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☐ Yes

☑ No
* 6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☒ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☒ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

   The proposed Bill infringes on The Human Rights Act 1998, articles 1 and 8

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

   The proposed Bill as it relates to the introduction of an air arms licensing system has massive implications for preventative spending as it will cost tens of millions of pounds to create, and then several hundreds of thousands of pounds per year to administer. Further costs will include a compensation scheme for the proposed deprivation of lawfully held items, the additional burden on Police Scotland and to the courts.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

Only in that specified at 9

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

It appears clear that the current Scottish Government has a disproportionate ‘issue’ with civilian ownership of anything it would describe (incorrectly) as a ‘weapon’, therefore the proposed Bill relates well to Scottish Government ‘objectives’
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

In a very limited way, as indicated by the Committee in its letter to the Scottish Government dated 27th June 2014, particularly questions 1, 2 and 5. Every police force in the UK acknowledges that the majority of air ‘weapons’ crime is committed by persons who are already known to the police and who are incredibly unlikely to/wouldn’t be permitted to apply for a certificate for the air rifle/pistol they use. Even those incidents that do occur outside of the criminal fraternity are rarely ‘innocent accidents’. Once the details of the incidents are realised they almost inevitably seem to involve reckless use of said air rifle and/or a breach of the current legislation (e.g. Not preventing unauthorised access to an air rifle to persons under the age of 18. Air gun crime has been falling fairly rapidly in Scotland for the past half-decade and the proposed Bill is simply not required to continue this trend.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

As this information is not readily available (and hence question 10 from the Committee), it is difficult to answer this. From my own experience of my locality, there are very few firearms clubs that also permit the use of air guns and as far as I am aware there are none that ONLY cater for air guns.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

N/A
In many cases it will exclude them entirely from the sport/hobby. Air guns are relatively cheap and the ease of use and lack of cost involved in shooting them is one of the most attractive features. If a licensing regime was brought in, in addition to the cost of the application, cost of a cabinet/safe and then the time and cost of travelling to the air gun club many people simply will not be able to afford to continue.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

The affect on youngsters LEGALLY using air guns will be even worse than it would be on adults as they naturally have less money, and many would not have the means of travel to get to a club.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

It would depend on the licensing regime implemented, if it was similar to the Firearms Certificate procedure large scale pest controllers etc would likely not be too badly affected, other than the onerous task of making the application, but smaller scale operations would be disproportionately affected and possibly put out of business if they suddenly find themselves an excluded person from air gun ownership.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?
As less and less people take up air gun shooting due to the increased cost, time and bureaucracy, the pool of people who go onto become competitive sportspersons will also diminish. Hopefully it would never get to the ludicrous situation that exists with the British pistol team having to train abroad.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No it most certainly is not. Just like with a Firearms or Shotgun certificate if the application was to be refused a full refund of the fee should be issued.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

Only upon the work load of the Police licensing departments which are already overstretched.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

As the intended consequences aren’t entirely clear this is difficult to answer, however as with Firearms legislation, the air gun legislation would have little impact on the criminal use of air guns as it is logical that those wishing to own an airgun for criminal purposes are either unlikely to apply for a certificate, and many will be ineligible anyway due to previous convictions.

The licensing system would increase the cost of airguns in Scotland and possibly the rest of the UK due to the lower demand.

Just like the 1997 Firearms Act an airgun licensing system would criminalise...
numerous people without them ever having committed a crime, due to the irresponsible, criminal actions of a tiny minority.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

It beggars belief that the Scottish government considers this proposal as an efficient use of limited public funds. Air gun crime in Scotland has been steadily falling for a number of years now and there is no indication that this trend will change soon.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Anonymous
Organisation: 
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 27
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes
☑ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☑ Personal

☐ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
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☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☒ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

My view is that if something is to be regulated it not be on occasion.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

I am the major shareholder of one of the largest specialist recruitment companies in the UK. There is economical consequence of not having lap dancing venues in Glasgow to which I will explain. Entertaining clients, whether that be taking them to casinos, football, horse racing, boxing or lap dancing clubs is an integral part of business. Visiting Lap Dancing clubs is a popular choice for many business and is considered to be harmless fun. I have a choice to take clients to clubs in any locations where I have an office, but always favour Glasgow as it is my home town. By not having Lap Dancing clubs in Glasgow I just simply take my business to another UK city that has such venues. Glasgow losses out on hotel stays, money spend in restaurants etc. There has also been many occasions when high net worth clients of mine have spent large sums of money in with clothing retailers such as [redacted] Glasgow the next day after visiting lap dancing pubs in Glasgow.

Being in the recruitment business I am by nature a talkative individual and talk to other businessmen and can say for sure, my viewpoint is shared by many other businessmen. All major cities in Europe and indeed the world have lap dancing clubs. What signal would we be sending to the international business community if we banned lap dancing clubs.

There is another observation I have made. I hear reports that lap dancing clubs are linked with the exploitation of woman. I have never anything that is further away from the truth than this myth. Have anyone who is involved in this process every visited a lap dancing club. If they did, they would see that it is the girls who have complete control over the men. Not only that, if one was to talk to any one of these girls they would find people who not only have complete freedom of choice but can make large amounts of money for themselves.
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*1. Please supply your name and contact details:

Name: [Anonymous]
Organisation:
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☑ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ Yes

☒ No

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☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☒ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues

Page 3 of 8
Name/Organisation: Alexander Tavern

1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

There will be no contribution at all to preserving public order and safety or in reducing crime by the introduction of an air weapon licensing system. There has already been a dramatic decrease in crimes involving air guns and people who use airguns irresponsibly and break the law are not going to apply for a licence as by their very nature they do not care if what they are doing is illegal and there is currently adequate provision within current firearms legislation to cover any misuse of an airgun. The only people who are going to comply with the legislation are the thousands of responsible airgun owners who take the responsibility of using an airgun seriously.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?

I am currently unaware if there is adequate provision of clubs for airgun users but no there is no doubt that any application for a new club premises to be created would meet with stiff opposition thus providing a back door way of further restricting what is the legal and legitimate use of airguns for target shooting.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
The licensing system will produce a huge burden on legitimate airgun users and will no doubt lead to many giving up a pastime that they carry out in an extremely safe and responsible manner.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

There will be a huge effect on those aged 14 to 17 as the licensing requirements will prevent many from taking up the sport and learning how to handle airguns responsibly which will have a serious detrimental effect on future sports stars and pest control.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

There will be a huge economic impact as many people travel from other parts of the UK to carry out pest control duties (especially in the border areas) /take part in fairs/ paintballing which will become more expensive and bureaucratic preventing many from participating. This will also have a knock on effect in the gun trade as due to the overly stringent conditions being imposed for the granting of a licence there will be a marked decrease in people buying / replacing / upgrading air weapons so many will go out of business.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?
There will be a huge impact on people using air guns for competitive sporting activities. The restrictions will prevent many young people taking up what is a very safe sport as well as preventing many shooters from the rest of the UK coming to Scotland to compete due to the cost of obtaining a licence to bring their guns to Scotland. Again this will lead to an adverse economic impact for Scotland.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

I feel it is unreasonable to ask someone to pay a non-refundable fee as it should be obvious from some simple quick checks to weed out most if not all of the applications that would result in a certificate not being granted. Making someone pay the full cost for a certificate that will not be granted after a few simple checks is unreasonable.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

There will be a huge detrimental impact on the Police and government finances. The proposals set out for the licencing of air guns, even with a full cost recovery from the applicants, will create a huge strain on police licencing departments that are barely coping with the current licencing scheme without placing a huge further burden on them. This will lead to a huge cost increase in running these departments as a vast number of additional staff will require to be employed at a time when the police budget is decreasing leading to larger cuts having to be made in other departments. Unless the Scottish Government is willing to ignore the rights of legitimate and law abiding members of the public who shoot for pleasure or pest control and allow the timescales for the grant of certificates to become unacceptably long. If this is the case then this will have a knock on effect when licences are renewed leading to the very real possibility that thousands of law abiding people suddenly find themselves breaking the law as they are in possession of an unlicensed air gun through no fault of their own. Unless we get to the ridiculous position where as soon as the certificate is granted a renewal has to be applied for due to the time taken to process them.

The proposed scheme is overly bureaucratic, extremely expensive, unmanageable and superfluous as air gun crime has dropped dramatically and as a proportion of the estimated number of airguns (estimated to be 500,000 but...
could be many more) the rate of airgun crime is infinitesimally small.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

There will be several unintended consequences in introducing this bill such as a vast increase in finances required for the police or any other agency to administer the legislation, a vast number of responsible law abiding people suddenly finding themselves criminalised buy an unnecessary piece of legislation that will be totally unenforceable as well as many more people applying for a full firearms certificate as if the conditions for being granted a certificate are the same they may as well have the more powerful gun as this will make activities such as pest control easier as they will be able to shoot from further away.

Will there also be plans put in place to carry out border checks on the Scottish/English border as the legislation is not changing South of the Border people will be able to drive to England, purchase an airgun legally and then drive back to Scotland without anyone knowing that they are in possession of it. Therefore the very real possibility that thousands of airguns will be held illegally in Scotland with no way to stop the cross border trade without putting border checks in place. It has been suggested that airgun ammunition could also be regulated. But again as there will be no restrictions in England nobody will know who is bringing airgun ammunition over the border without checks being made.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

The proposals will only be taken up by the vast law abiding majority who use air guns responsibly and sensibly. The government’s position that this legislation will solve what is an already small and decreasing number of airgun offences is ludicrous. People who use airguns illegally will take no notice of the bill. For example drink driving is against the law but it does not stop people from doing so. People that already break the law using airguns will continue to do so as there is no way of knowing how many airguns are in circulation in Scotland or who is bringing them or ammunition in from England.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

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*1. Please supply your name and contact details:

Name: George Eckton
Organisation: Child Eyes UK
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes
☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ Yes

☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

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☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.
We believe the Bill if amended further from its Stage 1 draft has the opportunity to meet even more of Scotland’s equality and human rights commitments especially in regard to the preventative aspect of reducing exposed of children to indecent objectifying and gender stereotyping literature.

The publication on 25 June 2014 of the Equally Safe Strategy for Scotland in its key objectives clearly recognises the preventative agenda in preventing and eradicating all forms of violence against women and children.

The overall aim of the strategy is to prevent and eradicate violence against women and girls, creating a strong and flourishing Scotland where all individuals are equally safe and respected, and where women and girls live free from such abuse - and the attitudes that help perpetuate it.

Four key priorities are set out within the strategy:

1. Scottish society embraces equality and mutual respect, and rejects all forms of violence against women and girls.

2. Women and girls thrive as equal citizens: socially, culturally, economically and politically.

3. Interventions are early and effective, preventing violence and maximising safety and wellbeing of women and girls.

4. Men desist from all forms of violence against women and girls and perpetrators of such violence receive a robust and effective response.

While the strategy sets out some early commitments, it explains how a phased approach will help ensure that longer-term change is sustained. We think the Bill’s recast of certain Civic Government (Scotland) Act 1982 powers, which itself was proceeded and recast the Indecent Displays (Control) Act 1981, could have a significant contribution could have a significant environmental impact on the exposure of society especially young children to “sex sells” media.

We believe that legislation is the only avenue at the moment to reverse the current over-sexualised displays parents are exposed to whenever they take their children into the general public spaces and supposedly family friendly retail environment. This de-sexualisation of public places we think would be a significant contribution long-term to the achievement of the challenging goals outlined in the Equally Safe Strategy and also more widely expressed in other Scottish Government Equality and Human Rights documents.

The Equally Safe Strategy outlines that violence, as a continuum from sexual harassment to physical violence, stems from an ongoing inequality between men and women and can have immediate and long-lasting impact on the individuals and families involved. In addition, highlighting the wider impacts on health, wellbeing and safety of Scotland’s communities. In financial cost terms, the Strategy outlines that the estimates of expenditure to address the impacts of domestic abuse is £1.6 billion and £4 billion when impacts of all violence against women is incorporated. The strategy is bold in its ambition and rightly so in our view, outlining the need to eliminate the systematic gender inequality that lies at the root of violence against women and girls and the need to be bold about how we do it.

We also consider that the proposed amendment to the Stage 1 draft of the Air...
10. Do you consider that the Bill has any implications for preventative spending and/ or public services reform? Please explain.

The amendments proposed in Section 55 of this form to the existing Stage 1 draft Bill we think are in line with the Equally Safe objectives of seeking a stepchange in emphasis on preventing violence from occurring in the first place or intervening at the earliest possible stage to minimise the harm caused to the victim. Equally Safe highlights that prioritising prevention challenges the notion that violence is inevitable if acceptable. It demands a fundamental change in the societal attitudes, values and structures that give rise to and sustain the problem.

The strategy outlines that this is an ambitious approach to take, demanding a determined effort over the long-term and as well as the public sector re-design challenge also highlights the renewed and increased focus on prevention from those working in the private sector, to identify where they can pursue preventative measures.

Equally Safe recognises that some of the initiatives and legislation we are proposing may have short-term benefit but also may be challenging as the positive effects of such preventative measures may take some years to deliver noticeable benefits at a time when public resources are already squeezed and demand for measureable results is heightened. However, it concludes that prevention is the only approach if we are to achieve the aim of a strong and flourishing Scotland where all individuals, regardless of gender live Equally Safe.

11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.
12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

We believe that the current licensing regime does not provide parents with the confidence that the current public spaces are regulated in a manner that does not sexualise children through the consumption of their surroundings in everyday life.

Therefore, whilst we recognize that parents have a responsibility to protect children. The problem we have is that parents are unable to protect children as sexual imagery and pornography is in every arena.

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

The Licensing and Civic Government provisions of the proposed Act in our view should seek to regulate individual behaviour and communities of space where the environment provided is indecent, degrading and offensive to women, children and parents and should provide a recourse for individuals and groups to register their complaints about such issues as shop window displays and other displays of material. For instance, a parent can only protect children from the degrading sexual imagery in shops (The Sport, Nuts, Zoo) if they either do not go into the shop or blindfold their child. Neither is a suitable solution. We have evidence from many shops including Co-op, Tesco and Spar.

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

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

We think that licensing further the display of indecent and sexualised imagery within public places would contribute to the achievement of the objectives of the Equally Safe Strategy by providing a less sexualised environment for children to develop and form their own opinions on the current stereotypical gender roles specified for society via the publication and display of images across all forms of media and goods.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
We would respectfully suggest that the Bill also considers the opportunity offered to update some of the provisions of the Indecent Display (Control) Act 1981 and also related provisions in the Civic Government (Scotland) Act 1982 around the display of sexualised images in public places and that it also takes the opportunity to close some of the loopholes/lack of powers for enforcement or removal of indecent displays. Whether this is via devolved primary legislation or a reserved legislative consent motion.

Specifically we would wish to see an amendment of Section 51 of the Civic Government (Scotland) Act covering obscene material to cover incendent and degrading imagery regularly published in the press displayed/placed in an appropriate area outwith general view:

51 Obscene material.

(1) Subject to subsection (4) below, any person who displays any obscene material in any public place or in any other place where it can be seen by the public shall be guilty of an offence under this section.

(2) Subject to subsection (4) below, any person who publishes, sells or distributes or, with a view to its eventual sale or distribution, makes, prints, has or keeps any obscene material shall be guilty of an offence under this section.

(2A) Subject to subsection (4) below, any person who—

(a) is responsible for the inclusion of any obscene material in a programme included in a programme service; or

(b) with a view to its eventual inclusion in a programme so included, makes, prints, has or keeps any obscene material,

shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a period not exceeding [F26 months] or to both or, on conviction on indictment, to a fine or to imprisonment for a period not exceeding [F23 years] or to both.

(4) A person shall not be convicted of an offence under this section if he proves that he had used all due diligence to avoid committing the offence.

(5) Under an indictment for or on a complaint of a breach of subsection (1) above, the court may, if satisfied that the person accused is guilty of an offence under section 1(1) of the M1 Indecent Displays (Control) Act 1981 (offence of public display of indecent matter), convict him of a breach of the said section 1(1).

(7) For section 5(4)(b) of the Indecent Displays (Control) Act 1981 (saving) there shall be substituted

1 To lower dignity, dishonour or disgrace.
Air Weapons and Licensing (Scotland) Bill: Introductory Questions

Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: ROBERT W SANDISON
Organisation: 
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 30
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes
☐ No

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☐ Commercial

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☐ Yes
☒ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☑ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

Much more work for the police and the courts.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

Many people will apply for a FAC or SGC.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

The Scottish government has completely failed to provide any evidence at all that air gun misuse is a problem in Scotland. The justice minister is on record as saying that there are many communities in Scotland that are blighted by air gun crime yet he has provided no evidence to back up these claims. As they were only 171 reported offences involving air guns in the whole of Scotland last year [a record all time low] these claims are hard to believe.
Local Government and Regeneration Committee – Air Weapons and Licensing (Scotland) Bill

ROBERT W SANDISON

Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

Yes it will mean more traffic journeys as thousands of air gun shooters travel to and from clubs.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

Yes many disabled shooters who presently shoot at home will be unable to travel or gain access to gun clubs or afford it for that matter.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

Yes the police will have a mountain of new work.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

Could well break the HRA namely the right to property. Due to the retrospective catch 22 nature of this bill thousands of people will in effect have their previously legally held property Confiscated from them for no compensation.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

This is clearly part of Scottish governments attempt to reduce public gun ownership to the lowest possible degree.
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

None new laws will INCREASE air gun offences.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?

No for example most if not all the Scottish Islands have no air gun clubs.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

It will ban members of the public from shooting on or in their own private land and property.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

As they are to be banned from getting a AWC they will may apply for a FAC or SGC which they are allowed to do.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

It will make it more expensive.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

It will prevent young people from taking up the sport.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No it must be the same as for FAC and SGC applications. Also i am confused all the previous questions refer to air weapon licence whereas this question refers to air weapon certificate as a licence and certificate have different legal meanings which is it going to be?
Local Government and Regeneration Committee

Submission Name: League Against Cruel Sports  Submission Number: 31

Response to call for evidence by the Local Government and Regeneration Committee on the Air Weapons and Licensing Scotland Bill

For several years, Scottish Government has worked to introduce an air weapon licensing scheme. Despite extensive lobbying by the pro-shooting community for the scheme to be scrapped, the proposed bill includes measures for a robust licensing scheme.

We believe the licensing scheme itself, as well as measures to prevent shooting in back gardens, are sensible and robust. However, we show below that:

- Attacks on animals using airguns occur in significant numbers, but are underreported
- Airgun attack on animals also have an impact on their owners and feelings of public safety, and that only controls on where air guns can be used will address these concerns
- There is a need for legislation to reflect the danger posed by air weapons to animals, and to be strengthened so that previous convictions for wildlife crime and animal cruelty are taken into account when applying for a licence
- There is little justification for allowing animals to be hunted for sport with air guns generally, and particularly by young and inexperienced shooters.

Overall, we believe that the Air Weapon component of the Bill is a positive step, but the legislation should be amended to make it more stringent, and the proposals should not be diluted in any way.

Data on airgun attacks on animals

The SSPCA reported over 178 air gun attacks on animals in 2012

Shortly before the unification of police forces in Scotland, a Freedom of Information request revealed the following figures for air gun attacks on animals in 2010/2012:

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>Combined figures for 2010-2012</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strathclyde</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Tayside</td>
<td></td>
<td>5</td>
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<td>5</td>
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<tr>
<td>Lothian</td>
<td>2</td>
<td>4</td>
<td>11</td>
<td>17</td>
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<tr>
<td>D&amp;G</td>
<td></td>
<td>2</td>
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<td>Northern</td>
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<td>Fife</td>
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<td></td>
<td></td>
<td></td>
<td>68</td>
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</tbody>
</table>
The disparity between SSPCA and Police figures, where the SSPCA record 178 attacks alone for 2012 but the Police have only 68 on record between 2010 and 2012, shows that the majority of airgun attacks on animals are not reported to the police.

Police reports tend to relate to large animals or attacks in unusual circumstances, including incidents where swans, pigs, and birds of prey were attacked.

It is likely that many attacks are never reported to either agency. Reasons for this include:

- Animals which are shot dead but their bodies not recovered. Uncertainty of events – animals have pellets lodged in their bodies which are only discovered by vets at a later date, or the animal goes missing for a time between being shot and arriving at home
- Animals are not taken to the vet for financial reasons
- Wild animals are targeted and their deaths not noted or investigated

Introducing an air gun licensing system would be the first step in regulating a practice which harms an unknown number of animals every year.

**Airgun attacks on animals and feelings of public safety**

Currently, it is permissible to use air guns in back gardens and on private land. We do not know the exact locations of many airgun attacks on animals. There have also been numerous reports of attacks on publically accessible or publically owned land such as parks, golf courses and other green spaces. Examples include a recent shooting of a cat in Carnoustie, and several recorded instances of attacks on swans.

As the cases outline below demonstrate, the damage to animals targeted by airguns can be fatal, and in some cases requires extensive medical treatment.

However, these case studies also show that attacks on animals can lead to people feeling less safe within their communities.

**Case Study 1, Lenzie, 1996**

This case involved a cat, Suki, which had a particularly friendly nature and often approached strangers, being shot at close range with an airgun. The lump found in Suki’s body was thought to be at the point of entry initially, but it transpired that the bullet passed most of the way through the cat’s body and lodged in the shoulder opposite the entry wound. The owner reported that:

_I never found out who shot my beloved cat. I don’t think I could print what I would do to them if I ever did. I do know however, that after that day a mistrust crept its way through most of us in the village. In mine and my family’s minds, everyone was potentially the culprit. Had we had the choice, we would have gladly kept Suki indoors for the rest of her life. Our village was a quiet, upper class residential neighbourhood, and we no longer felt safe there. The gun shot through the safety net we had held in each other and for me, changed how I saw the neighbours all around me._
Local Government and Regeneration Committee

Submission Name: League Against Cruel Sports  Submission Number: 31

Suki was severely injured yet managed to survive and recover fully.

Case Study 2, Stranraer, 2006

This case involved a cat, Clemmie, shot by the next door neighbour. Unusually, because the owner was nearby when the cat was shot, she was able to identify the attacker and call the police.

After her neighbour was arrested, the owner was called at 3am to let her know that the attacker had been released and to call the police if there was any further trouble, and in case her neighbour had other weapons on the property.

I had my disabled and elderly parents with me at the time and it was all very distressing indeed… Next morning I took the cat back to the vets, to be put on a drip, sedated and continue her observation. On my return from the vet’s, this delightful neighbour taunted me with ‘pussy cat, pussy cat’ calls.

The attacker moved house afterwards. Even though the owner had heard the gunshot and the neighbour had stored weapons and ammunition next to his window, the case never progressed to court.

Clemmie suffered extensive injuries and clung to life for a few hours, but despite the best efforts of the vets, began to fit as a result of her injuries. The owner had to take the very sad decision to euthanize the cat to prevent her suffering any further.

Case Study 3, Glasgow, 2014

This case involved a cat, Mia, who disappeared for a day and was then found in her owner’s front garden.

As it was the weekend, the cat had to be taken to the emergency veterinary practice, and operated on. Her spleen and parts of her intestine were removed. Mia was fortunate enough to recover from the attack.

She is an outdoor cat and my initial reaction was to keep her as a house cat going forward because I had no idea who was to blame for the shooting.

All three of these cases illustrate that it can be extremely difficult to prosecute attackers, even in the rare instances where the attacker can be identified and further highlight the need for air gun licensing and restrictions imposed on where air guns can be used.

Previous convictions for wildlife or animal welfare offences

The proposed air gun legislation uses the 1978 Firearms Act as a basis for ruling which applications should and shouldn’t be granted a licence. However, this affords leeway in whether or not a conviction for wildlife crime should be considered a reason to refuse a licence.
Local Government and Regeneration Committee

Submission Name: League Against Cruel Sports Submission Number: 31

We believe that the proposed legislation should be amended in line with the regulations around General Licences. These state that:

4. You may not use this licence if you were convicted of a wildlife crime on or after 1st January 2008 unless, in respect of that offence, you were either dismissed with an admonition, you are a rehabilitated person (for the purposes of the Rehabilitation of Offenders Act 1974 and your conviction is spent) or a court discharged you absolutely.

Any person not able to use the General Licence can still apply to Scottish Natural Heritage for an individual licence.

... “wildlife crime” means any offence under the Wildlife & Countryside Act 1981, the Conservation (Natural Habitats &c.) Regulations 1994, the Protection of Badgers Act 1992, the Protection of Wild Mammals (Scotland) Act 2002, the Animal Health & Welfare (Scotland) Act 2006 and the Protection of Animals (Scotland) Act 1912 (all as amended)

Given that nearly all parties represented in the Scottish Parliament are concerned about wildlife crime, we believe it would be consistent with the current direction of policy for the Air Weapons and Licensing Bill to be amended to bring it in line with the existing General Licences regime.

Appropriateness of shooting animals with an air gun for sport

The League Against Cruel Sports does not believe that animals should be harmed for entertainment, and we are not alone. A YouGov poll conducted in 2011 found that two-thirds of people in the UK find shooting live animals for sport totally unacceptable, and less than a quarter find it acceptable.

Much of the literature produced by the shooting industry suggests that animals are always killed cleanly by air guns, but this is unlikely given that the targeted animals are relatively small, highly agile and likely to be encountered in or near cover. The potential for animals to be injured or maimed and left to die a slow, lingering death is high.

Shooting of live animals by young people

Whether for pest control or for sporting purposes, humanely killing an animal with an air gun requires a considerable degree of skill. It is particularly inappropriate to allow people under the age of 18 to attempt to shoot live animals for any purpose.
Local Government and Regeneration Committee

Submission Name: League Against Cruel Sports
Submission Number: 31

Academic studies (Ceylan et al:2002 and Abad et al: 2009)\(^v\) have shown that young people are particularly likely both to be the victims and perpetrators of accidental shootings with air guns. Air guns can cause terrible injuries to people, and Abad et al particularly highlight the prevalence of eye injuries to young people caused by air guns. Allowing young people to stalk live animals, which move in space and time, has greater potential to cause accidental injuries to humans than shooting static targets at a club.

We therefore believe the legislation should be amended so that under 18s cannot shoot live animals.

**Recommendations:**

Firstly, we recommend that the committee take cognisance of the number of air gun attacks on animals and the considerable distress and pain that these cause to both the animals and their owners. Although this Bill was largely introduced because of injuries and deaths to humans, air gun licensing could have a very significant positive impact on animal welfare.

Specific recommendations:

- The requirement that shooting only take place in large areas of private land or shooting clubs remain within the Bill.
- The Bill be amended so that people with previous convictions for wildlife and animal welfare offences are not considered suitable to hold airgun licences
- That sporting use on live animals be removed as a legitimate purpose to hold a licence
- That a lower age limit of 18 be placed on the suitability of applications to use air guns on live animals.

\(^i\) SSPCA Press Release, “Full Support for Airgun Licensing Plans”, 14\(^{th}\) December 2012

\(^ii\) Figures given for both years where separate data not available


Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #awl bills.

**1. Please supply your name and contact details:**

Name: Grant Webster

Organisation: 

Address 1: 

Address 2: 

City/Town: 

Postcode: 

Country: 

Email address (if no email leave blank): 

Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☑ Personal

☐ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
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☐ Yes
☐ No

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☐ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.


12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
Name/Organisation: Grant Webster

2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

I feel that any benefit would be minimal and the cost of administering such a licensing system would far out weigh any benefit. It may also serve to increase the number of firearm and shotgun certificate applications, where people feel that if they must submit to a formal licence, they may as well apply for either a FAC or SC as the qualifying criteria will be similar.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?

In respect of the number of airguns currently in use in Scotland, I would think not

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

The feelings at the moment (although not 100% sure) will be that air guns will have to be used only on licensed ranges as part of a club activity, or for pest control on private land with the landowners consent. Private safe use in the owners garden ill be illegal?? This is probably one of the largest uses of air guns, training youngsters who may well go on the firearms in later life.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

Greater degree of supervision will be required.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

People current using air guns for pest control will be forced to apply for a licence to use their air guns. On private land with owner consent. They can currently do this without a licence. I would not use the word hunting and air guns in the same sentence. In my opinion low powered air guns are only suitable for small pests. I haven’t given a lot of thought to paintballing fairs etc.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

It will, drive down the numbers of people competing, particularly those with limited budgets.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
No (millions of law abiding individuals use air guns at the moment, why should they have to pay a fee to continue to do so?

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

I would say a negative effect, certainly on those with the responsibility to oversee the licensing arrangements. Already overworked individuals with little support due to financing will find themselves facing an even greater workload.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

AS mentioned previously, if people are going to have to apply for a licence, which has similar requirements to a FAC or SC, they may well apply for one, thus increasing the number of Firearms and Shotguns in circulation.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

Limited funding would be more wisely spent in other areas, such as health, education or social work.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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1. Please supply your name and contact details:

Name: 
Organisation: 
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

Fiona M. Stewart, Acting Convenor
SOLAR Licensing Working Group
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

* 3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ Commercial

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☐ Yes

☐ No
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☑ Yes

☐ No

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☑ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
Name/Organisation:

SOLAR Licensing Group

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

No comment

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

No comment

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

No comment
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

The 1982 Act is now long past its sell by date and is not compatible with the EUSD for several reasons.

Electronic communications is being addressed but the issue of fees and enforcement has not been addressed.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

No comment
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

No.

Our detailed answers to specific questions in this document will refer.

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

Civic licensing relates to licensing both in the public interest and for reasons of public safety. This relates both to the behaviours of individuals and the impact on communities of space.

Liquor licensing is similar based on the 5 statutory licensing objectives.

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
The European Services Directive promotes freedom of movement of business within Europe. Currently, not all licensing provisions reflect these provisions.

Community Planning can be reflected in policy decisions both by licensing boards and licensing authorities.

Case law suggests that licensing and planning regimes are separate entities.

At the present time, neither the liquor nor civic regime specifically address the issue of community regeneration.

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

See our response to Question 25 above.

Further, the 1982 Act in particular, requires updating to allow a more flexible approach in this area.

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

The existing legislation is weak in this area.

Licensing Boards require to take account of the 4th licensing objective in relation to policies and decision-making.

The 1982 Act makes no such reference.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

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*1. Please supply your name and contact details:

Name: Fiona M. Stewart, Acting Convenor
Organisation: SOLAR Licensing Working Group
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 34
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☑ Yes

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Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

No comment

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No comment

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

No comment
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

The 1982 Act is now long past its sell by date and is not compatible with the EUSD for several reasons.

Electronic communications is being addressed but the issue of fees and enforcement has not been addressed

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

No comment
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

We consider that there are a number of technical inconsistencies, which will make the application of the provisions, if enacted, difficult for Boards and licensing authorities. These include –

- Fit and proper person test linked to licensing objectives
- Lack of consistency across the provisions
- Not applied to occasional licences
- Transfer – fitness of the transferee is relevant not the fitness of the Applicant

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

The Relevant Offences provisions in relation to liquor should be removed and a similar system to that provided in the 1982 regime established.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
The addition of young persons to the licensing objective currently relating to children is welcomed.

We welcome the return of the fit and proper ground of refusal subject to the technical concerns outlined earlier.

Clarification on overprovision localities is welcome.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

We are of the view that this should be a separate ground of refusal, the licensing objectives being adequately addressed.

If it stands alone, it widens the scope of the issues that Boards can take into account in making decisions.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

Yes. As referred to earlier, the liquor legislation makes no reference to economic regeneration.

Anecdotal evidence and numbers of licensed premises suggest a downturn in the number of businesses selling alcohol.

The whole system of obtaining a licence is now much more complex.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?
See answer to Question 29 above. A similar system to the 1982 Act should be put into place.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

We have the following additional comments –

- Constant amendment of the provisions leads to an increasingly complex system with a significant number of grey areas where procedures differ across the country. Such as -
  - Major Variations
  - Transfers
  - Occasional Licences
  - Reviews
- There needs to be a detailed specification in relation to Annual reports which Boards can comply with.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: [Name]
Organisation: [Organisation]
Address 1: [Address 1]
Address 2: [Address 2]
City/Town: [City/Town]
Postcode: [Postcode]
Country: [Country]
Email address (if no email leave blank): [Email address]
Phone Number: [Phone Number]

Fiona M. Stewart, Acting Convenor
SOLAR Licensing Working Group
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

✓ Yes

3. Please confirm whether you are content for your name to be published with your submission:

✓ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

✓ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

✓ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation: 

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

No comment

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

No comment

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

No comment
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

The 1982 Act is now long past its sell by date and is not compatible with the EUSD for several reasons.

Electronic communications is being addressed but the issue of fees and enforcement has not been addressed.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

No comment
Name/Organisation: SOLAR Licensing Group

4. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

Public safety – suitable drivers and safe vehicles.

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

Anecdotal evidence suggests that the public do not know the difference between the two.

The current system allows local authorities to attach greater restrictions to taxis than private hire cars.

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?
It will cause disruption.

Local Authorities have well established licensing schemes for both.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

No. There will be practical difficulties in implementing two different quantity restrictions with significant associated costs for local authorities.

The power for local authorities to introduce such tests is welcome, however, it should be left to local authority discretion as to whether the power should be implemented.

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

SOLAR welcomes this.
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Name: [Field]
Organisation: [Field]
Address 1: [Field]
Address 2: [Field]
City/Town: [Field]
Postcode: [Field]
Country: [Field]
Email address (if no email leave blank): [Field]
Phone Number: [Field]
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☑ Yes

☐ No

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☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☑ General licensing issues

☑ Alcohol licensing

☑ Civic licensing – taxi/private hire car licensing

☑ Civic licensing – scrap metal dealers

☑ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
**Name/Organisation:**

**1. Equalities, Climate Change and other Scottish Government objectives**

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**8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.**

No comment

**9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.**

No comment

**10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.**

No comment
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

The 1982 Act is now long past its sell by date and is not compatible with the EUSD for several reasons.

Electronic communications is being addressed but the issue of fees and enforcement has not been addressed

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

No comment
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

SOLAR welcomes these provisions

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?
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3. Please confirm whether you are content for your name to be published with your submission:

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☐ No

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☑ Professional
☐ Commercial

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☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☑ General licensing issues

☑ Alcohol licensing

☑ Civic licensing – taxi/private hire car licensing

☑ Civic licensing – scrap metal dealers

☑ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

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8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

No comment

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

No comment

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

No comment
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

The 1982 Act is now long past its sell by date and is not compatible with the EUSD for several reasons.

Electronic communications is being addressed but the issue of fees and enforcement has not been addressed.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

No comment
6. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

Where local authorities have not included theatres in their resolution for public entertainment provision there will be a lengthy period of time to get these amended, therefore the transitional period should have regard to this.

48. Are there additional costs or resource implications on theatres or licensing authorities?

There will be conversions costs to theatres in obtaining new licences and costs associated with updating resolutions for licensing authorities.

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?

The whole question of fees relating to the 1982 Act needs to be reviewed and updated.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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1. Please supply your name and contact details:

   Name: 
   Organisation: 
   Address 1: 
   Address 2: 
   City/Town: 
   Postcode: 
   Country: 
   Email address (if no email leave blank): 
   Phone Number:

   Fiona M. Stewart, Acting Convener
   SOLAR Licensing Working Group
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

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☐ No

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☐ Yes

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☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

SOLAR Licensing Group

1. Equalities, Climate Change and other Scottish Government objectives

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No comment

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

No comment

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

No comment
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

The 1982 Act is now long past its sell by date and is not compatible with the EUSD for several reasons.

Electronic communications is being addressed but the issue of fees and enforcement has not been addressed.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

No comment
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

In order to avoid confusion, all references to adult entertainment should be removed from the liquor legislation provisions.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

We would question how this may be enforced? Such an exemption may dilute the positive impact of the proposed legislation.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

We agree this decision should be left to local authorities.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

We would reference our earlier comments in relation to the 1982 Act requiring to be overhauled and modernised.

54. Are there any barriers to licensing authorities operating the new licensing regime?

Until these provisions are enacted it is difficult to foresee what the barriers will be beyond earlier general comments made relating to the legislation.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

We would re-iterate that the Act is now over 30 years old and it is becoming increasingly difficult to address modern business activity within the structure of the Act.

In addition, penalties for civic offences are not generally commensurate with other licensing regimes e.g. liquor, private landlord registration, HMO licensing.
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Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: [Anonymous]
Organisation: 
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliament's "Policy on the treatment of written evidence by subject and mandatory committees":

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☑ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ Yes

☐ No

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☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

I should not be classed as working in the sexual entertainment industry I do nothing more than an actresses when they are in topless in films or shows if there not class as working in sexual entertainment then why should dancers.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

I think this is not the answer lap dancing club provide a safe venue with trained staff 12 months of the year. I would not choose to go to a venue 3 times a year were the staff and customers are not used to a professionally run club this would be very unsafe.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

The disadvantage to this is as a dancer I have chosen this career, if lap dancing clubs in Scotland shut down it will not make dancers stop working but we will then have to travel, having a family this will be difficult and an inconvenience for many people.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

the barriers is that it creates an inequality within Scotland. what gives the council the right to choose were dancers should work if Glasgow get there licence taken away then it should be the same for everywhere. people of the council are deciding my families future when they know absolute nothing about the entertainment industry how does lying topless on a beach which most young adults do or have done any different from doing it in a secure night club.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

I have been a dancer for some time the entertainment industry we work in has provided a good life for me and my family. I love my job it’s fun safe and I pick my shifts flexible hours having two kids and a partner in Afghanistan. This is the ideal career we make our money if in any night we do not make money we don’t pay the club our fee, managers are fantastic, I have put myself through collage bought my own property in any other career path I may have taken I wouldn’t have been able to archive this at such a young age. A lap dancing club for most people in this day an age is a fun night out for male and female stag/hen party birthday ect… there no contact no nudity no touching nothing sexual guys enjoy coming for company many business man come to our club instead of sitting by them self in a hotel or empty bar for company, we provide entertainment these clubs do no harm in the many years I have worked in the industry never once have I felt unsafe or in any danger there is more danger and violence in a standard night club these clubs should be kept open.
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Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Gillian Gunn
Organisation: Highland Violence Against Women Partnership
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

Yes

3 Please confirm whether you are content for your name to be published with your submission:

Yes

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

Professional

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Yes

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Yes

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Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

We believe that the consequence of using the language outlined above to describe “sexual entertainment” and it’s associated activities legitimises a pervasive form of Violence Against Women. It is our understanding, and that of the Scottish Government, that strip clubs, lap dancing clubs, etc are forms of gender based violence that have clear detrimental impacts for the women involved, local communities and on gender relationships as a whole.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
We appreciate that providing “sexual entertainment” infrequently would not in itself mean that a venue was a “sexual entertainment venue”, but we would expect the premises to have in place a licence to host the “sexual entertainment”, regardless of frequency.

The Highland Violence Against Women Partnership understands terms such as “adult entertainment” and “sexual entertainment” to be euphemisms for forms of Commercial Sexual Exploitation, and, as such, forms of Violence Against Women. Commercial sexual exploitation is as harmful to the individuals involved and to society as a whole regardless of how frequent performances are.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

We still require clarity on whether or not Local Authorities will be able to do this under existing European legislation and “grandfather” or “acquired” rights”. We understand that Local Authorities could set their numbers to zero, but some Licensing Boards are concerned that where there are existing venues offering lap dancing, etc, they would not be legally able to set the numbers to zero. However, as we understand that this new legislation would have no bearing on the previous application for alcohol licensing (which is, in effect, all that current venues have in terms of licensing arrangements) we therefore anticipate that it would mean that areas could set their numbers at zero.

We welcome this proposal (subject to clarity around the issues raised above) as current approaches by local Councils to Violence Against Women are being undermined by the current system in relation to Licensing.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?
We are unsure if this is adequate, particularly as venues are often in areas with low population density and therefore there are not many residents in the area who are informed of the application. We believe that it is appropriate for Boards to adopt systems whereby they can draw attention to applications to a wider range of interested individuals, particularly their own Council’s lead officers for equalities and Violence Against Women issues.

54. Are there any barriers to licensing authorities operating the new licensing regime?

Only potentially the issue described in question 52 in relation to existing establishments.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Michael Flynn
Organisation: Scottish SPCA
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

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☐ All of the Bill
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☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
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☐ Civic licensing – sexual entertainment venues
1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.
12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

The Scottish SPCA fully supports the introduction of a licensing system for air weapons. The Scottish SPCA accepts that there are lawful purposes that people may wish to own and use an air weapon, however, a licensing system should ensure that such a person has a legitimate reason for using an air weapon and a lawful place to use it, be that a gun club or on land with landowners permission.

Currently the Police have no power over the ownership of airguns, until a crime has been committed and the perpetrator identified. Air weapons are potentially dangerous weapons and should only be held by a fit and proper person who has a legitimate reason for possessing one. There is currently no involvement by the Police to determine if a person is deemed to be fit and proper with a lawful reason for using an air weapon.

There are wide ranging estimates on the number of air weapons currently held in Scotland, even if a percentage of these are removed from circulation, the misuse of air weapons will subsequently reduce.

Using an air weapon to shoot wildlife for non pest control purposes is an offence, as is shooting domestic pets and livestock, however, virtually no one is ever traced in relation to these offences. Since potential air weapon licensing was introduced by the Cabinet Secretary, the Scottish SPCA has seen a rise in the number of domestic cats shot by air weapons (three of which were fatal), this may be due to increased media interest and public awareness.

The use of air weapons against humans or animals is an offence and greater control over ownership will certainly reduce crime.

In the reported instances of air weapons being used against wildlife or domestic pets, owners of the animal or the Scottish SPCA can face substantial veterinary costs. The same will apply to the medical profession in relation to misuse of an air weapon where a human being is the victim.

In a 2012 survey of 120 veterinary practices in Scotland, 91% of respondents supported a change to the law.

In relation to air weapons, the Scottish SPCA responds to calls from the public or veterinary surgeons where animals have been the target of the misuse of air weapons.

In 2011 the Scottish SPCA responded to 114 air weapon related incidents.

In 2012 the Scottish SPCA responded to 156 air weapon related incidents.
14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

This is unknown to the Scottish SPCA, however, given the estimated number of air weapons in Scotland, it is unlikely that there is currently the capacity throughout Scotland for all owners to have access to an existing club. Like many other participants in other sports and pastimes, clubs should be self-funding.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

As long as the personal/recreational use is deemed as a lawful purpose there should be no barrier to a person obtaining a licence. Clear definitions of personal/recreational use should be clearly defined. Many of the incidents involving domestic cats and wildlife are discovered in densely populated housing areas, where such personal/recreational use should be questioned.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

The lower age limit to apply and obtain a licence should be 18 years of age. Anyone aged between 14-17 should only be allowed access to an air weapon in the presence and under the supervision of a licenced person over the age of 18. The licence holder should bear legal responsibility for any misuse of an air weapon by a person under the age of 18 who is under their supervision.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?
Under the proposals, pest control would be a lawful purpose. A licence for pest control should only be available to individuals on their own land or to a person who can demonstrate at the time of application that they have landowner’s permission to carry out pest control on a defined area of land. For commercial pest controllers, a licence condition should state that landowner’s permission is required.

As for entertainment venues – fairs, the owner of the airgun used should be licensed for that purpose and the licence holder should bear the responsibility for any misuse of an air weapon that is used by a client.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

Other than a potential cost implication and access to a suitable club or venue, the licensing of air weapons should have no effect on those participating in competitive sport.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

Yes, the Police will be required to carry out the same function regardless of whether a licence is or is not issued.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

Any reduction in the misuse of air weapons will have a positive impact on the costs currently incurred by the Police in investigating misuse and the medical and veterinary costs caused by the misuse of air weapons.
21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

No licensing system can prevent criminal activity, however, without such a system the Police currently have no ability to deal with air weapon ownership.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

There are many activities that require to be licenced from driving to watching a television in your own home. UK citizens do not have a “right to bear arms”. Owning a weapon that is potentially dangerous to humans and animals is a privilege and not a right. In these circumstances it is not unreasonable for a person to prove that they are a fit and proper person, that they have an air weapon for a legitimate reason and that they can prove that they have permission to use the air weapon at a stated location.

The Scottish SPCA can provide details of individual cases if required.

I have included a report from the Scotsman newspaper below.
**Airguns are not a licence for cruelty**

Scottish SPCA supports plans to regulate weapon ownership with a permit scheme in a bid to protect animals says Mike Flynn

Scottish SPCA supports plans to regulate weapon ownership with a permit scheme in a bid to protect animals says Mike Flynn.

The practice of licensing airguns is already in place in many countries where the use of such weapons is legal. The Scottish SPCA believes that a permit scheme would help to ensure that only responsible owners are able to purchase and use airguns, thereby reducing the risk of misuse and cruelty to animals.

Mike Flynn, Chief Executive of the Scottish SPCA, said: "We fully support the Scottish Government's plans to introduce a permit scheme for the possession and use of airguns. It is a simple and effective way of ensuring that only responsible owners are able to purchase and use these weapons, thereby reducing the risk of misuse and cruelty to animals."

The permit scheme would require individuals to provide a number of details, including their age, address, and any previous convictions, before being granted a permit. The permit would also require the owner to renew it on a regular basis, ensuring that they remain responsible and capable of using the weapon safely.

"This is not only good for animals, but also for their owners," Flynn added. "A permit scheme would ensure that only responsible owners are able to purchase and use these weapons, thereby reducing the risk of misuse and cruelty to animals."

Mike Flynn continued: "We hope that the Scottish Government will continue to support our efforts to promote responsible gun ownership, and that the permit scheme will be implemented as soon as possible."

The Scottish SPCA has been campaigning for the introduction of a permit scheme for the possession and use of airguns in Scotland for many years. The organisation believes that this measure is necessary to protect both animals and their owners, and that it is a simple and effective way of ensuring that only responsible owners are able to purchase and use these weapons.

The organisation has long argued that the current system of licensing airguns is too lenient, and that a permit scheme would help to ensure that only responsible owners are able to purchase and use these weapons, thereby reducing the risk of misuse and cruelty to animals.

Mike Flynn concluded: "We fully support the Scottish Government's plans to introduce a permit scheme for the possession and use of airguns. It is a simple and effective way of ensuring that only responsible owners are able to purchase and use these weapons, thereby reducing the risk of misuse and cruelty to animals."

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Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

   Name: Douglas Frood
   Organisation: National Licensing Standards Officers Group
   Address 1:
   Address 2:
   City/Town:
   Postcode:
   Country:
   Email address (if no email leave blank):
   Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

x Yes

3. Please confirm whether you are content for your name to be published with your submission:

x Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

x Professional

☐ Commercial

5. Do you wish your email to be added to the Committee's distribution list for updates on progress of the Bill:

x Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

*Yes

*No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

* All of the Bill

* Equalities, climate change and other Scottish Government objectives

* Air Weapons

* General licensing issues

* Alcohol licensing

* Civic licensing – taxi/private hire car licensing

* Civic licensing – scrap metal dealers

* Civic licensing – theatre licensing

* Civic licensing – sexual entertainment venues
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

[Text box for response]

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

[Text box for response]

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

[Text box for response]
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

The National Licensing Standards Officers Group would like to put forward the proposal of two amendments to section 84A of the Licensing Scotland Act 2005.

At present section 84A, is restricted to the Chief Constable being able to bring a review of any personal licence, if the holder of a personal licence has been found to have acted in a manner inconsistent with the licensing objectives.

As a group, we would like to see the power to report a personal licence under section
Currently, should a holder of a personal licence be found, by an LSO, to be acting in a manner inconsistent with the licensing objectives, the only route to make the appropriate licensing board aware, is through a premises licence review application under section 36.

This approach is cumbersome and in the case of an Occasional Licence applied and held under a personal licence, not applicable.

We feel that, notwithstanding the normal process of guidance and advice carried out by LSO’s, it would be beneficial to be able to bring a personal licence holder before the issuing board. This would allow all parties to discuss their conduct before the board, and for the board to apply any endorsements, if appropriate.

The second amendment we would like to propose, would be the inclusion to section 84 of a provision similar to that in section 38. This is where a board receives a review of a premises licence, a licensing standards officer may prepare and submit a report on the proposal.

It is our view, that, if this could be included in the Act, it would assist boards in determining an application by the chief constable under 84A, as the licensing standards officer may have further information in terms of the licensing objectives or the “fit and proper person” aspect of the act.
Thank you for the opportunity to respond to this consultation.

The reduction in crime and increase in safety intended by the Act are likely to have the helpful effect of reducing Emergency Dept attendance.

At question 30:

Creation of new offences of supplying alcohol to a child or young person for consumption in a public place will enhance the Protecting Children From Harm licensing objective as currently there appears to be provision only for sales and purchase of alcohol within in the Licensing (Scotland) Act 2005.

Additionally, the amendment of the licensing objective in relation to children to now include young person’s is welcomed as we recognise the health and other alcohol associated harms amongst 16 and 17 year olds of which there is no proviso for within current licensing objectives.

At question 34:

Amendment of the duration of licensing policy statement to align with the term of local government elections appears to be a sensible approach. It is reasonable to expect a revised policy statement within 18 months of local government elections as suggested. We anticipate that this will lengthen current policy statements to 4 years (with next policy statement thus being due by November 2017 instead of current planned November 2016). We would, however, be concerned if such an alignment caused any further postponement of the consultation and policy process. We would, therefore, welcome a requirement for a maximum period of 5 years for completion of a revised licensing policy.

It is encouraging that clarification has been given regarding entire Board areas being eligible to be described as an area of overprovision. Provision for Boards to take account of licensed hours in overprovision assessments is also welcomed. However, in section 54 of the Bill it is suggested that at Section 7-01 (3)(ii) the word ‘must’ is repealed and replaced with ‘may’ implying that the number, capacity and licensed hours is not an essential part of an overprovision assessment.

Regards,

John

John C Hamilton
Head of Board Administration
NHS Greater Glasgow and Clyde
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

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*1. Please supply your name and contact details:

Name: COLIN WILKINSON
Organisation: THE SCOTTISH LICENSED TRADE ASSOCIATION
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes
☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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 Scottish Licensed Trade Association has never been supportive of a licensing system governed by Local Authority Licensing Boards. In our opinion, such a system, solely administered by Local Councillors, continues to lead to rife inconsistencies, political “point scoring” and confusion, not just for the trade, but the customers it serves. The Scottish Licensed Trade Association is of the opinion that this fundamental flaw does not make the current licensing system in a general context fit for purpose and reiterates the need to change this inept and inefficient system and calls for a non-political National Government Licensing body to be set up. At local level/regional level there should be a group looking at local/regional issues. Such groups should consist of representatives from the trade, health organisation, community groups, the legal fraternity, police, in fact anyone deemed to be interested in the Licensed Trade. Perhaps these groups could be made up in a similar way to Local Licensing Fora. Alternatively a national independent adjudicator or an independent conciliation/arbitration body should be formed. With the need for the Scottish Government to currently consider separate legislation in respect of Tenant Licensees and the relationship they have with their Pubco/landlords, such an arbitrary system would be opportune to extend to cover all Licensing matters.

24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?
25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?

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

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

4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

The Association supports the additional new offence regarding the supply of alcohol to a child or young person in a public place and sees this as a resolution to ceasing outdoor “drinking dens” and strengthening the fifth licensing objective.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?
Further action should be taken with regard to irresponsible promotions in the off trade. Despite some lenient mandatory conditions extended to off-sales premises in respect of controlling irresponsible promotional activity having been introduced, such activity still continues.

The SLTA recognises that The Scottish Executive is currently carrying out research into the link between binge/excessive drinking and promotions in Off-sales, and that, if necessary, further regulations can be introduced. However, in our opinion, it is within the Off-sales sector, particularly supermarkets, where the greatest problem exists. When you consider that 62% of all alcohol sold is sold through the Off-sales sector and 72.5% of that is sold through the top five supermarket chains, greater action needs to be taken.

More and more people are buying cheap drink from the Off-sales sector and consuming it at home. We have become a nation of home drinkers and evidence shows that violent domestic incidents are increasing and are a greater problem for police to deal with.

We know from other jurisdictions, who have a very high proportion of alcohol sales from the off-trade, that they have very high alcohol abuse problems as well. There are very many well-run responsible off-sales operators in this country, however there are also some who are totally irresponsible. The prices charged, especially in the supermarkets, are quite often invitations to abuse alcohol. Irresponsible drinks promotion regulations should be standardised for all retailers of alcohol.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

The SLTA has for many years advocated that the Rehabilitation of Offenders Act should not apply to prospective new licence-holders. Our views have slightly changed on this in recent times to the effect that there should perhaps be some flexibility, at the discretion of the police, dependent on the severity of the crime previously committed. The 2005 Act narrowed the Police’s authority which was deeply concerning to the Licensed Trade and the Association was against limiting the Chief Constable’s ability to object on the grounds of an applicant’s involvement in serious organised crime. The Association welcomes the reintroduction of “fit and proper person” legislation enabling the Police to impart intelligence on an individual to the board.

With the reintroduction of “fit and proper person” legislation, Police powers of objection will no longer be restricted to only issues of “serious organised crime”, and will fit in, with not only the Licensing (Scotland) Act’s philosophies “to protect children and young persons from harm”, but also preventing crime and disorder, and securing public safety.

We are pleased to see that the ridiculous situation whereby the Police only had a very restrictive area of objection, yet any individual could object to a licence will be removed.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?
33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

**Overprovision**

The SLTA disagrees with the changes proposed in the bill referring to overprovision. In our considered opinion the definition of overprovision has always been a contentious issue and is constantly challenged. In 2010, West Dunbartonshire Licensing Board was the first local authority to declare it was overprovided with all licensed premises and it initially appear that this policy was working. The City of Edinburgh Licensing Board declared in 2012 that Edinburgh had “reached saturation point” as regards the provision of off-sales, and changed its policy statement to the effect that new applications for off-sales licences would be refused. However, when a new Licensing Board was formed in both areas, following council elections, both board’s reversed its predecessor’s policies on overprovision.

Whilst this proposals would be a step further in combating overprovision, the practicalities of using the entire jurisdiction of a licensing board in the assessment of overprovision would no doubt be challenged, particularly in large rural areas. The proposal to use trading hours will only generate confusion and no doubt further challenges will be made, particularly by the large operators. The SLTA has great concerns already over the inaction of licensing boards due to fears their decisions could be challenged in court, leading them to face large legal costs. This often precluded boards from making decisions against bigger operators, especially supermarkets, because they know an appeal is a distinct possibility. Boards have already admitted that there is a two-tier licensing system. It has even been suggested that licensing boards would be more willing to pursue an action against individual operators as the chance of appeal was more remote and this situation will only continue.

In our opinion there is only one solution to the problem of overprovision of liquor licences and that is a moratorium on the number of licensed premises.
**Licensing Policy Statements**

Whilst the proposed alignment of licensing policy statements to council terms is welcomed, the introduction of an ouster clause, similar to the Town and Country Planning (Scotland) Act 1997, should be introduced. This gives parties six weeks to challenge an adopted local plan with no further challenges being allowed. We see this as strengthening board policy, particularly on overprovision. This would also in some way stop boards deviating from their own policy statement, as has been evident in the Shetland Isles and West Lothian, particularly on the issue of opening hours.

**Licensing Boards Financial Reports.**

With regard to Licensing Boards Financial Reports we understand that legislation will necessitate Licensing Boards to be transparent about their costs to demonstrate that the fees they set are based upon cost recovery, unless they choose to operate to a deficit. However we see no provision made for potential recovery of costs to the licensed trade for any excess income generated by local licensing fees and this must be addressed.
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

Whilst appreciating that the venue concerned would have to be hosting such an event, we are concerned with the definition of “host” does this mean organised by the venue or simply the venue allows such an entertainment being allowed on its premises, but organised by a third party, whether known or unknown by the premises. For example a licensed premises entertaining a stag or hen night finds that, with out their knowledge, a “stripogram” has been booked. If this was to happen on more than three occasions, would the premises be deemed to be a sexual entertainment venue? Clarification is required on this potential situation.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
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Name: [Anonymous]
Organisation: 
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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2. Please confirm that you have read and understood the Scottish Parliament's “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☑ No

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☐ Commercial

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☐ Yes

☑ No

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☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
Name/Organisation: Anonymous

6. Civic Licensing – Sexual Entertainment Venues

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50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

Having been a former employee in the adult entertainment sector, doing security to help pay my way through my engineering degree, I feel that changing the definition of the licence gives a certain stigma which I personally feel would be degrading and have an adverse effect on future employment opportunities. I also feel that for some of the young ladies working there for similar reasons would be characterised in a degrading manner due to the change in definition of the licence.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
I feel this would be unfair and unjust, how can you possibly have 1 ruling for some venues allowing them to operate without a licence and in my opinion unsafely, as it would be an environment which has little to no experience of this area and could lead to young ladies being put at risk. Where as a functioning venue who has done risk assessments, has vetted and employed various members of staff to watch, lookout for, care for, and control the safety of every person within the venue is then given greater pressures and given a stigma that others are free from even though both are supplying the same service. Therefore any venue which supplies the service should be treated the same in order to be just and fair.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

This in my opinion is outrageous, how can you justify reducing the current level of venues to less than the current level or zero? This would mean closing companies that have operated legitimately for several years, thus causing numerous employees to be made unemployed and reducing the number of jobs available. Take myself and several friends I made while employed in the industry, we used this as a stop gap to help fund training and further education allowing us to better our lives. On top of this how can you let local councils choose the number of licences in their area? Surely to allow equality there has to be a ruling which gives all businesses in a given council areas the same chance, not being put at risk because some individuals in certain councils may have personal reasons as to why they dislike the industry.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

There is no comparison between adult entertainment and a sex shop so how can the frame work for one be used in the other? The adult entertainment industry is not selling items to take home but is merely supplying entertainment.
54. Are there any barriers to licensing authorities operating the new licensing regime?

I feel this question is similar to one prior, if the new regime is used then we have an equality as some councils depending on their personal issues will have the chance to reduce or close currently operating businesses where as in the same country a few miles away others have the chance to increase or keep the industry.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

Having been a former employee in the industry I feel that the new licencing regime is completely unfair and unjust and unequal:

- Unfair, employees change in stigma is degrading.
- Unjust, business closed and people could be suddenly made unemployed.
- Unequal, across country all council areas should be equal.
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☐ Civic licensing – scrap metal dealers

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☒ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
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- 'display of nudity'

Considering that currently and for the past many years venues such as these have been places of entertainment I do not understand why it is now sexual. There are no sex acts performed in any way in any of these venues. The reclassification is ridiculous. I have been an entertainment manager for 10 years now I am to be classed as a sex manager? Do you not yourself find that absurd?

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

If you can do these entertainment shows 3 times a year and it is not sexual entertainment the what changes the 4th 5th or 1000th time the entertainment show is performed?
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

The licensing authorities should have nothing to do with what goes on in these venues. The do not tell night clubs what dj to let play and bars what bands to put on. Yes I breach of licensing policy happens in regards to the venue then by all means take control but about the entertainment provided in the venue?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

I have been a manager in this industry for the past 10 years. I met my partner in this industry and we have been together for 7 years. We have a 14 month old daughter who relies on this industry to keep a roof over her head and food in her mouth. This is an industry that has not breached any laws. Is accepted in the whole of Europe and the rest of the world it would. Provides thousands of jobs in the country and to give a zero tolerance policy in place is socially and economically unjust.
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I strongly disagree with the term “sexual entertainment” being used to describe the atmosphere in which I work, I believe the change to the terminology from Adult entertainment to the term sexual entertainment deliberately implies that more goes on in the club than you chose to believe or are willing to accept, The girls where I work do no more than dance for the customers, they do nothing more than say a play in a theatre where a woman may be seen topless or naked, super models who wear revealing clothing or even topes are not in the “sexual entertainment business.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

There should only be one law / regulation for all places of adult entertainment, I believe that a gentleman's club such as entertainment central provide a genuine safe working environment for women who CHOOSE to work there. These venues are professionally run establishment's unlike places that would be allowed have this 3 times a year in an uncontrolled environment.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

I do not think closing these venues would be a wise idea, all of the girls I know who work here chose to do so and it has paid for them to go to university and to save up money to open their own businesses. This place has provided me a place to work after I was made redundant and helped me to pay my bills etc.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

I believe it gives local authorities the power to close well established businesses whose owners, managers and staff have met if not exceeded every guideline, objective and code of conduct put to them.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

I have been to a few different adult clubs from time to time for stag do’s and works nights out they are just a bit of harmless fun, no one is forced to work there, who would get a dance of an unhappy dancer?
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Andrew Cockburn
Organisation:
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
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☐ Civic licensing – sexual entertainment venues
1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

Considering crime in respect to air guns has fallen in the Government’s own figures further controls are unnecessary, costly and given that there are estimated to be over 500,000 airguns in Scotland, difficult to enforce.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

No, not at present.

Scope should be made in the act for lawful use on owners own property, as the current legislation allows.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

Additional cost, loss of use on own property.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

Restrict opportunity for practice outside competitive venues.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No, the system works perfectly well at the moment. If the Scottish Government wishes individuals to be licensed then the government should burden the cost.
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

Negative. Ridiculous use of precious resources administering the legislation.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

Increase in Shotgun and Firearms certificate applications, if owning an airgun becomes a more involved process. Increase in SGC and FAC applications would use even more manpower in Police Scotland Firearms Department.

Possible criminalisation of people with air rifles in the attic who were unaware of the act.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

This bill seeks to address a problem which simply does not exist to the degree that makes this legislation worthwhile.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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*1. Please supply your name and contact details:

   Name: Andrew Mitchell
   Organisation: City of Edinburgh Council
   Address 1: 
   Address 2: 
   City/Town: 
   Postcode: 
   Country: 
   Email address (if no email leave blank): 
   Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

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☑ Civic licensing – scrap metal dealers

☑ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
1. **Equalities, Climate Change and other Scottish Government objectives**

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. **Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.**

   The bill has some impact on climate change commitments with reference to those sections which deal with possible controls on the number of private hire vehicles.

9. **Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.**

   No responses

10. **Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.**

    Several aspects of the bill will increase the costs of the licensing systems and therefore the fees recovered from applicants and licence holders.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

No response

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

No response
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

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19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?


21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?


22. Do you have any other comments to make on air weapons licensing aspects of the Bill?
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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 issued under this Act to cover activity normally licensed under the 1982. For example a practice is common of using a 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.

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.

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.

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

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

The Council welcomes and supports the reintroduction of the ‘fit and proper’ test to the liquor licensing system. Similarly the broadening of the objectives to include ‘protecting young people from harm’ is necessary to remove that apparent gap.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

The Council would welcome consideration of whether the costs of policing the sale of alcohol could be recovered by means of a levy on relevant license holders. This would include costs for managing the night time economy which disproportionally impacts the City and other similar authorities in Scotland.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

The Council supports the broaden of the ‘protecting of children’ to include ‘young people’
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 Act?

The Council believes this will address public concern that these types of issue should be considered in addition to the licensing objectives when deciding whether or not to grant a relevant licence. It will enhance public confidence in the decision making process.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

The Council expresses concern that ‘occasional liquor licences’ are increasingly being used to licence events which would otherwise be licensed under the 1982 Act.

For example large music events operating on a £10 occasional licence. The Council respects that dual licensing is inappropriate but contends that this system is unsustainable for the following reasons:

a) It involves the Licensing Board in regulating issues beyond the sale of alcohol for which the 1982 Act already exists
b) There is a difference in how an event may be licensed depending on the Act used and this inconsistency is confusing
c) Large commercial events are benefitting from absurdly low licensing fees leaving local authorities to pay for managing these events from the general budgets.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

It is important that public confidence in the system is maintained. If you apply for a Taxi or Private Hire Drivers Licences all convictions must be disclosed spent or otherwise this inconsistency is not helpful.

Generally any conviction disclosing violence or dishonesty should be disclosed.
34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

| The Council agrees with the introduction of determination period and the requirement to certify an application is complete, it notes however that these will increase costs for the Board. |
| The Council agrees that brining the timescales for the statement of local licensing policy in line with local government elections is sensible. |
| The Council has no concerns about the introduction of financial reports as a statutory requirement. |

| City of Edinburgh Council |

Name/Organisation:

5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

| The Council strongly supports the continued licensing of these vehicles in order to prevent crime and protect public safety. The Council notes that most other forms of public transport have a licensing or regulatory oversight, e.g. passenger carrying vehicles. |

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

| The Council notes that the separate arrangements appear to work relatively well and does not seek a change to the current system. |
37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?

Such a change would require the Council to implement changes to bring its existing licensing system for both types of vehicle into line with the legislation. There are significant differences in types of vehicles, training of drivers, conditions and controls over numbers which would require significant work to harmonise. The Council would be concerned that such a change would require new and substantial resources to implement over a timescale of a number of years.

The Council not clear what the potential benefits are from such a unified system.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

The bill implements the position of the Council which it outlined when it responded to the previous Scottish Government Consultation.

The Council strongly support introducing provisions which would allow it to set a minimum standard of training for PHC drivers.

The Council support the power to introduce over provision for PHC but is not prejudging whether the Council would introduce such a cap. At present the number of PHC’s in the City have remained stable at approx 950 for the previous three years.

The Council would be concerned that some form of clear guidance would be required for Licensing Authorities to allow them to measuring demand as an initial assessment of whether to introduce a cap.

This guidance should be statutory and the Scottish Government should introduce it under a provision of the Act.

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be
included in the Bill?

The Act implements the position of the Council which it outlined when it responded to the previous Scottish Government Consultation. The Council has concerns that vehicle such as party limos or buses are unregulated.

The Council has no view to offer on exemptions.
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

The Council welcomes proposals to tighten the rules on metal dealers as a necessary response to incidence of theft of metal.

The Council is content that the 48 hour rule is no longer mandatory provided it retains discretion to apply as local condition depending on circumstances.

The form of records are similar to that which the Council currently requires for second hand dealers and the Council supports these.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

The Council has no objection but notes that self regulating schemes of accreditation are of limited use in tackling problems dealers.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
The Council supports the abolishing of the exemption warrants and has previously responded to a Scottish Government consultation in those terms.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

The Council has no view on this.

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

The Council would be concerned that the rules are easily understood and enforceable. It may be prudent to restrict cash transactions to those below a small weight and to prevent repeated cash transactions with the same seller of metal.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

The Council does not think the proposals are unduly burdensome.
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

The questions assumes the licensing authorities will amend their public entertainment resolution as required. There is a risk that this process will take up to 18 months to achieve. There is a risk that Theatres will be unlicensed if a particular licensing authority does not include these premises within its public entertainment resolution.

48. Are there additional costs or resource implications on theatres or licensing authorities?

This will require a review of licence conditions and there will be some resource implications.

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?

The Council anticipates that the current fee structure for public entertainment is broadly suitable.
8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'
**Sexual Entertainment Venue**, comments it is not clear what the difference between and audience and ‘live audience’ is in the bill. Secondly the definition would allow a loop hole if the Venue argued that the entertainment is provided for the financial benefit of any self employed entertainer as opposed to the organiser.

**Audience**, concern that the definition should include any interaction with the entertainment.

**Financial gain**, would this be sufficient if the organiser argued that this was provided free and the financial gain came from ancillary activity such as the sale of food and alcohol. Need to be clear that ‘free to enter’ would still be within the scope of this definition.

**Organiser**: See comment above re self employed entertainers.

**Premises**: Be helpful if it included temporary structures and explicitly private members clubs.

**Sexual Entertainment**: Would the display of any film or images be caught if the purpose was to stimulate a member of the audience. It would be useful if the definition could be clear as to whether parliament intends the scope of licensing to extend to those premises which charge an entrance fee and thereafter patrons may engage in sexual activity between themselves. NB the Council is not seeking to licence premises which were formerly licences as places of public entertainment before the resolution changed.

**Display of Nudity**: No comments

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51. **The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?**

The bill should be clearer, an occasion may be subject. It may be easier to specify ‘on three occasions each occasion being less than 24 hours in total’.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

Without prejudice to any decision the Council may make the Council supports having the ability to control the numbers of such premises in its area. The Council must be able to take into account the views of residents and the cumulative impact or clustering of these premises.

The Council would like the ability to further control or limits these premises as appropriate within smaller geographically areas within its boundaries.

The Council would request that statutory guidance is provided to assist in exercise of any such power.

The Council notes that similar powers existing for local authorities in England and Wales.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

The Council has no objection to Sections 44 and Schedule 2 being used for these premises.

The Council notes that there is a limitation on the powers of inspection for premises which ought to have a licence but does not. The Council would prefer that the powers of entry are amended to bring the Act into line with other statues which regulates business activity in respect of its powers.

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

The Council would argue that the 1982 Act requires updating in a number of key respects.

The Council would recommend that the powers section of the bill is reviewed in line with the sections above.

The Council would strongly argue that Licensing Authorities should have the power to revoke licences in the case of serious misconduct on the part of licence holders. The current position means that a licence authority is restricted to suspending a licence up to and including the ‘unexpired portion’. In practice this has meant that the Council has dealt with cases where it has had entertain renewal or variation application made with respect of licences. The Council is concerned that this allows interested parties to circumvent the decisions of the authority and retain a licence which ought to have been revoked.
SCOTTISH POLICE FEDERATION
Established by Act of Parliament

Local Government and Regeneration Committee
Scottish Parliament
The Scottish Parliament
Edinburgh
EH99 1SP

Email: lgr.committee@scottish.parliament.uk

Ref: CS/DR/LS 22 September 2014

Dear Sir/Madam

Air Weapons and Licensing (Scotland) Bill

The Scottish Police Federation are supportive of the need for stricter control of Air Weapon use and ownership in Scotland and after reviewing the Bill, the Policy Memo, Explanatory Notes and the Delegated Powers Memorandum we make the following observations, which are limited to the section relating to the licensing of air weapons as this area causes us some concern.

The Bill will introduce a system of licensing for air weapons in Scotland using the existing definition of an air weapon from the Firearms Act 1968 and broadly follows the existing principles of the licensing regimes in place from that act for Shotguns and Firearms; it also creates several new offences.

It is accepted that approximately 500,000 air weapons are believed to be in circulation in Scotland and it is further accepted that many of these weapons will be unused or forgotten.

At this time some 60,000 firearm and shotgun certificate holders live in Scotland and are all licensed within the current licensing framework having passed the test of their suitability to possess the weapons which they are authorised to hold. Many of these certificate holders will also currently possess an air weapon, the Government estimate this could be in the region of 40,000 existing certificate holders. It is suggested, without evidence, that many of these already licensed shooters will actually currently possess more than one air weapon and therefore make up a considerable amount of the 500,000 weapons in circulation. (In paragraph 54 of Part 1 Air Weapons of the Explanatory note)

It can only roughly be estimated of the air weapons currently in circulation how many of these will ultimately be disposed of, destroyed or come within the scope of the licensing regime. Any suggested figures with regard to cost can only be viewed as a rough estimation and it is apparent that within the Explanatory notes document that all estimates have been kept low.
In paragraph 40 of Part 1 Air Weapons, in the Explanatory note, it states that the Police have much of the knowledge, infrastructure and experience required to set up and administer air weapon licensing already in place. It further indicates that this is true of established shooting organisation and members of the legitimate shooting community. The Police do have the knowledge and experience however the capacity of the infrastructure to deal with the increase in workload cannot be accurately estimated at this time. It is our belief that without additional resources the service will struggle to deal with this additional demand.

In paragraph 41 it states the Chief Constable shall be the licensing authority for air weapons, with day to day responsibility falling on firearms licensing officers and staff across Scotland.

In paragraph 61 it states that the current Licensing and Violence Reduction Division of Police Scotland has a well-established, trained and experienced team who operate the current licensing system. Whilst this may be true the capacity of this team to deal with an as yet unknown amount of additional work without significant disruption is at best doubtful.

- Highly likely that the increase in work that will be generated for the officers working within the Licensing system could not be delivered without significant disruption as suggest.

In paragraph 62 it lists the current staffing levels of the licensing service across Scotland, the figures quoted seem higher than our understanding of the current staffing profile for officers and police staff directly involved in Firearms Licensing alone, the figures quoted may represent staff in total within the Licensing and Violence Reduction Division. It also fails to take cognisance of more remote areas of Scotland where existing firearms licensing enquires are still dealt with by local police officers. For example N Division have very few staff directly involved in firearms licensing but have some 22% of the national workload of firearms licensing, with the majority of all current enquires going to operational police officers for enquiry.

- More accurate staffing figures for the licensing service across Scotland are required, clearly identifying only those staff, whether police or support staff directly involved in firearms licensing.

This paragraph further highlights the Government view that it does not believe there will be a need for significant additional staffing to process new applications but does accept there will be an impact in the first 12 – 24 months. Again it is hard to balance how any increase in the workload for this group of officers in the licensing service or for operational officers in the remote areas of Scotland can be achieved without an increase in staffing.

- Seek clarification on the number of operational Police officers currently carrying out firearms enquiries across the country and the volume of enquires they deal with.
- Seek clarity over the potential increase in staff necessary to facilitate the introduction of this licensing system.

In paragraph 63 it indicates that training costs will be minimal for existing staff who are simply adding to their current knowledge. If additional staffing is required then clearly there will be a significant training cost. Some additional training will have also have to be included all operational officers who currently carry out licensing enquiries, it is unclear if this has been factored into any cost analysis.
An assessment of the training implications for both the new system and more likely for additional staff.

In paragraph 64 it refers to the current ICT system used by Police Scotland, this is currently the SHOGUN IT system. It will soon be the system used by all licensing departments across the country. It states that Police Scotland have indicated the system will be capable of being built on to include air weapon certification within SHOGUN but this has only been confirmed in principle with the software developer. It goes on to indicate that no formal discussions have taken place with the company responsible for SHOGUN and it’s not possible to state with any certainty the development costs, but initial discussions indicate the costs would not be high. It is unclear what this assumption is based on. The current system is operating separately in each of the legacy Force areas that operate Shogun, until the national system is populated then we cannot even be sure of the systems capabilities to deal with 60,000 database entries. The number of new air weapon certificates cannot be quantified as yet, so the ability of an untested national system to increase its capacity remains unknown. The potential costs to develop the system with suitable software and storage could not be estimated until far more detailed and formal work was undertaken by Police Scotland and the developer.

More detailed and accurate work is required to confirm the ICT system will have the capacity and functionality required along with clear costs. It is not clear if the current work has undergone tendering.

The creation of Air Weapon licensing will put thousands of people onto the Criminal History System (CHS) as a firearms holders and it is unclear if the cost of creating these records has been factored into the calculations on overall costs.

Confirmation that certificate holder’s details will be added to the CHS system and the costs of this work.

In paragraph 66 it identifies that the main costs will fall on Police Scotland from the initial certification of air weapon holders. It highlights that it has been agreed that extensive background checks and home visits will be necessary in a very small proportion of cases. Without the ‘Guidance Document’ which is yet to be published, it is unclear what criteria will be used to gauge when checks or visits will be necessary. It would therefore be impossible to gauge what volume of work will be generated until the guidance is issued. Only once you are able to identify what is suitable security for an air weapon, what is suitable land, what background checks or other enquiries are necessary could it then be established what actual work will be required in processing an application.

Paragraph 67 indicates that on average a shotgun or firearms enquiry takes an enquiry officer 5 hours with a further 2 hours of admin work and states that the air weapon enquiry should be dealt with in much less time. It highlights there is agreement with Police Scotland that checks of a level such as “disclosure” checks would be appropriate in most cases with relatively few requiring significantly higher level background checks, there is no evidence of how this conclusion is reached and it would seem reasonable that any person with previous criminal convictions will require further checks or where any other doubts arise.

The number of applications requiring a full enquiry cannot be accurately assessed until the criteria for these has been established.
Within a table at paragraph 69 it details 98% of applications require only 1.2 hours of work by an admin officer along with a set figure of £60 for the ‘disclosure’ style background checks. Of the remaining 2% that require the more detailed process, then 1.75 hours of enquiry officer time is allowed in addition to the admin time and background checks as previously listed. It then draws an average cost of £85.55 per application and provides some figures in paragraph 70 per 10,000 applications.

Again there is no clear evidence of where a figure of only 2% of applications requiring full enquiry is reached and without the guidance document then no assumptions should be made about when full enquiry will be necessary. In the example quoted for 10,000 applications it provides an estimated cost of £855,500. If the percentage of applications requiring full enquiry is increased to only 20% then the cost per 10,000 applications increases by £125,000.

This increase in cost is only calculated using the produced figures of allowing 1.75hrs for licensing enquiry but at present for current firearms enquires 5 hours is seen as the accepted amount of time. In our more remote areas then 5 hours will not be unusual for the length of time taken when including travelling. It would also be necessary when full and thorough enquiry is required into an application.

If 5 hours is used to calculate the cost of an enquiry then the costs increase from the suggested £153.65 per enquiry to £225.65 and if you use a figure of 20% requiring full enquiry then the cost per 10,000 enquiries increases to over a million to £1,124,500 an overall increase from the estimate by £269,000.

- **The time allocated for enquiry requires to be accurately assessed and costed.**

Compliance costs in paragraph 76 makes it clear that Police Scotland should not pursue unlicensed air weapons as a significant new priority but rather deal with the licensing and identify and seize unlicensed weapons as part of wider policing responsibility and as such no additional officers should be required as a consequence of this legislation. Once the offences created in the Bill are in statute then officers will have to deal with the weapons and the owners and users without certificate or in breach of the certificate conditions as offenders. This will undoubtedly increase workload it is however impossible to make an accurate assessment of by how much at this time.

The subsequent costs quoted in paragraph 77 with regard to the cost to submit a report regarding an offence and testing of the weapon again seem low both in terms of the time involved and financial cost.

- **The costs of the submission of an offence report and specialist weapon examination require proper and accurate detail.**

Disposals of weapons is covered in paragraph 80 and highlights that many old or unwanted air weapons will be handed into the police for disposal or destruction and that Police Scotland will securely hold these weapons and destroy them in line with the existing arrangements. This section also suggests that owners can dispose of them by selling on the air weapon but it is likely that the market for such weapons in Scotland will be limited with an oversupply affecting any resale value of second hand weapons. This may increase the number of weapons being surrendered to Police for destruction even though they have some value.

In paragraph 81 it continues that the current arrangements for the disposal and destruction of firearms is cost neutral, with the private company benefiting from any scrap value from the destroyed weapons.
Again within this section rough estimates have been placed on costs associated with the disposal of weapons and a figure of £30,000 placed over the first two years of the scheme. There is no apparent supporting information to indicate that work has been done with the private companies, who currently dispose of the weapons, in the first instance that they wish to take on the additional work and then costs based on estimated figures of disposals in a year. With potentially many thousands of weapons to be destroyed this will be a significant increase in work for these companies who may no longer be able to deliver this on a cost neutral basis.

It is our understanding that the number of companies who carry out this work for Police Scotland is very limited and only a small number of weapons annually go for destruction as a percentage of the current weapons legitimately held. The lead-in phase to air weapon licensing would see an amnesty period where weapons could be handed into police for destruction. This will involve officers from all over the country having to physically take possession of weapons, securely store them, arrange for safe transportation to central storage areas and then for onward transportation to the approved disposal agents. All of this will involve many officer hours, transport costs, admin costs and none of the additional costs to the Police appear to be factored into the suggested figure.

- Clarity required that the current disposal system will manage to deal with air weapons, that providers have been asked to provide tenders or bids for the work and what the costs will be.
- The actual costs to police for the additional work in dealing with the surrendered weapons, storage, transportation and admin have not been included.

The creation of new offences will lead to prosecution in the courts and paragraphs 84-89 cover the suggested costs of dealing with offenders through the courts. The estimated number of offences seems low and in this section there appear no cognisance taken of the additional police time that will be required following detection of an offence, the necessity to take offenders into custody and the subsequent reporting of offences to the Procurator Fiscal. All of this will take considerable Police time not to mention possible appearance at court for Trial later. This again creates additional costs which fall from this legislation and have not been clearly identified nor can they be accurately assessed at this time.

In Section 5, subsection (2) of the Bill with regard to the Grant or renewal of an air weapon certificate the Chief Constable may when considering an application from an existing firearm or shotgun certificate holder be satisfied that the applicant is therefore fit to be trusted with an air weapon and is not prohibited from possessing such a weapon. It does however further require him to meet the test of subsection (1) (c) and (d) that the applicant has good reason and can do so without danger to the public. As these applicants have individually undergone such scrutiny to hold their existing certificate to possess far more lethal weapons it would seem logical to simply extend the authority of the existing certificate in that such a certificate holder is exempt from holding an individual AWC.

In Section 38, it goes on to provide the Transitional arrangements for an existing firearm or shotgun certificate holder which allows them to use and possess an air weapon and to do so without committing an offence during the transitional period. This would allow some current certificate holders to possess and use an air weapon for up to five years without having the need to apply for an AWC. It could be argued that the process for an existing certificate holder to obtain an AWC would simply be bureaucratic and unnecessary if there is already an assumption the applicant will meet the criteria and be granted an AWC. If the current 60,000 Firearms and Shotgun certificate holders were removed from the AWC by means of exemption this will have an impact on reducing the number of applications to be dealt with and could be up to 40,000 individuals if based on Government estimates.
This could go some way to help with reducing the initial cost of introducing such a system.

- **Current firearm and shotgun certificate holders should be exemption from holding an air weapons certificate as long as they hold a current firearm or shotgun certificate.**

In Section 6 of the Bill it introduces that every AWC will have conditions attached and further creates an offence in subsection (4) of failing to comply with a condition attached to a certificate. It is likely that a significant amount of work may be created by holders failing to comply with conditions, be that in connection with the storage of weapons or their use. This creates an anomaly when a current shotgun certificate has no conditions relevant to the use of the shotgun but an AWC will have such conditions. There is potential for offences to be committed by a lack of understanding of the differences between conditions that will apply to an air weapon and similarly to a firearm but not to a shotgun. This is especially relevant when transitonally a shotgun certificate holder may possess and use an air weapon but may not have an understanding of the likely conditions they should be adhering to. There is potential for one standard generic condition such as the weapon should only be used in a safe manner at all times.

- **A review of the necessity for conditions to apply to each certificate holder, with only a simple generic condition applying to each certificate.**

It is envisaged that the AWC will be similar in style to the existing certificates but it is unclear if the certificate will bear the holders photograph and it does not appear to be a requirement that any weapons owned will be listed on the certificate, whilst it is understood that not all air weapons have serial numbers there does not seem to be a process of any form of notification of sale from AWC holder to similar holder. Only on the sale by a Firearms dealer to a place outside of Great Britain does the Chief Constable require to be advised. It is unclear how it will be recorded for example how many air weapons an individual possesses at any one time and details of persons to whom weapons have been disposed.

- **An understanding of how sales/transfers will be recorded and weapons be identified is required.**

In section 13 there is a requirement for visitors to apply for a visitors permit to allow them to use, possess, purchase or acquire an air weapon while in Scotland. It is unclear how many individuals travel to Scotland currently from within the United Kingdom with an air weapon to use in this country and while an existing system for visitors permits for foreign nationals visiting the country with firearms or shoguns is in place this has not been for residents from other parts of the UK.

With no such licensing of air weapons in England and Wales it remains likely that individuals will travel to Scotland with air weapons without knowledge of the restrictions that will be in place. A significant amount of publicity will be required in a hope of raising an awareness within the general population of this restriction. Clearly if visitors are detected without a visitors permit then they will have committed an offence and will have to be dealt with accordingly.

- **To avoid unnecessary offending a far reaching media campaign will be necessary not only in Scotland but the wider UK.**
There may be a similar opportunity for holders of firearm or shotgun certificates not resident in Scotland to be exempt from requiring a visitors permit if travelling to Scotland with an air weapon.

- **Consideration to be given to firearm and shotgun certificate holders from outwith Scotland being exempt from AWC.**

In section 18 it provides power for the Chief Constable to approve air weapon rifle clubs and further states that in section 21 if the club is already a club approved as a rifle club in terms of the Firearms Amendment Act that its approval can run concurrently with its rifle club status and in a similar fashion to a current firearm or shotgun certificate holder it has already passed a test of its suitability and such a club could be exempted from the need for further approval during the time its approval as a rifle club in terms of the Firearms Amendment act continues. This would again remove some bureaucracy and a further tier of licensing and administration.

- **Consideration be given to exempt existing approved rifle clubs from the necessity of air weapon rifle club approval.**

In section 31 it creates further offences of failing to take reasonable precautions for the safe custody of an air weapon and in 1 (b) failing to report immediately to the Chief Constable the loss or theft of an air weapon. This again creates an anomaly as a shotgun or firearm certificate holder has as a condition of the certificate to report the loss or theft of any weapon within 7 days. Clearly such a report should be made immediately or as soon as is reasonably practical but this section introduces a higher level of requirement for the lower level weapon which seems disproportionate.

- **The offence at section 31 (1) (b) be amended in line with the current provisions for firearms and shotgun and be reported within 7 days.**

As stated at the start of this response the SPF are supportive of the need for stricter control of air weapons however we are concerned that the capacity of existing staffing and IT systems will not be able to deal with this additional workload and may have an adverse effect on the arrangements for licensing of firearms and shotguns also dealt with by these staff.

Yours faithfully

Calum Steele
General Secretary
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Carol Johnston, Chief Solicitor
Organisation: West Lothian Council
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☑ Yes
☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal
☑ Professional
☐ Commercial

* 5. Do you wish your email to be added to the Committee's distribution list for updates on progress of the Bill:

☑ Yes
☐ No
* 6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes

☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☑ General licensing issues

☐ Alcohol licensing

☑ Civic licensing – taxi/private hire car licensing

☑ Civic licensing – scrap metal dealers

☑ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
The proposal to remove the exemption warrant procedure is supported to extend metal dealer licensing to all involved in the metal trade.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

The proposal to go cashless is supported in order that transactions can be traced for enforcement purposes. There is a concern that any de minimis provisions could be exploited.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
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Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?
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*1. Please supply your name and contact details:

Name: Gareth Adamson
Organisation: N/A
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 52
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

✓ Yes

3. Please confirm whether you are content for your name to be published with your submission:

✓ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ Equalities, climate change and other Scottish Government objectives

☑ Air Weapons

☐ General licensing issues

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☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.


12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

It will not contribute, at least in a positive way.

The amount of crime committed with airguns is falling without this legislation. Since those who misuse airguns currently will not be inclined to register airguns, the majority of current airgun-related offenses will not be reduced.

The most likely outcome is an increase in “crime” manufactured by innocent airgun owners who run afoul of the new laws.

It should be pointed out (and *must*, in the discussion of this bill, be raised) that the Violent Crime Reduction Act, enacted 2006 (one year after the tragedy that prompted this law) has already reduced airgun crime by over 70%. This bill is thus unnecessary and seems to be intended to only penalise the law-abiding without legitimate reason.

This appearance is backed up by the fact that despite 86% of those consulted calling for the law to be scrapped, an overwhelming majority by any means, Justice Minister Kenny MacAskill insists on pushing this unjust and unfair bill through Parliament.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?
No. The current estimates are that there are half a million airguns owned by 125,000 people.

A significant number of these people “plink”, or shoot recreationally on their own land without impacting anyone around them. Some if not all of these people will be unable to find an airgun club nearby, or will have one that is packed trying to accept everyone affected by the enactment of this legislation.

Given the somewhat regressive attitude displayed towards firearms in this country, it is unlikely that the Government will give fair approval to any new airgun clubs wishing to open to ease the trouble made for airgun “plinkers”.

It is also unlikely that the Government will give their approval to airsoft or paintball groups, which will be unfairly affected by this bill (see section 22).

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

It will all but cripple the hobby for a number of responsible owners, forcing unnecessary costs and restrictions on them – which many believe is the intent of the bill.

There are also the hobbies of Paintball and Airsoft which will in most likelihood be negatively affected.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

The new laws will disallow younger airgun users from owning their own guns, which could negatively impact young hobbyists from continuing the sport.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing...
centre, entertainment sector etc.)?

I cannot speak on most subjects mentioned.

On the subject of paintball – as far as I know, UK law prohibits firing airguns at a person within most cases. Paintball guns, although within current power ratings classifiable as “airguns” are currently exempt from such classification.

This new legislation will forcibly classify paintball guns as airguns, which could, if interpreted a certain way, have a significantly negative effect on the sport.

To a lesser extent, this will also affect Airsoft skirmishing, as a significant portion of Airsoft equipment will be wrongly reclassified as airguns.

I clarify somewhat in section 22.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

The increased difficulty in obtaining airguns and a permit will certainly reduce the amount of airgun owners involved in such activities.

A significant number of users, especially competitive shooters, shoot on their own land at targets, taking great care not to endanger anyone near them. Banning this practice will require shooters to go to ranges to practise, which will in some cases make the sport prohibitively expensive, which is unfair.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No. If the applicant for a certificate is rejected, the fee should be refunded in full, as occurs with Firearms Certificates currently.

Alternatively, given that this scheme appears to unduly penalise airgun owners, it should be considered to waive all fees as a measure of good faith, for the first five years of the licensing scheme at least.
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

Negative impact. Implementing a licensing system will take several months, and will be expensive both in terms of manpower, IT allocation and with regards to funding.

Further monetary costs will be required if giving fair compensatory value to airgun owners handing their weapons in as the legislation permits.

Police will be required to enforce the new law, which will give them more work and may take officers off the streets to cope with the influx of requests. Several police officers have opined that the law as written is unenforceable, and yet their voices have gone ignored.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

A significant amount of the shooting sports will be affected by this unnecessary Bill. The sports for Airguns draw in large amounts of tax revenue that may be lost if the Bill passes. The same goes for paintball and Airsoft, albeit in smaller quantities.

In previous licensing changes to other weapons, such as in 1997 with the handgun ban, those handing in guns and related items were in some cases given less than the value of the items relinquished, which cannot be legitimately called “fair compensatory value”. Although the Scottish Government may be inclined to offer fair value for weapons and other items handed in, there are fears that the same issues will arise again.

The Airsoft and Paintball sports do not appear to have been considered at all, and seem to have been deemed acceptable collateral damage. This is completely unjust, and cannot be permitted to occur. Both communities must be given a full say on the bill before it is considered.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?
The Bill and all of its consultations so far have unreasonably neglected the Airsoft skirmishing sport. Currently, Airsoft guns are legally permitted up to 1.3 Joules for automatic-capable guns and 2.5 Joules for single-shot only guns. This was recently confirmed as below lethal limits for these guns and therefore acceptable for use in skirmishing sport by the ACPO. These limits have been used in most skirmishing sites across the UK for quite some time.

Under the new Bill, Airsoft guns above 1 Joule will be wrongly reclassified as “airguns” and their use in the sport may be prohibited under the same laws that could affect Paintball. It is also likely that the Government will not allow current “skirmish sites” to be classified as clubs, which would disallow any use of reclassified Airsoft guns even at a site’s target range.

Overall, the law unfairly affects Airsoft, despite having used the aforementioned higher power ratings for several years without the injuries typically associated with airgun misuse.

The most concerning thing is that the Airsoft community was denied a say during the recent consultations, under the claim that they would not be affected at all by this Bill. As the Bill is written, this appears to have been a false statement.

Airsoft is currently regulated as part of the Violent Crime Reduction Act 2006, which also modified laws regarding airguns. Realistic Airsoft guns are only available to those who can prove proper use, such as membership at a local gaming site or re-enactors. This measure, despite being essentially “self-policied” by the exempt communities, has resulted in a significant drop in replicas used in crime, without unjustifiably penalising the legitimate use of the same.

The VCRA, as mentioned previously also regulated Airguns, and is almost certainly responsible for the 70+% decrease in airgun offenses following the Act becoming law. The proposed licensing bill is attempting to remedy an issue that has been covered sufficiently by previous legislation, and will only serve – and indeed appears to be intended – to penalise the legitimate users of airguns, paintball and Airsoft guns alike.

If the Government is insistent that this law be forced though, then in the interests of justice, the bill must without question include a common-sense amendment to exempt all Airsoft and Paintball guns within the current legally permitted limits.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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6. Civic Licensing – Sexual Entertainment Venues

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50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

If a club offering this type of entertainment is to be so heavily regulated surely it makes no sense to allow other venues to do it on an ad hoc basis
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

This in effect allows the local council the ability to close existing business when they have done nothing wrong yet allowing club who are in the same business in the same country to remain open. Postcode lottery comes to mind.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

I cant see how girls doing lap dancing relates to the sale of alcohol the barrier being the are not in a position of knowledge to make decision on these matters.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

The clubs I’ve been taken to on many business nights out have always been well run with very professional girls who take their jobs seriously. Although not everybody’s cup of tea no one can deny that they clubs are run to very strict rules and are heavily regulated, because some people don’t like them doesn’t mean they are not run properly or have no place in society. They are not marketed in an in your face way so the solution is simple if you don’t like them just don’t go!
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- 'sexual entertainment venue'
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- 'display of nudity'

There is nothing sexual that goes on in this club. We perform topless dances just the same as you would see on a beach on holiday.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

I wouldn’t do it as I wouldn’t feel safe.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

The club I work in is well run, if this happens it would be shut down & I would be out a job or forced to work in another city.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

In my opinion the licensing board have nothing to do with lapdancing.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

My names [redacted], my dance names [redacted]. I enjoy the flexibility of my job that I can pick and choose when I work. I like working in the industry, meeting people from all different walks of life & making great friends from this job. Dancing has giving me the opportunity to fund the lifestyle a lot of people my age don’t usually have. If all lapdancing clubs in Glasgow were to close I would have to work in a city such as Edinburgh which is a city I am not familiar with also I do not drive so after my shift I would have no way of getting back home. But most importantly if I were to dance in another city I would need to do fully nude dances. In Glasgow all we do is topless dances which I am comfortable & feel safe performing. This is my only job I have at the moment. The club has a fun & enjoyable atmosphere.
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- 'display of nudity'

Consequences of this turning into a sexual entertainment club is leading customers on that we do something in our work that we don't. Sexual puts into a customers mind that this isn't just a lap dancing venue. Which is certainly not what we do here.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

The thought of this club or all clubs in Glasgow being shut down but then bars being allowed dancers 3 times a year is ridiculous. Why take away a club where the girls working there are all safe to be working in, but allow them to dance in a bar, where men aren’t used to having dancers there, & the safety procedures of the dancers wouldn’t be the same.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

If the clubs in Glasgow were closed down, I would be forced to work in Edinburgh. As you can see, I live in Ayrshire, so already travel an hour to Glasgow & back every time I work. What doesn’t make sense to me is that if Glasgow clubs closed down I would be forced to travel 2 hours to Edinburgh, and struggle to get home at night, or even work in Aberdeen, where my shifts will be reduced to 2 a week as I would only be able to go on weekends, & then have to travel the hour to Glasgow & three hours to Aberdeen.
Also, all these clubs are full nude, were as Glasgow offers the least of Scotland’s clubs. Why should I have to travel two hours to work somewhere where I am going to have to be more nude.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

The problem here is nothing to do with licensing for our club. A lot of the customers I see don’t even drink, it is a form of entertainment, sometimes for business men who are travelling alone, & don’t see it fit to sit in a bar on their own. In these clubs it’s about having someone to talk to also, having company on a night were you may be alone & just want to speak to someone. It isn’t all about drinking.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

In my 2 years of dancing, I have travelled between Glasgow, Edinburgh & even Blackpool. Glasgow has been the place where I have been most comfortable. It is the one place I have experienced in the UK where I haven’t had to take all my clothes off, & I feel completely safe in my surroundings. The management here look after me very well, & treat me with respect & I am also allowed to choose my own shifts so I can work around my day to day life. If I have ever had a problem with the odd rowdy customer it has been taken seriously & I have been well looked after in no way I can complain about. Removing this club or any club in Glasgow would ruin everything. The girls here work hard, & everyone is happy, including the customers that come in for either a quiet drink, a stag show, or a birthday. It is a great establishment in Glasgow which would be terrible to lose.
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- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

As the regulations allowed any licencing venue to have strippers night three times a year if they want, I believe on the other hand when the customers come to the lap dancing venue they know it’s a lap dancing club firstly they been told the rules by the door staff and most of the lap dancing clubs are covered with 25 cameras for the staff and customers safety. Cctv being watched by the management and security staff to maintain the licencing rules and regulations.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

I have been working at many doors over 17 years including lap dancing clubs in Glasgow, they are very professionally run. I have experienced no trouble in lap dancing clubs as compared to other nightclubs. Management and staff are very professional and easy-going in my opinion. I can't see any reason to close the lap dancing clubs.
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<tbody>
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52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

Disadvantage as you are denying people the right to work in their chosen industry and also members of the public the freedom of choice of what they want to view.

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☐ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

I think the reintroduction of a fit and proper test on licenses premises and licensees will have a positive effect on the trade, but only if these tests are transparent and can be made public in order that any judgement can be fully scrutinised and assessed by all parties (Board, applicant, Police, Public) concerned, and indeed that they can appealed instantly through the courts by any who may feel wronged by any decisions by a board that would affect trading or granting of a licence.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?
Yes..a more streamlined structure of licencing ..one where all boards operate by the same rules and instead of varying licence policy documents being put in place by councils across Scotland, some as little as 15 pages long , one indeed 123 pages the government put in stricter guidelines to make sure that they concentrate more on policy rather than detail and admin process. That all publish an over provision statement instead of as I can see 17 councils feeling the need not to publish ,even though there is statutory obligation in place that they do. That licensed hours in all city centres , suburban and rural areas are standardised by government not council as it is a shambolic lottery from city to city as to what hours are allowed , especially late opening hours and out door drinking. For example …Why is that Edinburgh allows during festival times which is half the year, inside and out , to the detriment of the local 365 day a year publicans opening hours to drink at times when the milk man and paper boy has started their deliveries yet Glasgow 45 miles away thankfully doesn’t…crazy ! Boards it seem up and down the land are all over the place when it comes to determining curfews, setting terminal hours, dealing with special events and defining the type of entertainment that should be considered for a late licence. Very few seem up on licensing law or indeed the 2005 act and the 5 licensing objectives set within. The Government it seems are also only too happy to allow this chaos to continue issuing bland guidelines and definitions on operating hours, security and what constitutes a late night club, what is a bar (style or hybrid)and more recently what is a casino? This has led to a scenario where the price of alcohol has been driven down by all in order to be competitive and makes a mockery of their 5 objectives. Licencing law is a pig in poke and not ruled by common sense but more where you are the map and what type of board you have, and indeed the politics they share. Government should be more robust in their definition of trading hours and remove some of those decisions from the board, their should be level playing field for all to play on and not what we have at present a furrowed field.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

See above

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?
32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

As stated above the 2005 act needs beefing up ... boards are all over the place since the 2005 act was put in place many publicans and licensees have been forced out of business. There has been a catastrophic effect on trade from implementation of the smoking ban, a banking crisis and world economic recession. Nothing has been put in place to regenerate licensing only more laws and law makers to abide to. SIA, Personal Licence, Licence Costs, LSO’s and both Government and Boards intransigence to deal effectively and with common sense the negative effects these and more factors have had on the trade. Far from being encouraged to go out and safety drink and have a dance they are now in their thousands staying at home pre loading or tanking up unmonitored, unsupervised and unsafe. Which I'm sure was not the intention of the act.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

Full disclosure of all applicants, however common sense should apply ie if you haven’t paid your tv licence or parking fines then that should not be held against you. Only those crimes which would have the applicant at odds with the 5 objectives should be brought to bear.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

No
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6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

This could cause clubs to be closed even if they are well ran and popular with customers, taking the choice away from people who choose to visit them.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

Yes if they are deciding on what type of entertainment should be offered to the public, to force lap dancing out of business is unrelated to the sale of alcohol. They wouldn’t do this with other forms of entertainment comedy clubs for example often have very adult language in certain late night shows yet no one from licensing picks what type of comedy is suitable nor what type of music can be played in a club or what tricks a magician can perform. As long as the entertainment is legal it should be allowed for the public all over Scotland to choose if they wish to view it.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

It seems rather odd that if this Bill goes through that Lap dancing in Glasgow will by the council's own admission be closed down and its topless only but the clubs that offer full nude in Edinburgh will be left open. It's the same country and surely the people in Glasgow are as able as those in other parts of the country to decide if they wish to visit a lap dancing bar?
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- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

Sexual entertainment venue sounds quite harsh my opinion its to be left how it was because people will get annoyed when they will hear that.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

It’s a terrible idea my opinion its that the girls that go to private partys are not safe and there more safe in clubs that have stewards and they specifically asked for adult entertainment.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

The barrier is that they'll won't be any clubs in Glasgow and it's not fair if it's not affecting Aberdeen and Edinburgh...Glasgow it's a big city and should have lapdance clubs.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

my name is and I’ve danced in many other countries like Germany Malta Norway. Glasgow it’s the cleanest place to work and would be a shame to leave the clubs that are not clean and all the girls that work in Glasgow will have to leave and go in places that are not clean.
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Having worked as a dancer for the last year and a half I feel that to change the terminology from adult entertainer to sexual entertainer would have serious connotations. I feel that it would be derogative to me and my profession.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

If this was to happen the implications would be that as a dancer I would be put into an unsafe environment without the appropriate rules and regulations being enforced. I have worked within regulated premises as a dancer and would feel extremely vulnerable if the correct security was not in place.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

So in my opinion there are no advantages to this situation as dancers and workers in the industry will constantly be in fear that they will lose their jobs, in the current climate this would not be a positive scenario.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

I feel to close the industry in Glasgow/Scotland would not be a positive thing. I love my job and we work as and when we chose to. It is a great environment and I have never felt my safety ever compromised. It would only be negative to shut the clubs down.
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51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

Women who chose to work in this industry are capable of deciding for themselves we don’t need others to do it for us

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

I think its unfair that someone can decide on behalf of all the woman who have chosen to dance that they have made the wrong choice, that they will be out of a job because others think its not right. We work to live and to take that away from us while its ok in other parts of Britain and Europe is wrong! We should have the right to decide our profession same as everyone else.
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4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

Introducing the ‘fit and proper’ test to determine whether someone is suitable to hold a licence will allow Boards to consider a greater amount of information including Police intelligence and associations.

There is no guidance provided on ‘fit and proper’ test as it is noted Boards will have experience from other licensing regimes and case law to guide decision making with each case to be considered on its own merits.

Introducing new offences for supplying alcohol to a person under 18 in a public place will ensure that it is an offence both inside and outside of a licensed premise and will help reduce access to alcohol by children and young people.

It is noted however that this is only two of the licensing objectives and there should be equal weight on all five licensing objectives.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?
We would encourage consideration of further legislation to limit the supply of alcohol to children. For example, currently it is illegal to allow a child aged under 5 to consume alcohol [Children and Young Persons (Scotland) Act] and consideration should be given to raising this to at least 12 years of age, preferably 15 years of age to meet medical advice. Scotland’s Chief Medical Officer’s advice is that children under the age of 15 should not drink any alcohol.

Previously in the Further Options for Alcohol Licensing Consultation we supported the extension of police powers to impose restrictions on licensed premises within a specified geographical area where disorder is likely to occur.

Legislation currently excludes members’ clubs from the assessment of overprovision in an area. Within Scottish Borders, 22% of all licensed premises are members’ clubs contributing to a significant proportion of the overall availability of alcohol.

One key area of concern is changing licensing boards’ requirement that they ‘must’ take account of certain issues when considering overprovision to that they ‘may’ take account of these. This could potentially weaken existing legislation and know that over provision is already a challenge for Licence Boards to consider.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

By expanding the licensing objective of protecting children from harm to include young people will close the loophole whereby people between 16 and 17 were unprotected within the licensing objective.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?
32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

As previously noted the current exclusion of members clubs from the assessment of overprovision has the effect of the overall availability of alcohol being underestimated. Within Scottish Borders, 22% of all licensed premises are members’ clubs contributing to a significant proportion of the overall availability of alcohol.

An unintended consequence arising from overprovision for an entire board may mean more rural areas like the Scottish Borders may have someone in an outlying area who would not be able to obtain a licence even though the nearest licence premise was many miles away.

Current regulation around occasional licenses means that these can be granted to voluntary groups or members clubs at a low cost (£10) and contribute to overall availability. Therefore these should be considered in any overprovision assessment. An occasional license also allows groups to compete on an unfair basis with mainstream licensed premises where the same legal regulations are not required e.g. staff having completed basic training.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

It is difficult to comment on this since as well as the type of offence the length of time (and age of applicant) at the time of offence may influence decisions. For example, sexual or violent offences may be of concern.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
A number of other helpful suggestions were made within the Further Options for Alcohol Licensing which included ways to address concerns around members clubs and restricting access to alcohol where disorder is likely to occur. It would be informative if reasons for not including these in the Bill were shared.

It would have been beneficial for increased transparency for Boards if they were under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives including a range of key performance indicators and a reporting template to ensure consistent reporting. This would allow consistency across Scotland and ensures that Licensing Board take cognisance of the data provided. This would also point out any weaknesses or areas of objectives that are proving difficult to meet which may potentially be provided with central support. Unfortunately this has been restricted to a financial report only.
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1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

I do not believe that this legislation will help to improve public order and safety, reduce crime or advance public health. The current Firearms legislation is sufficient, in my opinion, to control the use of firearms and to punish those who misuse them. The current Firearms system is stretched and under resourced since Police Scotland formed – in my experience, the Aberdeen Firearms Licensing office is experiencing lengthy delays in processing applications and visiting.

I do agree that there are people who should not be allowed to own or use air weapons however this Bill will not have the desired effect of restricting them. People who do not use air weapons legally now, will continue to use them illegally in the future. There is an extremely large pool of unregistered air weapons to which undesirable people can access to now. If this legislation was introduced, unregistered air weapons will continue to be easily accessible in England and taken across the border into Scotland.

Weapons that are used in crimes are often unregistered or stolen.

The number of crimes committed involving air weapons is relatively small in comparison to this legislative reaction. More people are harmed by dangerous dogs than air weapons. More protected wildlife is killed by uncontrolled roaming cats than are killed by air weapons. It is, in my opinion, a disproportionate response to a small number of isolated incidents involving air weapons.

The banning of back garden plinking will not improve public safety.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?
I am unsure as I am not a member of a shooting club. I have safely used air rifles in a controlled environment from a young age in the back garden of my family home.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

I believe this legislation will restrict those who use air weapons, the vast majority of which do so legally and safely. I currently shoot air weapons (as well as my shotguns and firearms) on privately owned land and do so in a safe manner. I would find it very restrictive if I had to join a shooting club to continue practising my sport.

The main reason I shoot air weapons is for enjoyment, which is not a suitable ‘good reason’ under the proposed legislation. Air weapons are enjoyable to shoot and cheap to run which is why so many people choose to learn to shoot with them. Whilst I do also use air weapons for pest control and thus have a ‘good reason’ I think that this legislation would stop people from owning and shooting air weapons in their garden for enjoyment. Air weapons can be fired safely in urban environments such as a back garden if simple and reasonable precautions are made to stop the pellet traveling beyond the target.

I think it would discourage new people from entering the sport and learning the safe handling and shooting techniques before moving onto other firearms.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

Young people will be restricted from learning the key skills for handling and firing firearms safely.

Illegally held air weapons - If young people are exposed to illegally held firearms they may think that it is cool and similarly to recreational drugs they may slip into a culture where more powerful illegal weapons are held and used irresponsibly.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest
control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

No affect, those who currently use air weapons for pest control are likely to use FAC air weapons and be FAC/SG certificate holders.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

I think that this will restrict people bringing air weapons from the rest of the UK into Scotland for competitions.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No, based on my opinion that I think that the current firearms licensing system is fair.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

I do not think that the police can cope with an increase in firearms applications, this is based on my dealings with the Aberdeen branch of Scotland Police.

I think that the current firearms legislation adequately controls the use of air weapons and that those who misuse them can be adequately punished for doing so.
21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

- An increase in black market dealing of firearms in Scotland.
- Complications for people bringing air weapons across the Scotland/England border.
- Increase in high power air weapon ownership.
- Reduction in the number of people learning how to handle and shoot firearms safely from a young age.
- Increased interest from young people in the misuse of air weapons as it may become cool to own an unregistered air weapon.
- Reduction in competitions taking place in Scotland.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

- I do not think that this will increase public safety, or reduce the number of air weapon related crimes. I think that the current Firearms legislative system is fit for purpose.
- I think this bill is a disproportionate response to a relatively minor issue that can be addressed and punished under the current legal framework. I think the
- I do not think that Police Scotland have the capacity to deal with an Air Weapons licensing system and that any private company brought in to manage the licensing system will not provide value for money.
- If sub-12ft/lb air weapons are to be licensed as plus-12ft/lb air weapons are licensed through the Firearms Certificate, then I think we will see an increase in the number of more powerful air weapons being owned because if you have to apply for it, you may as well apply for the more powerful version.
- This is my understanding of Democracy – We (the people of Scotland) have voted for the Scottish Parliament to act on our behalf. When the Scottish Parliament asked us (the people of Scotland) our opinion on the Bill, we responded with an overwhelmingly majority against it. The people of Scotland do
not want this and I do not want this. The people of Scotland have asked you not to do this and I am asking you not to introduce this Bill. It is therefore your democratic duty to listen to the people of Scotland and scrap this Bill.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

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<th>Name:</th>
<th>Eric Carlin</th>
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<tr>
<td>Organisation:</td>
<td>SHAAP (Scottish Health Action on Alcohol Problems)</td>
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☐ No

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☐ Yes

☒ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☒ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

SHAAP recognises the role that alcohol can play as an underlying cause of crime and disorder, and that this is an important priority for the Scottish Government. It should be noted however, that all five licensing objectives are given equal weight within the 2005 Act. We would have liked to have seen more provisions included for promoting and improving public health.

In general, we support the provisions brought forward by the Bill.

Overprovision is one of the key mechanisms that can be used to prevent crime and disorder, and section 54(2)(b) widens the factors that a licensing board can consider when assessing overprovision. While we welcome this extension, we are concerned that the effect of the drafting is to change the requirement that licensing boards must have regard to the number and capacity of licensed premises in the locality to that they may have regard to (among other things) the number, capacity and licensed hours of licensed premises in a locality.

We would support the retention of a requirement that regard must be had to the number and capacity of licensed premises, but adding that licensing boards may also have regard to (among other things) licensed hours. As discussed at question 34, we would also like numbers of members’ clubs and occasional licences granted to be included in an assessment of overprovision.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?
SHAAP believes that that there is an urgent need to improve the quality and detail of published licensing data. Licensing boards should be given a statutory duty to record, collate and report on a comprehensive licensing data set, in a format that can be compared with other areas.

Collection of such data would enhance the information available to licensing boards to inform the development of their policy statements. It would also assist in understanding and reviewing how the licensing system is functioning, or assess whether it is achieving its purpose.

We believe this investment should lead to potential cost savings in other areas; better informed decision making should help mitigate the risks of alcohol harm and therefore the costs associated with such harms.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

We are broadly supportive of the Bill’s provisions.

We support section 41 of the Bill expanding the licensing objective of protecting children from harm to include young people.

We support the clarification provided by section 54(2)(a) that in assessing overprovision, a licensing board may determine that the whole of the board’s area is a locality. This change reflects the reality that different-sized localities are needed for assessing overprovision in relation to different alcohol problems.

We are disappointed that the opportunity has been missed within this Bill to further enhance the licensing objectives by strengthening their status within the legislation. We believe that the licensing objectives should be clearly identified as the overriding principles underpinning the Act, with a general duty placed on licensing boards to promote the objectives when undertaking their work.

It should be made explicit that the five licensing objectives should be the primary consideration when deciding licensing applications. As outlined within question 34, we also believe additional reporting, while extra work for licensing boards, would introduce much needed transparency and accountability in the licensing system.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?
We have concerns about whether the definition of ‘fit and proper’ could impact on the accountability of licensing boards, by making it problematic to assess whether the test is being applied consistently. A lack of any sort of guidelines about what factors may be taken into account when assessing if someone is ‘fit and proper’ to hold a licence may also make it more difficult for people to raise concerns about an applicant or licence holder.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

As discussed at question 30, the objective to protect children from harm left a loophole leaving young people aged 16 and 17 unprotected by the 2005 Act. We support the closure of this loophole.

SHAAP is concerned that the current exclusion of members clubs from the assessment of overprovision has had the effect of the overall availability of alcohol being underestimated during these assessments. We believe members’ clubs should be included within the assessment of overprovision.

We have concerns about the current rules governing occasional licenses, which are cheap (£10) and easy to obtain. It is our view that the current rules create a loophole enabling legal requirements of fully licensed premises to be bypassed. Action to address this loophole is recommended. As occasional licences can add to the provision of alcohol in an area, we also believe the number of occasional licences granted in an area should be included in assessments of overprovision.

As noted at question 30, we believe the lack of a general statutory obligation to promote the licensing objectives has created ambiguity about the extent to which these objectives should be the primary consideration making. We believe this unintended consequence could be addressed by using this Bill to amend the 2005 Act to include a general duty on licensing boards to promote the licensing objectives.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
**Licensing Policy Periods (section 42)**
We support extending the period of time for which a statement of licensing policy is in force to five years.

Safeguards also need to be put in place to strengthen the mechanisms of accountability of licensing boards, to include:
- Improving monitoring and accountability arrangements.
- Production of an annual report by every licensing board

**Deemed grant of applications (section 58)**

It is essential to ensure that sufficient protections are in place to guard against automatic grant of licences which have been delayed to allow more information to be sought due to concerns or controversy about the application.

**Guidance**
The current guidance on the 2005 Act needs to be updated as a matter of urgency. A requirement should be placed on the Scottish Government to regularly review and update the guidance.

As recommended by the MESAS evaluation, it would be helpful if Boards were given more guidance on:
- The public health objective
- How to assess overprovision, including how to measure capacity,
- The role and function of Licensing Forums
- Any new, relevant legislation that is implemented.

SHAAP endorses the Alcohol-related comments submitted by our partner organisation, Alcohol Focus Scotland, who have assisted us in preparing our submission.
The Scottish Parliament’s Local Government & Regeneration Committee has called for written evidence from interested parties as part of Stage 1 consideration of the Air Weapons and Licensing (Scotland) Bill.

The Gun Trade Association (GTA), which represents 700 members of the UK sporting, recreational and professional gun trade, is such an interested party in this exercise, having been a member of the Scottish Firearms Consultative Panel and having provided substantial evidence for both the impact assessment for the Bill and the Consultation exercise which preceded the Bill. The GTA submits the following evidence to the Scottish Parliament, setting out its views on the provisions of the Bill.

It is of particular note that this is the first Bill which addresses air weapon licensing in the UK with all the complexities involved. The regulation of air weapons was devolved to Scotland from Westminster in the Scotland Act 2012 (at Section 10). Significantly, the powers devolved to Scotland only addressed air weapons and not other similar items such as ‘specially dangerous’ air weapons or air weapons ‘disguised as other objects’.

The definitions which will be used to control the use, possession, purchase and acquisition of air weapons in Scotland, as outlined in Section 1 of the Bill, merit special scrutiny as the rest of the Bill will be entirely dependent on the definition of the air weapon itself.

**Section 1 – Meaning of an Air Weapon**

In 1(3) Component parts in (a) and accessories in (b).

The inclusion of component parts in the Bill is complicated by the lack of definition in the Firearms Act, 1968.

The Violent Crime Reduction Act, 2006, gives some assistance in this regard, wherein component parts are considered to be solely those parts that are pressure bearing. For air weapons, these include cylinders, air reservoirs, barrels, etcetera, but crucially not screws, stocks, springs, and any parts that are not directly pressure bearing.
It would seem both sensible and pragmatic to adopt this approach and we suggest that allowing possession of component parts of air weapons, in Scotland, should be addressed through appropriate wording on the Air Weapon Certificate. (e.g. ‘may possess air weapons and component parts thereof’).

Accessories; for the most part these are detachable sound moderators (silencers) which have never been controlled for air weapons. Moderators for Section 1 firearms are listed on Firearms Certificates.

We suggest that detachable sound moderators for air weapons are addressed in the same manner as component parts and certificates are worded; ‘may possess air weapons and accessories’. These provisions will allow RFDs to determine, at point of sale, the purchasers’ rights to acquire and allow the police and firearms licensing the necessary controls through clear wording on certificates.

We believe that Section 1(4) of the Bill is potentially legally contradictory.

To be an “air weapon” as defined by Section 1(3)(b) of the Firearms Act 1968 it must be sufficiently powerful to be potentially lethal, but not sufficiently powerful to be specially dangerous as defined by the Specially Dangerous Air Weapons (Rules) 1969. By any reasonable definition, an “air gun” incapable of discharging a missile with a muzzle energy in excess of 1 joule does not meet these criteria and is de facto not an “air weapon” as defined by section 1 (3) (b).

To avoid ambiguity we suggest the wording be altered as follows;

(4) But the expression does not include—

a) an air gun, air rifle or air pistol which is incapable of discharging a missile with a kinetic energy in excess of one joule as measured at the muzzle of the weapon.

b) an air weapon that is designed to be used only when submerged in water or the component parts of any such weapon.
The effect of this is to establish a clear lower limit by which air weapons may be judged.

The GTA is firmly of the opinion that a definition of a lower limit of muzzle energy will help the Scottish police to positively differentiate between airsoft and air weapons. Furthermore a definition, such as 1 joule, will limit the danger to public safety as airsoft type items will have a lower level of muzzle energy and the possession of air weapons will be controlled through certification.

The protection of public safety is a police issue and not that of Firearms Licensing who do not deal with ‘non-lethal’ and/or other ‘unlicensed weapons’.

Section 2 – Requirement for air weapon certificate

Clarification is required as to the definition of both the words ‘use’ and ‘possess’. The Firearms Act 1968, at Section 57, does not define possession or use but it is often taken that possession encompasses use. (‘Possession’ does not necessarily imply ‘ownership’).

The Policy Memorandum makes it clear that air weapon certificates will licence individuals rather than weapons. Thus the quantity of air weapons held will not be registered on the certificate.

*Should this important definition be stated on the face of the Bill?*

Section 3 – Application for grant or renewal of air weapon certificate

(3) The Chief Constable must maintain a register containing the details of each application made under this section (whether or not the application results in an air weapon certificate being granted or renewed). *If a certificate is not granted is the Chief Constable in breach of the Data Protection Act if he keeps the data?*

Section 4 – Verification of applications

*Will there be a lower age restriction for a ‘verifier’?*

Section 5 – Grant or renewal of air weapon certificate
The requirements or tests for the grant are, as is stated in the Policy Memorandum, broadly in line with those for more powerful weapons under Section 1 of the Firearms Act 1968. We believe that is disproportionate and unnecessarily burdensome. We suggest the approach taken in the 1968 Act to the grant and renewal of shotgun certificates is more appropriate and proportionate and should be adopted. As a consequence the Chief Constable would need to have good reason not to issue a certificate, as is the case for shotgun certificates.

We are awaiting ‘Guidance’ (under Section 39), as to definitions of ‘fit person’ and ‘good reason’. Will these mirror the definition used for current UK Firearms Legislation (as in 5(2))? The Policy Memorandum states that there will be further discussions with stakeholders on the above questions. The GTA awaits the response before any secondary legislation is drafted.

**Section 6 – Air weapon certificate: conditions**

Awaiting definitions of conditions.

The Policy Memorandum makes specific mention of ‘Plinking’ in gardens and/or other urban or highly populated settings. Plinking is in effect informal target shooting and it is extremely well established that the majority of young people start their air weapon shooting safely and under supervision, in that environment. The GTA considers it unreasonable to overly restrict this type of shooting and we believe that clear definitions of “gardens”, “other urban” and “highly populated settings” will be needed to avoid this.
Conditions, although necessary, must make allowances for safe informal target shooting or “plinking”.

Section 7 – Special requirements and conditions for young persons

In sub-section (5) there is no provision in the conditions for a young person to possess/use an air weapon for ‘sporting purposes’ (i.e. for shooting live quarry), but they are allowed, in (5)(d), ‘to use and possess only for the purposes of protecting livestock, crops or produce on land used for or in connection with agriculture’. Further, in (5)(e), ‘the holder may use and possess an air weapon while carrying on business as a pest controller or acting as the employee of a pest controller.’

This definition presents the young person, who holds an air weapon certificate, with a potential difficulty; Whilst using a borrowed air weapon, and shooting rabbits for crop protection, or pest control, how could the young person justify to a constable that the shooting was not ‘for sporting purposes’?

Clarification is required. Why should a young person, who has satisfied the requirement of ‘fit person’ and has ‘good reason’ for using an air weapon, not be allowed to use the air weapon for ‘sporting purposes’? We suggest that (5)(a) be amended to include ‘sporting purposes’.

Section 8 – Duration of air weapon certificate

Sub-section (2) is pragmatic and practical, and should be extended to firearm and shotgun certificates.

Section 9 – Alignment of different types of certificates

A pragmatic solution for alignment of certificates.

Section 10 – Variation of air weapon certificate

The Chief Constable has the right to issue a notice to the certificate holder requiring the certificate for variation. A list of conditions, as mentioned in Section 6, is required.
Section 11 – Revocation of air weapon certificate

In the event of the notice of revocation and the surrender of air weapons, the police must give assurances that the air weapons will be held securely and without any damage being caused to the items in their care.

Section 12 – Police permits

In (1)(b) On the face of the Bill private persons must also be permitted to sell air weapons held under a police permit.

Section 13 – Visitor permits

Clarification will be required in Guidance as to whether visitor permits will have to be applied for through a ‘sponsor’ resident in Scotland.

In (4)(c). A qualifying visitor from outside the UK will not be subject to the terms of Section 21 of the Firearms Act 1968 when the application is made.

Section 14 – Visitor permits: young persons

As per Section 7 where young persons may not possess an air weapon for ‘sporting purposes’ (shooting live quarry), young persons, who visit Scotland on a visitor permit, will not be permitted to shoot live quarry.

The same arguments for changing this condition apply. (see Section 7, above).

Sub-section 14(6) appears to be contradictory. Must the Chief Constable be satisfied that the visitor permit does not allow young persons to shoot live quarry or not?

Section 15 – Police and visitor permits: conditions

Definitions of mandatory conditions are awaited in Guidance.

Section 16 – Police and visitor permits: variation and revocation

Definitions of mandatory conditions are awaited in Guidance.

Section 17 – Event permits
It is not clear whether the ‘organiser’ (who may not own air weapons and thus not have an air weapon certificate), may borrow or hire air weapons from an RFD, or a private air weapon certificate holder, and then lend/hire to the participants of the event.

Sub-section (7). A fuller description of ‘activity’ will be required in Guidance.

Section 18 – Approval of air weapon clubs
Section 19 – Variation of approval
Section 20 – Duration of approval
Section 21 – Alignment of club approvals
Section 22 – Power to enter and inspect club premises

The GTA has no comment to make on air weapon clubs.

Section 23 – Requirements for recreational shooting facilities

Sub-sections (1)(2) and (3); It is presumed that an RFD may possess air weapons without holding a specific air weapon certificate. An RFD who owns a miniature rifle range or a facility for combat games may therefore loan/hire air weapons, in the normal course of his business, to someone who does not hold an air weapon certificate. Conditions of age and supervision will apply.

Sub-section (4)(b); Combat games. Air weapons will have a muzzle energy of more than 1 joule. The GTA believes that the use of ‘air weapons’ at recreational facilities would be a danger to public safety. (See proposed revised definition of ‘air weapon’ at Section 1(4)).

It is also important to bear in mind is that the airsoft community in England (UKARA), consider that a range of muzzle energies from 1.3-2.5 joules is acceptable before the item should be defined as an air weapon.

Section 24 – Restrictions on transactions involving air weapons

Sub-section (2)(c)(i); There will be some countries that do not limit the purchase of air weapons to 18 years of age. Is it therefore correct to limit the age for purchase to a young person under 18 who may legitimately make the
same purchase in his own country of residence, especially if, as in (2)(c)(ii), he may not take possession in Scotland?

Sub-section (2)(c)(ii), ‘Outwith Great Britain’ precludes England and Wales. This would prevent potentially considerable sales to those who visit Scotland from England and Wales and wish to purchase air weapons whilst visiting. This is a serious restriction of trade.

Section 25 – Requirement for commercial sales of air weapons to be in person

Sub-section (2) contradicts Section 24 sub-section (2)(c)(ii) where it states that possession may only be transferred by being ‘delivered outwith Great Britain’, without coming into the purchaser’s possession.

Section 26 – Requirement to notify Chief Constable of certain sales

Sub-section (1)(b); see Section 24 and comments on sub-section (2)(c)(ii).

Section 27 – Power of search with warrant

No comment.

Section 28 – Production of air weapon certificate

Sub-section (1)(a); it would practical to allow also the production of a photocopy of the air weapon certificate.

Section 29 – Cancellation of air weapon certificate

Sub-sections (2) and (3); Is there the right of appeal as in the case of revocation?

Section 30 – Forfeiture and disposal of air weapons

Sub-section (5); should also include ‘or part of a collection of antique air weapons’.

Section 31 – Failure to keep air weapon secure or report loss to the police
Sub-section (b); a time limit should be prescribed in Guidance as to ‘immediately’. A person might return to where the air weapon is normally kept after a holiday, or other absence, to find their air weapon missing.

**Section 32 – False statements, certificates and permits**

No comment.

**Section 33 – Time limit for offences**

No comment.

**Section 34 – Offences by bodies corporate**

If the body corporate forms a part of an English body corporate (e.g. a subsidiary of an English company), it must be established as to where any prosecution is brought.

**Section 35 – Appeals**

No comment.

**Section 36 – Fees**

Awaiting secondary legislation and guidance to determine the level of fees.

**Section 37 – Power to make further provisions**

Awaiting secondary legislation and guidance.

**Section 38 – Transitional arrangements for existing certificate holders**

Awaiting further guidance, especially in the case where a young person may have been ‘gifted’ an air weapon.

**Section 39 – Guidance**

It is imperative that sufficient public funds are made available to ensure that any guidance is published as widely as possible.
Section 40 – Interpretation of Part 1

It is essential that the definitions in Section 1 are clarified as to the meaning of ‘air weapon’.

Sub-section (5). The GTA believes that reference should also be made to the Violent Crime Reduction Act 2006.

Additional points that need to be considered:

- We feel that it is important to note that the GTA has been responsible for considerable input into the Financial Memorandum. The Scottish Government has accepted the figure of 500,000 air weapons, provided by the GTA, as the core estimate of numbers for the Bill. (See Explanatory Notes Paragraphs 44 – 49).

- Confirmation is required as to exactly what details will be required for entries into the Registers of Registered Firearms Dealers (RFDs).

- England and Wales will introduce electronic RFD Registers on the 31st December 2014. Will Scotland be included in the requirements of the EU Firearms Directive?

- Regarding RFD Registers: Will storage and repair of air weapons be a requirement in the register?

- Regarding internet sales: How will internet sales be dealt with under the air weapons Bill?

- Will remote sales be permitted between dealers in Scotland and those in the rest of the UK?

- Regarding firearms offences and the requirements for air weapon certificates: What will be the lead time period for ‘hand-in’ before an offence is committed?
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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☐ Civic licensing – sexual entertainment venues
Name/Organisation:

6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?
Over the years Calor has placed more than 10 million cylinders on to the British market with a replacement value of over £300 million. Each year Calor invests between £10m and £11m putting new cylinders into circulation and maintaining the existing fleet. This is a significant investment.

Scrap metal has a value of c£250/tonne, but the cost to the LPG industry in replacement cylinders is significantly higher than this. Calor recovers 100,000 cylinders a year via a legitimate third party internal recovery scheme at a cost of £300k. These cylinders are mostly recovered from the Civic Amenity sites, but also from scrap yards, though entry to the latter can be exceptionally fraught. The percentage we successfully manage to recover is unknown, but best estimates would be:

- We probably recover half of what is out there meaning that a further 100,000 cylinders are permanently lost to the scrap metal recycling industry. At an average tare weight of 30kgs a cylinder at least £0.75m is generated by the scrapping of the remaining 100,000 cylinders.
- The replacement value is, as already stated, much higher - with cylinders costing between £25 and £60 apiece. At this rate, just to maintain stock levels, it costs Calor at least £4.5m a year.
- No assessment for the brass valves have been made though they equally have a value.

It should be noted that Calor is just half of the LPG industry so the figures above should be doubled for industry cost purposes i.e. 200,000 cylinders are scrapped each year with a scrap value of £1.5m but a much higher replacement value of c£6m.

Calor recognises that the Scottish Government takes the rising trend of metal theft seriously. We have been working in partnership with Metal Theft Scotland on the issue, and have provided case studies to the group. Our overall message will echo those who have been pushing for a tougher regulatory regime for the scrap metal industry across the UK; namely, that whenever possible, Scottish legislation should seek to meet the standards already set out in the Scrap Metal Dealers Act 2013 for England and Wales.

Calor therefore welcomes the latest proposals contained within the proposed Air Weapons and Licensing (Scotland) Bill, which should help to ensure that legislation is consistent with what is in place elsewhere in the UK. By tightening up the record keeping expected by metal dealers, there should be a more consistent paper trail. Calor cylinders have been found across the world, in many places where we don’t do business, suggesting that there is an international trade taking place. Better licensing and removing all cash payments would make illegal trading much more difficult for those criminal elements seeking to sell on our products.

We welcome the move to bring itinerant scrap metal dealers into the legislation and be subject to the same licensing conditions as fixed premises dealers.
41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

Calor was interested to learn in the explanatory notes to the Bill that there are around 280 licenses for metal dealers, but that only half of them (142) are actually in use, with 130 believed to have ceased trading or not actively dealing in scrap metal. Calor would be interested to know what work is undertaken to ensure that licenses are checked regularly to ensure that their status doesn’t change between license renewals.

The draft legislation states that metal dealers which do not comply with the proposals will be subject to a fine. Calor would welcome further detail on the range of actions which can be taken to metal dealers trading in illegal goods, up to closing unlicensed premises. This is a power which is contained within the Scrap Metal Dealers Act 2013, and we would argue Police Scotland should have the same powers as those in England and Wales.

While the legislation makes it clear that dealers in precious metals will be affected by the changes in the Bill, we would appreciate confirmation that car breakers or motor salvage operators are classified within these proposals as they are in the Scrap Metal Dealers Act 2013.

With regard to accreditation, Calor recognises the value of having a scheme to improve overall standards in the scrap dealer industry but this should not be implemented in lieu of a stronger regulatory regime. We would recommend that any such scheme be administered centrally to ensure that the information can be easily accessed.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

Calor welcomes the removal of the exemption warrant as it ensures that all metal dealers are operating under the same regime. This should simplify monitoring and enforcement.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal
activities?

If law enforcement agencies in Scotland are happy for the 48 hour metal retention requirement to be rescinded we have no objection.

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

Calor Gas supports moving to cashless payments across the entirety of the UK, and would want to see a consistent approach taken in Scotland. Calor cylinders could potentially come under the definition of “small transactions”. A cash ban on all transactions will make legislation consistent with the Scrap Metal Dealers Act 2013, and would put an end to the current loophole used by itinerant dealers. This would also remove the potential threat of criminal elements wishing to take advantage of a weaker regime North of the border.

45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
As a company which does business across the United Kingdom, Calor believes it is vital that legislation in Scotland is consistent with the Scrap Metal Dealers Act 2013.

While we would not wish to make the process of record keeping burdensome, ensuring that record keeping can be easily matched up to those kept elsewhere in the UK is key if we are to reduce incidents of cross border crime.

46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?

All mandatory conditions should be consistent with those contained within the Scrap Metal Dealers Act 2013.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Laura tomson
Organisation: Zero Tolerance
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

☐ Commercial

* 5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☐ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes
☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

   While separate licensing for Sexual Entertainment is a small step towards addressing gender equality the Bill does not go far enough in either considering or addressing the equalities impact of this kind of ‘entertainment’.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

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12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
Name/Organisation: Laura Tomson,

6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- ‘sexual entertainment venue’
- ‘audience’
- ‘financial gain’
- ‘organiser’
- ‘premises’
- ‘sexual entertainment’, and
- ‘display of nudity’

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

It would mean that sexual entertainment could occur without the protections that should be offered to performers and communities under a licensing regime. It may mean businesses operating by rotating around different premises in order to avoid the requirement for a license.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

This is the right approach – it means that local authorities can respond to local communities as well as local and national equality and child protection strategy to eliminate SEVs and associated harms in their area.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

See attached.
Submission from Zero Tolerance to the Scottish Government consultation: Air Weapons and Licensing

Zero Tolerance are responding only to section 68: Licensing of sexual entertainment venues. We are resubmitting our original response to the 2013 consultation on the Regulation of Sexual Entertainment Venues, as the majority of the points we (and many others) made at that time do not appear to have been addressed in the current Bill. In particular:

- The legislation must specify more clearly what kinds of sexual entertainment are acceptable under license and other standards that venues must comply with. Given the prevalence of prostitution being accessed in sexual entertainment venues (see pg. 10), and the overwhelming evidence that women working in SEVs and/or in prostitution are particularly vulnerable to VAW\(^1\), this legislation must take the opportunity to establish better protections. These should include:
  - No physical contact between performer and client
  - No private booths for performances
  - Changing areas for performers which are single-gender and separate to public areas.
  - Clear policies in place in every venue on the safety of performers and behaviour of clientele.

License inspections should be used as an opportunity to monitor the wellbeing of performers and offer links to support services where required.

- The legislation should also stipulate restrictions on signage and advertising of SEVs to protect the local community and particularly children. No sexual imagery should be allowed outside the venue or on advertising material which could be accessible to children; SEV’s websites should be age-restricted. There should be no visibility from the street into the SEV.

- There should be clearer, and stronger, regulations on notifying and involving the local community in decision-making on providing licenses. With the Community Empowerment Bill currently also out for consultation it would be inconsistent not to provide for communities to be involved in decision making on SEVs, which arguably have at least as great an impact on communities as planning decisions.

- A license should be required by all venues offering sexual entertainment, even if only once in a twelve-month period. The problems and risks

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associated with sexual entertainment are present no matter how often entertainment of this kind is offered, as accepted by previous consultation respondents involved in the industry:

“I feel this will result in groups of inexperienced persons operating businesses providing Exotic Dancing performances, in multiple venues throughout Scotland with a view to avoid any such proposed licensing restrictions, thus causing great concerns in respect of safety for the performers as well as the public.” (2013 submission from Miss Hollywood)

- Given the issues outlined above and in our previous submission around women’s safety, it is essential that a clause is introduced requiring that license holders are fit and proper persons. A history of any offence of violence or abuse, particularly towards women and girls, or involvement in organised crime, should preclude an individual from obtaining a SEV license.

Regarding two clauses which have been added since the previous consultation:

- Adopting a sexual entertainment venue licensing policy should not be optional for local authorities. Local authorities which have a larger number of SEVs are both more in need of a policy and, in some cases, less likely to voluntarily adopt one. If a policy is needed in any LA, it is needed in all, and the approach to SEVs must be consistent across Scotland.
- Under-18s should not be allowed inside sexual entertainment venues at any time. Those working with and responsible for children and young people in Scotland are currently facing multiple challenges arising from the normalisation of sexualised media and behaviour; allowing under-18s to access venues dedicated to providing sexualised entertainment will only exacerbate these challenges and undermine work being done to address them. Many SEVs currently display pornographic imagery and there is a high level of risk in such a venue of the breaking of child protection laws in relation to exposure to such material (see e.g. Guidance on the Sexual Offences Scotland Act section 33: causing an older child to look at a sexual image). Given the aforementioned prevalence of prostitution in SEVs and recent cases highlighting the widespread sexual exploitation of children, which the Scottish Government’s own report has explicitly connected to early sexualisation, it is entirely inappropriate that children be allowed in SEVs.

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2 See e.g. [www.zerotolerance.org.uk/sites/all/files/UnderPressure_Doc_Web_sm.pdf](http://www.zerotolerance.org.uk/sites/all/files/UnderPressure_Doc_Web_sm.pdf); A forthcoming event on young men and sexualised imagery is heavily oversubscribed with applicants from sexual health, teaching, youth work, social work and more. Applicants express high levels of concern around how young men’s behaviour is affected by exposure to objectifying and sexualised imagery.

3 For example Criminal Justice Social Work training on sexualisation and relationship abuse; SHARE resource and training for schools on sexualisation, pornography and consent; Rape Crisis education work on consent and sexualisation; Zero Tolerance Under pressure training for youth workers.

4 See e.g. [www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham](http://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham)

The current Bill appears to have been written with a view to ironing out legal technicalities in the regulation of sexual entertainment and alcohol, rather than with a consideration of the more important themes of gender equality, women’s safety, child protection and the rights and safety of communities. The final Bill must cohere clearly with Scottish Government policies on gender equality, child protection and violence against women and girls, including Equally Safe.

**Submission from Zero Tolerance to the Scottish Government consultation re: Regulation of Sexual Entertainment Venues.**
September 2013

**About Zero Tolerance**

Zero Tolerance is a national charity working to end men’s violence against women (VAW) in all its forms. We promote a primary prevention approach, believing that changing societal attitudes, values and structures is the key to ending gender-based violence. We also believe that pervasive gender inequality in our society creates a culture in which VAW is prevalent and tolerated and that this must change. More information about our work can be found on our website, [www.zerotolerance.org.uk](http://www.zerotolerance.org.uk)

**Summary of our position**

We support the creation of a new regime to regulate Sexual Entertainment Venues (SEVs) but with some caveats, which stem from a philosophical disagreement with the approach of regulating a form of social harm as opposed to trying to end it. We are concerned about possible unintended consequences, such as legitimising an industry we see as extremely harmful and problematic. But, on balance, we support the proposals as they represent an improvement on the current regime of licensing and they are better than no change at all.

Our support for some of the intent behind this proposal does not lessen our belief that, fundamentally, lap-dancing, stripping and all other forms of sexual entertainment are forms of commercial sexual exploitation, and as such of violence against women. The industry which provides SEVs sanctions objectification of women, glamorises exploitation and harms work to achieve gender equality.

We aspire to a Scotland without these forms of so-called ‘entertainment’ and admire societies which have taken action to end highly gendered ‘sexual entertainment’. For example Iceland has legislated to ban all strip clubs. The law was passed with no votes against and only two abstentions. It makes it illegal for any business in Iceland to profit from the nudity of its employees. Arguably there is a correlation between gender equality and SEVS – the societies with the least gender inequality tend to have the fewest of these kinds of venues. It is not unrealistic to aspire to a society with no SEVs. It is a matter of political will.

**Concerns re: conflicting policy positions**
We are dismayed that the consultation paper notes that the Scottish Government defines the activities that happen in the types of venue likely to regulated as SEVs as commercial sexual exploitation, and yet decides that freedom of choice must be balanced against the harm these venues cause. The Scottish Government’s current strategy on VAW notes that these activities cause harm to all women, by sanctioning objectification of women’s bodies, and further notes that this harm to women collectively happens regardless of whether individuals claim liberation or empowerment from the activity, so it is not clear why they should be allowed to continue, because of ‘freedom of choice’. In a civilised society in which ‘our people and communities support and respect each other’ (SG Strategy for Justice in Scotland, 2012) some choices are curtailed in the interests of all. It is interesting and disappointing that men’s choices to watch women perform in a sexualised manner are being protected here. We would like to see much more emphasis, alongside regulatory work, on challenging men’s choices, and a much more robust approach to promoting gender equality.

Scotland has led the way in tackling other forms of violence against women e.g. domestic abuse. It is unfortunate that we are less progressive in tackling the harms of the sex industry, perhaps because governments are excessively distracted by the economic aspects of this industry. But who really profits? And who loses? These are questions that we feel need further reflection.

In early 2013, we sought opinion of counsel on licensing matters and that confirmed the difficulties of reconciling policy positions with the current licensing regime. Per Opinion of Counsel, A Hajducki QC, March 2013, “even if the City of Edinburgh Council [or any council] were to view lap-dancing as exploitative, harmful to women’s health or otherwise undesirable it is hard to see how this could properly form part of their statement of [alcohol] licensing policy." This is not satisfactory or acceptable.

Specific questions and answers

In answer to the questions posed in the consultation paper:

Q1: Yes, there needs to be a separate regime for licensing SEVs and alcohol.

We strongly agree there needs to be a new regime. The regime we have now does not work. Many premises have a ‘Code of conduct on dance entertainment’ or similar, appended to their alcohol licence. Compliance is largely voluntary and breaches are common. It is clear that any such policy is “little more than a statement of intent or suggested code of conduct”; therefore “conditions specifically relating to the adult entertainment provided are effectively unenforceable following Brightcrew” (source: Opinion of Counsel A Hajducki QC, March 2013). ‘Brightcrew’ is a case that found it was not permissible for Licensing Boards to impose additional conditions not directly related to the sale and consumption of alcohol.6

Our concerns about how the regime is failing at present were set out in our response to the Scottish Government consultation ‘Further Options for Alcohol Licensing’ in March 2013.7

We anticipate that some bodies, such as the Law Society of Scotland or COSLA, may express concerns about creating a double licensing regime. We believe that this is not an issue.

The opinion of counsel we sought in March 2013 suggests that in previous discussions of this topic, “objections…that the introduction of licensing for such establishments would result in a dual licensing regime which was a thing to be avoided overlooks two important factors, namely that we already have a dual licensing regime in several areas and secondly that an existing enforcement and checking regime already exists. The dual licence argument ignores the fact that certain activities are already subject to dual licensing e.g. cinemas which have to be licensed under the 2005 Act for the sale of alcohol and under the Cinemas Act 1985 in respect of the exhibition of films, and so far as I am aware this has never caused any particular problem. The ‘policing’ functions for alcohol and entertainment licensing are already carried out in many areas by the same licensing enforcement officers employed by the council and both the 2005 Act and the 1982 Act have parallel enforcement powers (including search and other powers, designated officers, entry and inspection provisions, penalties and procedural codes), and if anything the 1982 Act powers are more comprehensive and would not add any significant costs to councils.” (A Hajducki QC)

Q2: Yes, SEVs should be licensed separately from other forms of public entertainment.

We strongly agree with this proposal. Going to watch some ‘sexual entertainment’ is not the same as going for a coffee, a meal or a sunbed session. It is not aimed at all members of our society. Licensing it separately reflects the harm it causes; can allow for a separate monitoring process and data aggregation that can be useful in future policy development (for example, monitoring the gender of licence applicants); and can allow for special tailored measures e.g. a differential pricing regime to inhibit growth of this sector.

We have concerns about labelling this kind of activity ‘entertainment’ as we feel that normalises and trivialises it; we would prefer ‘sexual performance’ or some alternative language. In England and Wales the term ‘sexual encounter establishment’ is used but we believe that the word ‘encounter’ implies physical contact so we would not wish it to be adopted in Scotland.

We strongly disagree with the proposal at para. 16 of the consultation paper that “it would be at the discretion of the local licensing authority as to whether or not a licensing regime was needed in their area.” Discretion leads to inconsistent policy, and in some local authorities to very poor decision making around VAW (ref. the City of Edinburgh Council’s well known ‘discretionary’ policy regarding saunas and indoor prostitution). There must be a consistent national approach and an adoptive regime

7 http://zerotolerance.org.uk/node/272
would not deliver this. (Being obliged to have a licensing regime for SEVs does not of course mean being obliged to have the same approach to them in each area).

It MUST be mandatory or the cities which currently have the majority of sexual entertainment venues in Scotland may well opt out to avoid having a difficult or controversial decision to make.

Q3: Yes, the definition of the audience is appropriate.

This will encapsulate performances in a private space where there is only one person watching. These should not happen but we must anticipate that they might, as they are prohibited in many clubs at present but still advertised on the clubs’ websites.

Q4: The definition is clear, subject to one change.

We agree with the definition of sexual entertainment, but we would suggest that the definition should mention nudity or partial nudity as some venues will try to get round the legislation by requiring women performers to wear miniscule items of lingerie so they can say they are not nude. This is already common practice: we are aware that women wear crotchless garments, or G-strings, or string bras, to avoid breaching the ‘full nudity’ clauses in some venues.

We do not believe that other measures are required to protect the position of artistic performances, as the more variations are introduced, the more likelihood that a venue that is operating as a SEV will try to present its offerings as ‘artistic’ to escape regulation. We have already seen this process starting in Edinburgh with the rebranding of one very prominent strip club as a ‘gentlemen’s club’ that now offers burlesque, dance classes etc. in an effort to appear more ‘respectable’.

Q5: There are no other venues which should be exempt.

Q6: We do NOT agree with exemption for premises offering sexual entertainment less than three times a year.

All premises which offer sexual entertainment should be subject to the same regulation, regardless of how frequently they wish to provide this entertainment.

Q7: Yes, local authorities should be allowed to decide that there should be no SEVs in their area.

This is crucial. At present community councils have no say and residents have no input, especially when existing premises apply for licence renewals. The licensing process is obscure and most people do not know that they can object, or how to go about it. Small print notices on lamp-posts near the venue don’t encourage people to engage with the process, and many people who object to strip clubs feel resigned to
them existing in perpetuity, especially in cities like Edinburgh that have a very established sex industry with local authority support.

When councils are given a choice about having SEVs they often choose a nil limit – most recently in Swansea. In Highland they recently granted their first licence for a strip club, and the licensing board chair is on record as having had to do so against her wishes, and despite numerous objections, because she had no legal leeway to refuse the application. Many communities would not want such clubs near them, for a range of reasons including preventing public disorder, promoting gender equality, protecting children from harm and from exposure to inappropriate sexual imagery, or developing an area as a cultural or business hub.

Local authorities can then take into account factors such as proximity to schools or children’s centres and decide if SEVs are to be allowed, where they should be located, and seek to avoid the clustering of venues (as in Edinburgh, where there are multiple venues on Lothian Road and the West Port area – presently six venues within a square mile, one part of which is known locally as the ‘pubic triangle’). At present there is no power to object on the basis of over-provision of this type of entertainment as the dance activity is seen as ancillary to the liquor provision.

We strongly believe that communities must be more involved in setting limits on SEVs. The Scottish Social Attitudes survey in 2012 found that only 22% of Scots feel that they have a say in their community, a figure which must be improved upon.

Q8: No comment

Q9: Other issues

We would suggest the Scottish Government should give consideration to the following issues when setting policy on SEVs:

9.1 Economic issues – good places to work?

The Scottish Government’s Economic strategy speaks of the value of creating high quality, permanent jobs; of creating highly skilled jobs as part of new developing markets such as the renewable energy sector; and of promoting equity in the economy. It is unclear how SEVs will fit with any aspects of this agenda.

Lap-dancing and strip clubs are generally extremely poor employers – for example, lap-dancing clubs routinely:

• Ask women to pay to appear/dance (unlike other dance performances where the audience members pay for a ticket and the organisation staging the performance pays the performers), meaning that they can be out of pocket if they don’t have enough customers to cover their appearance fee on a given night – what other jobs involve women making no money at all on a shift?
• Use women who are self-employed dancers as opposed to employees, so they have limited protection, job security and rights.
• Fine dancers for breaches of rules, which can be arbitrary and unpredictable.
• Have high staff turnover because men demand new ‘products’ to look at and engage with and do not wish to see the same girls and women repeatedly –
they wish a range of nationalities, breast sizes etc. The nature of the work is that it’s not permanent – sexual entertainment is provided by young women whose attractiveness is deemed to diminish with age.

- Encourage or tolerate drinking among the dancers, some of whom develop alcohol dependency problems.
- Make the women who work there feel unsafe or degraded, with long-term impacts on their physical and psychological well-being - many women report a heavy psychological toll linked to dealing with, in effect, normalised sexual harassment on a nightly basis.

For detailed testimony on the experience of working in these kinds of clubs and the harms it creates see [http://www.object.org.uk/lapdancing-testimonies](http://www.object.org.uk/lapdancing-testimonies) - selected excerpts from some of these testimonies are below:

“*The industry by its very nature, is highly discriminatory and ageist, it is a certain fact that men want to see nubile young women naked, not 40 year old women, so the very core of the industry is extremely derogatory, and degrading to women of all ages*” (Alexandra, former lap-dancer)

“You have a code of conduct but it’s not adhered to too much. It’s just to placate the local authorities. We weren’t even encouraged to read it. You just sign it quickly. I was worried about signing it – but it became apparent it was all nonsense.” (Sarah, former lap-dancer)

“I increasingly, rather than getting dances, was making customers buy me a drink instead, and on more nights that I am too ashamed to admit would be so drunk that I would lose my dancing money, fight with other girls and customers and not remember getting back home. It was hell.” (Liz, former lap-dancer)

“There’s no hierarchy. You can’t be promoted. It’s for quick money. There’s no holiday or sickness pay. Shifts are booked on a weekly basis. If you’re ill you can’t work. There’s no pension!” (Sarah)

“The management in all the clubs treated the girls very badly, they were discriminatory, frequently derogatory in their comments to and about the girls...The customers’ attitudes varied between politeness to downright hostility and abuse.” (Alexandra).

As suggested in Alexandra’s testimony, these venues do not generate work opportunities for women after a certain age or who do not fit a very narrow, culturally-relative interpretation of physical attractiveness; and they do not create jobs where there is any kind of advancement or career structure possible.

Due to the temporary nature of the work and the relative lack of scrutiny these venues are also attractive to people traffickers and more must be done to integrate anti-trafficking work with reform of this industry.

Lap-dancing clubs also routinely employ women who are not sober, as many of the women feel they need to misuse alcohol to survive the experience of working there – see Liz above and also the testimony of Jennifer Danns:

“In the two years Jennifer Hayashi Danns worked as a lap-dancer, she never met a woman who danced sober. Some took cocaine, the rest drank – whether they drove to work or not. At her worst point, Danns would have a bottle of wine before work, half a bottle while getting ready, and drink steadily through her shift. How else, she asks, could she walk up to strangers and ask if they wanted her to take her clothes off?”

The 2004 research report, “Profitable Exploits: Lap dancing in the UK” also found that dancers are encouraged by management to drink alcohol on site, which would be condemned in any other workplace. It reported that it is common for women in the sex industry to misuse substances to enable them to cope with the stresses of the work. Would any other employer who encouraged the drinking of alcohol and tolerated the use of other illegal drugs as part of a job be tolerated and supported by the licensing regime?

Their presence in society also puts working women at risk of encountering sexual harassment, through being excluded from corporate entertainment at strip clubs or expected to join in against their will. The Fawcett Society’s ‘Corporate Sexism’ report noted the commonness of firms holding business meetings, entertaining clients and celebrating deals at lap-dancing venues, with some establishments offering unmarked receipts for expenses. They identify this as a major threat to women’s equality at work.

The industry promotes stripping and lap-dancing as exciting and lucrative ‘work’ for women but the reality is that lap-dancing clubs are highly exploitative and offer very poor work. Councils and the Scottish Government will need to consider how these fit with local and national economic strategies.

9.2 Economic issues - legitimate, law-abiding businesses?

Most SEVs maintain a high ‘performer to punter’ ratio, to offer the customer a choice of ‘types’ of women e.g. different nationalities or body types (in itself an indicator of their view that women are objects for looking at and not human beings with rights and dignity) and this means there is intense competition between performers, which in turns escalates the types of performance on offer.

Increasingly men expect explicit sexualised behaviour and full nudity. We have reported a number of venues to the City of Edinburgh Council for breach of the code of conduct on dance entertainment, for advertising fully nude dances or dances in private booths. We have not had a satisfactory outcome to these complaints. One compliance officer admitted to us “we have taken our eye off these places”.

http://www.guardian.co.uk/lifeandstyle/2011/nov/10/truth-lap-dancer-clubs

Julie Bindel, Child and Woman Abuse Studies Unit, London Metropolitan University, Aug 2004
This is an industry in which breaches of licensing policy are commonplace, as we have found by checking Edinburgh venues’ compliance with ‘codes of conduct’. It is hard for women’s sector agencies to have confidence in the inspection regime when it generally involves men from the local authority and police visiting a premises to check what is happening.

It is well known that the buying and selling of sex acts occurs in some clubs. Scottish research with 110 men who had bought sex found that 31% of the men had accessed prostitution through a lap dancing club.\textsuperscript{12} Selling sex is not illegal but brothel-keeping is and if more than one performer is selling sex in the same premises on the same night then the premises is effectively operating as a brothel, and the owner/manager is living off immoral earnings. These are crimes.

We do not have confidence that the venues operating as strip clubs at present, which are likely to apply to become SEVs, are legitimate, law-abiding businesses. The monitoring of these must be much more stringent than it is at present, with unannounced visits, conducted by officers who are trained in recognising signs that someone may have been trafficked. Compliance with regulation must be seen as paramount in these kinds of venues, commensurate with the risks they pose and their well-documented harms.

9.3 Gender equality

Lap-dancing is a manifestation of gender inequality. It is not a coincidence that the performers in lap-dancing clubs in Scotland are almost all women and the customers and business owners are almost all men. This industry thrives on the systematic exploitation of women by men and a gendered hierarchy of power.

The consultation on SEVs uses gender neutral language like ‘performers’ and ‘customers’ and says that entertainment can be ‘provided by both male and female performers.’ Yet there is not one single lap-dancing or strip club in Scotland where men perform for women’s sexual gratification. There is not one venue with graphic images of nearly naked men outside on the windows, or photos of men in underwear outside, or on the website. There are no reviews of men’s bodies on the review websites for these premises. There are explicit reviews of women’s bodies. There are no descriptions of men on the sites, but there are descriptions of women.

Women sometimes watch male strippers at hen parties for example, but the power dynamic at these events is very different from events where men, the dominant sex in our society, who have more money and power than women, watch women performers. There are no dedicated venues which offer women the chance to see men perform in this way, because there is no demand for this. Women generally do not demand to see men naked or near naked and in submissive poses. This issue cannot be understood separately from the wider issues of the unequal distribution of money and power between men and women in Scotland and the wider world.

This is an industry run by men, for men, in which women are the objects to be watched, touched and lusted over. A pretence of gender neutrality or symmetry does not help us towards making good policy on this issue.

These venues also exploit men. Although women are the primary victims of a regime which objectifies and commodifies them, men too are hugely exploited by this industry – the clubs are very tactical about parting men from their money, and the dancers are skilled in knowing how to make men pay more than they had intended.

“The private one on one dance was everyone’s bread and butter and the trick was to try and get them to stay in there as long as possible and have multiple dances at £10 each. The manipulative trick to this was to remain topless, lean over and whisper in their ear, “Would you like me to carry on?” to which any red blooded man would pant “yes!” whether they could afford to or not.” (Liz – former lap-dancer)

This industry preys on men’s willingness to be seen as a ‘lad’ and to conform to stereotypes about men’s desire to exploit women sexually and to value women primarily for their appearance.

It’s hard to see how local authorities can meet their obligations under the Equality Act 2010, and the sex/gender aspects of the Public Sector Equality Duty, whilst licensing premises which do so much to undermine equality between men and women.

9.4 Normalisation of the sex industry

Over the past decade, lap-dancing has entered the mainstream and the clubs are keen to present themselves as respectable. Some strip clubs offer lessons to women in pole fitness or striptease skills – e.g. Club Rouge in Edinburgh. Many leisure and fitness centres now offer ‘pole fitness’ classes to teach the skills for pole-dancing. In 2006 Comic Relief, which funds projects for young people affected by sexual violence, included a show called ‘Strictly Come Pole Dancing’ in its plans for fundraising. (This was later dropped due to the volume of protests.)

Clubs are not discreet or hidden venues. They are advertised on flyers, in magazines and local papers, on local taxis and on larger billboards, and by promotional staff (often dressed in lingerie) handing out flyers in high streets. The clubs are very visible on main streets, many with frontage which makes it clear what is on offer inside. Regulating the appearance of these venues has been difficult in Edinburgh as the advertising regulations have been interpreted by council officers in such a way as to allow these venues to place large silhouettes of naked women in their windows.

In February 2010, the Home Office published a review of the Sexualisation of Young People. This review examined culture and society in the UK and found that jobs in brothels and lap-dancing clubs were advertised by Job Centre Plus and that “we are seeing the normalisation of [sex work] as viable career choices” which “sends out a powerful message to young people about what is of value” (para 29). The review concluded that popular culture lends “credence to the idea that women are there to be used and that men are there to use them” (para 30).

http://www.clubrouge.co.uk/pole.html
In this climate, it is easy for young people to be groomed for involvement in the sex industry and for escalation to occur. Many young women who work in lap-dancing clubs do not intend initially to become involved in prostitution but soon find that is the norm in these clubs and become involved in selling sex, with severe consequences for their wellbeing.

We are concerned that this new regime may have an unintended consequence; that of further cementing this ‘normalisation’. Venues will be able to say they have an SEV licence and this may confer respectability. It may even be that we see a mushrooming of this sector as more people apply to run an SEV, if this regime makes it clearer what is involved and resolves some of the difficulties created since the Brightcrew case. On balance we think the proposed regime is better than the status quo and that change is needed but we urge caution over the risks of expanding an industry which is so harmful.

9.5 Other AEWG recommendations?

We note that some recommendations\textsuperscript{14} made by the Adult Entertainment Working Group in 2006 have not been enacted and would encourage the Scottish Government to revisit these.

9.6 Link to local policing

We would like to see more linkages made between policing plans/local policing, and the licensing regime. For example, police data collection could seek to establish if there is any correlation between levels of harassment/sexual assaults etc. in a (say) 2 mile radius of SEVs, or if customers who cause disorder at these venues also have convictions for forms of gender-based crime such as domestic abuse or sexual assault. This would help us gather more evidence about the impact of SEVs on our communities.

9.7 Frontage/signage

We recommend that the regime created includes provision for restricting the types of frontage/signage permissible at these venues. One lap-dancing club in Edinburgh has photos of some of the women performers in lingerie in a display case outside the front door, and others have graphic representations of women stripping or pole dancing, as mentioned at 9.4. We would prefer that if these venues exist at all, that they be disallowed from using such imagery as advertising for their services.

9.8 Prevention of crime

We need more clarity on how this new proposed regime will stop prostitution from happening in SEVs – we know it does presently\textsuperscript{15} – what will prevent this? There

\textsuperscript{14} \url{http://www.scotland.gov.uk/Publications/2006/04/24135036/3}

\textsuperscript{15} Women’s Support Project research on men who bought sex - \url{http://www.womensupportproject.co.uk/userfiles/file/uploads/Challenging_Men%C2%92s_Demand.pdf} – found that 34% of men who had bought sex in Edinburgh had located prostitutes in a lap-dancing club.
need to be clear rules prohibiting private dances, private booths and the sale of sexual acts, and these need to be enforced.

9.9 Safer communities

The SG wishes to create safer communities. We believe that lap-dancing clubs harm communities. They make women feel uncomfortable and unsafe, and create no-go areas in our towns and cities. We have a lot of anecdotal evidence of women in Edinburgh avoiding Lothian Road and the West Port to avoid walking past strip clubs. We also wonder what risk men who are sexually excited on leaving a strip club pose to women in the city, both to strangers and to the women they are in relationships with. There needs to be further study of this.

One study, in Glasgow, conducted by the Glasgow Chamber of Commerce in 2003, found that three quarters of city centre businesses believed that lap-dancing clubs would damage the reputation of the city; and half were concerned about the safety of their staff in the vicinity of the clubs.

*Case study: Camden*

In 2001, the female rape rate in the London Borough of Camden, which then had seven lap-dancing clubs sited mainly in residential areas, was three times the national average. Researchers at the Lilith Project say that since 1999, rape of women in Camden has increased by 50 per cent and indecent assault by 57 per cent. In 2002, a report from the council's environmental health department recorded that some streets had turned into "a no-go area for female shoppers and male passers-by who are often accosted by pimps and other strip clubs offering sexual services and favours".

9.10 Fit and Proper

We believe that the regime that is created should include provision to determine whether the holder of an SEV is a ‘fit and proper’ person, and that the definition of ‘fit and proper’ should incorporate whether or not a person has any convictions for illegal behaviour. This should include a reasonable assessment of whether the criminal conviction is for an offence which may put the public at risk (e.g. assault, sexual assault) or a more victimless crime e.g. a public order offence gained in protesting. The public have the right to be protected from licensees who have serious criminal convictions.

Further information

For more information, please contact Laura Tomson, Co-Director, Zero Tolerance (laura.tomson@zerotolerance.org.uk; 0131 556 7365).

*NB: This submission is made on behalf of the organisation and may be published.*
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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1. Please supply your name and contact details:

   Name: William Macleod
   Organisation: British Hospitality Association (BHA)
   Address 1: 
   Address 2: 
   City/Town: 
   Postcode: 
   Country: 
   Email address (if no email leave blank): 
   Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes
☑ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal
☐ Professional
☑ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes
☑ No
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☐ Yes

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☐ Air Weapons

☐ General licensing issues

☑ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill's provisions on alcohol licensing allow for reductions in crime and the preservation of public order?


29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?


30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?
34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

The questions posed in this section of the document (questions 28 – 34) are not appropriate in terms of the BHA’s views on the measures proposed in the Alcohol licensing section of the Bill. Our comments are provided on a separate paper attached to this response.
Air Weapons and Licensing (Scotland) Bill
Call for Evidence
Supplementary Paper from British Hospitality Association, Scotland

This paper provides the observations of the British Hospitality Association (BHA) in Scotland on the Alcohol Licensing proposals in the Air Weapons and Licensing (Scotland) Bill. The Association does not consider that the questions (28-34) posed in Section 4 of the invitation to submit evidence provide an adequate opportunity to make its views known. The Association’s views are therefore presented in this supplementary paper which should be read in conjunction with the official form for submitting evidence to which this paper is attached.

The Association has not commented on proposals within the Bill with which it is in agreement; in fact, most of these proposals are welcome. The observations provided below represent aspects of the Bill with which the BHA disagrees or which it considers should be removed or amended.

1. In general terms, the BHA would much prefer that when alcohol licensing legislation is amended a consolidated piece of legislation should be produced which clearly identifies the changes that are proposed. BHA believes that such an approach would save public and private resources.
2. BHA is uncomfortable with the re-introduction of a fit and proper person test which was done away with in the 2005 Act.
3. BHA considers that there is no value to introduce spent convictions into licensing hearings without just cause. Spent convictions are just that – ‘spent’.
4. BHA considers that there is no value whatsoever in the inclusion of Angostura Bitters in the definition of alcohol.
5. BHA is pleased with the introduction of ‘deemed grant’ but believes that the time period of 9 months within which Licensing Boards must determine applications is too long and that this should be reduced to 6 months.

William Macleod
British Hospitality Association
24 September 2014
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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<thead>
<tr>
<th>Name:</th>
<th>Cath King</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation:</td>
<td>The Highland Council</td>
</tr>
<tr>
<td>Address 1:</td>
<td>Care and Learning Service</td>
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<tr>
<td>Address 2:</td>
<td>Glenurquhart Road</td>
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<td>Country:</td>
<td>Scotland</td>
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<tr>
<td>Email address</td>
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<td>Phone Number:</td>
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</tbody>
</table>

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70
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

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☑ Yes

☐ No

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☐ Commercial

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☐ Equalities, climate change and other Scottish Government objectives

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☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

We do not believe that the current legislation adequately protects the health of children and young people, specifically in relation to street traders and mobile food vendors in the vicinity of schools.

The Scottish Government has recently published ‘Beyond the School Gate’ (BTSG). It highlights that 14 authorities have placed a condition/restriction on trader’s licences to restrict their operation in the vicinity of schools under section 39 of the Civic Government (Scotland) Act 1982 (which require amendments in accordance with the statutory process detailed in section 9 of the Act in order that a new condition can be attached to the licence). Restrictions have been introduced in respect of the area and/or times that street traders can operate and, in effect, means there can be an exclusion zone in place around schools within which street traders are not allowed to trade (usually during certain times/days). The document states that the degree of any condition/restriction is determined by local circumstances and varies between local authorities.

We believe that any restrictions under the current legislation would be ultra vires and challengeable.

The Highland Council does not currently use licensing powers in this manner. We are pleased that the introduction of BTSG advocates the restriction of licensing for mobile food vendors in the vicinity of schools but The Council’s legal advice is that to be competent, any move to introduce exclusion zones around schools for street traders requires to be supported by changes in primary legislation. The Air Weapons and Licensing Bill provides an opportunity to address this important issue in relation to the health of our children.
24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?

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

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

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?
The Highland Council and its partners have been working to improve the
school food environment through an officer/member stakeholder group.

One of our major challenges is the availability of unhealthy food in the
vicinity of our schools. We believe that any move to introduce exclusion
zones around schools for street traders requires to be supported by
changes in primary legislation. The Air Weapons and Licensing Bill
provides an opportunity to address this important issue in relation to the
health of our children.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

As noted at 3. General Licensing Issues, The Highland Council and its partners have been working to improve the school food environment through an officer/member stakeholder group. One of our major challenges is the availability of unhealthy food in the vicinity of our schools. We believe that any move to introduce exclusion zones around schools for street traders requires to be supported by changes in primary legislation. The Air Weapons and Licensing Bill provides an opportunity to address this important issue in relation to the health of our children.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Scott Gardner
Organisation: Kelvin Smith Insurance Brokers Ltd
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
* 2. Please confirm that you have read and understood the Scottish
Parliaments “Policy on the treatment of written evidence by subject and
mandatory committees”:  

☐ Yes

* 3 Please confirm whether you are content for your name to be published
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☑ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

Sexual Entertainment Venues – In particular lap dancing venues hold have no hidden agenda, they are simply a method of light hearted entertainment and no different to Bands, DJ's or other live shows.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

It is irrelevant how many times per annum this form of entertainment in is held, there is no malice in it in front of or behind the scenes.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

No advantage to the community what so ever. This form of venue would in fact cause less disruption to the surrounding community than a conventional night club or live music venue with regards to noise levels, clientele etc.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

To something such as a lap dancing bar in the same breath is ludicrous. Venues such as this are merely light hearted entertainment and a far cry from anything underground or seedy.

54. Are there any barriers to licensing authorities operating the new licensing regime?

The only change the new regime will make is damaging an already wounded licensed trade in a crucial time for the Scottish employment and economy.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

See above.
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*1. Please supply your name and contact details:

Name: Freyja Prentice, Jo Muir, Mhairi Spence, Eilidh Prize

Organisation: Elite Scottish/GB Athletes

Address 1:

Address 2:

City/Town:

Postcode:

Country:

Email address (if no email leave blank):

Phone Number:
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☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

This bill will have a negative effect on the Scottish Government’s Policy to make Scots active for life. The policy reads;

*The Scottish Government’s over-arching policy objective is to make Scots active for life. We want to get and keep more Scots active help Scots be the best by dealing with a spectrum of physical activity - helping those who are inactive at one end, to supporting elite athletes at the other.*

*By aligning sport and physical activity more closely together, the links between the two will be strengthened. The Scottish Government’s sport and physical activity strategies continue to play an important role in setting out the detail of what needs to be delivered on the ground.*

*The Scottish Government has made Physical Activity a new national indicator to reflect its importance. Physical inactivity contributes to nearly 2,500 deaths in Scotland and costs the NHS around £91 million per year. It is a health challenge that the Scottish Government is passionate about taking on. An annual investment of £3 million is aimed at increasing physical activity, including those furthest away from meeting the physical activity guidelines - teenage girls and older adults. This is in addition to National Programmes such as Active Schools, which provided over five million opportunities for young people to be physically active.*

[http://www.scotland.gov.uk/Topics/ArtsCultureSport/Sport/physicalactivity](http://www.scotland.gov.uk/Topics/ArtsCultureSport/Sport/physicalactivity)
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

We don’t think it will.

Forcing young children to have to shoot at existing club premises where the number of shooters using airguns will increase dramatically if the bill is passed, will place them in a more heavily lead contaminated environment, this would be counter to public health policies.

In addition Scottish Saltires MPC and Scottish Tetrathlon members are taught to be extremely safety conscious and look after their pistols responsibly as they are given training by Scottish Saltires MPC and Scottish PC Tetrathlon Range Officers. Scottish Saltires MPC and Scottish Tetrathlon work hand in hand in training at all levels. 90% of pentathletes start the sport of Modern Pentathlon through Scottish Tetrathlon.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?
There is not currently sufficient provision of air weapons clubs across all areas of Scotland. Many members of Scottish Saltires MPC are not in an area that can support a traditional club due to geography.

Pentathletes currently train with Scottish Saltires MPC and Scottish Tetrathlon in various locations and practice on private land without incurring the cost of being members of an Air Weapon Club. If the bill was passed and Scottish Saltires MPC and Scottish Tetrathlon (under the auspice of Pony Club) were to become an approved air weapon club which uses multiple premises across Scotland this would provide sufficient capacity. By virtue of Schedule 1 Exemption 1 Scottish Saltires MPC and Scottish Tetrathlon members would be able to train with Scottish Saltires MPC and Scottish Tetrathlon at various premises and on private land without requiring individual certificates. Schedule 1 Exemption 1 would need to be slightly amended to reflect this.

As many pentathletes are under 14 years of age Scottish Saltires MPC and Scottish Tetrathlon request that Schedule 1 Exemption 1 be amended to allow a parent/guardian/adult over 21 be allowed to supervise both training and competitions.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
If all pentathletes were to require an air weapons certificate it will add cost and bureaucracy to a sport/organisation which is well controlled and teaches young people responsibility and respect. If all pentathletes were required to go through the time consuming and costly process of both obtaining a licence and joining an additional club, they would be unlikely to take up the sport and may also choose to leave the sport.

If passed as is, pentathletes will not be able to repair their air weapons either at their own homes or during a competition without the presence of a registered firearms dealer. There are not sufficient firearms dealers to service this requirement and they will add additional cost to enter this sport. Scottish Saltires MPC has proved to be, along with Scottish Tetrathlon, the grass roots organisation for many young athletes who have gone on to become elite athletes in modern pentathlon.

They currently have 70 members regularly competing approx 75% are girls and 70% are under 14 years of age with Scottish Tetrathlon having 200 members.

Many Scots have gone on to compete at elite level, representing GB and part of the World Class program. Currently competing are 2012 World Champion and 2012 Olympian Mhairi Spence who is from Farr near Inverness, Inverurie's. Freyja Prentice, reserve athlete for London 2012, junior individual medal winner at World and European level. Joanna Muir from Castle Douglas spent time on top of the world junior ranking list this year. Aberdeen’s Eilidh Prise has won individual youth world and European medals and started 2014 on top of the youth world ranking. Maili McKenzie from Dumfries represented GB at junior world and European championships this year. We, Mhairi, Freyja, Jo and Eilidh are part of a group of 7 women on the GB world class program on Podium and Podium Potential which is clearly dominated by Scots women. We all started at grass roots level through Scottish Tetrathlon, moving onto Pentathlon as a result of the high standard of performance we showed in Scottish Tetrathlon.

Airgun shooting is a sport accessible to all ages and disabilities. This bill will deter people starting recreationally due to the beaurocracy and so stop the development of competitive shooters at all levels.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?
The majority of Pentathletes are under 17 and as such the air weapons licensing systems would have a huge effect on them. If however Scottish Saltires MPC and Scottish Tetrathlon were allowed to become an approved air weapon club and therefore exempt from individual licences this would work for their organisation.

Each person will require an air weapons certificate which will add cost and bureaucracy.

They will not be able to repair their weapons without a registered firearms dealer, again adding cost and time. In addition as they are 14-17 they will probably be unable to drive and therefore find it difficult to access a firearms dealer especially in the more remote areas of Scotland.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

All competitors require a licence incurring cost and bureaucracy. This would require event and visitor permits. This would be totally untenable for our sport as we often have more than 20 visitors attending our competitions and training events which run monthly. Having tried and failed to get visitor permits to take across to Northern Ireland we know how difficult and impractical such a requirement is.

In 2013 the Irish Pentathlon team came over to Scotland to compete against Scottish Saltires. All competitors were youth’s and gained invaluable experience from competing at this level against another nation. The Scottish youths took a convincing win which gave the sport a boost and encouraged participation. Eilidh Prise competed at this event and is now an athlete recognised by GB as having olympic potential and is included in a program to support this. This event would be impossible under the current proposals in this bill.

If Scottish Saltires MPC and Scottish Tetrathlon were to become an approved air weapons club as requested previously, according to our interpretation of
Schedule 1 section 1b(i) we would not require an event or visitor licence which would allow us to continue to run our competitions which are only open to and attended by our members.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

We do not agree that a fee should be payable for unsuccessful applications.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

We think that the air weapons licensing system will have a negative effect on the public sector in Scotland. Given that the Firearms teams are already over stretched, resourcing this requirement for licensing of air weapons, clubs, permits will place unprecedented demand on already slim resources.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

We believe that in making it difficult or costly to run events (run, shoot, swim, fence and ride) people will choose not to put themselves through the difficulty of obtaining an air weapons certificate, a visitors permit or joining an additional club, nor to pay the additional costs we will need to charge at competitions to take account of the cost of obtaining event permits. This will mean that grass roots organisation that currently has up to 200 children from 8-25 competing monthly will no longer exist. In the future we will not have the next generation of Modern Pentathlete or Air Pistol Olympians as they will have no foundation.

The risk of introducing a requirement for an airgun license may encourage applicants to go the full hog and apply for a shotgun/firearms certificate that will thereby increase the number of more high powered/more lethal weapon
22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

We respect the bill and are keen to work with it. However as it is currently drafted it would be unworkable for us. If however Scottish Saltires MPC and Scottish Tetrathlon were to become an approved Air Weapons Club with multiple premises for training and competitions across Scotland and allowing all our members and visitors to use air weapons without holding individual certificates, as detailed above, this would allow them to work within the bill and the continuation of our sport along with the added benefit of a pipeline of elite athletes into Modern Pentathlon and the sport of Air Pistol Shooting to follow in our footsteps.

Allow Scottish Saltires MPC to become an approved air weapons club.

Allow all members within Scottish Saltires MPC NOT to require an air weapons certificate, but that Scottish Saltires MPC will hold the air weapons certificate for all weapons used.

Allow Scottish Saltires MPC Qualified Range Officer to repair, transfer or sell air weapons.

Allow anyone visiting from England, Northern Ireland or Wales to be exempt from visitors permits.

Do not limit the size of visiting groups.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

<table>
<thead>
<tr>
<th>Name:</th>
<th>Willie Taylor</th>
</tr>
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<tbody>
<tr>
<td>Organisation:</td>
<td>Dumfries &amp; Galloway Council</td>
</tr>
<tr>
<td>Address 1:</td>
<td>Municipal Chambers</td>
</tr>
<tr>
<td>Address 2:</td>
<td>Buccleuch Street</td>
</tr>
<tr>
<td>City/Town:</td>
<td>Dumfries</td>
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<tr>
<td>Postcode:</td>
<td>DG1 2AD</td>
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<tr>
<td>Country:</td>
<td>Scotland</td>
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<tr>
<td>Email address (if no email leave blank):</td>
<td><a href="mailto:Willie.taylor@dumgal.gov.uk">Willie.taylor@dumgal.gov.uk</a></td>
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<tr>
<td>Phone Number:</td>
<td>01387 245913</td>
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</tbody>
</table>
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☑ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes
☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
Name/Organisation: Dumfries & Galloway Council

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.


9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.


10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.


11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.


12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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 Licensing Framework remains resilient but could do with up-dating to make sure that the provisions purposively reflect modern requirements including means of communication, EU Services Directive and Data Protection.

The fact that the Licensing (Scotland) Act 2005 has undergone substantial changes since its commencement in 2009 and this Bill’s proposes to add other significant changes speak loudly that it remains not fit for purpose.

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

Need these be mutually exclusive? Groups of individuals impact on city space. Is this relevant to a consultation on a specific Bill?

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
Licensing must relate to a well-defined activity and have a clear well-understood purpose. It should only adversely impact on other regimes when this is necessary but must always be recognised as independent of those other regimes and not subservient to them.

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

Licensing should lead to benchmarking standards, improvement to service delivery and increased professionalism of staff.

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

Many licensing systems, for example Skin Piercing and Tattooing, have these elements at their core.
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

The new offence of supplying alcohol to a child or young person outwith licensed premises is welcome but will the police and courts have the resources to prosecute to the extent required to provide deterrence?

The other side of this is that it is designed to address proxy purchases; it would also criminalise responsible parents introducing young persons to alcohol within a family picnic setting.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

Before considering new measures, there must be a proper assessment of the existing measures.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

Adding Young Persons to Licensing Objective (e) will strengthen that objective.
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

In its present form, the link with the licensing objectives is likely to frustrate its re-introduction as there is already one and only one ground of refusal relating to the Licensing objectives: the logic of the leading case of Brightcrew would prevail—what exactly has this to do with the sale of alcohol?

An expert legal opinion is needed on whether the proposed linking of the objectives and the fit and proper test would bring the results heralded and fill the vacuum created by the 2005 Act or lead to confusion and frustration in practice.

The proposal that a revocation must flow from a Premises Licence Review or Personal Licence Review finding that the licence holder is not a fit and proper person is draconian. It also would be an unjustified restriction on the Board’s authority and decision making powers.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

One which will be addressed by the Bill is the mandatory premises licence review proposal for any conviction for a relevant or foreign offence by giving the Board discretion in stated circumstances.

One which will be created by the Bill is the negation of the refresher training requirements for a personal licence holder. The proposal to enable a personal licence holder to re-apply immediately on revocation of their licence because of their deliberate failure to comply with the refresher training requirements, would render refresher training nugatory by statutory approbation of failure to comply.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?
The Board will get full information on which to decide an application. Other decision making bodies can decide that justice cannot be done unless reference is made to spent convictions and alternatives to prosecution and the Bill would extend this to Boards. The procedure to consider whether spent conviction should be disclosed is pre-existing- Section 7 of the Rehabilitation of Offenders Act

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

This has not been a helpful questionnaire: it would have been better to seek views on each of the proposals rather than ask very open ended, almost exam type questions. It is likely to be difficult to collate the responses cohesively.

The proposal to require the Board to forward a copy of a personal licence application to the LSO to report to the Board does not appear to be closing a gap. It would make perfect sense if the proposal required the Board to forward a copy of a premises licence application or an application for major variation of a premises licence. This is already supported by the LSO’s extensive powers in relation to inspection of premises to prepare an assessment on the impact on the Licensing Objectives.

If it is designed to assist with “renewal” of personal licences towards the end of their 10 year duration, this really merits detailed analysis. The present provisions are a legislative nightmare. The most obvious defect is that if the renewal application were processed within the current licence duration, the renewal application must be refused as the applicant already has a personal licence.

The Bill contains proposals to amend the time within which the “renewal” application can be lodged. This is tinkering with a cumbersome, immediately otiose process: there is still time for a proper assessment and introduction of an effective renewal process. At the same time there should be consideration of how the second 5 year refresher training requirement would fit within the renewal process.

The proposal that the Board can recognise its whole area as a locality for assessment of overprovision should be recognised as a fundamental development and not the addressing of a lacuna.

The change of the term of a licensing policy statement from 3 to 5 years and the link to the Local Government Election appear immediately attractive and practical. However, 5 years is a long time not to be seeking views of the community stakeholders and trade on the policy. In practical terms it is likely that supplementary statements would be necessary. Linking with the Local Government Election would draw the licensing policy statement within the political cycle following the election. Although appointment of Board Members must follow the setting up of the new council, it is generally recognised that a Board is politically neutral; this proposal may give the impression that this is not the case.
Name/Organisation: Dumfries & Galloway Council

5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

- Inclusivity, safety, affordability, customer care and effective a-b service along the shortest route.

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

- It is argued that one system would lead to congestion due to increased number of vehicles within town centres.

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any
potential benefits of a unified system?

This matter has been the subject of detailed consultation, collation and analysis of responses within the framework of the Scottish Government’s Taxi and Private Hire Car Licensing: Proposals for Change Consultation. It has to be asked whether it is necessary or appropriate to consult on such wide terms at this late stage.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

Any answer must be speculative. This would be a complete innovation relating to a service which is now largely hidden: the customer calls the operator to arrange for the hire and agree the fare. Unless undertaking a hire or coming back from one the private hire vehicle need not be on the street. This contrasts with the visibility of taxis which are either on ranks or are seeking hails from the street.

Overprovision is a problem when operators are openly competing on price for fares.

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

This is going to be a massive area of work: most operations under an exemption are likely to be well hidden: from where are they going to receive notice of the licensing requirements?

Any exemptions should be sorted out before the Bill is passed: it is recognised that Scottish Ministers would be empowered to create exemptions by Statutory Instrument but meantime those operating the hires would be breaking the law if they did not have the necessary licences.
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

Not the function of a consultee to justify proposals within the Bill. These proposals have followed detailed consultation and reflection on changes in England and Wales.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

From where has the suggestion of “an accreditation scheme for metal dealers” arisen?

There is a need to look at how different licensing regimes interact: SEPA and licensing authority.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

No
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

Not known

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

Introducing an exemption from the cashless system for small transactions would weaken the system: the cash exemption would be open to abuse by operators.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

What is the information from England and Wales about the effectiveness of the 2013 Act requirements?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?

Mandatory conditions allow a baseline and local conditions allow authorities to take into account specific local concerns and circumstances.
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

The proposal to abolish mandatory licensing for theatres should be recognised as such. Only if licensing authorities are satisfied that local licensing, under PEL, is necessary should their PEL Resolution be extended to cover theatres or certain specification of theatres. This should not be perceived as merely a shift of theatre licensing to PEL.

48. Are there additional costs or resource implications on theatres or licensing authorities?
It is to be noted that the inference that theatres would likely be covered by a Public Entertainment Licence, fails to appreciate fully that theatre licensing is presently mandatory whereas it is up to each licensing authority to determine whether to license places of public entertainment and, if so, what type of entertainment to cover.

The licensing authority will require information upon which to decide whether there is a need to license theatres as places of public entertainment. The fact that mandatory licensing of theatres has been abolished will be a very strong indicator, perhaps even a starting point, that licensing of theatres under PEL is not necessary.

For authorities not licensing places of public entertainment any consultation and decision making process under the 1982 Act is likely to be substantial and detailed.

For those presently with PEL, the process may be less detailed but will still include significant press publication fees for statutory notices if the authority’s resolution is to be widened to include theatres.

Many local theatres are amateur, community based initiative who will not welcome any increase in fees-which must be extremely likely.

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?

Local decision taking into account local circumstances.

Name/Organisation:  
Dumfries & Galloway Council

8. Civic Licensing – Sexual Entertainment Venues
50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

This has been the subject of detailed consultation with responses on these issues having been collated and analysed.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

Policing springs to mind.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?
If Scottish Ministers believe that this activity should be prohibited as exploitation then they should legislate to ban it and not merely allow a licensing authority a tortuous process to introduce the licensing of this activity and then effectively to ban it by agreeing a zero level.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

There should be a separate schedule.

54. Are there any barriers to licensing authorities operating the new licensing regime?

As it will be a decision of the licensing authority whether to license Sexual Entertainment Venues, this will involves detailed consultation, Committee and officer time and press publication fees for statutory notices and Committee and officer time in preparing and issuing a policy on the appropriate number of SEVs for its area, which limit may be zero.

It is extremely unlikely that an authority would receive an application: most of the wasted effort would be avoided by making it a mandatory licensed activity.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

No further views.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Sheila Scobie
Organisation: Competition and Markets Authority
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 74
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

✔ Yes

3. Please confirm whether you are content for your name to be published with your submission:

✔ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ Yes

☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

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☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☑ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
4. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

The Office of Fair Trading (OFT) conducted a market study in 2003 on the regulatory framework affecting licensed taxi and private hire vehicles (PHVs) across the UK. The report found that consumers value quality and safety controls for vehicles and drivers, and licensing addresses these issues which might be difficult for them to judge when hiring a vehicle (for example the technical safety of the vehicle and the competence of the driver). Quality and safety controls and licensing are therefore necessary to ensure passenger safety and security.

However, using licensing to limit the number of new taxis and PHVs may lead to an increased demand for illegal taxis where neither the driver nor the vehicle has been subject to appropriate quality and safety checks. We believe this could expose consumers to greater safety threats. Limited supply of taxis could also contribute to difficulties faced by the police in clearing city centres or public places in the evenings.

In 2003 the OFT said that licensing authorities should consider the needs of consumers and the effect of the proposed specifications on the availability of taxis and PHVs. Limiting the number of PHVs should be a last resort and licensing authorities should try to ensure that any quality and safety specifications do not go beyond what is required to achieve this policy aim.

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36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?
In the 2003 report the OFT found that the two tier system of taxis and PHVs worked well and benefited both consumers and licensing authorities. The main benefits being:

- It provides a degree of choice for the consumer in terms of vehicle type. This is particularly important for disabled and older consumers who will often require a particular type of vehicle, which is not necessarily the traditional, wheelchair accessible taxi.

- It increases choice and value for money for consumers living close to administrative borders. Taxis can take passengers from within their licensed area to other licensing authorities but can’t accept bookings for passengers or ply for hire outside the area in which they are licensed. PHVs, on the other hand, can take passengers from any point to any other providing the PHV driver, vehicle and operator are licensed in the same area.

- It allows regulations to be targeted at the parts of the market where they are needed, without disrupting the market in sectors where such regulation is unnecessary. For example separate regulations for vehicles that only work in the phone booked or online sector of the market, where OFT research has shown competition and consumer protection issues are less of a problem, allow these vehicles to be subject to less regulation. In contrast, taxis plying on the street and at ranks, where there is more need to protect consumers, are subject to much tighter regulations. The reduced amount of regulation benefits both PHV providers and licensing authorities.

- It also provides for greater competition and choice, on both quality and price, in the telephone and online markets, and to a lesser extent, between rank/hail and telephone markets. Competition encourages taxi and PHV drivers to offer better value for money and better quality service to consumers.

The OFT did find that there are some drawbacks of the two tier system. The main issue being that consumers can find it hard to tell the difference between taxis and PHVs. This can mean that consumers may not be aware what regulation applies to the vehicle they are travelling in. It may be that this lack of consumer awareness impedes monitoring and enforcement in circumstances where some PHV operators may be illegally plying for hire. For example, in circumstances where taxis may not be able to meet all of consumer demand at certain peak times.
37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?

The CMA’s view is that the current regime is fit for purpose and we have not seen any evidence that suggests that consumers are disadvantaged by it. A new system of licensing will require initial start-up costs which could be expected to be high and also ongoing costs to PHVs. Introducing these costs may impact on the supply of PHVs in a locality due to reduced incentives that result from lower profits.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?
In relation to Section 60 of the Bill we believe that the market works better without quantity restrictions on taxis and PHVs. The OFT’s market study found that the licensed taxi and PHV market is already highly regulated and that the overall quality of taxi services could be enhanced by reducing aspects of the regulatory framework. We found that quantity restrictions can actually have an adverse impact on both choice and price for consumers. The long term benefit to society of lifting quantity restrictions, in terms of lower waiting times, improved safety and lower costs of market entry outweigh the potential drawbacks. This would also introduce greater consistency between the two forms of transport.

We consider that the current two-tier system, provided it differentiates between the two regulatory regimes for taxis and PHVs on objective and proportionate criteria, is fit for purpose. The CMA recognises and understands that there are circumstances where it will be appropriate to have a quantity restriction for taxis, for example when there are concerns about public safety, congestion or pollution. We have not seen any objective evidence that suggests that similar circumstances might apply in respect of PHVs, given that they are demand-responsive. Without such evidence, it is difficult to see how local licensing authorities will be able to determine whether there is over-provision of PHVs in their areas. Private hire cars can only be pre-booked and therefore demand is not as easily measured in the same way as with taxis. Consideration will need to be given to ensuring that any policy on overprovision of PHVs is robust against challenge, given the difficult task of determining whether this is, in reality, causing actual consumer detriment. Local licensing authorities, in our view, would be advised to consider cautiously representations made by competitors of potential new entrants to the taxi/PHV market in this regard. We understand that the Scottish Government will be producing guidance to assist local licensing authorities. We believe that licensing authorities should be made to consider whether introducing licensing restrictions for PHVs are the most appropriate method of achieving the policy objective, and, for any given locality, whether quantity restriction is the most appropriate and proportionate response.

We would strongly encourage the Scottish Government to consider these points when preparing guidance for licensing authorities on measuring over provision and seek advice from the CMA on the potential risks of restricted competition and poorer outcomes for consumers.

We believe setting particular requirements for driver licensing including a geographical knowledge test can be a good way for licensing authorities to manage driver quality directly. Consumers are likely to expect both PHV and taxi drivers to have a level of geographical knowledge. When hiring a taxi or PHV they are unable to judge whether a driver has a good geographical knowledge or not. A test is an effective way of establishing a driver’s level of knowledge. However, any tests need to be based on clear, objective and transparent criteria and be proportionate.
39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

The licensing of hire cars being used on contract for 24 hours or more was not covered in the OFT’s 2003 Market Study. However, updating licensing conditions to ensure that there is consistency across local authority areas will help to create a ‘level playing field’ across the sector. This would ensure that competition is not distorted. We understand that one of the areas this will cover is voluntary transport arrangements that are run as a charitable activity. The provisions of competition law can also apply to operations that are run a not for profit basis.
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<th>Guy Jefferson</th>
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<tr>
<td>Organisation:</td>
<td>SP Energy Networks</td>
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☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☒ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation: SP Energy Networks

6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers’ licensing regime to the extent that metal theft and related criminal activity is reduced?

We believe that the new measures which include steps to tighten record keeping and customer identification requirements are positive. Of upmost importance, is the new prohibition which will prevent a dealer from paying for metal in cash. We opine that this will remove the incentive of ready cash for a potential metal thief as well as making it easier to identify any persons involved in the selling of metal.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?
**Penalty**

We consider that the maximum penalty of £5000 for an offence is disproportionate given the implications that the theft of metal can cause. Whilst we do appreciate this is the maximum level afforded by the Criminal Procedures (Scotland) Act 1995 for statutory offences, we understand that the limit for common law offences tried summarily are in fact higher. It is our position that an increase in maximum penalty is required to have any meaningful impact. We believe that the legislation must allow for the application of the full sentencing powers available to the courts, including the additional sentencing powers available under the Criminal Procedure (Scotland) Act 1995 and the Proceeds of Crime (Scotland) Act 1995 than are currently provided for in the bill in order to present a more effective deterrent to offenders. Another area which could be improved is with regards to repeat offenders as the current bill does not deal with harsher penalties for such offenders.

**Identity**

The Civic Government (Scotland) Act 1982 proposed section 33B (5)(c) says that a dealer must “keep a copy of any document produced by a person to verify that person’s name and address”. We believe that there should be a requirement placed on a dealer to verify the identity of a person supplying or receiving metal for recycling.

If such a requirement is introduced, it is essential that the person whose identity is to be verified, and the form of acceptable documents, is set out clearly and unambiguously. This would be most easily achieved by a photographic identification which we believe should be a mandatory requirement of the bill.
We propose that there may be an opportunity to use credit card style credentials with photographs & authorisations. This could be similar to Energy & Utility Skills register cards or Street Works qualifications register. This would allow for the tracking of holders and location of where the scrap is being disposed of. Ultimately, this would be aligned to a register of fixed base & Itinerant Scrap Metal Dealers (SMD’s) countywide which would include information on volumes & types of scrap collated. This would permit the authorities / public to ask who is taking their scrap away with a fee or not involved to satisfy themselves of the legitimacy of the itinerate scrap dealer.

**Metal dealer definition**

The Bill’s definitions of a metal dealer and an itinerant metal dealer in the Civic Government (Scotland) Act 1982 section 37 are not changed by the new Bill and require a person both to buy and to sell metal before they qualify. One significant implication is that a typical itinerant who collects from households without making payment for the items or materials he collects would not require a licence, and would thus remain outside the scope of the Bill. Furthermore, there is scope for a person collecting general waste and other materials, but actually earning a substantial proportion of his income from separating out and selling scrap metal, to escape the licensing regime. Similarly, skip hire operators and demolition contractors generating a substantial amount of their revenue from sale of scrap metal could escape the definition and need for licensing.

We note that the Civic Government (Scotland) Act 1982 section 37(2) allows the ability to smelt etc. This should result in an enhanced set of records to be kept and verified as to who and where materials came from and payments to what registered licence holder(s). This would also improve traceability of the raw materials. The list of Scrap Metal Dealers as already known under the metal theft group we are part of already has an established RAG (Red, Amber & Green) flag system which could be utilised. Should a person engaged in this scrap process not be VAT registered, it would seem logical to require them to pay tax of some description through either a business or home address which can be verified.

**Licences**

The Civic Government (Scotland) Act 1982 section 5(4) allows a person who may be carrying on an activity which requires licensing five days to produce the licence.

By placing an obligation on metal dealers to display copies of their licence on their premises, and for itinerant metal collectors to display their license/s on their collection vehicles, this may assist enforcement agencies in identifying illegal dealers.
42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

N/A

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

N/A

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
Cash trading

We welcome measures that will deter metal theft by removing opportunities for the anonymous disposal of stolen material for cash.

Methods of payment

Electronic transfer definitions and associated record-keeping requirements are poorly defined. As a specific example, ‘payment in kind’ is not addressed.

Payment mechanisms that would be permitted under the Civic Government (Scotland) Act 1982 proposed section 33A are unclear. For example, in proposed section 33A (2)(a) there is no restriction on the person to whom a non-transferrable cheque may be made out; it does not have to be the seller or any person whose identity has been verified.

Furthermore, proposed section 33A(2)(b) fails to link the seller and payee for electronic transfers. It also does not define “account”, nor does it set any parameters for traceability of transfer between an account and the seller.

One of the schemes currently employed in England & Wales is the setting up of cheque cashing facilities by scrap metal dealers “next door” to their existing traditional operations. This allows the thieves to potentially accept a cheque and then cash it almost immediately without question. We do not believe that this issue is addressed in this bill.

Scrap Metal Dealers or Itinerate Scrap Metal Dealers who cannot supply a card or licence to register the scrap against should automatically default and therefore no payment should be made to them. This would also encourage the Itinerate Scrap Dealer to register, and the receiving Scrap Metal Dealer to log what they have received against a registered person. This will result in the payment being made to a known registered licence holder. Taxation should be a matter for the proper authorities.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

Record keeping requirements are pragmatic and may potentially be utilised as evidence by the authorities should a case be raised against an appellant.
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?

With the exception of our belief that there should be a requirement placed on a dealer to verify the identity of a person supplying or receiving metal for recycling; any further obligations should be discretionary.

Should the requirement to provide photographic evidence not be stipulated in the final bill; we would be keen to see CCTV as an alternative and a mandatory requirement.
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*1. Please supply your name and contact details:

Name: Dr Colin Shedden
Organisation: BASC Scotland
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City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
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☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
Name/Organisation: BASC Scotland

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

No

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

With respect to equality we do feel that the proposed legislation unfairly discriminates against young people. Those aged 14 or over will be expected to pay the same amount for a certificate as those over 18, but for a shorter duration.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

No
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

No

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

No
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

This air weapons licensing system is unlikely to contribute to preserving public order and safety, or reduce crime. The reason that we state this is due to the fact that the only people who will submit themselves to the licensing system will be those who are already law-abiding. Those who are not law-abiding will not apply for a licence and will either dispose of their air weapon (that could further compromise public order and safety) or continue to keep it illegally. This point is accepted by Scottish Government in their response to this Committee on the 1st September 2014 (Q5).

Offences involving firearms, and specifically air weapons, are at their lowest level for many years. Creating new legislation that affects the possession and use of an estimated 500,000 air weapons in Scotland will inevitably result in an increase in reported crime, even if an offence has been committed unintentionally.

The creation of this air weapons licensing system will not affect public health policy.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?
It is not known if there is sufficient provision or capacity of air weapons clubs across all areas of Scotland. In July this year there were 138 approved rifle clubs in Scotland. It is not known how many of these clubs currently have the facilities for air weapon shooting or how many currently unapproved air weapon clubs there are. SARPA, in their submission, estimate that no more than 5% of air weapon users are currently involved in clubs.

Scottish Government stated on 1st September 2014 (Q10) that they “will work with stakeholders to encourage the development of a network of air weapon clubs across Scotland”. We look forward to being involved in this initiative but fear that it will be difficult to establish such a network without commitment and funding, especially if the requirements for approval are seen as onerous.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

Those who currently use air weapons for personal/recreational use do so without any need for a licence. Many chose to use air weapons rather than other firearms for this reason. In addition, they are not exposed to the cost of a licence or to any restrictive conditions placed on a licence. They do, however, have to act within the law and ensure that they only shoot on land over which they have permission.

The air weapons licensing system will introduce the need for a licence, the cost associated with this and the real possibility that, for many, their “good reason” would not be seen as adequate. (We refer here to the references in the Policy Memorandum and Explanatory Notes to the presumption against informal target shooting in gardens – “plinking”.) Consequently a significant number of licence applicants (or potential applicants) could be deprived of their sport.

It has already been noted by BASC that a number of hitherto exclusively air weapon shooters have now applied for either a Shotgun Certificate or a Firearms Certificate. They have concluded that if they need to have a certificate they might as well get one for a more powerful firearm and still be able to enjoy their air weapons shooting for free, for a period of up to five years.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?
Many young people may be disinclined to apply for or pay for an air weapon licence and therefore lose their opportunity to enjoy their sport. Their parents may take a similar view.

A number of young people who do apply for a licence will be directly affected by the restriction on live quarry shooting being conditional upon protecting livestock, crops etc. This would prevent them from undertaking many aspects of essential pest control for conservation reasons (Section 7 (5) (d)).

We do not understand why a certificate granted to a person under the age of 18 will expire when that person reaches the age of 18. (Section 8 (1) (a)) This effectively makes a certificate for a young person proportionately more expensive than one for an adult and may lead to a delayed application, waiting until the person reaches the age of 18. This appears to us to contravene the principles of equality.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

Professional use will be affected by requiring all who use air weapons to be licenced. This may have a minimal effect on pest controllers who have to be licenced for many other activities, such as the use of poisons, but it will be another financial burden on predominantly small businesses. Those based out with Scotland but operating in Scotland will have the additional burden of applying for a Visitor Permit at least annually, unless a long-term visitor’s permit is introduced.

Professional use would also apply to the many people who use air weapons for the humane dispatch of captured pests species, such as rats, grey squirrels, mink etc. Many of these individuals are either employed by conservation agencies or NGOs and would face the cost of a licence just to allow the occasional use for this purpose.

It is not known how many tourists come to Scotland to participate in air weapon hunting but it is thought to be less than those who come for hunting with either a rifle or shotgun. However, if they came from England or Wales they would have to apply for a Visitor Permit for an air weapon but not for a rifle or shotgun.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?
Those involved in competitive air weapon sports and residing in Scotland will inevitably apply for and hopefully receive their air weapons licence that will then allow them to both train and compete as before.

Those wishing to come to Scotland will require a visitor’s permit and this may well act as a disincentive to both individuals and groups, especially if an application has to be made each year, or more often. We are aware that there have been delays and frustrations over recent years with respect to visitor permits for shotguns and rifles. In such situations the visiting sportsman or woman can borrow a firearm, such as an “estate rifle”, and still participate. However, few air weapon competitors would be able to compete if they did not have their own rifle or pistol due to the fact that most are customised for their own particular requirements.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

BASC does not think that it is equitable that the fee is charged even for an unsuccessful application. Each person applying is doing so to remain law-abiding and it is wrong to financially penalise them if their application is rejected. Given that it is anticipated that the majority of applications will be dealt with at a civilian/administrative level in just over one hour of processing time there will inevitably be mistakes based, for example, of failure to recognise good reason. It is fundamentally wrong to financially penalise a person for trying to do the right thing.

Again, this could act as encouragement to apply for a Shot Gun or Firearms Certificate instead.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?
While the air weapons licensing system will not affect many areas of the public sector it will affect Police Scotland. BASC has considered the figures in the Financial Memorandum. Our main concerns relate to the “Processing Costs” outlined from Para. 66 onwards. An assumption is made that “extensive, detailed background checks and home visits will be necessary only in a very small proportion of cases”. 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.

It is assumed that the majority of air weapon owners use them for informal target shooting in their garden and we note that the Policy Memorandum states (para. 64) “Ministers do not believe that target shooting in such an environment (in gardens or other urban of 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”. With this in mind we feel that a large number, possibly 50% of applications, will give such informal target shooting as their good reason. We do not know what decision-based mechanism could be used to determine whether this would be acceptable or not without enquiry officer involvement and/or a home visit. Instead of 2% of applications requiring “detailed process incl. home visit” we feel that this would be nearer to 50%. 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. This will have a considerable negative impact.

The only other public agency that may be affected is SNH, which does employ staff who require air weapons for humane dispatch purposes.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?
The requirement to obtain an air weapon certificate will encourage many people to get rid of their air weapon. Some will be surrendered, some will be sold but many could be otherwise disposed of, leading to a possible increase in offences involving air weapons in the coming years.

The requirement to obtain an air weapon certificate may be the incentive for many to decide to apply for a shot gun or firearms certificate instead. The process may be easier (there is no need for good reason for a shot gun certificate and no conditions can be attached, for example) and possibly cheaper, and if the application is unsuccessful the fee will be returned.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

The Bill refers to applicants being required to demonstrate “good reason”. This is defined as “pest control, sporting target shooting, or being a collector” in the Explanatory Notes (Sect. 18). However, the Policy Memorandum is clear that Ministers do not believe that “plinking” in gardens “should generally be acceptable”. This is the most common use for air weapons in Scotland. Many applications for an air weapon certificate could therefore be rejected due to advice in the Policy Memorandum rather than what is in the Bill itself. This will deprive a large number of air weapon shooters of their sport.
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☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

The Scottish Women’s Convention (SWC) welcomes the definitions put forward under s68 of the proposed Bill. The SWC are particularly pleased that ‘audience’ includes an audience of one. This definition will ensure that men who purchase private dances in sexual entertainment venues, whereby they are in a room alone with a woman, are subject to licensing conditions.

Many clubs state that they have ‘no touching’ rules, however there is no enforcement of these either by the club individually or under licensing conditions as they stand. It is hoped that under a new licensing regime, this type of rule will be enforceable and women will not be subject to the abuse they face at the moment. Regulation is necessary as many customers assume that dancers will agree to provide sexual services.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
The SWC has real concerns that this loophole could be exploited. Not considering a venue hosting sexual entertainment on three occasions or less within a 12 month period as a sexual entertainment venue could lead the organiser (again, as defined under s.68 of the Bill) to provide sexual entertainment in a number of other venues which are not covered by licensing laws. This could, in effect, lead to an organiser using several venues throughout a Local Authority to provide sexual entertainment, with each venue being used no more than three times, and all the while avoiding being subject to specific sexual entertainment licensing. The possibility of this happening seems to be counter-productive to the strong definitions outlined in the Bill and the aim of the legislation overall.

52. **Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?**

One of the main advantages to this proposal is the control that it would give to Local Authorities. Areas that do not want to have any sexual entertainment venues will be able to make that quite clear. This, in turn, will send a clear message that the commercial sexual exploitation of women is not something they want as part of their community.

Conversely, allowing each Local Authority to set the number of sexual entertainment venues in their area could lead to inconsistency throughout the country. The activities which go on in sexual entertainment venues constitute commercial sexual exploitation. The Scottish Government considers commercial sexual exploitation as a form of Violence Against Women (VAW); however it is giving individual Local Authorities the opportunity to decide whether it wants to have sexual entertainment venues (such as lap dancing clubs) in their areas, as opposed to objecting to them overall. This approach seems to go against not only the ethos of the Scottish Government, but also the amount of work which has been done in the field of VAW towards prevention and eradication of this blight on society.

Lap dancing and strip clubs are fundamental examples of gender inequality. This type of ‘entertainment’ is a euphemism for commercial sexual exploitation and normalises activities which often disguise more abusive, controlling and demeaning behaviour towards women. Most women undertake work in these types of venues because of poverty and lack of choice. Lap dancing portrays women’s bodies and their sexuality as their most important qualities as valued by men.

While moves to create more regulation are important, a shift towards a zero tolerance approach to such venues would be welcomed. It is vital that there is consistency throughout Scotland in order to avoid exploitation of the law.
53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

<table>
<thead>
<tr>
<th>Name:</th>
<th>Tony Glover</th>
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<tbody>
<tr>
<td>Organisation:</td>
<td>Energy Networks Association</td>
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<tr>
<td>Address 1:</td>
<td>6th Floor, Dean Bradley House</td>
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<td>Address 2:</td>
<td>52 Horseferry Road</td>
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<td>Email address (if no email leave blank):</td>
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<tr>
<td>Phone Number:</td>
<td>0207 706 5118</td>
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</tbody>
</table>
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes
☒ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal
☑ Professional
☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes
☒ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☑ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.


9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.


10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.


11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?


21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?


22. Do you have any other comments to make on air weapons licensing aspects of the Bill?


3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

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

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

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

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?
38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

Energy Networks Association (ENA) represents the “wires and pipes” transmission and distribution network operators for gas and electricity in the UK and Ireland.

ENA led the campaign in England and Wales for a change to the Scrap Metal Dealers Act and have lobbied for similar legislation in Scotland and Northern Ireland. We support the broad objectives of the Bill and welcome the Scottish Government’s commitment to amending the law in this area.

ENA has also maintained an ongoing lobbying campaign as organisers of the Westminster Parliament All-Party Group on Combating Metal Theft which brings together Network Rail and BT as well as the War Memorials Trust, the Church and a range of other organisations affected.

Metal theft is a serious problem for electricity and gas network operators. Its cost cannot just be counted in monetary terms or even the impact it has on people’s energy supplies but also the serious danger it exposes the public to. That is why we have campaigned for legislative change. It is clear that if you remove the means of disposal of stolen metal you impact on the crime itself.

This has been illustrated in England and Wales. According to figures from the Health and Safety Executive, in the year following the introduction of the Scrap Metal Dealers Act incidents of theft and interference with electricity network assets fell by 25%. Over the same year incidents of theft and interference in Scotland increased by 62%. We believe this illustrates that England and Wales have exported the thieves to Scotland. That is why it is vital that the legislation is passed as quickly as possible.

The English and Welsh scrap metal industry has almost completely reformed its practises as a result of the legislation and the main trade association for the industry, the British Metals Recycling Association has strongly welcomed the legislation and believes it has removed the rogue element and cleaned up the sector.
41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?
Yes we believe there are and these are set out below. The comments below address not only the content of the Air Weapons and Licensing (Scotland) Bill, but also the consequences of leaving certain other elements of the Civic Government (Scotland) Act 1982 (“CGSA”) unamended.

Production of licences
There is no requirement for a metal dealer or itinerant metal dealer to display a copy of a licence within the Bill. CGSA S5(4) allows a person who may be carrying on an activity which requires licensing five days to produce the licence. We believe it is essential to place an obligation on metal dealers to display copies of their licence on their premises, and for itinerant metal collectors to display their license/s on their collection vehicles. This will ensure effective enforcement of the new regime.

Verification of identity
CGSA (as amended) S33B(5)(c) says that a dealer must “keep a copy of any document produced by a person to verify that person’s name and address”. However, there is no requirement placed on a dealer to verify the identity of a person supplying or receiving metal for recycling. We believe that this is essential and the form of acceptable documents, is set out clearly and unambiguously.

Metal dealer definition
The Bill’s definitions of a metal dealer and an itinerant metal dealer in the CGSA S37 are not changed by the new Bill and require a person both to buy and to sell metal before they qualify.

One significant implication is that a typical itinerant who collects from households without making payment for the items or materials he collects would not require a licence, and would thus remain outside the scope of the Bill. Furthermore, there is scope for a person collecting general waste and other materials, but actually earning a substantial proportion of his income from separating out and selling scrap metal, to escape the licensing regime. Similarly, skip hire operators and demolition contractors generating a substantial amount of their revenue from sale of scrap metal could escape the definition and need for licensing. Furthermore car breakers are not covered by the definition, a situation exacerbated by the absence of a definition of scrap.

We believe that the Bill should be amended to provide exemptions for manufacturers disposing of their own surplus materials or offcuts. A clear and comprehensive definition of metal dealer, to include vehicle dismantlers and other businesses generating a significant proportion of their income from sale of scrap metal is essential.
42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
We strongly support the introduction of a cashless regime. This has undoubtedly had a very positive effect in England and Wales, not least in helping to radically reform the sector. However, we believe there are elements of the payment process that could be much better defined.

Electronic transfer definitions and associated record-keeping requirements are very poorly defined. Payment in kind is not addressed.

A notable weakness of the regime in England and Wales is a poor definition of acceptable payment methods. The payment mechanisms that would be permitted under the CGSA (as amended) S33A are equally unclear. For example, in S33A(2)(a) there is no restriction on the person to whom a non-transferrable cheque may be made out; it does not have to be the seller or any person whose identity has been verified (if indeed there is any requirement for verification of any person’s identity. Furthermore, S33A(2)(b) not only fails to link the seller and payee for electronic transfers, it also does not define “account”, nor does it set any parameters for traceability of transfer between an account and the seller.

45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of
payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also
attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?


48. Are there additional costs or resource implications on theatres or licensing authorities?


49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?


8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Air Weapons and Licensing (Scotland) Bill Call for Evidence – The Co-operative Response

The UK Consumer Co-operative Movement comprises 16 retail Co-operative Societies. The Co-operative Group is the largest Co-operative Society, operating as a consumer co-operative and comprises a family of businesses whose activities range from food to finance and from farms to funerals. Food retailing is core to our activities, including in Scotland, providing almost half of the Group’s turnover. The Co-operative Group operates Food stores at the heart of hundreds of communities across Scotland from Lockerbie to Lerwick and from Castlebay to Coldstream. Similarly we have partner societies operating in different areas of Scotland such as Scotmid Co-operative Society, Clydebank Co-operative Society, and a number of small community co-ops that we support in the most remote areas of Scotland. Part of the retail mix in Co-operative Food stores is the sale of alcohol products. Therefore we wish to comment only on the proposals contained within the draft Bill as they relate to alcohol licensing.

When the Scottish Government launched its Further Options for Alcohol Licensing consultation in December 2012 it promised an “open and productive discussion” and it was in this atmosphere that we responded to the consultation. We agreed with the Scottish Government that due to the recent rapid pace of alcohol licencing reform in Scotland there are aspects of the licensing regime that have become unbalanced; we felt that it was important that the retail co-operative societies trading in Scotland responded constructively. Some of the proposals put forward at that time were ones we felt that we could support. Certain other proposals caused us greater concern and so we stated our apprehensions to ensure that any further legislative reform did not have the potential to create new problems.

On the whole the proposals put forward are ones which we feel we can support. The one exception to this is the return of the ‘fit and proper person’ test. This is not something we are particularly keen to see re-introduced as in our experience as multiple licensees this was purely an administrative hurdle through which we were required to jump and which did not add anything to the promotion of the licensing objectives.

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

Proxy purchase
We believe that the biggest positive impact will come with criminalising the supply of alcohol to a person under 18 for consumption in a public place. We supported this proposal when we responded to the consultation.

Retailers have worked hard to incorporate age verification schemes into their businesses. The Co-operative and other retailers in the Retail of Alcohol Standards Group were already operating a Challenge 25 policy across their Scottish
Co-operative Retail Trading Group

estates before this became a mandatory condition following the Alcohol etc (Scotland) Act 2010. These policies have reduced the amount of alcohol bought from retailers by underage individuals. A report by NHS Health Scotland in July 2012 revealed a reduction in direct sales of alcohol to young people. However, it also noted that the reduction in alcohol sales to underage individuals has not necessarily translated into a reduction in alcohol consumption by underage individuals: “Despite [this]... no-one reported a decrease in young people’s alcohol consumption at this time.” (Section 4.1.2).

The explanation for this disparity between sales and consumption is due to ‘proxy purchasing’. The Serve Legal and Plymouth University ‘Checked Out’ Report published in June 2012 revealed (Section 7) that over half of all underage drinkers now obtain their alcohol through family and friends. Their research showed that supermarkets and convenience stores are now ranked as the very last places from which underage drinkers would attempt to obtain alcohol. As the off-trade has become more rigorous in its policing of sales, underage drinkers have resorted to ‘proxy purchases’ – getting over-age individuals to legally buy alcohol and then sell or gift it on. The Co-operative, as a responsible retailer, has incorporated guidance on how to spot proxy purchases into its training for all front-line store staff. This cannot be infallible however, particularly when the underage individual does not come anywhere near the store.

The recent ‘Rising to the Challenge’ report assessing the performance of the Challenge 25 scheme’s operation looked specifically at the issue of proxy purchasing. It concluded that “Given the complex nature of proxy sales, it is important that the trade, trading standards, the police and the Home Office look to work ever more closely on dealing with the issue.”

Retailers now identify proxy purchase as the biggest challenge they face in preventing alcohol getting into the hands of underage individuals. Last year the Association of Convenience Stores commissioned the think tank Demos to look at three problems relating to alcohol, one of which was underage drinking. The resulting ‘Sobering Up’ report concluded that tackling proxy purchasing requires targeting parents and adults. To drive the message home that facilitating underage drinking is not to be tolerated the report recommended radical action in this area including ‘social shaming’ and alcohol-related community sentences targeted at those purchasing alcohol for children.

Currently all the penalties for proxy purchasing are targeted at the retailer rather than the proxy purchaser. We are happy to support the law being amended so that the truly guilty – those that fraudulently purchase alcohol with the intent of passing it on to an under-18 – can be prosecuted in such cases. However, any new law must be utilised; at present we do not believe that existing powers are effectively enforced.

Our one concern is that by focusing solely on consumption in a public place the proposals do not go far enough. As the Scottish Government has previously stated, drinking in Scotland is a societal issue. Education is probably the key means of changing Scotland’s drinking habits. With this in mind we would encourage a blanket ban on supplying alcohol to under-18s. We believe that it is a stronger and clearer message than the one hedged with exemptions proposed in the Bill. When, in July last year, as part of their support for the East Edinburgh Community Alcohol Partnership, the police seized alcohol possessed by underage individuals they stated: “we believe a number of adults continue to assist underage drinking through the proxy purchase of alcohol. Friends, family members and other persons over the age of 18 are reminded that it is an offence to buy or supply anyone underage with alcohol.” Even under the new proposals this statement will not be accurate.

The present Bill states that supplying alcohol for consumption by a child will not be an offence as long as it is consumed anywhere other than a ‘public place’. If it is to be consumed at home no offence is committed. This will make it harder to police proxy purchase in store – not only do staff members have to make a judgement about whether the alcohol purchased is on behalf of an under-18 but they also have to make a judgement about the location in which it will be consumed.

‘Young People’
In the same light we approve of the licensing objective “to protect children from harm” being amended to include ‘young people’. Legally, a child is defined as “a person under the age of 16”. However, it is also illegal to sell alcohol to 16 and 17-year-olds; a person aged 16 or 17 is defined as a “young person”. This means that should alcohol be sold to an individual aged 16 or 17 the law will have been broken, but not the licensing objective.

The current mandatory condition creates the paradoxical situation where the law might have been broken, but the licensing objective has not. We have heard of at least one instance where a retailer has successfully defended itself at a hearing on the basis that, in selling alcohol to a 17-year-old, they had not contravened the terms of the alcohol licence. As all licensees should be operating a Challenge 25 policy amending the mandatory condition to close this loophole should not cause responsible retailers any extra cost or difficulty – assuming an appropriate phrase can be agreed. This is an example of eliminating contradictions in the licensing regime which impose no extra regulatory burden upon licence-holders.

It makes sense to harmonise the mandatory objective with the statutory age restriction. The more comprehensive a standard, the easier it is to understand and prosecute. However we would need absolute clarity upon the definition of a “young person” – in official statistics this term often covers all individuals over 16 but under 25. It would create genuine difficulties if the licensing objective were amended to make retailers consider the potential impact on consumers aged over 18 who were legally entitled to purchase alcohol. Doing so would also contravene the Equality Act.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

We are not convinced that the re-introduction of the ‘fit and proper person’ test will positively affect compliance with the licensing objectives. In our consultation submission we stated that we did not see any particular need to re-introduce this test. We continue to believe that the current requirements of the personal licence application and licence review processes are effective enough to support the licensing objectives. Our objections are based upon the amount of non-productive time required to attend any required interviews rather than fears that our applicants will fail the test. Despite the subjective nature of the phrase we cannot recall any applicant nominated by either The Co-operative Group or Scotmid falling foul of such a test. The statement in the Policy Memorandum (paragraph 137) that “A definition of ‘fit and proper’ is not necessary” does concern us, however. From a natural law standpoint we would prefer any new legislation to clearly define what activities or associations would result in an applicant being deemed to be not ‘fit and proper’.

Whilst the test was officially removed by the 2005 Act we have found that in practice it never went away. In certain areas the police still call in potential personal licence holders for face-to-face interviews before they are content to let the application go through. In Edinburgh, for example, the police invite all applicants for a 5-10 minute interview at force headquarters at Fettes Avenue with a licensing officer. This is something they used to do under the 1976 Act when a new premises manager was nominated. The questions asked are basic and will have been covered by the personal licence qualification training – we do not believe that they add anything extra to enforcement of the licensing objectives.

While we cannot see any advantages from this activity to ensure the objectives are upheld, they are time-consuming. Personal licence holders have to be released from their day-job (with cover provided) and travel across to the headquarters for what is often just a five minute interview before they can return. This can take up to two hours out of store even in a relatively small area like Edinburgh.

We would be concerned if the fit and proper person test meant that this sort of interview was expected for all premises managers and all personal licence-holders. Before the 2005 Act came into effect most forces would interview a new premises manager. We never saw this as a particularly useful expenditure of the police’s time. In all cases for The Co-
operative Group and Scotmid a new store premises manager will already have a qualification as a personal licence holder and in most cases they will already be a premises manager moving to a new store. We cannot recall any occasions where such interviews brought to light any new information to suggest that our applicant was not a ‘fit and proper person’, despite the subjective nature of that phrase. Obviously we will only have one premises licence per licensed store but we will have more personal licence holders employed. As stated above, it currently takes up to two hours for a member of staff to get across a relatively small area like Edinburgh and back; considering the stores we operate in some of the remotest communities in Scotland we have significant fears that if every proposed premises managers or personal licence-holders were called in to interview by the police or Licensing Board we could lose up to an entire day’s work – or more in the case of island stores reliant on ferry crossings – for each staff member for the sake of a 5-10 minute conversation. The end result is that operators of licenced premises could potentially try to reduce this non-productive time by reducing the number of personal licence holders they employ. This would tend to undermine the licensing objectives rather than support them.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

The Licensing (Scotland) Act 2005 introduced the concept of ‘overprovision’. Since its introduction co-operative societies in Scotland have raised objections about the application of the policy. We favour concrete action being taken to identify and deal with problem purveyors of alcohol, but oppose sweeping generalisations that tar responsible retailers with the same brush as the irresponsible. Overprovision assessments create increased administrative cost and burden to licensees and thereby stifle competition and local growth.

We believe that assessments of overprovision on health grounds are only valid if two conditions are met:

- a clear causal link between the number of alcohol licences in an area and resultant health problems can be shown
- that the alcohol consumed by those with alcohol-related health problems was purchased primarily in that area.

We do not believe that either of these conditions are met.

No causal link can be established between the number of licences locally and health problems. Alcohol Focus claimed to have found a ‘moderate’ relationship between off-licence density and alcohol harms in young people in England in their One on every corner report, but to make this claim they had to specifically exclude London where no such trend was evident. Even amongst the areas they saw fit to quote there are clear anomalies. For example, Malvern Hills had 26.7 off-licences per 100,000 population whereas Tunbridge Wells had almost twice as many (48.3), and yet Tunbridge Wells saw far fewer alcohol specific under-18 hospital admissions (48.4 per 100,000 population) over a two-year period than Malvern Hills (82.4). Moreover there is an assumption that all licences are equally harmful, despite the amount of alcohol purchased on a daily basis varying enormously between an out-of-town hypermarket and a local corner shop or between a ‘vertical drinking’ chain pub and a small bistro.

Nor is it possible to demonstrate in most cases that harm is caused by alcohol purchased within the local area. The consultation document acknowledged this fact (“it is very difficult, if not impossible in most cases to make a causal link between where alcohol is sold and where it is consumed”, paragraph 97). The 2011 submission to the Scottish Government for the Alcohol (Minimum Pricing) (Scotland) Bill by West Dunbartonshire Licensing Board et al made the point that whereas 31% of the respondents to a 2008 survey in Whitecrook bought alcohol at a local convenience store 85% bought it from a supermarket outwith the local area: “the problems occurred in Whitecrook but the alcohol was bought in Clydebank Central”. The 2010 Statement of Licensing Policy for West Dunbartonshire states that “persons in West Dunbartonshire, wishing to obtain alcohol from off-licences will travel up to two miles across sub-localities to purchase alcohol” (section 28).
They will also cross local authority boundaries. Since the introduction of the multi-buy ban in 2011 there have been reports that consumers resident near the English border have simply been crossing to England to buy alcohol – should minimum unit pricing be introduced in Scotland and not in England we would expect to see this trend continue. As a result health or crime problems caused by alcohol bought in England would be felt in Scotland.

What overprovision does do is stifle local investment and competition. Overprovision assumes that alcohol consumption is led by availability – the more premises there are selling alcohol the more consumption there will be. We would instead argue that both consumption and availability is led by demand – consumers expect to be able to complete a full shopping trip in just one location. This is why the number of independent stand-alone greengrocers, butchers and bakers has plummeted over the last thirty years. Consumers expect to be able to buy all their fruit and vegetables, their meat, their bread and all the rest of their shopping under one roof. This includes alcohol. If a consumer is not able to buy a bottle of wine in the same place as the rest of their evening meal they will travel elsewhere. It does not therefore make commercial sense for a convenience store or supermarket to invest in a community unless they can sell alcohol as part of that offer.

Where alcohol licences are restricted retailers are reluctant to invest in that area, stifling job-creation and competition. High street vacancy rates in Scotland already stand at 14.9% according to the Local Data Company. Safe from competition, existing retailers are at risk of becoming complacent and letting standards slip.

Bearing these reservations in mind, we do not support the concept of overprovision unless clear evidence meeting the two conditions specified above can be demonstrated. Extending the locality to cover the entire Board area, as proposed in Section 54, would compound the existing problems. It would mean that pockets of perceived problems would blight wide areas where no new investment or competition was allowed in. For example, during the Highland Licensing Board's assessment of overprovision, NHS Highland identified that twelve of Highland's 22 wards showed rates of alcohol-related hospitalisation significantly above the Scottish average. If this was translated into an assessment that the entire Highland area was overprovided it would mean that Ullapool, for instance, would be starved of increased retail opportunities when the nearest area NHS Highland had identified as a problem was Cromarty Firth over 40 miles away. Indeed, Cromarty Firth's neighbouring ward, the Black Isle, would face the same issue, despite the fact that Black Isle's rate of hospitalisation for alcohol-related conditions was 20% lower than the Scottish average (877.4 per 100,000 as opposed to 1,088). In these circumstances, in effect, a 'surrender' policy for licences would be established. Our experience of the surrender policy in Northern Ireland is that it disproportionately disadvantages independent and smaller retailers and has retarded investment and economic growth. For overprovision assessments to have any utility at all they need to be based on clear, hard evidence. Having localities covering the entire area will only dilute any impact and effectiveness from measures introduced to address specific local issues. We therefore believe that locality boundaries should be drawn as tightly as possible.

We believe that the proposal to count extensions in opening hours would be an over-reaction to a very small issue. An extension of trading hours would in general only be likely to marginally increase alcohol provision. Even then an increase in the hours within which alcohol can be purchased would not necessarily mean that more alcohol would be consumed: since licensing hours were relaxed in England and Wales in 2005 alcohol consumption has fallen by over 17%. Just as importantly we feel that it should be noted that the hours in which alcohol can be sold are already restricted by laws and licence conditions. Making this subject to an overprovision assessment would duplicate other, existing, regulations. The proposal is simply that a Board “may” have regard to licensed hours with no greater detail about what that would entail. For example, if an off-licenced premises were to apply to extend its licensed hours from 21:00 to 22:00 would all licensed premises be taken into account to determine whether the locality was overprovided or only those that were licenced between 21:00 and 22:00?

Again we are, on balance, opposed to including increases in capacity under the overprovision rules. Capacity in this sense would either be the number of individuals the premises can contain in the on-trade, or the size of the alcohol sales area in the on-trade. However in practice such increases would not dramatically increase the amount of alcohol being sold. It would
be strange if an extra half a metre of shelving in a convenience store was counted as just as big a threat to an overprovision assessment as a new out-of-town hypermarket. Yet under this proposal each would be subject to exactly the same test. Retailers frequently remerchandise and refit stores to best meet consumer needs. Most of the time these will just involve ‘micro-space’: keeping the existing shelving and general space splits but moving products around on the shelves. Sometimes, however, to meet consumer demand, to fit in with new brand ideas or to roll out improved formats ‘macro-space’ revisions are necessary. These may involve changing old shelves for new, increasing or decreasing the splits in store space between different categories, or gutting and refitting the store entirely. Extensions to the selling area might be necessary under macro-space refits. Creating a general presumption that no increase in alcohol capacity would be approved in certain areas would almost certainly mean that existing retailers would not invest in modernising and refitting stores in those areas. This will create negative impressions of those areas, as the existing stores become tired and shabby. As alcohol-related health harms or crimes are predominantly associated with more deprived areas it is most likely that it is more deprived areas will be covered by overprovision assessments. It would be a shame if they were deprived of modernised or newly-refitted retail opportunities.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

We support the proposals in Section 57 for the removal of the prohibition on any individual who has had a personal licence revoked due to a failure to prove to the Licensing Board that they have undergone refresher training from reapplying for a new personal licence within five years. We are confident that we have the information to hand to ensure that personal licence-holders we employ will be scheduled to undertake refresher training in advance of the deadline. However there can be occasions where it is not possible for the individual to sit training at the appropriate time – due to maternity leave or illness for example. Preventing licence-holders from reapplying for a five year period would only have the effect of weakening the field of employees responsible for upholding the licensing objectives by removing long-standing licence-holders. Barring them from taking responsibility for the authorisation of sales of alcohol would be counter-intuitive. We are glad to see this rule revoked.

Likewise the increased notice that a Licensing Board must give prior to the expiry date of a personal licence and the extension of the period within which it is possible to apply for a renewal will help licence holders plan around maternity leave or ongoing illness.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: John Lee
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Address 1: 
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City/Town: 
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Email address (if no email leave blank): 
Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliament's "Policy on the treatment of written evidence by subject and mandatory committees":

☐ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee's distribution list for updates on progress of the Bill:

☐ Yes

☐ No
* 6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?
34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

Overprovision

1. The new licensing bill proposes to amend section 7 of the 2005 Act to enable Licensing Boards to determine that the whole of the Board’s area is a locality. SGF opposes this proposal.

2. We recognise that groups such as Alcohol Focus Scotland assert that there is a strong body of evidence to show that the availability of alcohol (i.e. the number of premises) is a significant factor in the prevalence of alcohol-related problems, particularly alcohol-related crime. However, we are not convinced that this evidence is either robust or conclusive enough. There is no simple cause-and-effect relationship between the number of premises and alcohol-related problems and overall it is becoming increasingly difficult to make a link between individual premises and problems in a specific locality. Inequality continues to be the main determining factor: alcohol-related harm in Scotland is still disproportionately experienced by those from more deprived areas.¹

3. Moreover there is an assumption that all licences are equally harmful, despite the amount of alcohol purchased on a daily basis varying enormously between a large supermarket and a local corner shop or between a ‘vertical drinking’ chain pub and a small bistro. As it currently stands overprovision is a blunt instrument: it does not take into account the differences between licensed premises and different business sectors. For example, Edinburgh has 449 restaurants, 428 bars/pubs but only 243 licensed convenience stores. As such it is clear that overprovision restricts business development and job creation in business sectors where no genuine overprovision exists.

4. We do not believe, for example, that for the purposes of assessing overprovision convenience stores and off-licences should remain in the same category. Whilst a convenience store and an off-licence

¹ MESAS 3rd annual report December 2013
may be the same size they make a very different offering to customers. In an off-licence the entire store will generally be designated as the alcohol display area and the premises will concentrate on selling alcoholic products to the exclusion of most others. In contrast a convenience store provides a full retail offering, where alcohol counts for a much smaller proportion of sales, with chilled and ambient food, household goods and newspapers and magazines comprising the bulk of turnover. In a typical convenience store alcohol will only account for approximately 12% of the entire volume of sales (Chilled foods, for example, currently account for about 13% of total sales and tobacco upwards of 20%) Their alcohol display area would hence be much smaller than that in a similarly-sized off-licence. This makes the two types of business very different and they cater for very different customer shopping missions.

5. As Scotland’s only Trade Association for the convenience store sector, we strongly believe that responsibly-run convenience stores are a vital community asset. We would therefore suggest that, for the purposes of overprovision, the Licensing Boards separate ‘local convenience stores’ and ‘off-licences’ into different categories, much as has already happened with ‘Large supermarkets’. It is important to note that no causal link has been established between the number of licences in a locality and alcohol-related health problems. Nor is it possible to demonstrate, in most cases, that harm is caused by alcohol purchases within the local area. Indeed this was acknowledged by the Scottish government in its consultation paper ‘Further Options on Alcohol’ – ‘it is very difficult, if not impossible in most cases, to make a causal link between where alcohol is sold and where it is consumed.’

6. Capacity is an important issue in determining overprovision. If the entire Board area was regarded as being overprovided for it would prevent retailers from ever increasing the capacity of their alcohol sales area. However, in practice such increases would not dramatically increase the amount of alcohol being sold. It would be a paradox if a 20m² increase in selling area of a convenience store was counted as just as big a threat to an overprovision assessment as a new out-of-town hypermarket. Yet under this proposal each would be subject to exactly the same sort of scrutiny. Retailers
frequently remerchandise and refit stores to best meet consumer needs. Most of the time these will just involve ‘micro-space’: keeping the existing shelving and general space splits but moving products around on the shelves. Sometimes, however, to meet consumer demand, to fit in with new brand ideas or to roll out improved formats ‘macro-space’ revisions are necessary. These may involve changing old shelves for new, increasing or decreasing the splits in store space between different categories, or gutting and refitting the store entirely. Extensions to the selling area might be necessary under macro-space refits. It should be noted that, of course, retailers are charged a fee for any major or minor variation to their licences.

7. Creating a general presumption that no increase in alcohol capacity would be approved in the entire Board area would almost certainly mean that existing retailers would not invest in modernising and refitting stores.

8. Similarly, an extension of trading hours would in general only be likely to marginally increase alcohol provision. Even then an increase in the hours within which alcohol can be purchased would not necessarily mean that more alcohol would be consumed. Just as importantly we feel that it should be noted that the hours in which alcohol can be sold are already restricted by laws and licence conditions.

9. Rather than taking a ‘blanket’ approach to overprovision, Boards should continue to take into account the specific activities and mode of operation of the applicant. The categories used should make clear distinctions between premises such as convenience stores and supermarkets and indeed convenience stores and off-licenses. It is important to note, however, that arguably the number or capacity of premises in a locality in unlikely to be the key factor in deciding whether there is overprovision. Instead, the determining factor is the extent to which there are alcohol-related, health, and crime problems in the area.  

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2 Fraser, A (2012) Preparing an evidence based overprovision policy
10. The Board’s approach to overprovision should be based on evidence. This will help to ensure clarity and consistency. The evidence should be based on obtainable data per data zone such as alcohol-related deaths, hospital admissions and alcohol-related crime. To re-iterate: the number or capacity of premises in a locality is unlikely to be the key factor in deciding whether there is overprovision.

11. We should point out that overwhelmingly our members are responsible retailers; they put considerable effort into ensuring that alcohol is sold in a responsible way. This happens through the following key areas:

   a. Full compliance with the Challenge 25 regulations;
   b. Staff training;
   c. Appropriate signage;
   d. In-house test purchasing;
   e. Refusal books.

   Whilst only Challenge 25 and basic staff training are mandatory, the other areas listed are carried out on an entirely voluntary basis by our members.

12. Rather than designating their entire area as a locality for overprovision purposes, Boards should focus strongly on enforcement: proxy purchases are the biggest problem area in relation to under age sales and individuals participating in these must be prosecuted. The number of prosecutions for purchasing alcohol for consumption by persons under 18 actually fell from 156 in 2009/10 to 64 in 2011/12.\(^3\) Clearly this point on enforcement also has to apply any retailers who act in an irresponsible way - it is time to root out the rogue retailers.

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\(^3\) Answer to written question in the Scottish Parliament S4W-13828
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*1. Please supply your name and contact details:

Name: T/D/SUPT ALISON EVANS
Organisation: NATIONAL METAL THEFT TASKFORCE
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:

* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

X Yes
* 3. Please confirm whether you are content for your name to be published with your submission:
   X Yes
   □ No

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   X Yes
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Submission Number: 81
- Equalities, climate change and other Scottish Government objectives
- Air Weapons
- General licensing issues
- Alcohol licensing
- Civic licensing – taxi/private hire car licensing
- Civic licensing – scrap metal dealers
- Civic licensing – theatre licensing
- Civic licensing – sexual entertainment venues
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

The National Metal Theft Taskforce (NMTT) supports the reform of the legislation around dealing in metal and would prefer to see a regime that mirrored that in England and Wales to avoid displacement of offending and dealing in stolen metal.

The removal of exemption warrants is supported as we believe legislation should apply to all scrap metal dealers, no matter what size.

We have seen no convincing commercial argument for not retaining metal for 48 hours and it would be of great assistance to law enforcement if metal was required to be retained. As part of the minimum standards of investigation, British Transport Police officers visit, at least, the three most local SMDs to search for the stolen cable, it would facilitate the identification of both stolen property and the premises that repeatedly process stolen metal if SMDs had to retain metal for 48 hours. It would also have a deterrent effect of SMDs refusing to accept metal they thought “may” be stolen if they thought that they may make themselves liable to handling type offences.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?
We would welcome an accreditation scheme which could follow on from the RAG status by which all SMDs in England, Scotland and Wales have been evaluated as part of Operation Tornado. This would assist with the licensing process, reducing the burden on local councils, and allow all the relevant parties involved in the licensing of SMDs – law enforcement, SEPA and LAs – to focus their enforcement activity on those who choose not to comply with the legislation.

The NMTT is currently developing a Scrap Metal Dealers Register for all SMDs in England and Wales to provide a comprehensive register of all SMDs, motor salvage operators and mobile collectors. This will not only hold all the details of licences issued and applications refused, but will also hold intelligence in order that the appropriate decision is made regarding the licence, and all agencies have access to up to date information to prioritise their visits and inform activity. We believe this would be enhanced by the inclusion of all Scottish SMDs, to enhance information sharing, avoid duplication and eradicate knowledge gaps.

We note that the definition of a dealer and itinerant dealer requires that they “buy and sell metal”. This will exclude itinerant collectors who collect from door to door but do not pay, or can not be proved to have paid. This was identified when the SMD Act 2013 was drawn up and the wording of the 1964 Act was amended to “buy or sell”. It is our belief that such a change should be made through the medium of this Act as well.

We believe that records should be maintained for longer than six months. Whilst huge strides have been made against organised crime groups involved in metal theft, these investigations can take many months and even years, investigating multiple offenders and wide ranging offences. Without a mandatory requirement to retain records potential evidence would be lost.

We would like to recommend that records are kept for the length of the licence. Then, LAs could also use them, should they choose, to check whether the records had been completed and stored correctly as part of the relicensing process.

The Scrap metal Dealers Act 2013 specifically precludes payment in kind and we believe that this Act should mirror that to avoid any subversion of the cashless system.

We can find no mention in the Bill of a requirement
42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

As stated above – we believe there needs to be a comprehensive scheme that covers all SMDs, motor salvage operators and mobile collectors no matter what size.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

As previously stated we believe that the requirement to retain metal for 48 hours, coupled with the requirement to record metals received, would be of great assistance to law enforcement investigating the theft of stolen metal locally and we do not believe that this would be commercially disadvantageous to SMDs.

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
Our experience working with dealers in England and Wales is that they have adapted very well to the new regime of cashless transactions since the inception of, initially LASPO 2012 and then the Scrap Metal Dealers Act 2013. SMDs have tried to undermine the legislation by instigating cheque cashing services on sites, but, if they are run correctly and have third party involvement then these are legal and, indeed, provide another layer of identification confirmation through the necessary KYC checks of a Money service business.

We firmly believe that the evidence from England and Wales proves that there is no requirement for any transactions, however small, to be paid in cash, and the blanket ban relieves SMDs of any pressure from unscrupulous customers to make a series of payments under the threshold to avoid identification via a cheque or bank account.

45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
The requirement for identification is one of the key tenets of the legislation in that it removes the capability of thieves to dispose of the metal they have stolen anonymously and increases the risk of detection for them. As such it has been extremely effective, particularly again low level less organised offenders by removing the legitimate market for stolen property. This is why, prior to the legislation, law enforcement and partner agencies worked with the BMRA to get SMDs signed up to start voluntarily requiring identification as part of Operation Tornado, which has proved to be extremely successful and paved the way for the legislative requirement when the SMD Act came in to force in 2013. Identification documents should be limited to passports and driving licences and proof of address, a household bill, excluding a mobile phone bill, as per SMD Act 2013.

46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'?

Whilst it is right that each local authority may apply additional licensing requirements accordingly to their local needs, close liaison with law enforcement and partner agencies should be undertaken to ensure they are aware of any additional requirements when undertaking visits/stops etc.

CCTV could be considered to be an unnecessary burden by small operators, however, no only would it be useful for crime investigation purposes, it would also have a deterrent effect, making the premises less vulnerable to burglaries or thefts.
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**1. Please supply your name and contact details:**
   - Name: Anonymous
   - Organisation:
   - Address 1:
   - Address 2:
   - City/Town:
   - Postcode:
   - Country:
   - Email address (if no email leave blank):
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2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☑ Yes
☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☑ All of the Bill
☑ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues

Name/Organisation:
1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

The evidence supports the conclusion that restrictions on the availability of alcohol can contribute to a reduction in alcohol-related problems. Investment in improving the effectiveness of the alcohol licensing system, particular in improving the pursuit of the licensing objectives, therefore has the potential to reduce the potential costs of alcohol-related harm that arise in other public services and the wider economy.

11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

In relation to transparency and accountability of the licensing system the East Renfrewshire Alcohol and Drug Partnership recommend that the current guidance requires to be updated to reflect current legislative changes. There is currently no system to hold licensing boards to account where they do not consult or develop a licensing policy statement and assessment of overprovision.

Further actions we would like to see addressed are:-

- A statutory duty on licensing boards to promote the licensing objectives.
- A statutory duty on licensing boards to produce an annual report outlining how they have complied with their licensing policy statement.
- A requirement for the Scottish Government to regularly review and update the statutory guidance for licensing boards.
- The requirement for overprovision assessments to include members clubs and occasional licences.

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

supports approaches that regulate communities of space, such as restricting the availability of alcohol as this contributes directly to a reduction in alcohol-related harm.
25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?

The alcohol licensing system is an important means through which the Scottish Government’s priorities set out in *Changing Scotland’s Relationship with Alcohol: A Framework for Action* can be achieved. Furthermore the licensing system has a key contribution to make through the implementation of the licensing policy statement and overprovision assessment to support the achievement of community planning and alcohol and drug partnership priorities to prevent and reduce alcohol related harm.

It is imperative that the licensing policy does not operate in a silo and works constructively to compliment and align with key local strategies and plans such as community planning, land use planning and alcohol and drug partnership delivery plans.

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

The East Renfrewshire Alcohol and Drug Partnership recognise the importance of economic development however this must not be at the expense of the adverse health and social consequences linked to alcohol.

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?
Evidence clearly indicates that reducing availability and increasing price are amongst the most effective policy measures to reduce alcohol consumption and harm in a population. The inclusion of the licensing objective to protect and improve public health, and the requirement for licensing boards to include a statement on overprovision in the licensing policy statement provides the foundation on which licensing boards can act to address alcohol-related health harm. The extent to which public health data is used in practice continues to be subject to varying interpretations of the evidence by licensing boards and the licensing policy outcome therefore does not always reflect the health evidence presented.

Name/Organisation:

4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in.
(Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill's provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

supports the additional new offence regarding the supply of alcohol to a child or young person in a public place will enhance the protecting children from harm licensing objective.
29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

recognise that the 2005 Act has successfully addressed the issue of irresponsible drink promotions in the on trade however we believe that this should be further strengthened in relation to the off trade.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

welcome the following:

- The inclusion of the fit and proper person test as a ground for refusal.
- Clarification of overprovision to include the whole board area reflects a whole population approach to addressing alcohol related harm and availability.
- The addition of young persons to the protecting children from harm objective now protects young people of 16 and 17 within the licensing legislation.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

supports the return to fit and proper test as this allows greater scope for relevant information to be presented before the Board in which to determine an application. The fit and proper test should not be linked to the licensing objectives but stand alone as this would widen the range of issues a Board can consider. We would recommend that appropriate guidelines be produced for licensing boards.
32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

The East Renfrewshire Alcohol and Drug Partnership has concerns regarding the rules and use of occasional licenses. The current rules create a loophole enabling legal requirements of fully licensed premises to be bypassed.

This allows commercial premises to be run under a series of occasional licenses and is inequitable to permanent licence premises. Furthermore it can increase the availability of alcohol in an area that is not presently taken into account for overprovision assessment purposes.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

The East Renfrewshire Alcohol and Drug Partnership supports the extension of the time frame for the operation of licensing policy statements to five years. As noted in section 23 this should include accountability measures to ensure boards comply with publishing their local policy statements within the agreed timeframe.

We welcome the clarification regarding the entire board area being described as an area of overprovision. Boards should take into account licensed hours, members clubs and occasional licenses.

The national guidance should be updated and the reference to the requirement to have a causal link between individual premises and alcohol related harm should be removed.

We would not recommend that Section 54 of the Bill (section 7-01(3) (ii) that the word ‘must’ is replaced with ‘may’ in relation to overprovision.
We propose that Section 84a of the 2005 Act should be extended to further include in addition to the Chief Constable the Licensing Standards Officer (LSO). This would allow LSO’s to deal with issues arising with personal license holders in particular when using the occasional licence system inappropriately.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Carol Johnston, Clerk of the Board
Organisation: West Lothian Licensing Board
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

83
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

☐ Commercial

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☑ Yes

☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☑ General licensing issues

☑ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

See the word document submitted with this response.

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

It is submitted that the system should be enforced more robustly by Police Scotland in conjunction with the Crown Office to regulate individual behaviour so as to protect the public and prevent disorder. At present very few licensing offences are prosecuted.

In relation to communities of space if there is to be an expectation that such areas will be regulated through licensing a power to do so should be made explicit in the legislation to prevent uncertainty.

There should be a restriction on the number of occasional licences which can be granted for any premises in any 12 month period. At present there is no restriction, although there is scope in the legislation for the Scottish Government to impose a limit. Premises which would otherwise not get a premises licence, as they would not be able to get the required Section 50 certificates, are operating with occasional licences almost on a weekly basis. Some of these premises are utilising in excess of 70 occasional licences per year meaning that although alcohol is sold in these premises on a very regular basis they remain unlicensed premises. It is submitted that this situation is not what the act envisaged. Occasional licences should be for premises which are only licensed on a truly occasional basis.

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and
It is submitted that in order to prevent a variety of different layers of bureaucracy the licensing system should be amended to make it clear that such considerations can be considered before licences are granted. It is often unclear to customers that they may need a number of separate consents to operate, e.g. a street trader trading on council land may need planning permission, a street trader’s licence, permission from the Council to occupy the land and a food hygiene certificate.

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

It is submitted that the licensing system is too prescriptive and narrow in its approach to be of any assistance in these respects.

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

These are not currently licensing considerations and unless the law is changed to make these licensing issues any decisions made on these grounds would be open to challenge.
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

It is submitted that it is not clear if the Bill’s provisions on alcohol licensing will allow for reductions in crime and the preservation of public order. This would require the police to act and utilise the powers they have to deal with liquor licensing offences. The act distinguishes between breaches of licensing conditions and offences and envisages a regime where offences are dealt with through the courts. However it is the case that very few offences are prosecuted. It is not clear if that is as a result of decisions taken not to prosecute by Procurator Fiscals or if the Police do not report offences. It is submitted that if the licensing legislation was utilised correctly, with the backing of the Crown Office that a lot of the crimes and offences committed by persons under the influence of alcohol would decrease for example if people were prosecuted for being drunk on licensed premises, if licence holders or “responsible persons” were prosecuted for allowing drunk persons on their premises or for selling alcohol to drunk persons. It is submitted that public drunkenness could become socially unacceptable if the law was enforced. Those frequenting late night premises could be made to think twice about ‘preloading’ if they were to be refused entry and / or reported to the courts. It would take time but attitudes could be changed to make licensing offences as socially unacceptable as drink driving. If people were not supplied alcohol to the extent where they were completely drunk there would be less instances of anti-social behaviour around premises, fewer fights and assaults and fewer associated domestic incidents when persons returned home. There has to be a concerted effort by all interested parties which is just not there at present. At present the Police are dealing with the late night economy problems with fewer resources and by making applications for review of premises licences where there is regular disorder at specific premises.

With regard to interested persons / connected persons. There is the position where a premises licence is held by a brewery for example and they lease the premises to a person or company who stipulate who the Designated Premises Manager is. The brewery and the premises manager are interested / connected but the ‘middleman’ is not mentioned anywhere in any Board records or on the licence. Section 147 (5) is in place but is not in force. It opens the way for ‘organised crime’ to have a major stake in the running of licensed premises with no measures in place to ascertain who they are. Indeed were there to be any review of the premises licence for any matter they premises licence holder and the designated premises manager could be held accountable by the Board but the person / company actually operating the premises are not held accountable due to this part of the Act not being in force.

The Board has a concern that due to the way the legislation is structured often licence holders, particularly larger companies such breweries or restaurant chains, have little involvement in the day to day running of licensed premises.
29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

As stated in the answer to Q28 Police Scotland and the Crown Office and Procurator Fiscal Service could take a more active stance in the reporting and prosecution of licensing offences which have for some time been seen as ‘minor’ and ‘not worth pursuing’. Similarly to drink driving where once it was almost the norm it is now seen as an antisocial activity and shunned by most. If more people were reported and prosecuted for licensing offences e.g. being drunk in licensed premises and allowing persons to be drunk in licensed premises.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

The change to include young persons in the “protecting children from harm” objective is welcomed.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

The Board agrees that the introduction of a “fit and proper” test would allow greater scope for Police Scotland to present relevant information to board members which they can take into account when determining applications.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?
33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

It is submitted that the list of relevant offences should be reviewed to ensure that all relevant statutory offences are included or change the legislation to Police Scotland to report all offences to allow boards to decide which offences are relevant.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

LSOs have no access to criminal records and in the vast majority of cases the applicant will not be known to the LSOs so it is difficult to know what comments they could make on applications for personal licences.

Given the number of changes to the legislation since the 2005 Act was brought into effect and the provisions of section 142 which require boards to have regard to the guidance issued it is submitted that updated guidance to take cognisance of the changes in legislation should be issued after any legislative change.
ANSWER TO QUESTION 23

It is not considered that the current licensing regimes are fit for purpose. A response regarding the 1982 Act has been submitted by West Lothian Council. This response concentrates on liquor licensing.

It is submitted that there have been a number of key changes to the Licensing (Scotland) Act 2005 since it was brought into full effect in 2009. These incremental changes have meant that all parties involved in liquor licensing find it extremely difficult to keep track. A fully consolidated act would assist greatly as everyone would be able to look at the legislation as one act and not have to ascertain if a section had been amended by a subsequent act or SSI. The fact that the act has been amended several times and that one needs to have access to the 40 plus statutory instruments to understand the full effect of its provisions means that it is almost impossible for someone without access to legal advice to understand their responsibilities under this legislation.

Premises licence holders, personal licence holders and staff working within licensed premises have little or no legal training or access to legal advice and, on the whole, find the act completely confusing despite the personal licence qualification. It is incredulous that following receipt of the training certificate a significant number of those who have undertaken the training still remain confused and are under the misapprehension that by undertaking the training they have been issued with a personal licence. This has become even more of a problem over the last few months since personal licence holders have sending in their refresher training certificates. A number of persons have contacted the Board attempting to update their personal licences and it is has only then been identified that despite undertaking the initial training course in 2009 they never applied for personal licences. In all these circumstances it is submitted that the standard of this qualification and the content of the training be reviewed.

Experience also shows that the personal licence document issued to personal licence holders is not in a form which is practical for its purpose. Personal licence holders do necessarily have an office or filing facilities in the same way as is likely to be available to a business or employer. They may understandably be reluctant to put their licence into the hands of another person such as their employer. It is submitted that a more practical form of licence for persons working in the licensed trade would be preferable e.g. a laminated ID containing key licence details.

As a Board we see the practical effect of lack of understanding of the legal requirements by those working in the trade on a very regular basis. Examples of this are –

- Confusion about the role of premises manager and licence holder – many applications are submitted by the wrong persons and worryingly often by persons not named on the licence who are in de facto control of the management of the premises
- A lack of understanding amongst the former registered clubs about their legal responsibilities under this legislation, many are trying to increase their income by running functions/events open to the public or advertising that they are open to the public for meals etc.
- A lack of understanding amongst voluntary organisations and other applicants for occasional licences about how alcohol, should be sold under an occasional licence
Confusion over price variations and what can be done on on-sales and off-sales premises. There are regular complaints about these and where there is both on and off-sales there are two different timescales for the varying of prices for the same premises. It is difficult for licence holders to comply with the legislation because it is so detailed and complex.

With regard to on sales and price variations, our experience is that premises have found a way round the mandatory conditions on a daily basis as they claim that a certain brand of alcohol is only available for a specific period of time and is priced extremely cheaply. Some premises have different ‘offers’ each and every day of the week. The answer when questioned is that the price of the brand remains the same but it only available until 9 pm or it is only available on a Thursday for example. It would be a lot less confusing for all concerned if the same rules applied to all premises. The legislation should also stipulate that if a brand of alcohol is a certain price then, if it is on the premises it must be available for sale. This would go some way to stop premises merely removing a brand from behind the bar and placing it in a store room and telling customers that it is not available.

There is a lot of confusion relating to the varying of premises licences and what constitutes a “major” or minor variation. An off-sales premises for example with the maximum trading hours of 10 am until 10 pm and store opening hours of 8 am until 10 pm have to make a major variation application to open from 7 am until 10 pm. They cannot sell alcohol for any more hours in the day but the store is open an hour earlier. This is a change to information contained in the operating plan and is considered to be major. In contrast an on-sales premises with outside drinking which builds an extension to the premises and increases the size of their outside area but stipulates that there will be no increase in capacity can apply for a minor variation, which must be granted, as they are operating in the same manner as the information contained in their operating plan but the premises can be considerably larger. There is also no neighbour notification for a minor variation, which means that a neighbour can have a licensed premises increase in size and not be given the opportunity to make comment or objection to the Board. These are practical examples of the effect of the rules on what amounts to a minor variation.

Section 91 the approved qualification for obtaining a personal licence has never been prescribed by the Scottish Government and accordingly Boards are having difficulties as the qualification has changed and the ‘older’ certificates have qualifications which are ‘lapsed’. There was never any advice or information forthcoming from the Scottish Government regarding this which has resulted in a fragmented approach across the country and a great deal of confusion for both applicants and Boards.

It is submitted that the Government should take urgent steps to introduce the Personal Licence Database and give all Boards access to it. Without this facility it is impossible for Boards to know if designated premises managers are also working in that capacity in other areas or after 1 December 2014 have had their personal licences revoked.

The Board continues to have serious concerns regarding the operation of the Scottish Government’s Guidance as to how overprovision policy should be formed in practice, and the knock-on effect of this with regard to the application by boards of the ground for refusal based on overprovision contained in different sections of the 2005 Act. In particular the Board is concerned by lack of engagement by advisors at the evidential level suggested in the Guidance, and a growing trend for advisors, or parties purporting to
represent their interests, to later criticise boards unfairly for their failure to introduce substantive overprovision policy.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

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**1. Please supply your name and contact details:**

Name: Eric Anderson
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Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☑ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'
Sexual entertainment venue – we are still concerned regarding the financial gain element of the definition. We previously stated that the fact that it depends on the financial gain of the organiser to be licensed could mean that it could be argued that where performers are self employed a licence is not required, arguing that the performers provide the entertainment and that the occupier/ owner provides only ancillary entertainment. We would therefore seek clarification of the definition of the term Organiser and would seek confirmation as to whether this would now include performers who were self employed.

Audience – pleased to see that you have taken on board comments previously made and that definition includes an audience of one so that lap dancing and peep shows would be covered.

Financial Gain – definition would appear sufficient but we would question why the financial gain element has been included since the similar provision for the payment of money or moneys worth has recently been removed from the licensing of places of Public entertainment. Again we would submit that there is a need for consistency of approach in the act.

Organiser – the definition would appear sufficiently wide but as questioned above we would seek clarification as to whether it includes self employed performers.

Premises – we are in agreement with this definition.

Sexual entertainment - our previous comments we would submit are still valid. We submitted that the definition of sexual entertainment was sufficiently clear and wide enough to encompass all types of sexual entertainment including any future developments. However we feel it may still be too wide so as to include, with regards to (a) burlesque and exotic dancing. In order to ensure that such forms of entertainment are not caught by the new legislation. We noted that in the Chambers dictionary for example the definition of exotic includes “pertaining to striptease” If there is not further definition it would be possible for different authorities to take different views on whether something required a licence, again giving rise to a lack of consistency.

Display of nudity – agree that this is very clearly defined.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
Yes this would have consequences as it could potentially create a loop hole which could be exploited by organisers who rather than having a permanent premises with a licence and proper facilities for the performers could simply transfer the activity around different venues where there are no such facilities and protection. Such an exemption could therefore mean defeating the aims and purposes of these amendments to the 1982 Act.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

We agree that licensing authorities should be allowed to decide whether there should be no such premises/venues in their area. In doing so they should be allowed to take account of their own local circumstances.

There would of course be a disadvantage to exiting businesses which are licensed. Although there is quite a lengthy period before the authority’s decision could take effect there could be a significant impact on their income and livelihood.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?
Yes we would agree that the mechanism for the licensing of sex shops is adequate for the licensing of sexual entertainment venues as putting these together and taking them out of the realm of the 2005 Act is more appropriate.

Additionally we welcome the introduction of mandatory conditions and for the introduction of government guidance which will provide consistency across the country together with the scope for local conditions to deal with local and circumstances. This we believe will help better regulate the industry.

However given that the licences are to be regulated by Schedule 2 and have the same one year duration as sex shop licences we are concerned as to whether this short period is appropriate. Many of these premises have Premises Licences under the 2005 Act which last indefinitely would a longer duration of say three years maybe be more appropriate for their sex entertainment licence.

There is also the question of fees. We appreciate that Schedule 2 states that authorities must charge such reasonable fees as they may determine. The level of fees for sex shops are often very high. If the fees for sex entertainment venues are to be regulated in the same way consideration will require to be given as to the appropriate level and whether these are consistent with the fees for sex shops and if not the reasons for this and any issues that could arise from this lack of consistency.

54. Are there any barriers to licensing authorities operating the new licensing regime?
The majority of premises that would be affected by the new licensing regime are already licensed under the terms of the 2005 Act and therefore the premises have already been assessed. The new type of licence will simply bring in additional safeguards aimed particularly at the entertainment provided and for the protection of those delivering that entertainment. Therefore although this is an additional form of licence and the introduction of this will have some resource implications of local authorities there are not a huge number of these premises.

We would however request a suitable transition period in order that premises can smoothly move over to the new licensing regime with minimal impact to their businesses and allowing authorities the appropriate guidance and time to process the necessary applications.

If however an authority were to decide that the appropriate level of sexual entertainment premises for their locality was to be zero this could lead to appeals against such policies and impede the operation of the regime.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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**1. Please supply your name and contact details:**

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<tr>
<th>Name:</th>
<th>Ian Hetherington</th>
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<tr>
<td>Organisation:</td>
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Submission Id Number 85
* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

✓ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

✓ Yes

☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ No

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☐ Civic licensing – theatre licensing
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3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

NO

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

BOTH INDIVIDUAL BEHAVIOUR AND THAT OF BODIES CORPORATE

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

N/A

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

N/A
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

As currently drafted we do not think the proposals in sections 63 to 66 of the Bill will strengthen the metal dealers' licensing regime and they could increase the opportunities for criminal behaviour.

We do however support a radical overhaul of the licensing regime

See detailed comments annexed to this response

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

See detailed comments annexed to this response

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
We support the removal of the exemption warrant

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

See detailed comments annexed to this response

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

See detailed comments annexed to this response
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

See detailed comments annexed to this response
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?

See detailed comments annexed to this response
BMRA response to the Scottish Parliament Local Government and Regeneration Committee’s call for evidence on the Air Weapons and Licensing (Scotland) Bill 2014

Introduction

The British Metals Recycling Association (BMRA) is the trade association for ferrous and non-ferrous recycling companies throughout the UK and represents some 340 businesses which between them handle over 95% of the metal recycled in the UK. This £5.6 billion industry processes over 15 million tonnes of metal annually into secondary raw material, which is vital for metals manufacturing.

Within membership there are 28 companies with facilities located in Scotland (see Annex A) ranging in size from small family-owned enterprises to large multi-national companies. They operate from approximately 50 sites, processing around 1.3 million tonnes of metal-rich materials including end-of-life vehicles; waste electrical and electronic equipment; and packaging wastes, as well as household, business and industrial waste arisings. Each year the industry contributes around £500 million to the Scottish economy, and because of a decline in the UK’s production of steel and other metals, the majority of recycled metals produced in Scotland are exported; generating around £300m in foreign exchange earnings.

BMRA has previously commented on consultations by Scottish Government published November 2011 and February 2013 and on an early draft of the Bill circulated in March 2014.

We are disappointed that despite our continued engagement with Scottish Government, on seeking a robust and equitable licensing regime for all metal dealers, the Air Weapons and Licensing (Scotland) Bill (“AWLS”) published in May 2014 for scrutiny appears to do nothing to address the significant loopholes and weaknesses we identified in previous submissions.

The comments below are based on a thorough assessment of the AWLS Bill, our experience of the reforms to scrap metal dealer licensing in England and Wales and extensive consultation with all of our Scottish members. Our comments consider the content of the AWLS Bill and also the consequences of leaving certain other elements of the Civic Government (Scotland) Act 1982 (“CGSA”) un-amended.
The changes recommended by BMRA in this document are designed to cover the key issues. However, these observations are not exhaustive and we are prepared to discuss these and propose further amendments that would serve to strengthen and aid the effective implementation of the AWLS Bill.

**Major Issues**

**Cash trading**
We welcome any measures that will deter metal theft by removing opportunities for the anonymous disposal of stolen material for cash. However, this has to be on the basis that the AWLS Bill will minimise the creation of new unfair competitive opportunities for those operating on the margins of the licensing regime at the expense of compliant dealers.

The AWLS Bill seeks to ban cash payments using virtually identical text to the Scrap Metal Dealers Act 2013 (England & Wales), but contains significant weaknesses relating to the licensing regime itself that would provide readily-exploitable loopholes for unscrupulous operators.

**Date of processing**
S33B(4)(b) of the CGSA (as amended) calls for a dealer to record the date on which metal is processed, including its description and weight prior to the processing operation.

Such a requirement is wholly unrealistic in a typical metal recycling facility where material is continually received and sorted for processing in economical quantities. Compliance with the requirement would require the batching of all material through processes that are intrinsically continuous. This would require a substantial increase in the land allocated and licensed by SEPA for the purpose of metal recycling and would threaten the economic viability of many Scottish businesses.

**Register of licences**
It appears that responsibility to maintain registers of metal dealers remains with each licensing authority (CGSA Schedule 1, para 14 refers), although an itinerant's licence will remain valid for collections anywhere in Scotland (CGSA S 32(2) refers).

Local registers may be appropriate for the other activities regulated by the CGSA. However, metal trading, particularly by itinerant metal dealers, frequently involves collections and transportation throughout multiple local authority jurisdictions. That means enforcement agencies may have to access and consult registers for distant local authorities in order to establish whether an individual or a business is licensed.

Failure to set up a national register of metal dealers, potentially managed by SEPA who already maintain registers of all these businesses in one form or other, would constitute a lost opportunity to assist enforcement agencies in the detection and prosecution of metal theft and breaches of the CGSA.
Production of licences
We can find no requirement for a metal dealer or itinerant metal dealer to display a copy of a licence.

CGSA S5(4) allows a person who may be carrying on an activity which requires licensing five days to produce the licence. We consider that placing an obligation on metal dealers to display copies of their licence on their premises, and for itinerant metal collectors to display their licence/s on their collection vehicles, would be a useful measure to assist enforcement agencies in identifying illegal dealers.

Verification of identity
CGSA (as amended) S33B(5)(c) says that a dealer must “keep a copy of any document produced by a person to verify that person’s name and address”.

However, we cannot find any requirement placed on a dealer to verify the identity of a person supplying or receiving metal for recycling (see below under “Methods of payment”). If such a requirement is introduced it is essential that the person whose identity is to be verified, and the form of acceptable documents, is set out clearly and unambiguously.

Methods of payment
Electronic transfer definitions and associated record-keeping requirements are very poorly defined in the AWLS Bill. ‘Payment in kind’ is not addressed.

A notable weakness of the regime in England and Wales is a poor definition of acceptable payment methods. The payment mechanisms that would be permitted under the CGSA (as amended) S33A are equally unclear. For example, in S33A(2)(a) there is no restriction on the person to whom a non-transferrable cheque may be made out; it does not have to be the seller or any person whose identity has been verified (if indeed there is any requirement for verification of any person’s identity - see above under “Verification of identity”). Furthermore, S33A(2)(b) not only fails to link the seller and payee for electronic transfers, it also does not define “account”, nor does it set any parameters for traceability of transfer between an account and the seller.

Metal definition
S33A of the Act as amended defines acceptable forms of payment for metal by a person who falls within the definition of a “metal dealer” or an “itinerant metal dealer” (S37 refers), but does not restrict that to metal for recycling, indeed the nature of the metal is neither defined in the CGSA, nor mentioned in the AWLS Bill.

That might be seen to be a useful means of avoiding ambiguity over when an item might qualify as scrap. However, banning anyone who fits the definition of “metal dealer” or “itinerant metal dealer” from buying any metallic item for cash seems to be a draconian measure and is unlikely to have been the intention of the drafter. The absences of a
definition of metal, or of any reference to licensing regimes or restrictions on methods of trading relating to metal, are serious weaknesses in the legislation.

It would be appropriate to re-work the AWLS Bill to make it clear that the ban on cash payment relates to metal traded in the course of a metal dealer’s/itinerant metal dealer’s business, and not (for example) to consumer goods he might buy. A natural consequence is that a clear definition of metal, including when an end of life vehicle may be considered scrap, is essential.

**Metal dealer definition**
The Bill’s definitions of a metal dealer and an itinerant metal dealer in the CGSA S37 are not changed by the AWLS Bill and require a person both to buy and to sell metal before they qualify.

One significant implication is that a typical itinerant who collects from households without making payment for the items or materials he collects would not require a licence, and would thus remain outside the scope of the AWLS Bill. Furthermore, there is scope for a person collecting general waste and other materials, but actually earning a substantial proportion of his income from separating out and selling scrap metal, to escape the licensing regime. Similarly, skip hire operators and demolition contractors generating a substantial amount of their revenue from sale of scrap metal could escape the definition and need for licensing. Furthermore car breakers are not covered by the definition, a situation exacerbated by the absence of a definition of scrap.

We note that CGSA S37(2) excludes manufacturers’ buying of scrap for manufacture of other articles from the definition of metal dealer, providing scope for creative interpretation of both “manufacture” and “other articles” to evade licensing. For example, a metal dealer who has a small furnace for the manufacture of aluminium ingot would fall outside the scope of the AWLS Bill. We believe that the AWLS Bill should be amended to capture “all persons carrying out a business consisting of buying or selling scrap metal”, with some specific exemptions for manufacturers disposing of their own surplus materials or offcuts. A clear and comprehensive definition of metal dealer, to include vehicle dismantlers and other businesses generating a significant proportion of their income from sale of scrap metal is essential.

**Powers of Search and Seizure**
We consider the existing powers vested in police officers under Section 60(1)(c) of the Civic Government (Scotland) Act 1982 to enter and search premises occupied by a metal dealer without warrant to be draconian, particularly in the light of the levelling of playing field for regulation of all metal dealers through the removal of the exemption warrant system. The AWLS Bill provides an opportunity to regularize the situation by removing specific additional powers in respect of metal dealers’ premises and vehicles.

British Metals Recycling Association
## Annex A – BMRA member companies with operations in Scotland

<table>
<thead>
<tr>
<th>COMPANY NAME</th>
<th>MAIN OFFICE LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angus Braidwood &amp; Son Ltd</td>
<td>Stirlingshire</td>
</tr>
<tr>
<td>Bernard Hunter Ltd</td>
<td>Edinburgh</td>
</tr>
<tr>
<td>Binn Skips Ltd</td>
<td>Perthshire</td>
</tr>
<tr>
<td>Christie &amp; Son (Metal Merchants) Ltd</td>
<td>Renfrewshire</td>
</tr>
<tr>
<td>Concorde Metals Recycling Ltd</td>
<td>North Lanarkshire</td>
</tr>
<tr>
<td>D Shaw Metals</td>
<td>South Lanarkshire</td>
</tr>
<tr>
<td>Dalton Demolition</td>
<td>City of Edinburgh</td>
</tr>
<tr>
<td>Dalton Metal Recycling</td>
<td>West Lothian</td>
</tr>
<tr>
<td>David Band (Metals) Ltd</td>
<td>Perthshire</td>
</tr>
<tr>
<td>ELG Haniel Metals Ltd</td>
<td>North Ayrshire</td>
</tr>
<tr>
<td>European Metal Recycling Ltd</td>
<td>North Lanarkshire</td>
</tr>
<tr>
<td>Foundry Steels Ltd</td>
<td>Stirlingshire</td>
</tr>
<tr>
<td>Frank Kelbie Ltd</td>
<td>Tayside</td>
</tr>
<tr>
<td>GRC Recycling Ltd</td>
<td>City of Dundee</td>
</tr>
<tr>
<td>John Graham (Metals) Ltd</td>
<td>Stirlingshire</td>
</tr>
<tr>
<td>John Lawrie (Aberdeen) Ltd</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>John R Adam &amp; Sons Ltd</td>
<td>City of Glasgow</td>
</tr>
<tr>
<td>Panda Rosa Metals</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>R G S Hutchison &amp; Sons (Metals)</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>R M Easdale &amp; Co Ltd</td>
<td>City of Glasgow</td>
</tr>
<tr>
<td>Robertson Metal Recycling Ltd</td>
<td>Fife</td>
</tr>
<tr>
<td>Rosefield Salvage Ltd</td>
<td>Dumfries and Galloway</td>
</tr>
<tr>
<td>Sims Metal Management</td>
<td>Dumfries and Galloway</td>
</tr>
<tr>
<td>Thomas Muir (Metals) Ltd</td>
<td>Fife</td>
</tr>
<tr>
<td>William Tracey Ltd</td>
<td>Renfrewshire</td>
</tr>
<tr>
<td>William Waugh (Edinburgh) Ltd</td>
<td>City of Edinburgh</td>
</tr>
</tbody>
</table>
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Jon Morgan
Organisation: Federation of Scottish Theatre
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

✓ Yes

3. Please confirm whether you are content for your name to be published with your submission:

✓ Yes

☐ No

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✓ Professional

☐ Commercial

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☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Local Government and Regeneration Committee – Air Weapons and Licensing (Scotland) Bill

Name/Organisation: Federation Scottish Theatre

1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

No comment

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

No comment

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

No comment
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

No comment

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

Very few theatres use live air weapons in performances, most preferring to use dummy or ‘prop’ weapons. Where they do use air weapons, it would be helpful to clarify if they will need to have a licence even if they are hiring from a licensed supplier for a defined period (as opposed to owning and keeping an air weapon permanently on their premises) or whether it is sufficient to apply for a temporary police permit. We understand the proposed exemption is for the individual performer handling a weapon in performance and not for the theatre management who may have to store a hired air weapon overnight between performances.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

No comment

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

No comment

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

No comment

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

No comment
6. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

Whilst welcoming the simplification that this rationalisation of the licensing regime would create, we would ask that all licensing authorities and licensed premises are given sufficient time and guidance in advance of the transition to make any necessary adjustments in order to comply with the change in licensing arrangements. We would also propose that licensing authorities allow licensees to transfer to the new licensing regime at the end of their current license period in order to avoid both a backlog of license renewals all at the same time and any additional expense for the licensee by effectively having to renew their licence before the old one has expired.

48. Are there additional costs or resource implications on theatres or licensing authorities?

It is hard to predict if there will be additional costs for theatres as licensing authorities do not necessarily set the same charges for their PELs as for their Theatre Licenses. This would require further research. Some venues because of the nature of their operation hold both a PEL and a Theatre Licence and for these venues we anticipate a saving in both time and money.

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
We would certainly expect that licensing authorities do not increase their current fees for PELs as we understand that the cost is determined on a self-funding basis and we would see the simplification of the licensing regime for theatre as, at worst, cost neutral for licensing authorities and, at best, cost beneficial.
7. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- ‘sexual entertainment venue’
- ‘audience’
- ‘financial gain’
- ‘organiser’
- ‘premises’
- ‘sexual entertainment’, and
- ‘display of nudity’

We believe the definition as currently composed runs the risk of both vexatious complaint and potential self-censorship of artists for fear of falling within the scope of the legislation. We would propose the removal of the word ‘any’ from the definition as this leaves open the potential for vexatious complaint and the removal of the word ‘verbal’ which might then include any dialogue of a sexual nature.

We would also like to see included in the Bill an explicit statement that this is not intended to include ‘artistic performances whose primary purpose is artistic, creative or educational’ and an exemption for ‘arts venues and venues taking part in an arts festival.’

We would also expect any accompanying guidance to local authorities to emphasise the intention of the act not to limit or censor artistic performance so that local authorities, venue programmers and artists are clear about the purpose and scope of the legislation.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended
consequences?

No comment

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

No comment

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

No comment
54. Are there any barriers to licensing authorities operating the new licensing regime?

No comment

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

No comment
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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*1. Please supply your name and contact details:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Graham Ellis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation:</td>
<td>Scottish Air Rifle and Pistol Association</td>
</tr>
<tr>
<td>Address 1:</td>
<td></td>
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<tr>
<td>Address 2:</td>
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☐ No

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☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

We see no perceivable benefit in public order or public safety that would not be achieved by the diligent use of existing legislation, only law abiding citizens will apply for a licence, criminal users though very few will by their very nature continue to abuse air weapons without regard. The current control regimen has seen airgun incidents fall year on year (71% in 5 years) to a low of 171 for 2013. The vast majority of offences being minor with very few serious incidents where actual harm was caused.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?
Currently only a minority of airgun users frequent clubs, most airguns are used in vermin control or private land target shooting, the club structure we have in place covers approximately but no more than 5% of all airgun owners. Clubs are currently run by volunteers, while we have initiatives to increase land availability working with public bodies and have established a framework to make it easier for clubs to get started we still depend greatly on the response from either the private or public land holder.

Many airgun users have individuals permissions to shoot on private land on an ad hoc basis which works well for very small groups but land holders in general will have concerns over increased numbers that would be involved in the creation of formal “Clubs”

Other than disciplines run by the International Shooting Sports Federation such as those seen at Olympics or Commonwealth Games Airgun shooting tends to be an outdoor or field activity in general while there is some small infrastructure and access to a small number of shared, licenced indoor and Firearms ranges these are only beneficial for those to train in “ISSF” like disciplines what is greatly is required access to suitable forestry and lands suited to airgun “field” type shooting. A small club with a single Field Target course requires a minimum of 4 - 8 Acres with a suitable safe backdrop area as compared to an indoor range which requires a building of around 50M x 25M

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

The implementation of legislation may drive many out of the sport entirely or more likely with the requirement to hold a licence many will choose to move to traditional full power firearms. There will be the additional financial burden from the licence and significant costs if they need to travel to a club to shoot as opposed to on their local premises, while there are a good number of clubs in the central belt out with that area it can be a two to three hour drive to access any club facilities sometimes further for Field Target clubs.

For those engaged in vermin / pest control the lack of access to practice on private ground outwith their vermin control area may impact their ability to sustain their skill levels.

In addition where it is currently sufficient to have approval to shoot over suitable lands granted by a land owner, indication is that further approval by the chief of police may be required removing access to safe shooting grounds, impacting the rural target shooter and domestic vermin control further increasing the burden on Firearms control officers to review such sites.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

SARPA have concern over the licencing of juniors, not in the fact that they have every right to shoot but by that in licencing individuals who are in effect minors may pass the message that responsibility lies solely with them rather than parents or responsible guardians who need to ensure that airguns are controlled and only used in safe responsible manner. There are a great number of junior shooters who take part in air rifle target shooting as part out door activities such as Boys Brigade, Scouts, Air Training Corp, Cadets this legislation should not get in the way of delivering safe and educational exposure to shooting as a sport.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

Scotland is renowned for its shooting heritage with many traditional “country sports” type hotels and outdoor pursuits venues providing airgun shooting as an visitor attraction and activity. The implementation of this licence scheme may well see the removal of airgun shooting events from many of our rural tourist attractions, hotels and other event organisations directly impacting tourism and shooting sport venue revenues. In addition it will put at jobs at risk for a great many who work delivering airgun shooting at these venues.

Many come to our nation to enjoy the outdoor activities and Airgun shooting is often the only practical and accessible form of shooting available.

Currently Pest Control can be ether a professional or personal service, may farmers and land holders have a mutual agreement with airgun shooters and rely on individuals who they have built up a trust relationship with. Any professional pest control services offered from across the border would also require some form of long term licence solution or visitor permit to operate cross border.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?
This licence scheme will directly impact the ability of competitors to access the sport from across borders and from other nations. Currently we have a common licence scheme across the UK and our events are accessible to many nations, this legislation could make Scotland a shooting backwater unable to hold major international events, Competitors will travel to less officious countries with less red tape to be deal with.

On top of ISSF, national, commonwealth events there are many other airgun shooting events such as Field Target, Hunter Field Target, Bench rest, Iron Plate etc. etc. many of which see competitors traveling from abroad. Most of these sports are practiced in the outdoor natural arena.

On the domestic front the impact may be minimal depending on the application of the legislation, many clubs operate with private land holders to deliver competition grounds, as well as other events which take place in conjunction with country fairs and public events, if each “site” or event is required to be licenced, public involvement and competition will become a thing of the past with competition being restricted to far fewer “Approved” sites.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

This position is NOT equitable, currently individuals may own air guns for many reasons all perfectly legal and law abiding, should any application from such an individual be declined no charge should be leveraged against them legally or financially.

Many individuals hold equipment to the value of thousands of pounds, if forced to surrender or sell that equipment given the potential negative impact on airgun values from a flood of equipment hitting the market not only should there be no charge but there should be a compensation system to address the financial lost being imposed through no fault of their own.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?
There is the potential for a huge negative impact on the public sector in the loss of man hours spent on what is essentially a non-issue, the current firearms control structure is barely able to meet the need of the 70,000 current firearms owners, adding around 50,000-150,000 air weapon licences and potential home/site visits for any deemed as requiring further attention will impact the public purse to a far greater level than is currently stated in the Financial impact study.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

This bill may cause a large migration of shooters from air guns to firearms straining further both Firearms control structure and the supporting club structures.

We can also see large number of airguns dumped on the grey market or thrown in skips where children or irresponsible individuals could access them and create a far greater public risk.

Legislation may also cause the criminalisation of any who may hold an airgun who may not apply for a licence in appropriate time or though not knowing they are accountable for them in the case of guns airguns held for youths or held in storage.

It may also cause significant damage to a growing sport at the grass roots level from which the likes of Sian Bruce, Caroline Brownlie, David Owen and Jen McIntosh Scotland’s most decorated Olympian and others stemmed from.

By the introduction of new offences created by this bill crime statistics will inevitably increase as people fall foul of any new regulation, the unfortunate fact is that it will not create any further public safety benefit and may through uncontrolled “dumped” air weapons put them in the very hands of those who would misuse them ether through ignorance or deliberate act.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?
Currently there is no issue with airgun users, the fact is that as a member of the public you are at far greater risk of injury from dogs, golfers, cyclists or attending football, we see no benefit to this legislation as proposed.

We can see that regardless of the very positive input and constructive discussions held between the SFCP and invited bodies the content of those discussions have been largely ignored.

Should a licence be introduced which we believe it will be a large and ineffective waste of public resource, any scheme needs to be proportionate, fairer and far lighter than the current proposal, which as it stands exceeds the requirements for Shotgun ownership.

This proposal has no majority support from either the shooting fraternity or the general public,. A fact demonstrated by both the petition of 20,600 against the bill and the 87% or respondents to the Consultation process who rejected the need for change.

We still support the position that no further regulation is required other than the application of existing laws.

In relation to the bill there remains the option to either remove this proposal from the bill entirely or put a proportionate and responsible system in place.

RFD’s are already obliged to register anyone buying a new airgun under existing legislation something airgun buyers have lived with for almost a decade, expansion of this to facilitate self registration through an online system with an automated PNC check would cost far less, engage with a wider audience delivering the sort of data that may help the Airgun retailers and police identify legitimate airgun users freeing police time to focus on the criminal element who given their nature would not register.

The underlying causes of airgun use will not be addressed by further legislation, what could drive the statistics down even further would be a public education program ensuring shooters, parental guardians and the public at large are informed on the facts and obligations under the laws we have today.
Thankyou for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Kirsty Craig
Organisation: Scottish Tetrathlon
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliament’s “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

☐ Yes

☐ No

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☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

Scottish Tetrathlon

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.


9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.


10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.


11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

As an organisation we feel that the Bill should aim for a light regulatory touch with minimum cost when it impacts on bona fide sport clubs such as Scottish Tetrathlon. This will help limit potential detrimental effects this Bill might have on the various Scottish Government objectives and initiatives in Scottish Sport such as:- "Girls on the Move" (75% of our participants are girls) and "Giving Young People a Sporting Chance" all our participants are under 21.
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

We don’t think it will.

Forcing young children to have to shoot at existing club premises where the number of shooters using airguns will increase dramatically if the bill is passed, will place them in a more heavily lead contaminated environment, this would be counter to public health policies.

In addition our members are taught to be extremely safety conscious and look after their pistols responsibly as they are given training by Scottish Tetrathlon Range Officers.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

There is not currently sufficient provision of air weapons clubs across all areas of Scotland. Many members of Scottish Tetrathlon are not in an area that can support a traditional club due to geography.

Members currently train with Scottish Tetrathlon in various locations and practice on private land without incurring the cost of being members of an Air Weapon Club. If the bill was passed and Scottish Tetrathlon (under the auspice of Pony Club) were to become an approved air weapon club which uses multiple premises across Scotland this would provide sufficient capacity. By virtue of Schedule 1 Exemption 1 Scottish Tetrathlon members would be able to train with Scottish Tetrathlon at various premises and on private land without requiring individual certificates. Schedule 1 Exemption 1 would need to be slightly amended to reflect this.

As many of our members are under 14 years of age Scottish Tetrathlon request that Schedule 1 Exemption 1 be amended to allow a parent/guardian/adult over 21 be allowed to supervise both training and competitions.
15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

If each of our members were to require an air weapons certificate it will add cost and bureaucracy to a sport/organisation which is well controlled and teaches young people responsibility and respect. If all our members were required to go through the time consuming and costly process of both obtaining a licence and joining an additional club, our members would be unlikely to take up the sport and may also choose to leave the sport.

If passed as is, members will not be able to repair their air weapons either at their own homes or during a competition without the presence of a registered firearms dealer. There are not sufficient firearms dealers to service this requirement and they will add additional cost to enter this sport. Scottish Tetrathlon has proved to be the grass roots organisation for many young athletes who have gone on to become elite athletes in both shooting and modern pentathlon.

We currently have 200 members regularly competing approx 150 are girls and 75% are under 14 years of age.

Many Scots have gone on to compete at elite level, representing GB and part of the World Class program. Currently competing are 2012 World Champion and 2012 Olympian Mhairi Spence who is from Farr, Inveruries. Freyja Prentice, reserve athlete for London 2012, junior individual medal winner at World and European level. Joanna Muir from Castle Douglas spent time on top of the world junior ranking list this year. Aberdeen's Eilidh Prise has won individual youth world and European medals and started 2014 on top of the youth world ranking. Maili McKenzie from Dumfries represented GB at junior world and European championships this year. Mhairi, Freyja, Jo and Eilidh are part of a group of 7 women on the GB world class program on Podium and Podium Potential which is clearly dominated by Scots women. They all started at grass roots level through Scottish Tetrathlon, moving onto Pentathlon as a result of the high standard of performance they showed in Scottish Tetrathlon.

Of the current Scottish Pistol squad, both junior and senior, all bar 1 of the ladies came through Scottish Tetrathlon and the majority of the junior boys too. Both the Liddon sisters who came through Scottish Tetrathlon and now coach for Scottish Tetrathlon have been invited onto project Rio.

In addition the Scottish Team competing at the Junior International Air Gun Competition at Bisley this year was made up of 3 boys and 4 girls who all bar one came via Scottish Tetrathlon and collected 2 bronze and 2 silver medals.

Airgun shooting is a sport accessible to all ages and abilities. This bill will deter people starting recreationally due to the bureaucracy and so stop the development of competitive shooters at all levels.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

The majority of our members are under 17 and as such the air weapons licensing systems would have a huge effect on them. If however we were allowed to become an approved air weapon club and therefore exempt from individual licences this would work for our organisation.

Each person will require an air weapons certificate which will add cost and bureaucracy.

They will not be able to repair their weapons without a registered firearms dealer, again adding cost and time. In addition as they are 14-17 they will probably be unable to drive and therefore find it difficult to access a firearms dealer especially in the more remote areas of Scotland.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

All competitors require a licence incurring cost and bureaucracy. This would require event and visitor permits. This would be totally untenable for our sport as we often have more than 20 visitors attending our competitions and training events which run monthly. Having tried and failed to get visitor permits to take air pistols across to Northern Ireland we know how difficult and impractical such a requirement is.
If Scottish Tetrathlon were to become an approved air weapons club as requested previously, according to our interpretation of Schedule 1 section 1b(i) we would not require an event or visitor licence which would allow us to continue to run our competitions which are only open to and attended by our members.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

We do not agree that a fee should be payable for unsuccessful applications.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

We think that the air weapons licensing system will have a negative effect on the public sector in Scotland. Given that the Firearms teams are already over stretched, resourcing this requirement for licensing of air weapons, clubs, permits will place unprecedented demand on already slim resources.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

We believe that in making it difficult or costly to run our events (run, shoot, swim and ride) people will choose not to put themselves through the difficulty of obtaining an air weapons certificate, a visitors permit or joining an additional club, nor to pay the additional costs we will need to charge at competitions to take account of the cost of obtaining event permits. This will mean that our grass roots organisation that currently has up to 200 children from 8-25 competing monthly will no longer exist. In the future we will not have the next generation of Modern Pentathlete or Air Pistol Olympians as they will have no foundation.

The risk of introducing a requirement for an airgun license may encourage
applicants to go the full hog and apply for a shotgun/firearms certificate that will thereby increase the number of more high powered/more lethal weapon ownership.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

We respect the bill and are keen to work with it. However as it is currently drafted it would be unworkable for us. If however Scottish Tetrathlon were to become an approved Air Weapons Club with multiple premises for training and competitions across Scotland and allowing all our members and visitors to use air weapons without holding individual certificates, as detailed above, this would allow us to work within the bill and the continuation of our sport along with the added benefit of a pipeline of elite athletes into Modern Pentathlon and the sport of Air Pistol Shooting.

Allow Scottish Tetrathlon via Pony Club to become an approved air weapons club.

Allow all members within Scottish Tetrathlon NOT to require an air weapons certificate, but that Scottish Tetrathlon will hold the air weapons certificate for all weapons used.

Allow Scottish Tetrathlon Qualified Range Officer to repair, transfer or sell air weapons.

Allow anyone visiting from England, Northern Ireland or Wales to be exempt from visitors permits.

Do not limit the size of visiting groups.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

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2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes
☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☑ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☑ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
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18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?


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


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


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


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

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
Name/Organisation: 

5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

The safety of the public should be the priority of all Licensing Authorities and Councils. This safety should not only consist of the suitability, condition and roadworthiness of any vehicle who either operate as a Taxi or a Private Hire Car but should encompass the drivers and operators of such vehicles.

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

In areas where two tier systems operate, a clear delineation of type i.e. Purpose Built Hackney type carriages which are fully Wheel chair Accessible and this allows the public to know which can be hailed on the street as a “there and then hire” and a Private Hire Car can only be pre-booked through a Licensed Booking Office. This distinction is blurred by certain areas using saloon type cars as Taxi’s. A high provision of W.A.V. is therefore desirable to meets the needs and rights of disabled people and many saloon cars cannot provide this flexibility.

In many areas Taxi drivers have to go through a test of their knowledge of their area whereas at present the majority of Private Hire drivers are not required to do so. It is far better for the public to use a vehicle where the driver has the knowledge to take them to their destination without delay or referring to maps or other means of navigation.

The Public can make the choice but only a two tier system can give it to them!

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities,
the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?

If a single tier system were to be introduced the effect would be catastrophic and the disruption would take years to sort out!
The first and most important problem be “what would the criteria” be for a Taxi?
If they were all Purpose Built traditional type hackney taxis, operators who at present use saloon type cars will be faced with a huge increase in the cost of operating a “Taxi” as the saloon cars in use at present are in all occasions less than half the cost of a traditional W.A.V. This would force many operators out of business and lead to a significant increase in costs to the public and the and could lead to a shortfall in the amount of vehicles available for hire.
If on the other hand “saloon cars” were the vehicle of choice operators of W.A.V. taxis would move to the cheaper saloon car option. (At present a purpose built taxi costs in the region of £35.000 as against £15.000 for a car) These saloons offer better M.P.G. and comfort for the driver.
Saloon cars would probably sound the death knell of companies manufacturing purpose built Taxis as a significant decrease in sales, due to the purchase of cheaper alternatives.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?
There is a real need to put a ceiling on the issue of Private Hire Licences. There is a real bone of contention that the unrestricted issues of P/H licences is to provide the public with a better service or choice but in reality it is merely a revenue raiser for cash strapped councils who do not research if there is a need for these licences. This creates a situation where P/H’s in an area with over provision gravitate to other areas where there is the opportunity to “Pirate” or illegally ply for hire. This situation is evident within Glasgow City Council’s Licensed where P/H’s from the adjoining areas “trade illegally” with impunity. The need for a statutory role for police in curbing this is urgently required and despite repeated meetings and requests for action very little is carried out. The reluctance of the Procurator Fiscal to pursue these instances is understandable with their work load but never the less these people are breaking the law. English Councils routinely prosecute for not only illegally plying for hire but prosecute for driving without the appropriate insurance. The issue of statutory powers for Enforcement Officers to issue fixed penalty notices for offences should be seriously considered. In Scotland there are around 20,000 Taxis and P/H’s licensed in Scotland and 10,000 are in the Glasgow and surrounding areas and the situation is out of control. Effective and punitive action is urgently required!

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

To protect the public from coming into contact with unsuitable persons it is desirable that all such companies are brought into the licensing umbrella.
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

48. Are there additional costs or resource implications on theatres or licensing authorities?

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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**1. Please supply your name and contact details:**

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<th>Name:</th>
<th>David John Penn</th>
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<tr>
<td>Organisation:</td>
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☐ Yes  

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☐ No

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- Yes
- No

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- Air Weapons
- General licensing issues
- Alcohol licensing
- Civic licensing – taxi/private hire car licensing
- Civic licensing – scrap metal dealers
- Civic licensing – theatre licensing
- Civic licensing – sexual entertainment venues
1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

No

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

Only insofar as it adversely affects young persons who must pay the same fee as would an adult certificate holder, but for a certificate of shorter duration.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

No
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

No

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

No
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

It is unlikely to meet these goals as it will predominantly impact on the law-abiding and demand considerable police involvement at a time of shrinking resources.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

Presumably the majority of existing approved small-bore clubs would apply for air weapon approval as will existing air rifle clubs and field target clubs, but this question can only be answered meaningfully if the distribution of existing clubs was known and the criteria for air weapon clubs had been promulgated.

It should be noted that there appears to be no reason why a shooting range using air rifles (but not air pistols) could not continue to benefit from Section 11(4) of the 1968 Act without need for approval.

It is most regrettable that the proposal for a long-term visitors permit for competitive shooters has not been pursued.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
Expense and loss of flexibility in pursuit of the sport. All certificates should be conditioned to permit target shooting on private land, thus allowing practice and helping to ensure that those engaged in quarry shooting or pest control can maintain their skills. As an example of lack of flexibility, a person with a certificate granted on the basis of membership of an approved air weapon club would need to obtain a variation if he wished to hunt or engage in pest control. Informal target shooting, properly conducted, is safe and should not be discouraged. Consultation is required to establish safe practice in gardens and urban areas.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

The exclusion of young persons from hunting with an air rifle is most regrettable. One outcome is likely to be an increase in applications for firearm and/or shotgun certificates by young persons who wish to hunt. Quarry shooting represents a major income stream for the Scottish rural economy and many young shots begin their hunting careers with an air rifle.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

A long-term visitor’s permit would also be useful for professional pest controllers based in England but with business in Scotland. At no time in the debate about air weapon licensing in Scotland has there been, to BSSC’s knowledge, any concern with regard to public safety about the commercial or professional use of air weapons. Licensing will just add another cost and a complication to small businesses.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?
Primarily as a disincentive to competitors from outside Scotland. A long-term visitor’s permit for competitive shooters would go some way to mitigate this impact.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No. BSSC remains opposed to the charging of a fee for unsuccessful application for an air weapons certificate. The fee is not a punt on the races, it is part of an attempt at compliance with mandatory legislation, so it is inequitable to keep the money if the application fails. It may also encourage applications for firearm or shotgun certificates.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

BSSC does not see any positive impact on other areas of the public sector in Scotland. Negative impact will primarily be on the police service. Given that there are accepted to be 500,000 air weapons in Scotland, BSSC considers that there are likely to be more than 30,000 applications from people who do not hold firearm certificates or shotgun certificates.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

The Bill creates a number of new offences, primarily related to licensing, so this may slow down or reverse the fall in the number of offences recorded annually after a substantial period of significant decline (71% decrease in five years). While there would be more offences committed, this would not add to the level of risk to the public, since the offences would be administrative. Unless steps are taken to prevent it (and none has been suggested so far) there will be a huge increase every five years in those renewals from shooters whose air weapon certificates were not initially made co-terminous with a firearm (or shotgun) certificate. This will
require additional, probably temporary, licensing staff, training and financial resources.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

BSSC has comments relating to the Bill, the explanatory notes and the financial memorandum:

Air Weapons and licensing (Scotland) Bill: BSSC Comments

7(5)(a-e) If more than one of these conditions is applied, then the word ‘only’ used in each of these conditions is inappropriate as it is exclusive and the conditions will be mutually contradictory.

24(2)(c)(ii) and 26(1)(b). This would seem to disadvantage those resident in England and Wales. Why could not a person resident in England who does not hold a visitor permit have a Scottish Registered Firearms Dealer export an air weapon directly to England?

38. As part of the transitional arrangements, the Chief Constable should be required to communicate individually by letter with all firearm certificate and shotgun certificate holders to advise them of the effect of the new legislation.

Air Weapons and licensing (Scotland) Bill Explanatory Notes: BSSC Comments

11. As air weapons are not to be entered on Air Weapon Certificates, it would be anomalous to make a requirement to enter component parts or sound moderators on such certificates and this should read ‘...and possession must be authorised by an air weapon certificate’. A straightforward way of dealing with this would be for every air weapon certificate to state that the holder may possess air weapons, components and sound moderators.

31. (and 81) The BSSC strongly supports this renewal process.

94-97. Will transactions between English and Scottish RFDs be subject to full import/export controls? What will be required for private sales between individuals when the purchaser is in Scotland and the vendor is in England? Would it be correct to say that a Scottish domiciled private vendor could sell in England to an English domiciled purchaser without
formality, since there would be no bar to the former taking the air weapon into England?

**Air Weapons and licensing (Scotland) Bill Financial Memorandum: BSSC Comments**

43. (also 101) See BSSC’s response at 19 above.

46-54. As already indicated, BSSC believes that, with c. 500,000 air weapons in circulation, then 30,000 applications from people who do not hold FACs or SGCs are likely to be a significant under-estimate. If the figure is under 30,000, then the legislation is almost certainly to be in some aspects a failure, given the number of air weapons believed to be in public hands. For 30,000 new applicants plus 40,000 existing certificate holders likely to be possessing air weapons, this would indicate a holding of around 7 air weapons per certificate holder. If air weapon figures are close to the average of firearms or shotguns possessed then an average of about 3 would be more likely. Clearly a number of air weapons will be surrendered and others disposed of outside Scotland. Ultimately, as the air weapons will not be entered on to the certificate, then no-one will have a clear idea of the success or failure of the legislation.

80. The likely effect of the Act will be that the legitimate market will be flooded with old, tired or poor quality air weapons with little or no resale value. Many dealers will be reduced to scrapping unsalable air weapons, and this could impact on police costs if they wished to verify destruction (a difficult process given that many air weapons lack serial numbers). This is one reason why a buy-in is beneficial, since the owner can realise at least some of the value of his property and the air weapon is dealt with in an accountable manner.

98. Shooting organisations are likely to be significantly impacted financially through the provision of advice to their members, at least in the initial stages of implementation of the legislation.

101. Is the intention that the fee be hypothecated and used to offset licensing costs, or will it just form part of Police Scotland’s income stream?
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

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<tr>
<th>Name:</th>
<th>Jamie Stewart</th>
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<tr>
<td>Organisation:</td>
<td>Scottish Countryside Alliance</td>
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2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☐ Yes

☐ No
* 6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes

☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☑ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?
The Scottish Countryside Alliance (SCA) does not believe that creation of an air weapons licensing system in Scotland will contribute to preserving public order and safety in any meaningful way, or indeed reduce crime and advance public health policy! Conversely, the SCA believes that changes to the current legislation carry with it the significant risk of involuntary penalties. The changes proposed by the Scottish Government will create a number of new offences, some of which we believe will inevitably be breached without intent and/or in ignorance. The gun crime question is already popularly and symbolically constructed as a problem of the gun as if gun crime were a distinct set of offences that made sense and could be understood together. This is unlikely to be the case and probably unhelpful as gun crime can take a wide variety of forms, which share no necessary common features and have no necessary relationship to one another. For example, gun crime can include crime committed involving real guns; anti-social behaviour (criminal damage) with an air weapon; crime committed involving public display of imitation guns; crime facilitated by guns; the sale, transfer, distribution or mere possession of guns; and the discharge of a gun even where no injury results.

The definition of gun crime influences the patterns of crime recording. For example, the criminal statistics record offences involving the criminal use of a firearm rather than simple offences of illegal possession of a firearm. Such deficiencies in offence definition and recording inevitably contribute to intelligence gaps and crime prevention problems. The resulting convictions will result in a perceived rise in offences before the courts, damaging the good work carried out by the Scottish Police Forces over the past years in enforcement, prevention and consequently reducing firearms crime in Scotland to its current 35 year low and creating a perceived problem with legitimate air weapons ownership in Scotland when in fact there is none.

Whilst we accept the Government’s thoughts on those who knowingly misuse air weapons, or who would not be able to show that they had a legitimate reason for possessing and using such weapons, may be unlikely to apply for a certificate and therefore commit an offence under the terms of any new licence as proposed. The SCA questions the logic in this as criminals habitually break the law; simply creating a licence for air weapons will not change the attitude or habits of the criminally active individuals and gangs throughout Scotland.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?
The SCA is aware of 138 approved rifle clubs in Scotland, however because clubs which use air weapons are not currently required to be authorised to do so, it is not possible to identify how many of the above clubs offer air weapon shooting facilities in tandem with traditional small and full bore. We are therefore currently unable to establish a national picture of airgun clubs in Scotland.

We are encouraged that the Scottish Government believes that air weapon clubs provide the ideal safe and supportive environment for shooters and in particular new shooters to learn the sport and that they will work with stakeholders to encourage the development of a network of air weapon clubs across Scotland. The Scottish Government has long recognised the economic restraints placed upon business operating in the rural or wider countryside and has many initiatives to aid the sustainable growth of rural and countryside based business. It is our hope that the Scottish Government does not impose such restrictions to the establishment of an approved air rifle club that would make the running of an approved air rifle club in anyway unduly prohibitive. i.e. Insisting on remote locations or the prohibition or limitations on the establishment of urban or indeed inner city clubs.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
The SCA questions the proposed restrictions on the use of air weapons within the confines of personal property or gardens leading to a likely prohibition of the use of air weapons for "plinking" in gardens or other urban or highly populated settings. Although the SCA accepts and welcomes the establishment of approved air weapon clubs we are concerned that statements such as “Target shooting in such an environment will not 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”.

The reluctance to allow the use of an individual’s own premises causes the SCA concern on several fronts. The ability of a low earner(s) to apply and pay for a licence may then limit the ability of the individual(s) to access approved clubs which it is presumed will carry a membership fee and range use fee, greatly limiting the individual(s) ability to practice and enjoy low powered air weapon shooting. The SCA also feel that those with physical disability may also find themselves restricted from free practice within their own premises. Simple economics often see the limitation to the provision of disabled facilities which are generally limited numerically in relation to that offered to the able bodied i.e. less provision of specialist access areas leading to lower opportunities for disabled shooters to practice. Further to this, we question the motive behind the above statement on satisfying the Chief Constable in relation to safety and wonder if this is translated into effectively requiring approved air weapons club status if they are to be allowed to legally use their own garden premises, actions we believe to be disproportional to the threat and financially prohibitive.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?
The SCA Welcome the Scottish Governments recognition of young people's associations, for example the Scouts, Guides, the Pony Club and various cadet forces, also include air weapon shooting as part of the range of activities offered to their members.; and the fact that the Bill allows options for this to continue, either as guests at an approved air weapon club or miniature rifle range, or under an event permit issued by the police.

We do however question areas within the conditions as applied to a young person’s certificate and conditions as applied to a young person’s visitor permit within the proposed licensing system:

The conditions are that—

(a) the holder may use and possess an air weapon only for the purposes of target shooting on private land,
(b) the holder may use and possess an air weapon only for the purposes of participating in events or competitions,
(c) the holder may use and possess an air weapon only for the purposes of the holder’s membership of an approved air weapon club,
(d) the holder may use and possess an air weapon only for the purposes of protecting livestock, crops or produce on land used for or in connection with agriculture,
(e) the holder may use and possess an air weapon only while carrying on business as a pest controller or acting as the employee of a pest controller.

We note with some concern that young people achieving a certificate under the proposed licensing system will be permitted to use an air weapon for the purpose of protecting livestock, crops or produce on land used for or in connection with agriculture and carrying on business as a pest controller or acting as the employee of a pest controller, but excluded to use the licenced air weapon for sporting purposes (including shooting live quarry) on private land.

The SCA would hope that any certificate granted to a qualifying young person would not prohibit the use of a licenced air weapon for sporting purposes (including shooting live quarry) on private land. We note with interest that a Young Person operating under a visitor permit would also appear to be prohibited to use the licenced air weapons for sporting purposes (including shooting live quarry) on private land.
17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

The SCA is encouraged that the low powered air weapon licence as proposed makes provision for those using weapons commercially or professionally and define these as separate from paintballing, fairs of the entertainment sector. Our interest and area of expertise lies within the former our answer then applies to the commercial and professional employed within wildlife management and pest control. The SCA are concerned that this professional body of participants will be further hampered in a sector with very fine financial margins through the unnecessary charges relating to an unwarranted licence. We further believe that if pushed to make an application for a low powered air weapon that many will be encouraged to apply for a licence to possess a section one or section two firearm leading to a further impact on public services.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

Great Britain has a long and enviable history of sporting prowess within our shooting disciplines gaining a range of medals across a range of disciplines in Commonwealth, World and Olympic championships.

The SCA recognise the provision under the bill that the chief constable may, on the application of a person (“the organiser”) who is organising or otherwise responsible for an event, grant a permit authorising individuals at the event to borrow, hire, use and possess air weapons while engaging in an event activity without holding an air weapon certificate (“an event permit”).

In addition to the suggestion of approved clubs and the exemptions offered under private land under supervision and do not believe that the licence as proposed affect those using air weapons for competitive sporting purposes.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
The SCA does not believe that it is equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not.

Sections 32 and 35 of the 1968 Act state a fee is charged only upon “grant”, “renewal” or “replacement” of a certificate. Therefore forces are unable to charge for the cost of a firearms or shotgun certificate upon refusal.

The SCA does not understand the difference in the approach taken by the Scottish Government in the decision to charge a non-returnable fee for an application for a low powered air weapon licence when applicants can apply for section one and section two firearms and if refused received a full reimbursement.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

It is the belief of the SCA that the air weapon license as introduced will have a negative effect and impact on public sectors in Scotland.

We accept that the Scottish Government have made provision for the ownership of a low powered air weapon where an individual aged 14 years or more holds a firearm certificate or a shotgun certificate with the individual making an application for an air weapon when the current certificate expires. However, the projected numbers of low powered air weapons in circulating greatly outweigh the numbers of shotgun and firearms certificate holders, even if all of those possessing a current shotgun or firearms certificate were to confirm ownership of a low powered air weapon. Further to this we firmly believe that the introduction of a licence for a low powered air weapon will see a greater application for a licence to obtain a section one or section two weapon, greatly increasing the number of weapons in circulation and further compounding the workload of Police Scotland firearms licensing teams, seriously compromising the processing of section one and section two certificate holders grants or renewals.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?
As previously stated the SCA believes that a system to license the estimated half-a-million airguns in Scotland will be a costly and bureaucratic mistake.

It has been widely recognised that offences involving air weapons in Scotland has fallen by 75% in recent years. Between 2006-07 and 2012-13 with a reduction from a ten year peak 683 air weapon offences to 171 offences. Further to this, generic firearms offences are now at the lowest level since records began. Airguns are already extensively regulated by law, with more than thirty offences on the statute books. Introducing a licence for low powered air weapons will not deter those who are already determined to break the law. It is the belief of the SCA that the changes proposed by the Scottish Government will create a number of new offences, some of which will inevitable be breached without intent and/or in ignorance. Consequentially statistics will record an increase in firearms crime, which may lead to a knee jerk reaction and the implementation of further unwarranted legislation.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

The SCA recognise the introduction of a low powered air weapon licensing regime in Scotland to be a step change in firearms licensing within the UK. We question the implementation of a non-refundable application fee and the setting of prescriptive conditions for the ownership and use of a low powered air weapon both distinctively differing from ownership of a low powered air weapon anywhere else within the United Kingdom. We do not believe the implementation of a low powered air weapon licence to be proportional to the perceived threat from low powered air weapons and that the licensing of low powered air weapons will prove to be bureaucratic and expensive without actually reducing the illegal use of firearms in Scotland.

The SCA seek to point out our thoughts on the unnecessary introduction of a licensing regime to prevent, perceived or real, firearms crime when so much has been achieved in the last ten years through legislator and participant collaboration and cooperation. Significant reduction in crimes involving firearms has been achieved by the Scottish Government, Police Scotland and those representing shooting at all levels coming together to improve education and the awareness of existing legislation.

We draw on the Justice Secretary Kenny MacAskill who recently announced that the “education and enforcement” approach has proved successful in reducing knife crime in Scotland. Indeed research commissioned by the Scottish government stated that education and prevention were key to reducing knife crime. Figures from the Recorded Crime Bulletin 2012/13 back up the statement showing that crimes of handling an offensive weapon (including knives) had dropped dramatically in Scotland, falling by a massive 67% in Glasgow and 60% in Scotland since 2006/07.

We ask at this time why the significant fall of 75% in offences involving air weapons over a similar timescale doesn’t merit the same educational and prevention campaign as witnessed in the £2 million investment in the No Knives, Better Lives campaign. The Scottish Countryside Alliance
believes that further investment in this direction would realise a greater return than an administrative and bureaucratic licensing regime.

It is our humble opinion that the introduction of a licence for low powered air weapons will not make a significant contribute to preserving public order and safety in any meaningful way, or indeed reduce crime and advance public health policy.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed—all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

Name: Jessica Liddon
Organisation: Scottish Pistol Association
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes
☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ Yes
☐ No

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☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
Name/Organisation: Scottish Pistol Association

1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

I personally don’t think it will. It is an unfortunate fact that there is a small number of people in the world who will commit crimes. If they are happy to break one law then they are more than likely to be happy to break another. Whether it is illegal for them to have an airgun or not, if they are committing another crime, it is unlikely that they will stop to think if they have the correct paperwork for their airgun.

I also do not think it will advance the public health policy. Lead pellets are used with airguns and the management of this lead is controlled by the staff at the shooting ranges. If approved ranges are the only place athletes are allowed to train then the large influx of new shooters to the approved ranges will cause an increase in the amount of lead being used. This in an enclosed environment such as a range produces a high risk to the athletes using the facility.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?

According to British Shooting and the National Small-bore rifle association in Dumfries & Galloway and the Borders there are only two airgun clubs – one in Dumfries and one in Hawick. In the same area there are roughly 10 pony clubs, each with their own team of tetrathletes who shoot air pistol. There are cadets, modern pentathletes and development pistol shooters who aren’t members of any clubs and find their own safe place to shoot. If all of these athletes were bound by the law to train at an airgun club, it could result in hours of travelling for them and not to mention the overloading of the two airgun clubs who could not physically cope with the numbers of new members due to health and safety restrictions for numbers in the building and they would not be able to maintain a safe range officer to athlete ratio.
15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

Shooting is a sport which is already difficult to get into due to the stigma around guns and the lack of facilities in Scotland. By adding the airgun licensing system it will make the sport almost impossible to try. How will those who have seen the sport on the BBC during the Olympic Games and the Commonwealth Games find a way to give the sport a go and find out if they could be the ones competing at future games. This then has a knock on effect with no new comers to the sport, those who already compete will have no one to push them further and compete for places on National teams therefore reducing the standard and participation in one of Scotlands most successful sports.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

Age 14-17 is the age where a lot of adolescents get involved in sport. Pony Club Tetrathlon, Modern Pentathlon and Air pistol/rifle shooting are all legitimate sports. Sport is proven to help improve time-management, determination and concentration in school children. Having an outlet from school work in the form of sport gives youngsters a safe, controlled environment to enjoy themselves and spend time with their friends. The Scottish Government strive to increase participation in sport for school children, particularly with females. All the above mentioned sports give both girls and boys an opportunity to take part. By introducing the licensing system a deterrent is created for those looking at taking part in the sport. The added bureaucracy, time, paperwork and cost makes it less likely for people to get started in the sport which ruins the grassroots of the sport creating a large knock on effect to the elite end of the sport as well as reducing the number of children getting involved in sport as per the Scottish Governments aims.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?
18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

The requirement of a visitors permit for anyone coming to compete in Scotland will deter those who are willing to travel to the competitions held in this country. Due to this the level of competition held in Scotland will decrease therefore not pushing the Scottish athletes further in their abilities. This will reduce the success of Scottish athletes at a National and International level. Not only this but those who are only just getting into the sport will be deterred due to the cost and

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

I don’t feel that it is appropriate to charge a fee if an application is unsuccessful.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

I feel that there will be a negative impact on the public sector. Firearms departments are already overstretched with the work that they currently have, adding thousands of applications for individual, club and premises permits will increase the workload ten fold.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

I believe there will be a large knock on effect caused by the introduction of the airgun licensing system. Currently there are 6 Olympic disciplines which involve the use of airguns. Many of the athletes representing Great Britain in these events have come from small Pony Clubs who use local facilities to train outwith airgun clubs. For example, Georgina Geike who competed in the 2012 Olympic
Games in London came from a Pony Club background, Mhairi Spence another Team GB member for London 2012 was introduced to her sport of Modern Pentathlon through the Pony Club. The consequences of introducing an airgun licensing system will include increased costs in running competitions due to the necessity of obtaining event permits, increased costs in participation, again due to the necessity of obtaining a permit, increased difficulty in getting started in the sport due to the impossibility of giving the sport a try before committing to it, the increased difficulty of finding training facilities close to home due to the requirement of a licensed premises. All of these factors will have a large impact on participation in the sport and will significantly reduce Scotland’s chances of medalling at both Commonwealth and Olympic Games as well as World and European Championships.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

Since the license only applies to Scotland, I am unsure how the Scotland/England border will be watched to ensure the control of airgun movement between the two countries. I am also unsure how the airgun owners in England, Wales and Northern Ireland will be informed of the licensing to ensure that visitors abide by the law.

Personally I believe that this licensing system will have a very small effect with regards to the great increase in bureaucracy. According to Scotland.gov.uk, between 2011-12 and 2012-13 the number of crimes handling offensive weapons dropped by 29%, the crime in this area is already reducing and for the added work for the firearms department that this licensing system would involve, I don’t believe the benefit would be significant enough to justify it.
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

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

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

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

4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

_________________________________________________________________________

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

_________________________________________________________________________

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?

_________________________________________________________________________
38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'?
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

48. Are there additional costs or resource implications on theatres or licensing authorities?

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- ‘sexual entertainment venue’
- ‘audience’
- ‘financial gain’
- ‘organiser’
- ‘premises’
- ‘sexual entertainment’, and
- ‘display of nudity’

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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Follow the Local Government and Regeneration Committee's Twitter feed all Committee tweets on this Bill will have the hashtag #awlbill.
1. Please supply your name and contact details:

Name: Stephen Pringle

Organisation: FAST (Frenchie AirSoft Technician)

Address 1:

Address 2:

City/Town:

Postcode
Country:

Email address (if no email leave blank):

Phone Number

Office Use Only

Submission ID number
* 2. Please confirm that you have read and understood the Scottish Parliaments "Policy on the treatment of written evidence by subject and mandatory committees":

* 3 Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☑ Professional

☐ Commercial

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No

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☐ Yes

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☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives
Local Government and Regeneration Committee – Air Weapons and Licensing (Scotland) Bill

☑️ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
2. **Air Weapons Licensing**

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

16. How will the air weapons licensing system affect those aged 14 to 17 who
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

Airsoft within Scotland is alive and vibrant. Scotland has within it's borders two of the most established retailers working within the industry and is overly provided with active skirmish sites. Thanks to the work of filmmakers like John Welsh, Scottish airsoft is literally viewed by millions worldwide.

For those of you not familiar with the pastime, airsoft is similar in broad terms to paintball, but rather than using markers which fire frangible ammunition, airsoft guns predominantly shoot 6mm plastic or biodegradable balls at muzzle energies of up to 2.3 joules, although the majority of sites impose limits closer to 1.3 joules. The term airsoft gun is misleading, as although they closely resemble firearms, airsoft guns are incapable of discharging live ammunition and are ballistically more closely related to muskets in that they project a ball along a smooth barrel.

This background is important because as it stands it is impossible to read this Bill without fearing for it's effects, unintended as they no doubt are, on this popular pastime.

The Bill defines the level at which an object should be considered to be an air weapon at 1 joule. This figure comes originally from an appendix to the 11th annual report of the now-disbanded Firearms Consultative Committee. It was made without reference to any scientific investigation but has assumed the nature of canon law within the realm of legislators since. In 2011, the Association of Chief Police Officers (ACPO) commissioned a report into airsoft guns and lethality from the Forensic Science Service (FSS) in order to better define lethality. Based on the finding from the FSS, ACPO recommended to it's members that muzzle energy of 1.3 Joules in an airsoft gun capable of automatic fire, and 2.3 Joules in a single shot airsoft gun were unlikely to cause more than a trivial injury. Since the
17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

The inclusion of paintball in the question must immediately raise doubts as to the competence of those asking. Paintball markers are not covered by the powers delegated to the Scottish Parliament, a fact which those drafting this Bill should be well aware of. The Bill will however have a potential impact upon the pastime of Airsoft within Scotland as detailed below in Sect. 21

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
publication of this report, the airsoft industry within the United Kingdom has broadly adopted these standards.

If this Bill is passed into law without amendment, it is difficult to see how there will not be an overwhelming argument that in order to fall outside the remit of air weapon licensing, airsoft guns must be restricted to 1 joule or less. The Bill makes no mention of airsoft guns but given that they are capable of firing a projectile it seems reasonable to assume that over 1 joule of muzzle energy they would have to be licensed. Since they are unsuitable for any of the purposes listed within Section 7 of the Bill (which appear to be indicative of the permitted purposes for the grant of a license) it is likely, and I would posit probable, that the Scottish Police Service would decline to grant a licence specifically for airsofting.

There is also the question as to whether or not it is appropriate, given the putative reasoning behind this Bill, to permit anyone to shoot at another human being with a licensed air weapon, regardless of how 'harmless' or not it might be.

For those within Scotland engaged in the business of airsoft, this Bill presents a number of challenges. It is difficult to ensure that imports of new stock will comply with the 1 joule limit. This is for historical reasons but is largely a function of the fact that internationally much higher muzzle energy limits exist for airsoft guns. Do businesses have to register new stock as air weapons? Once they have been brought below the 1 joule limit can they be "deregulated"? There exists no provision within the Bill at present for this. Can the existing businesses legally import anything over the 1 joule limit without registering as Firearms dealers?

For those who operate the numerous skirmish sites across Scotland where airsoft is regularly played are they now faced with having to police the new laws? What consequences might befall them if a player is found to be using what would in effect constitute a licensed air weapon?

This may all seem somewhat esoteric however the greatest threat to airsoft in Scotland is the law of unintended consequences. It was undoubtedly not the intention of the present Scottish Government to legislate for airsoft equipment, but they have done so by accident. In setting a lower muzzle energy limit of 1 Joule they are flying in the face of the most current research on the subject. If this Bill passes unamended it will disadvantage Scottish businesses compared to their competitors in the rest of the United Kingdom, which is where the majority of their market lies.

I suggest the addition of a simple clause which at once defines and excludes airsoft guns from the meaning of air weapon as defined in Section
1. Something along the lines of "Airsoft guns, being defined as low-powered air weapons designed to project spherical, non-metallic projectiles via a smooth-bored barrel not exceeding 8mm in internal diameter, and with a muzzle energy not exceeding 2.5 joules are excluded from all the provisions of this Bill as they relate to air weapon licensing". Freed from the dangers contained within this Bill, the industry, the sites and the players will continue to act and to play responsibly within the now-well-established limits resulting from the ACPO / FSS report referred to above.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?
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**1. Please supply your name and contact details:**

Name: Arlene Wilson
Organisation: British Transport Police and Police Scotland joint submission

Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments "Policy on the treatment of written evidence by subject and mandatory committees":

X Yes

3. Please confirm whether you are content for your name to be published with your submission:

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□ No

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- Civic licensing – theatre licensing
- Civic licensing – sexual entertainment venues
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers’ licensing regime to the extent that metal theft and related criminal activity is reduced?

British Transport Police and Police Scotland welcome any legislation which will contribute towards a reduction in metal theft.

The phenomenon, driven by international commodity prices and a perception by criminals of a low risk high reward crime, has blighted communities, business and major utilities.

The market-makers in stolen metal have been unscrupulous scrap metal dealers who have exploited the law, failed to keep adequate records and allowed a system to develop that has made disposal of stolen metal easier. Arguably the availability of cash in this industry adds to the anonymity which further reduces the risk to thieves of being traced and apprehended.

The proposals therefore should provide law enforcement with greater control and can introduce a level playing field across the scrap metal industry but there are additional steps that can strengthen the bill for the benefit of communities.
41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

British Transport Police and Police Scotland fully support an accreditation system and see this as an important step for the industry to progress. Accreditation would raise the standard of the industry and allow sellers to make informed decisions based on the ability of dealers to meet a minimum set of standards. The scheme ideally should be driven by the industry, for the industry and would be the next logical step. Companies such as BT Openreach and Network Rail already have disposal policies; an accreditation system would ensure contracts were awarded to the dealers who have successfully attained accreditation.

Should the maintenance of retaining registers for metal dealers remain with Local Authorities this may be problematic as metal trading can involve collection and transportation of metal throughout multiple Local Authority areas. British Transport Police and Police Scotland would like to see the introduction of a national register of metal dealers (including itinerant metal dealers) which could be accessed by enforcement agencies. In addition it would be beneficial for metal dealers (including itinerant metal dealers) to display a copy of their licence. The current legislation allows five days for production of a licence which can hinder police investigations. We would propose that licenses should be clearly displayed within premises or vehicles in the case of itinerant metal dealers.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

British Transport Police and Police Scotland fully support the removal of exemption warrants. The removal will improve investigations. Currently Police, Local Authorities, SEPA and other stakeholders can be hindered by unscrupulous metal dealers who can deny site access and thwart preventative measures to ensure that criminality is not taking place.

The removal of the exemption warrant together with a statutory power of entry and inspection will ensure that the industry operates on a level playing field, that they all can face the same level of scrutiny and regulatory oversight.

One concern around the Bill is that if the definition of a Metal Dealer remains unchanged (both buy and sell metal) this will by its wording exclude Itinerant Metal Dealers who collect from households without making payment for the items/materials collected. The definition would also allow for operators who deal predominately in End of Life Vehicles or those who collect general waste and other materials then sort them into waste and metal for sale to avoid licensing.
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

British Transport Police and Police Scotland preference would be to retain the retention of metal for 48 hours as this is consistent with second hand dealer legislation and conditions. This permits a Constable or duly authorised individual to enter and inspect following any theft or reset allegation. The daily fluctuations in commodity prices may make this unpalatable to the trade although if this is a nationally agreed condition then the short term impact should be evened out.

Should the removal of retention remain the police would look to the Local Authority to impose specific conditions on those who are suspected of involvement in irregular practices or criminality.

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

The British Transport Police and Police Scotland view is that there should be no cash transactions and that the requirement to purchase without cash should be applied across the industry (including all mobile collectors).

Experience and evidence from France where the government initially introduced legislation that provided a €500 threshold below which transactions could be in cash was revisited and amended within 8 months to ban cash completely.

Therefore there should be no minimum amount and all transactions should be either electronic or by cheque. The opportunity to exploit a cashless loop hole will increase with the addition of a minimum cash payment amount. The costs involved in issuing cheques or crediting debit cards is minimal and should not restrict business activity. The absence of large amounts of cash, reduce risks, bank charges and insurance costs. Low level offending must be discouraged. Prior to the Scrap Metal Dealers Act 2013 there were a number of concerns raised in terms of loosing smaller amounts, there have been no complaints since the introduction of the act.
45. Forms of identification and record keeping:
In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years. How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

The requirement for record keeping should be standardised across the industry as this has been extremely successful in England and Wales in terms of deterring low level criminality. A tightening of the existing measures which should be supported by photographic identification (ID) and proof of address would not add an administrative burden; it just ensures that requirements are strengthened. The existing conditions under section 30 of the Act regarding record keeping should continue and be subject to proper scrutiny.

46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'?

British Transport Police and Police Scotland would like to see a requirement for CCTV to be mandatory and not left to the discretion of the Local Authority. To ensure that smaller businesses are not financially hindered the level of coverage could be set to a minimum standard to ensure that only certain critical areas are covered for example entrances and exits, payment offices, scales and weigh bridges.

Following introduction of the Scrap Metal Dealers Act 2013 some dealers exploited a loop hole in the legislation introducing cheque cashing facility within the yard. This has now been addressed in England and Wales although this appears to have been overlooked within the proposed Bill.
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### *1. Please supply your name and contact details:*

<table>
<thead>
<tr>
<th>Name:</th>
<th>Ivor Williamson</th>
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<tbody>
<tr>
<td>Organisation:</td>
<td>Rosefield Salvage Ltd</td>
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<td>Address 1:</td>
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3. Please confirm whether you are content for your name to be published with your submission:

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6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers’ licensing regime to the extent that metal theft and related criminal activity is reduced?

It will depend on how it is regulated, the key point being Police Scotland will have to enforce and regulate this thoroughly. Everybody should be under the same legislation ie waste companies demolition companies and car breakers as well as metal dealers, as they all deal in metals in some form or another.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

We suggest that a law is introduced to stop any metals being sold to non-registered metal dealers.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
As long as the Authorities regulate the itinerant dealers and all other aspects of metal recycling that are not included in the bill, we have no objection to the removal of the exemption warrant.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

None

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

In rural areas there are a lot of small transactions from private households (under £10.00), which due to the administration costs involved with the “cashless” payments make them to be worthless to process, which could stop the idea of recycling these materials, which could then lead them to be fly tipped.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

Record keeping is very important, and obviously we want to assure the identity of the seller. What worries us is that the itinerant dealer will not be policed or have to enforce the same requirements, and then they have the ability to source materials away from the fixed licensed sites. There needs to be clear definitions on what to use for identifying the seller of the metal and the recording of it, so everyone uses the same process.
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?
Everyone throughout the country should have the same conditions, and not be left to the discretion of a local council to implement discretionary requirements. Perhaps it could be policed if a site is caught breaking licensing conditions they could be struck off after 3 misdemeanours.

NB- a few other points we would like to raise on the bill
Date of Processing of Metal – there is a an amendment calling for the dealer to record the date on which metal is processed – such a requirement is totally unpracticable and unworkable in any yard in the country.
Methods of Payment – method of payment and record keeping should be CLEARLY defined so we know exactly what is acceptable.
Metal Definition – This needs to be clearly defined, so anybody dealing with metal comes under the new act, as your Act does not include car breakers, demolition companies, waste management companies, who all have the ability to buy metal in their day-to-day basis.
Metal Dealer definition – You need to define who is actually a metal dealer, as previously stated car breakers, waste management companies and demolition companies can deal with metal and do not come under the Act at the present time.
Powers of Search & Seizure – We consider the existing powers vested in police officers under Section 60(1)© of the Civic Government (Scotland) Act 1982 to enter and search premises occupied by a metal dealer without warrant to be draconian, particularly in the light of the levelling of playing field for regulation of all metal dealers through the removal of the exemption warrant system.

As a past President of the Scottish Metal Association, I find it frustrating, that having sat in several consultation meetings with colleagues at the Scottish Parliament and explained the potential pitfalls and problems following the changes in the English law, that we can still see similar problems occurring in the Scottish Bill, and it appears that it is only there to appease the general public, and not deal with the actual problem.
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<table>
<thead>
<tr>
<th>Name:</th>
<th>Jacqui Cuff</th>
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<tbody>
<tr>
<td>Organisation:</td>
<td>Cats Protection</td>
</tr>
<tr>
<td>Address 1:</td>
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<td>Address 2:</td>
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☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

Cats Protection

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland's climate change commitments? Please explain.


9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.


10. Do you consider that the Bill has any implications for preventative spending and/ or public services reform? Please explain.


11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

Provisions in the Bill relating to the granting of a licence for an air weapon should be compatible with the intention of existing Scottish legislation relevant to safeguarding cat welfare in Scotland. We hope the provisions of the Bill relating to the licensing of airguns will help prevent casual and random acts of cruelty towards cats in Scotland. Cats are protected animals under the provisions of the Animal Health and Welfare (Scotland) Act 2006. However there are evidential difficulties in enforcing this Act with regard to air gun attacks on cats – see Q 13.

In the case of owned cats there is the additional offence of vandalism under Section 52, Criminal Law (Consolidation) (Scotland) Act 1995. Again evidential difficulties may well arise.
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

Where airguns are used randomly casually or deliberately to inflict injuries on cats (and other animals) we are aware that that the owners of those cats are often unable to proceed to prosecution for the crime against their cats under current law for reasons often related to evidence. Whilst it is, for example, an offence under the Animal Welfare Act 2006 to cause unnecessary suffering the particular evidential difficulty with offences committed using air weapons is: ascertaining the shooter’s identity and proving that the shooter committed the offence. Typically, pellets become lodged in the cat’s body, its brain, eyes, spine or vital organs. A cat will then leave the scene and, as cats do, it will either crawl away to hide or die in a concealed and secluded spot. Alternatively, it will try to conceal its injury from its owner. Concealing injuries is a behaviour which has evolved in cats to protect themselves from predators. As a consequence, many such injuries are not apparent and often go undetected. Some injuries from pellets eventually prove fatal or, by chance, they come to light if the cat has an x-ray. Because of the delayed nature in detecting airgun pellets in cats this also makes it harder to establish when and where (public or private land) the shooting took place.

We welcome this proposed scheme for better regulation and enforcement of air weapons. We would hope that a licensing scheme would result in fewer such crimes by restricting licences to those that have legitimate reason for them. Our view is that prevention is preferable to prosecution (or lack of prosecution). We also hear cases where people are living in a locality where they fear for the safety of their pets and that this can affect a person or community’s general sense of ease and feeling of public safety.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?
We cannot comment on the sufficiency of provision of shooting clubs in Scotland other than to comment that we assume that shooting within the confines of a club, and presumably under supervision, might be less likely to cause death or injury to cats or other animals.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

Cats Protection is concerned that cats may on occasions be shot by those with airguns for personal or “recreational” reasons (perhaps by a person with a dislike of cats, or because of a neighbourly dispute about a cat that goes onto neighbouring property, for example in their garden). We have had reports of neighbourly disputes of this kind resulting in one neighbour allegedly shooting the others’ cat. This is a difficulty when cats by nature are roaming creatures.

We welcome the proposal that an applicant for an airgun licence will need to fulfil the “good reason” test. We hope this will deter applications for certificates from those who would knowingly misuse airguns towards cats or other animals. Where an airgun is used illegally, without a licence and without a legitimate reason for possessing and using it we understand the Bill, for the first time, will allow the police to remove the weapon(s). Removal should serve to reduce further offences and fear of offences amongst the public.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

No comment

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

Page 7 of 11
The Bill is vague on the question of “pest control” If this is a “good reason” for a licence, the term “pest control” needs to be included in the Bill and defined so that it is clear what species are classed as pests and when and where they can be controlled and by whom.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

No comment

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No comment

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

No comment
21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

There may be those that decide to acquire and use an airgun without licence. In those instances a clear offence can be proven if they are reported for using the gun without licence and we’d support provisions to remove the weapon in those cases. See our comments at Q15.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

Injuries and fatalities to cats from airgun attacks are sadly all too often reported in the press and also directly to Cats Protection both in Scotland and across the UK. We are not aware of any official statistics recording airgun attacks on cats and other animals in Scotland (or elsewhere in the UK.) We do not know if the police record investigations into reported airgun attacks on cats or on other animals and if so whether they have statistics of reported incidents?

Since 1 June 2014 to 21 September 2014 (16 weeks) Cats Protection has been keeping our own statistics. We have recorded 69 cases of cats being shot with an airgun in the UK (either reported in the press or reported direct to Cats Protection). 69 cases equates to an average of over 4 per week. These numbers are likely to understate the problem as many more airgun incidents go unreported.

22% of these cases resulted in the death of the cat.

We very much welcome the proposals within this Bill to tighten up the law on the licensing of airguns in Scotland and very much hope that the Bill provisions are not weakened in any respect as the Bill progresses.

13% (9) of the 69 cases we have logged were in Scotland (75% (52) in England, 6% (4) in Wales, 6% (4) in Northern Ireland)

In a recent Cats Protection public survey for the UK 98% of respondents agreed with the need for tighter regulations for the ownership of airguns.

The Committee may find it helpful to read some case studies of very recently reported airgun attacks. These illustrate the impact attacks and injuries have on the cat, its owner and often the family. It is of note that often it is not known if the cats were shot on private or publicly owned land. The examples do show the difficulties in identifying the person who shot the cats. None of the cases resulted in any kind of prosecution due to a lack of evidence. We suggest this strongly supports tightening of legislation to ensure that airguns are only licensed to those who can demonstrate good reason and we strongly support the onus being on the applicant to show good reason.
Fizz – Renfrew, Aug 2014
Seven-month-old Fizz managed to drag herself to her home this August with a serious wound to her leg. An examination by vets revealed she had been shot by an airgun. Her thigh bone was shattered and vets were forced to remove one of her back legs. Fizz’s owner said “Aside from the obvious pain, Fizz has been left traumatized. This has been very upsetting for the whole family and we are disgusted that someone could do this. There have been no leads as to who shot Fizz but we are still hoping some information will come to light.”

Sylvester – Inverness, Aug 2014
Two-year-old Sylvester had to be put down after a pellet was found lodged in his chest near his heart. The vet decided that Sylvester would not survive an operation to remove the pellet. It is believed that the projectile could have been there for as much as three weeks before it was discovered. Owner said “We noticed that he was off his food and he started to have problems with his breathing. We took him to the vet who gave him an x-ray and that’s when they found the pellet. I just can’t understand why anyone would do this to a defenceless cat. It’s so cruel.”

Miz – Prestwick, Mar 2014 (CP incident)
Cats Protection adopted cat Miz returned home in March 2014 very distressed and would not let his owner touch his shoulder. She rushed him to the out of hours vet and an x-ray showed an airgun pellet lodged in him. said “thankfully there was no bone damage as he was quite a muscular cat and the muscle protected the bone”. The pellet was left in situ so as not to cause Miz more distress but he had to take painkillers and antibiotics for three weeks before he was back to more like himself.

Molly – South Ayrshire, May 2014 (CP incident)
Molly was taken to the emergency vets where an x-ray showed she had been shot in the chest but luckily the pellet didn’t enter her thoracic cavity. Molly survived the ordeal.

Case studies outside Scotland
Tino – Morpeth May 14 (CP incident)
Twelve-year-old Tino was already blind in one eye and had suffered a broken hind leg from an airgun pellet three years previously. In May this year he came home one morning vomiting and not wanting to be picked up. Tino’s owner took him to the vet where a scan showed an airgun pellet lodged in his stomach. The pellet had gone through his bowel and kidney, so the kindest decision was to put him to sleep. said “I was absolutely devastated”. Police talked to neighbours and looked at some CCTV footage but there was nothing of help. I have two other cats so I am worried about letting them out.”

Sooty – Manchester, Sep 2014
Eight-month-old Sooty is being treated by vets after being shot in the spine near his home. The pellet hit the right side of his spine and has
left him paralysed. The plan is to nurse him for the next few days and hope that the bruising and swelling subside and he starts to recover nerve function. If not, he may have to be put to sleep. Owner said “We’re devastated. I’m shocked and my five grandchildren are really upset.” Ruth bought Sooty for her four-year-old grandson who is profoundly deaf.

END
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*1. Please supply your name and contact details:

Name: MARK WILLIAMSON
Organisation: D&S METALS
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

✔ Yes

3. Please confirm whether you are content for your name to be published with your submission:

✔ Yes

☐ No

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☐ Personal

☐ Professional

✔ Commercial

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✔ Yes

☐ No
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☑ Yes

☐ No

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☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☑ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

It will depend on how it is regulated, the key point being Police Scotland will have to enforce and regulate this thoroughly. Everybody should be under the same legislation ie waste companies demolition companies and car breakers as well as metal dealers, as they all deal in metals in some form or another.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

We suggest that a law is introduced to stop any metals being sold to non-registered metal dealers.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
As long as the Authorities regulate the itinerant dealers and all other aspects of metal recycling that are not included in the bill, we have no objection to the removal of the exemption warrant.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

None

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

In rural areas there are a lot of small transactions from private households (under £10.00), which due to the administration costs involved with the “cashless” payments make them to be worthless to process, which could stop the idea of recycling these materials, which could then lead them to be fly tipped.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

Record keeping is very important, and obviously we want to assure the identity of the seller. What worries us is that the itinerant dealer will not be policed or have to enforce the same requirements, and then they have the ability to source materials away from the fixed licensed sites. There needs to be clear definitions on what to use for identifying the seller of the metal and the recording of it, so everyone uses the same process.
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and ‘forensic coding’?

Everyone throughout the country should have the same conditions, and not be left to the discretion of a local council to implement discretionary requirements. Perhaps it could be policed if a site is caught breaking licensing conditions they could be struck of after 3 misdemeanours.

NB- a few other points we would like to raise on the bill

Date of Processing of Metal – there is a an amendment calling for the dealer to record the date on which metal is processed – such a requirement is totally unpractible and unworkable in any yard in the country.
Methods of Payment – method of payment and record keeping should be CLEARLY defined so we know exactly what is acceptable.
Metal Definition – This needs to be clearly defined, so anybody dealing with metal comes under the new act, as your Act does not include car breakers, demolition companies, waste management companies, who all have the ability to buy metal in their day-to-day basis.
Metal Dealer definition – You need to define who is actually a metal dealer, as previously stated car breakers, waste management companies and demolition companies can deal with metal and do not come under the Act at the present time.
Powers of Search & Seizure – We consider the existing powers vested in police officers under Section 60(1)© of the Civic Government (Scotland) Act 1982 to enter and search premises occupied by a metal dealer without warrant to be draconian, particularly in the light of the levelling of playing field for regulation of all metal dealers through the removal of the exemption warrant system.

I find it frustrating, that having sat in several consultation meetings with colleagues at the Scottish Parliament and explained the potential pitfalls and problems following the changes in the English law, that we can still see similar problems occurring in the Scottish Bill, and it appears that it is only there to appease the general public, and not deal with the actual problem.
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**1. Please supply your name and contact details:**

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* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:
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* 3 Please confirm whether you are content for your name to be published with your submission:
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No X

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?
Personal X
Professional
Commercial X

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Yes
No X
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Yes

No  X

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All of the Bill

Equalities, climate change and other Scottish Government objectives

Air Weapons  X

General licensing issues

Alcohol licensing

Civic licensing – taxi/private hire car licensing

Civic licensing – scrap metal dealers

Civic licensing – theatre licensing

Civic licensing – sexual entertainment venues
In order for something to be considered an airgun it would need to be a lethal barrelled weapon so while the bill has set the power level at 1 joule until they reach a power level of a lethal barrelled weapon they are not airguns.

Replica firearms including airsoft are dealt with by the Violent Crime Reduction Act

It regulates and grants exemptions for films, sporting use and so forth and may be a reserved matter.

Paintball and Airsoft should be granted a specific exemption in the bill as they're sport's enjoyed by many people.

The bill also plans to put airgun sound suppressors under the licence as well. Whether such powers are devolved and the extra costs to license such accessories should also be looked at.

Fees should be refunded if a licence isn't given and accurate compensation should be dealt if people need to surrender their guns.

The main thrust for air gun regulation came after a child died by being shot in Easterhouse, a deprived area in Glasgow. Both the victims parents and the shooter had been charged on separate occasions for drugs offenses. The air rifle wasn't found and it was also claimed to have been made more powerful.

The reason I bring these details to your attention is that air gun crimes have been falling yet this bill is to be brought in for the sole benefit of problem areas at the expense of the rest of the country. The restrictions on drugs doesn't seem to have had an effect so why would air gun licensing? The air gun was never found so it may have been an illegal firearm already.

A consultation in 2013 found that the majority of the replies were opposed to the licensing of airguns for a variety of reasons. A few of the minority of those supporting the proposals were from animal rights organisations relying on emotive arguments to support the licence plans. I find it rather hypocritical seeing as dogs have killed more children in recent times and cats have killed more wildlife and peoples pets inside their gardens than air guns, yet there is no calls for more responsible pet ownership.

There are some unintended consequences to consider.

Air guns help take care of small scale pest control. Without it people may ignore a problem until it spreads or gets big enough for professionals to deal with. The other options may be to use traps or poison which could affect other animals or pets.

Other incidents I have heard about were swans getting shot however I had also heard that people were hunting Swans to eat. With the rise of food banks and in light of the attempts by the DWP to deny the public their basic needs it's not beyond the realms of possibility that some people are trying to hunt for food. Something that's a far more serious subject than an ill thought out licensing law which does little else than grant the government and licensing boards more unneeded powers at the expense of the public's freedoms.
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**1. Please supply your name and contact details:**

Name: Jenna Parker  
Organisation: Institute of Licensing  
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Country:  
Email address (if no email leave blank):  
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

x Yes

3. Please confirm whether you are content for your name to be published with your submission:

x Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

x Professional

☐ Commercial

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x Yes

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☐ All of the Bill

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☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

No comment

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

The Institute notes from its broad experience in relation to licensing jurisdictions in England and Wales that the Scottish proposal is broadly equivalent to that which is already in force south of the border. It seems odd therefore that the Scottish proposal would create a cap on the exception to the licence requirement where there are three or less occasions of central entertainment in premises within a twelve month period where the equivalent provision under the English and Welsh legislation is for twelve occasions. The Institute would therefore ask the Scottish Government what evidence it has that imposing a cap of three is or is not more appropriate than a cap of twelve.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

The Institute remains concerned that the proposed sexual entertainment venue regime does not adequately deal with the request for grandfather rights. This creates uncertainty for business in that the political make-up of the council may change from time to time and the ruling powers at a local authority may elect to have a change of heart as to the zero cap in relation to sexual entertainment venue premises. This could mean that a premises operating under a cap of say two or three premises and has had its licence renewed without issues suddenly finding its licence automatically revoked as a result of the change to the cap because of the political vote of the local authority.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

No comment

54. Are there any barriers to licensing authorities operating the new licensing regime?

The Institute notes that historically licensing boards in Scotland have dealt with licensing of sexual entertainment venue premises through the alcohol licensing regime and therefore have the institutional knowledge on premises of this nature. The Institute takes the view that licensing boards will be the correct authority to deal with sexual entertainment venue premises licensing due to this experience and not the licensing committee which is a function of the council.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

No comment
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*1. Please supply your name and contact details:

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Organisation: Young & Partners LLP
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Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

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☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

The remit of police Scotland is currently very restricted when reporting on an applicant. This will allow them to bring other relevant matters to the attention of the board. Some guidance as to what matters would be considered “relevant” would be helpful. There should also require to be evidence to back this up.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

I suspect that there may be human rights implications here, especially following the recent Supreme Court case *R v Secretary of State for the home Department and another* [2014] UKSC 35 in which five justices unanimously held that exceptions to the general rule that a person is entitled not to disclose “spent” convictions or cautions was against Article 8.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

Many opportunities have been missed to tidy up parts of the legislation that those involved in running licensed businesses are finding unduly complex, uncertain or unworkable.

**Consolidation** – it would have been nice to have a consolidating piece of legislation given the significant amendments already implemented since the 2005 Act came in to force.
Provisional variations – there is still no provision for a provisional variation. Timescales surrounding a variation remain unclear. It is not sensible to carry out work which would be in breach of your existing licence and would require reversed if the variation were to be refused. However, technically as soon as a variation application is granted, there is a breach of licence as the licence will not reflect the actual position. How long does the licence holder then have to complete the work in terms of the variation? We are currently relying on the good grace and common sense of boards and LSO’s etc.

Site only provisional licences – There is no facility to apply for a provisional licence at an early stage without submission of highly detailed plans (that are likely to require amendment and a subsequent variation). This was available under the 1976 Act and it would be helpful to see it return.

Transfer – we are still having to rely on the common sense and co-operation of boards and clerks (and at times their section 135 discretion!) when dealing with transfers in absent tenant situations, company dissolution and more. Timescales can also be problematic. The current systems under s33 and s34 do not sit comfortably with many transactions involving licensed premises sale, purchase, lease etc. Especially where a variation is also sought.
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*1. Please supply your name and contact details:

**Name:** DOUGLAS CAMPBELL

**Organisation:** RENFREWSHIRE COUNCIL

**Address 1:**

**Address 2:**

**City/Town:**

**Postcode:**

**Country:**

**Email address (if no email leave blank):**

**Phone Number:**
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

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3. Please confirm whether you are content for your name to be published with your submission:

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Alcohol licensing

☑ Civic licensing – taxi/private hire car licensing

☑ Civic licensing – scrap metal dealers

☑ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
4. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

The licensing system should ensure that taxis and private hire car vehicles are suitable and safe for the carriage of passengers and, in relation to taxis, that fares are consistently applied as permitted under the act. The power of local licensing authorities to determine the type of vehicles which are suitable enables them to promote equality for disabled persons (as Renfrewshire have done) and potentially to encourage greener forms of travel. To date, these matters have been left to the discretion of local licensing authorities, which autonomy we support, although the absence of legislation on vehicle standards can leave a local licensing authority open to litigation.

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

We are aware that there have been suggestions that there should be only one category of hire car rather than the current two tier system. There is some benefit from the current system from the viewpoint of licensing authorities in that certain vehicles may be approved as suitable for use as taxis, particularly with a view to accessibility. If the distinction were to be removed, the policy in Renfrewshire that vehicles used as taxis be wheelchair accessible with no such automatic requirement for private hire cars (which contains a mixture of saloon vehicles and wheelchair accessible multiperson vehicles) may have to be amended and it may be harder to cater for the mixed needs of the public if the distinction were to be removed. Resolving issues of this type may cause some upheaval for local licensing authorities and potentially also for the travelling public.
37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?

Reference is made to answer 36 above. In addition, we would comment that there would clearly have to be carefully considered transitional provisions before such an overhaul could occur. In addition, in our local authority area, there may be difficulties with the licence conditions during transition given that we have licence conditions we have approved for taxis which do not apply to private hire cars. Further, there may be confusion among the public, at least in the period after such an overhaul, as to the extent to which the fares charged by hire cars would be controlled under a new regime as well as whether a vehicle would be entitled to ply for hire. The current two tier system is at least understood by the majority of the general public at present.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

Reference is made to Answer 23, above. While we understand that the Scottish Government may not have used the same test for a quantitative restriction for private hire cars as already applies to taxis on the basis that measurement of taxi provision at ranks is possible unlike the position with private hire cars (which require to be pre-booked), we have concerns that “overprovision” may be difficult to measure. We do have concerns also that this may be a prohibitive cost for local licensing authorities, especially with two different tests having to be satisfied, and we have concerns as noted above in relation to private hire car licences effectively acquiring a financial value. We think consideration is required as to whether the proposed section would improve the service offered to the travelling public. We do think a policy introduced by a local licensing authority on the strength of Clause 60 of the Bill may be well received by licensed private hire car operators and drivers in enabling them to make a living and that, accordingly, there may be a benefit in reducing illegal trading by those drivers.
39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

We welcome this provision as it is currently open to abuse and difficult to enforce where drivers claim the vehicle is being used for exclusive hire. However, we also consider that the development of taxi apps may result in increased numbers of vehicles carrying passengers for hire and that the licensing system should therefore be strengthened to ensure that adequate electronic records are made available to the Police and Civic Licensing Standards Officers to ensure that vehicles are being booked legitimately.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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**1. Please supply your name and contact details:**

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<th>Charles Ambrose</th>
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<td>Motor Vehicle Dismantlers Association</td>
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Yes

3. Please confirm whether you are content for your name to be published with your submission:

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4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

Professional

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No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).
Civic licensing – scrap metal dealers

Name/Organisation: Charles Ambrose, Motor Vehicle Dismantlers’ Association

6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

We believe the proposals, as far as they go, will help strengthen the Metal Dealer licensing regime in Scotland. Amongst other things, they will do this by making the relevant businesses more visible, making it easier to distinguish legal operators from illegal, their transactions more transparent and establishing a basis for audit. It will also make it easier to identify who is supplying/receiving materials. However, legislation on its own is not sufficient to drive compliance, and it is absolutely essential that a robust compliance/enforcement programme is implemented.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?
We believe the most effective way to ensure that the legislation regulating Metal Dealers in Scotland results in a reduction in illegal activities is to:

1. Ensure that it applies equally to all relevant parties and activities, irrespective of size/scale. The definition of a metal dealer needs to include, like the SMDA13, vehicle dismantlers and motor salvage operators. Furthermore, it should apply to all persons carrying out such a trade, irrespective of the scale of operation – it is naïve to think that those operating ‘above or below the radar’ have no significant involvement in metal theft. Similarly, the definition of scrap metal must include ‘end of life vehicles’ (ELVs, scrap cars).

2. Focus particular on itinerant collectors and those receiving metal from them. And, like SMDA13, on those businesses most likely to handle ELVs (salvage operators, bodyshops, garages etc.)

3. Ensure legislation can be fully and properly implemented in an achievable timescale. At the time of writing, 12 months after the introduction of legislation in England & Wales, it would appear that SMDA13 licenses have still not been issued by a large number of English & Welsh local authorities.

4. Integrates (as best as possible) ‘seamlessly’ with the existing English & Welsh systems so as to provide a level playing field for all operators in the UK as a whole, avoiding localised market distortions (both within Scotland and the UK as a whole). We understand that ‘metal crime’ very quickly started migrating ‘north of the border’ as a result of the difficulties in obtaining ‘cash’ in England following implementation of SMDA13.

5. Forms the basis upon which the industry can be regulated in practice, by (for example) ensuring that license fees properly reflect the ‘depth’ of required compliance audits. Since October 2013 we have seen a 10-fold range of local authority fees, without any justification for such a variance. It would appear, at one extreme, a local authority levying a 3-year fee of £150, has undertaken no significant background checks on applicants and/or is not undertaking the necessary compliance checks; and at the other extreme a local authority levying a 3-year fee of £1500+ (single site) maybe using this as a means of raising revenue.

6. Ensuring that the responsibilities of the Police, local authorities and SEPA are clearly defined, and that all parties have an understanding of the industry they are regulating (which was not the case in England).
7. Co-ordinates with the activities of other Government bodies operating in this area, particularly the Police & SEPA, ensuring that licenses are only issued to appropriate (‘suitable/ fit & proper’) applicants in the first place, and that ‘intelligence’ is shared between Government bodies/ departments in order to identify non-compliance & eliminate illegality. Handling ‘scrap metal’ is a waste operation and requires from the EA/ NRW/ SEPA an Environmental Permit or Exemption (if site based), and/ or a Waste Carriers Licence. Licenses should not be issued to site-based operators in the absence of these.

8. Make publicly available on-line a register of SMD registrations that can be of practical use by the public and industry alike in identifying legal & illegal operators. The SMDA13 public register is maintained by the Environment Agency, based on information provided by local authorities. Data suggests that in September 2014 many local authorities were not represented on the public register, meaning that 1 year after SMDA13 became law, the public were still largely unable to distinguish legal & illegal operators. This public register should also allow scrap metal yards to be distinguished from vehicle dismantlers, salvage operators etc.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

Removal of the Exemption Warrant is essential for the correct operation of this legislation. Experience suggests that the ‘size’ of a ‘scrap metal’ business cannot be used as a measure to judge compliance – it is not unknown for the commercial ‘performance’ pressures exerted on local depots of national companies to lead to the temptation to ‘cut corners’.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

This requirement does not exist in England & Wales. We have no practical experience of this issue upon which to make a judgment, but it can easily be envisaged that this might cause significant practical problems for operators. However, in terms of compliance, we would ask whether this is judged, by the ‘Scottish Authorities’ to have been of significant use to date in combating ‘metal crime’?
44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

We support the cashless payment proposals. There must be no exceptions to this. Cashless payment systems became established very quickly in England & Wales following the introduction of SMDA13. In this respect, the vehicle dismantling & salvage industry was probably well ahead of the scrap metal industry, in that cheque & BACS payments for vehicle purchases were already established & had been widely used for many years. The scrap metal industry also widely used cheque & BACS payment methods for account customers. Our view is that cash payments at scrap yards should be regarded with suspicion.

It may also be worth pointing out that some companies sought to reduce the impact of cashless trading upon sellers of scrap metal by introducing cheque-cashing facilities on site.

The ban on cash payments for scrap cars introduced as a result of SMDA13 has resulted in a shift in emphasis by unscrupulous (particularly itinerant) operators (of which there remain many) to cash payments for ‘used vehicles’ (which are then delivered to scrap yards).

Many vehicle dismantlers and salvage agents that sell spare parts and vehicles from their site quite legitimately receive payment from customers in cash (as well, of course, as credit/debit card & cheque). As such, the presence of ‘cash’ on site is not necessarily indicative of criminal activities. However, all payments should be both receipted and accounted for.

Currently in the UK about 1.2 million Certificates or Notifications of Destruction are issued annually. But analyses of data on ‘active vehicles’ for the last 10-15 years suggests that 600,000-800,000 vehicles go missing every year. These vehicles are dismantled illegally in the UK or, increasingly, exported overseas. In recent years there has been a dramatic increase in these activities, facilitated both by the ease with which large quantities of vehicles can be obtained and of transporting vehicles/vehicle parts overseas, but also the ability to sell vehicle parts anonymously on public auction sites (such as eBay, Gumtree etc.) and the very low risk of being ‘apprehended’. These operations are based on cash.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

As previously stated, we believe that Scottish Scrap Metal Dealer legislation should reflect that of SMDA13 as closely as possible, so as to avoid distortion in the market place. But we also fundamentally agree that there should be an absolute requirement to keep proper records – including details of what was purchased from whom and when. Under the Motor Salvage Operator Registration scheme which was introduced in England in 2003, MSOs were already required to keep the records detailed in SMDA13. Therefore this posed no particular problem for these businesses. In relation to vehicles, there is already a long-established document that accompanies each vehicle transaction – the V5C registration document. But SMDA13 made no mention of this important document.
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'?

Some of our previous comments/observations apply to this question. We do not believe that there is a need for accreditation or installation of specific equipment such as CCTV. This potentially just adds cost to those naturally inclined to comply, and in the absence of rigorous enforcement serves further to undermine legitimate business.

We have also made previous comment about the huge variations in performance of & fee levied by individual local government authorities. This also applies to ‘interpretation’ of requirements by local authorities.

Anything that contributes towards ‘smoothing out’ local anomalies should be encouraged.
Consultation on the
Air Weapons & Licensing (Scotland) Bill
Scrap Metal Dealers
Submission from the
Motor Vehicle Dismantlers’ Association

These comments are provided by the Motor Vehicle Dismantler’s Association of Great Britain (MVDA), the Trade Association for professional UK vehicle recyclers (dismantlers and salvage agents).

The MVDA was formed in 1943 and represents the interests of approximately 200 UK vehicle recyclers and associated companies. MVDA members are typically small and medium sized enterprises (SMEs), usually family owned businesses. Our role is to provide help and guidance to members, and to represent their interests to Government, industry and consumers.

The MVDA fully supports initiatives that seek to detect and deter vehicle crime, and to protect the public from unfair, dangerous and illegal practices.

We are grateful for this opportunity to comment on legislation relating to Scrap Metal Dealers contained in the Air Weapons & Licensing (Scotland) Bill.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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Name: DOUGLAS CAMPBELL
Organisation: RENFREWSHIRE LICENSING BOARD
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City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
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Yes

3. Please confirm whether you are content for your name to be published with your submission:

✔ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

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- No

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- All of the Bill
- Equalities, climate change and other Scottish Government objectives
- Air Weapons
- General licensing issues
- Alcohol licensing
- Civic licensing – taxi/private hire car licensing
- Civic licensing – scrap metal dealers
- Civic licensing – theatre licensing
- Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?
As a Licensing Board, our responses are focused upon the liquor licensing regime and the liquor licensing provisions of the new Bill. We have a number of concerns about the current liquor licensing regime. We are concerned that the provisions allowing refusal of an application or allowing steps to be taken in relation to a licence on review, with their reference to the licensing objectives, are difficult for local licensing Boards to apply in practice. This is particularly so given the key decisions of the Court of Session in *Brightcrew* and *LidL*. The Bill would, in our view, have been an opportunity to address these issues. While we welcome the fit and proper person test being introduced to the 2005 Act, we consider the addition of the words “having regard to the licensing objectives” in this context unnecessary and likely to give rise to litigation where Boards seek to regulate in the public interest. We think the different formulations throughout the Licensing (Scotland) Act 2005 in relation to the licensing objectives, for example “necessary or appropriate for...”, “having regard to...” and “would be inconsistent with”, makes for complexity in interpretation.

We consider that revised statutory guidance is long overdue. The current guidance has already been shown to be deficient in relation particularly to excluded premises, specifically garage forecourts. Meantime, Boards require to formulate policy statements on issues such as overprovision in the absence of useful guidance. Given that Boards have a duty to have regard to the Guidance, it is important that the Guidance is useful and represents the current legal position.

We note that the new Bill does not address the difficulties around clubs’ licences despite these featuring prominently in a recent consultation. We consider there should be additional restrictions on the operation of members’ clubs and that breach of the provisions of a club constitution should in particular become a breach of licence allowing a Board to review the licence. The privileges allowed to clubs under licensing legislation are in place due to the nature of these organisations. In the absence of licensing controls to ensure that they are operating properly within their own constitution the provisions surrounding club licensing are open to abuse. It is suggested that the constitution itself should not physically form part of a licence, but that the same end could be achieved by introducing mandatory conditions for these organisations’ premises that (a) the club must comply with the terms of its Constitution as shall apply at any given time and (b) that a copy of the Constitution must be provided with applications for a licence and then within 14 days of any change being made to that Constitution, to both the Board and the police. This would ensure the provisions were incorporated in the licence without unduly increasing administration and unnecessarily requiring applications for minor variation upon changes being made. See *Paper Apart for the remainder of this Answer*

We also consider that the legislation should be more explicit that only a registered club should be able to lodge an application for an occasional licence for its own premises, given the relaxation to allow their premises to be subject of an occasional licence under Regulation 3 of The...
24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?

We consider that it is essential that licensing regulates individual behaviour to ensure that the licensing objectives are met, but also that it should regulate localities, as it already does with overprovision statements.

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

It is recognised that alcohol problems present considerable challenges to all community planning partners and initiatives take place in relation to addiction and offending. We consider that the licensing system should allow local licensing boards discretion to decide what is best for the areas they serve and that the liquor licensing system should allow them to assist in delivering community planning objectives including the building of more prosperous and safer communities. We have no comment to make on the land use planning system, other than that existing legislation and case law recognise that licensing regimes are not in place to regulate matters covered under other legislation.

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

With the exception of overprovision policies, which in any event require to seek to promote the licensing objectives, it is difficult in our view to see how existing liquor licensing legislation directly assists with sustainable development and economic balanced areas.
27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?

The liquor licensing system in our view seeks to achieve this through statements of licensing policy which must seek to promote the licensing objectives and the grounds for refusal of applications which include protecting and improving public health.
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

We welcome the re-introduction of the “fit and proper” test, although we think its formulation with reference to the licensing objectives is unnecessary and is likely to be the subject of litigation to clarify what it means. We think the move to a fit and proper test may allow Boards to refuse licences more easily where there are concerns over members of the licensed trade involved in criminality and we welcome the additional powers of police and Licensing Standards Officers to comment on these matters. However, we also have concerns that this test, as it relates to reviews, may only be used in relation to the more serious cases, given that revocation of a licence is the only option available to a Board where it is established.

The rules around supply of alcohol for consumption in public by children and young persons are also likely to assist in reducing crime and preserving public order.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?
Reference is made to Answer 23. We consider that the grounds of refusal and review should be more robust, with the issues raised by Brightcrew and Lidl being addressed in legislation to ensure Boards have more effective powers to deal with- and impose a sanction upon- those premises where poor practices are evident. The new fit and proper person test, with revocation the only available step, may only be used only in the more serious cases. We consider that the issues identified in relation to clubs, if rectified as suggested at Answer 23, may be of some assistance in relation to maintaining public order.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

We welcome the extension of the fifth licensing objective to cover young persons as well as children. This should enable this licensing objective to be engaged in relation to reviews based on test purchases.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?
It is to be hoped that this will be effective in ensuring that only those who ought to have a licence obtain one or remain licensed. However, we have some concerns by the addition of the words “having regard to the licensing objectives” throughout these provisions. We think this will be open to interpretation, particularly in light of Brightcrew, and that the effect and extent of the provisions may not be clear until there has been litigation on this point. We do have concerns that the provisions may not be fully utilised given that the only penalty available in the event of the new test being established is that of revocation. In cases of moderate seriousness particularly, the difficulties created by the LidL decision remain and leave Boards to identify suitable steps to achieve some “forward-looking” purpose.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

We are not aware of any specific unintended consequences in our area.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

Given that the relevant legislation sets out at length the offences considered “relevant” under the Act, we think this matter should be left to the discretion of local Licensing Boards. While the Bill seeks to delete the current provision excluding spent convictions, it is probable, unless further exclusions are made from the scope of the Rehabilitation of Offenders Act 1974, that a Board will in any event have to consider whether the interests of justice require disclosure of spent convictions, having regard to the age, nature and seriousness of these matters.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
We do think that the provisions around transfers in section 33 and, particularly, 34 of the 2005 Act, could also be simplified by adding some new provisions to the Bill. The provisions of section 28 of the 2005 Act around licences ceasing to have effect 28 days from an “event”, particularly insolvency, mean that on a strict reading a licence may come to an end and be unable to be transferred prior to an insolvency practitioner being appointed by the Accountant in Bankruptcy, causing unintended consequences. It is unclear why the dissolution ground can only apply to a person other than an “individual, partnership or company” and this can lead to situations where a premises licence may cease to have effect, simply as no-one will realistically be able to trade under the previous licence again, so that a new licence has to be sought.
Renfrewshire Licensing Board  
Paper Apart for Response in relation to Air Weapons and Licensing (Scotland) Bill

Continuation of Response to Question 23... We also consider that the legislation should be more explicit that only a registered club should be able to lodge an application for an occasional licence for its own premises, given the relaxation to allow their premises to be subject of an occasional licence under Regulation 3 of The Licensing (Clubs) (Scotland) Regulations 2007, which does not apply to other licensed premises.

We would also identify further areas for reform in liquor licensing-

(a) We consider the provisions in relation to insolvency to be confused. Insolvency is presently a ground under section 28 upon which a licence ceases to have effect unless a transfer application is made timeously by a prescribed person. However, it is not a ground for refusal of either a premises or occasional licence, which means that a person who has lost a licence under section 28 could possibly apply for a new licence for the same premises. It is unclear why this should be the case.

(b) We are aware that Boards and practitioners alike have had to improvise as to the meaning of the words “ceased to be used for the sale of alcohol” in section 28. The Act does not specify what happens when there is a temporary cessation in trading from any premises. Similarly, there is no provision as to what happens when premises are destroyed and rebuilt. We think there could be more clarity around these provisions.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☑ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

**40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?**

UKLPG represents the LPG industry throughout the UK. LPG (Liquefied Petroleum Gas – also known as propane and butane) is sold in portable cylinders, most being made of steel with brass fittings. As such many are misappropriated. In recent years the LPG industry has replaced 400,000 cylinders per annum, whilst only scrapping 200,000 suggesting that 200,000 are misappropriated each year, finding their way into metal scrap yards or illegally exported.

LPG cylinders in almost all cases in the UK belong to the gas supplying company who provide the cylinder to the users under contractual arrangements, in most cases involving a payment of a deposit. Handling of cylinders therefore by SMDs or others who seek to misappropriate them has been of growing concern to the industry. As such it has worked closely with police forces throughout the UK, assisting direct action and sharing intelligence. UKLPG sits on the Association of Chief Police Officers Metal theft Working Group.

Since the introduction of cashless trading in England and Wales, and the further requirements of the Scrap Metal Dealers Act 2013, police report fewer incidents of cylinders found in scrap metal sites suggesting the combined provisions are working. UKLPG would suggest that provisions in Scotland reflect those now introduced in England and Wales.

UKLPG therefore welcomes the provisions proposed for Scotland, in particular the introduction of cashless trading, the repeal of the exemption warrants and the requirement for improved record keeping for both fixed SMDs and itinerant dealers.

**41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?**
So long as an accreditation scheme is not used to circumvent the improved legal provisions, then any action that improves the way in which Scrap Metal Dealers operate within the sphere of public interest would be welcomed. It may be that accreditation, based on quality and best practice, is for the industry itself rather than the authorities.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

UKLPG welcomes the removal of exemption warrant system, as we believe this both simplifies and strengthens monitoring and enforcement leaving no doubt that all SMDs operate under the same conditions.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
We support a fully cashless regime and believe that opening the door via “very small transactions” could quickly lead to abuse and would be tougher to police. Questions arise in what constitutes a “very small transaction” and how would thresholds be set (metal weight/amount of cash)? Without any requirement to keep the metal on site how could anyone prove that, say, 5 small transactions were not actually one larger transaction for which cash was paid?

Gas cylinders can illicitly change hands for a small rounded cash consideration (equal to bank note denominations) and so allowing cash transactions in any form may make gas cylinders even more appealing to those trading in illicit goods. We urge the Committee to stand firm and ban all cash trading so ensuring similar conditions throughout the UK and reduce any risk of trade moving from England to Scotland to exploit this potential loophole.

45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
UKLPG believes it is important that record keeping requirements reflect those in the Scrap Metal Dealers Act of 2013. Gas cylinders are sold and returned throughout the UK, and with a number of member companies trading both in Scotland and England, consistency in legislative requirements in the case of SMDs would be supported.

Stolen gas cylinders, because of their portability, can be illicitly traded anywhere in the UK so requiring consistent record keeping would help any UK wide investigation by police or joint authorities.

We do not believe the record keeping proposed is unduly onerous – we have not heard of any comment that it has been un-manageable in England and Wales, and evidence suggest that the Act has resulted in fewer metal thefts.

46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?
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*1. Please supply your name and contact details:

Name: Stephen McDonald, Chairman ALAEVsScotland
Organisation: Association of Licensed Adult Entertainment Venues, Scotland
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

☑ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

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☑ Yes

☐ No

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☑ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☑ General licensing issues

☑ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

The Association
1. considers that if adult entertainment venues must be re-defined as sexual entertainment venues and require to be so licensed the administration of that licensing should be carried out by licensing boards to prevent dual licensing and conflict between differing licensing regimes
2. is concerned that the definition for adult entertainment venue in the Licensing (Scotland) Act 2005 is different from the definition of sexual entertainment venue which could lead to difficulties of interpretation
3. has no comment to make on the term “audience”
4. has no comment to make on the term “financial gain”
5. has no comment to make on the term organiser
6. has no comment to make on the term “premises”
7. the association has no comment to make relating to the definition of “sexual entertainment” however wish it noted that members believe the entertainment provided within their premises does not fall within the definition of “sexual entertainment” as the purpose of the entertainment provided within the adult entertainment venues belonging to members is such as to entertain customers by way of exotic dance and performance and not to sexually stimulate members of an audience. Further the Association questions how the term “sexual stimulation” can be determined.
8. has no comment to make on the term “display of nudity”

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a
sexual entertainment venue: does this have any unintended consequences?

The Association
1. is concerned that this proposal would encourage the very criminality the Scottish Government seeks to prevent by permitting this type of entertainment to potentially take place in unlicensed venues where performers and customers might be subject to harm
2. that the Scottish Government is failing to deal with crimes and offences of a sexual nature which take place in private dwellings – vis the recent report by Police Scotland on prostitution and human trafficking
3. that the Scottish Government is basing its proposals for licensing of “sexual entertainment” on a false premise that current adult entertainment venues are venues which are run in such a manner that performers and customers are at risk. This premise is flawed as was demonstrated in the Scottish Government’s own report Working Group on Adult Entertainment which reported in 2005. Adult entertainment venues are amongst the best run establishments in Scotland as evidenced by the complete lack of crimes reported or convictions made relating to the running of these premises.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

The Association considers this to be a flawed proposal which if implemented would result in the closure of some 20 venues in Scotland and the loss of some 1500 jobs. The Association believes that a “grandfather rights” mechanism should be set up to protect the current well run businesses. The Association believes that if current dedicated ‘adult entertainment “venues are to be closed due to this process it should be for the licensing authorities to demonstrate what harm or criminality which would be prevented or was required to be tackled before the decision was taken to close existing businesses.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations,
revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

The Association believes that the licensing of sexual entertainment venues should be carried out by Licensing Boards and not local authority licensing committees to prevent conflict of regimes and dual licensing.

54. Are there any barriers to licensing authorities operating the new licensing regime?

As above the potential for conflicting regimes is high and the proposal does not meet with the terms of the Scottish Government’s desire for better regulation.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

The Association has no other comments to make on the Bill.
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*1. Please supply your name and contact details:

Name: Douglas Meikle
Organisation: The Scotch Whisky Association
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliament’s “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ Professional

☐ Commercial

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☐ Yes

☐ No
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☐ Yes
☒ No

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☒ Air Weapons

☑ General licensing issues

☑ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

We believe the Licensing (Scotland) Act 2005 is fit for purpose. It is important that there is consistent application and enforcement of the Act.

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

We consider that a licensing system inevitably will have an impact on both individual behaviour and that of the wider community.

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

We have no evidence to suggest whether or not it does.
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

Refer to answer to Q25.

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

The licensing system is not designed to, nor have the intention of supporting the listed criteria.

Protecting public health is one of the objectives under the Licensing (Scotland) Act 2005. Those subject to its requirement have a role to play in promoting responsible consumption of alcoholic beverages.
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

We believe that a number of additional measures contained in the Bill will support the licensing objectives as set out in the 2005 Act.

We are supportive of the aim of the new offence of supplying alcohol to children or young people for consumption in a public place, as set out in the Policy Memorandum, to tackle outdoor drinking dens which consist of small groups of people below and above the legal purchase age. However, it is important that the provision is designed in a way that does not result in unwelcome and unintended consequences; for example the criminalisation of parents that serve alcohol to their children at family picnics. Guidance to police and licensing boards on this issue will be important.

The ‘fit and proper person’ provisions will also make a contribution.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

In Scotland we have a comprehensive licensing regime; the Bill makes further adjustments and enhancements to the Act which we believe will make a contribution to reducing crime and preserving public order.

We believe the biggest contribution to addressing this issue is consistent and effective enforcement of the provisions of the current Act.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

The re-introduction of the ‘fit and proper person’ test has the potential to contribute towards implementation of all the licensing objectives.

In our response to the consultation on Further Options for Alcohol Licensing we supported inclusion of a definition of ‘fit and proper’. We note in the letter dated 1 September from Scottish Government officials have set out a range of regimes which use the ‘fit and proper’ test and we can see the benefit it will provide in allowing Licensing Boards to consider a broad range of information in making their decisions. However, that does not preclude developing a definition that would support consistency in its interpretation and application.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?
34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

**Overprovision**

Distillery Visitor Centres (DVCs) are major tourist attractions. They attract more than 1.3 million visitors a year and contribute £34 million in value to the local economy. They promote not only Scotch Whisky and Scotland, but many other local products.

The Bill will provide Boards with powers to assess overprovision for entire Board Areas.

We are concerned this has the potential to negatively impact on the development and creation of new DVCs.

It would appear unfair that a distillery within a Board’s area could not develop or build a new DVC because there was blanket over provision ruling applying to the whole of the Board’s area. In other words a DVC in rural environment being impacted because the number of licenses premises in a local town or other part of the Board’s area, especially as most alcohol sales from DVCs are to tourist and visitors from outwith the area.

Section 57: Personal Licences: grant, duration and renewal

We support the proposal to address the current situation which prevents a licence holder who has their licence revoked for failing to undertake refresher training, from reapplying for a licence within 5 years.
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*1. Please supply your name and contact details:

Name: Alexander Kelman
Organisation: Aberdeen City ADP
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 107
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

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☐ No

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☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

Accountability for Licensing Boards is lacking. In addition to the requirement that licensing boards produce an annual financial report (Section 55) measures we would like to see brought forward include:

- A statutory duty on licensing boards to promote the licensing objectives
- A statutory duty on licensing boards to record, collate and report on a comprehensive licensing data set.
- A statutory duty on licensing boards to produce an annual report, including outlining how they have complied with their Statement of Licensing Policy, including details of decisions made that are contrary to the Statement of Licensing Policy giving clear reasons why such decisions were made.
- A requirement for the Scottish Government to regularly review and update the statutory guidance for licensing boards.
- Retaining the requirement for overprovision assessments to take account of the number and capacity of licensed premises, supplemented with a permissive ability to also take account of licensed hours, numbers of members’ clubs and occasional licences.

24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?
We would support a whole population approach as this has been found to be more effective than measures which seek to regulate individual behaviour.

The prevention paradox highlighted by Poikolainen et al (2007)\(^1\) identified the top 10% of heaviest drinkers in their national sample and then compared their outcomes to the remaining 90% of drinkers. This study clearly identified that targeting the heaviest drinkers in a population is unlikely to reduce the associated health burden of alcohol-related harms as the small risk multiplied by a larger population can produce more cases than a greater risk multiplied by a much smaller population.

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

The current licensing system in Scotland does not support the land use planning system, community planning and regeneration. When alcohol has been identified as a Single Outcome Agreement (SOA) priority it is vital that Licensing Boards recognise this and make the connection. The licensing system should also be aligned to and compliment community planning priorities and strategies.

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

Too much consideration is being given to the "alleged" economic argument to the detriment of the evidenced harms to health submitted by health.

There is no objective to promote the economic development of an area but this is often a prime consideration for licensing boards. There is ample evidence to confirm the harms to physical health and the negative social impacts of alcohol. Licensing Board members should concentrate on their prime function – which is the promotion of the five licensing objectives and the licensing of premises or persons for the sale of alcohol.

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

In principle the licensing system in Scotland is there to support health and planning, addressing health inequalities and public health and wellbeing outcomes but our experience is that in practice this does not happen.

We feel that if Licensing Boards were held to account for producing outcomes for the 5 Licensing Objectives they would be less inclined to discount the health evidence,
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

The bill has more focus on crime and the preservation of public order and has missed the opportunity to highlight the benefits of promoting and improving public health.

We object to the change in wording under section 54(2)(b) and would suggest that “licensing boards must have regard to the number and capacity and licensed hours of ……”

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

As documented in Q23 we would stress the need for annual reporting from all Licensing Boards using a common format across Scotland.

Data collection in relation to alcohol sales would also help inform figures for volume of sales in specific localities and provide baseline data for estimated consumption.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
We welcome
- the inclusion of 16 and 17 year olds by the act and the impact this will have on the licensing objective of protecting children from harm, and
- the clarity around the overprovision statement.

Hopefully comments made in response to question 23 can also be considered as these would certainly enhance outcome reporting and monitoring in relation to the licensing objectives.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

The re-introduction of the “fit and proper person” statement is welcome but will need to be accompanied with a clear definition of what this means. How will this be measured?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

Legal representatives are more prepared to give reasons why applications should be exceptions to the Statement of Licensing Policy when there is an over provision statement and are concentrating on economic and community planning arguments to make their cases.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?
34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

It would be helpful if Licensing Boards were given more guidance on:
- The conduct of hearings
- Irresponsible drinks promotions
- The public health objective
- How to assess overprovision, including how to measure capacity
- Any new, relevant legislation that is implemented.

This guidance should also be reviewed and updated regularly.

We approve of the changes identified in section 42 which would align the licensing policy period to election of councillors for local government areas and the introduction of the new criminal offence – the purchase or attempted purchase of alcohol for or on behalf of a child or young person.
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**1. Please supply your name and contact details:**

Name: William McDonald

Organisation: 

Address 1: 

Address 2: 

City/Town: 

Postcode: 

Country: 

Email address (if no email leave blank): 

Phone Number: 

2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

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☒ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

Theses venues are for adult entertainment and a customer choosing to enter such venues. It cannot be assumed that all adults see dancing as 'sexual entertainment'.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

There is no way in which it can be monitored that a venue would have less then 3 occasions of sexual entertainment. An adult entertainment venue should be licenced at all times.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

Yes there are disadvantages as Edinburgh and Glasgow may then have very different rules and guidance. This is confusing for both customers and staff who may visit or work in two cities. An authority which controls alcohol licensing should not have authority on these venues and decisions.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

Yes. There are well run and well established adult entertainment venues who have their place in a society where people have the right to choose what they find ‘entertaining’.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

I have a member of family who works in a lap dancing club and I know she is not a sex slave or a prostitute. I think it is ridiculous what you are trying to do. I ask you to think again about closing lap dancing clubs as they do no harm customers or staff who choose to work there. Many staff are happy in the environment and women should be free to choose their job. We do not want Scotland to regress.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Dr Graham Wightman
Organisation:
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

☐ No

3. Please confirm whether you are content for your name to be published with your submission:

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☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?
Whilst the majority of air weapon owners are responsible, accidents continue to happen. In Scotland the number of offences and injuries has been falling, but as a percentage of firearms offences and injuries they have been increasing since 2010. Around half of these injuries occur to youngsters under the age of 20.

Whilst fatalities in Scotland from air weapons are fortunately very few, within the UK there can be one or two fatalities a year. Other regions of the UK have from time to time followed legislation developed in one of the other member countries, and well crafted legislation in Scotland could become a model for other regions and hence save lives.

Research undertaken at Abertay University has looked at the penetration of air weapon pellets into various materials and pellets can penetrate 10-15 cm into ballistic gel models. Turkish researchers have shown similar results with 8 cm penetration into skin stimulant-ballistic gel models with air weapons below 16 J. Pellets striking bone embedded in gel can deform and may fragment, causing multiple injury tracks. Whilst real life situations are complex due to clothing, skin, muscle, and bone, the evidence so far suggests that air weapon pellets have the potential to penetrate vital organs, and there are published accounts in the literature of accidental and deliberate shootings that confirm the injuries and fatalities that can occur.

One problem with any weapon is that it may be perceived as 'safe' if there are no restrictions on it. It is difficult to propose a safe limit for air weapons, and statistics from the USA show that there are around 600 cases a year of people reporting to emergency rooms with injuries from paintballs, although this figure is far short of the 20,000 reporting with injuries from air weapons. The limit of 1 Joule for needing a certificate will therefore exempt many paintball and airsoft activities, but it should not therefore be assumed that no injury could occur.

The Bill alludes to the Firearms Act 1968 but it may be worth stating the upper limits that a certificate will cover i.e. 6 and 12 foot pounds (8.2 and 16.3 Joules)

The aim of this legislation therefore needs to be to limit access to air weapons for potentially irresponsible users whilst causing minimum disruption to those who have legitimate uses for air weapons for vermin control or as a hobby.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?
15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?
18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?
22. Do you have any other comments to make on air weapons licensing aspects of the Bill?
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: John Watson
Organisation: ASH Scotland
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Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 110
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☑ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☑ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?
Local Government and Regeneration Committee – Air Weapons and Licensing (Scotland) Bill

No. We note that the principal policy objectives of this Bill are “to strengthen and 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”.

As the independent Scottish charity taking action to reduce the harm caused by tobacco use we will focus on the need to advance public health through adequately regulating the supply of tobacco. Our submission highlights what we feel is a large and unwarranted gap in the existing licensing regime – an anomaly which this Bill is well placed to address.

That there is a comprehensive licensing regime regulating who is able to sell alcohol and how they are able to do so is well known. There are also licensing schemes in place to govern a range of other activities, such as having people staying in a caravan on your land, felling trees, exhibiting performing animals and placing tables or chairs on the pavement outside your premises (full details are available from www.gov.uk/licence-finder).

It is a failure in the current licensing regime that the supply of the product which is far and away the greatest cause of preventable ill health and death is not subject to such restrictions. Everyone is legally entitled to sell tobacco – and while many retailers voluntarily restrict this to over-18s, there are no required skills, training or qualifications.

Tobacco has been a priority area for health improvement under successive Scottish administrations. Recently we have seen legislation to remove retail tobacco displays and to ban unstaffed vending machines. We have comprehensive legislation to prohibit tobacco advertising and of course a ban on smoking in enclosed public areas. Yet at the same time the sale of tobacco remains a very open and liberal market.

The Scottish Government has set a key national outcome that we will live longer, healthier lives and has adopted an ambitious target of making Scotland free from tobacco by 2034. Yet the ubiquity of supply presents tobacco as a normal, everyday consumer product, just as the tobacco companies wish us to see it. We know that growing up in an environment where tobacco use is the norm makes children more likely to take up smoking themselves.

A pregnant smoker is at higher risk of having her baby born too early and with an abnormally low birth weight. A woman who smokes during or after pregnancy increases her infant’s risk of death from Sudden Infant Death Syndrome (SIDS). At a societal level, nearly two thirds of smokers start before they are 18 and most now indicate that they want to stop. The smoking rate in the poorest communities is 4-5 times higher than in the richest, making smoking a huge cause and effect of health inequalities.

The Scottish Government has set a key national outcome that we will live longer, healthier lives and has adopted an ambitious target of making Scotland free from tobacco by 2034. Yet the ubiquity of supply presents tobacco as a normal, everyday consumer product, just as the tobacco companies wish us to see it. We know that growing up in an environment where tobacco use is the norm makes children more likely to take up smoking themselves.

The new alcohol licensing scheme explicitly introduced a new policy objective “to protect and improve public health”. We propose that extending licensing arrangements to cover sales of tobacco would provide a significant opportunity to pursue the improvement of public health through enabling the setting of local health goals and regulating the supply of tobacco accordingly and generating an enforcement regime with real teeth, helping to reduce the supply of tobacco to young people and tackling the problem of illicit tobacco.

In considering whether a licensing scheme could make a significant contribution to regulating the supply of a harmful product, we ask the Committee to consider whether it would back removing the requirement of a license to sell alcohol, allowing anyone to do so. We suggest that such a move would make the regulation of alcohol in support of public health goals more difficult, and hence that this is not something the Committee would be likely to support.

We would be happy to develop these ideas in oral presentation to the Committee.
24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?

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

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

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?
Submission Name: Scottish Saltires Modern Pentathlon

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

As an organisation we feel that the Bill should aim for a light regulatory touch with minimum cost when it impacts on bona fide sport clubs such as Scottish Saltires Modern Pentathlon and Scottish Tetrathlon. This will help limit potential detrimental effects this Bill might have on the various Scottish Government objectives and initiatives in Scottish Sport such as: "Girls on the Move" (75% of our participants are girls) and "Giving Young People a Sporting Chance"
1. **Air Weapons Licensing**

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. **In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?**

| We don’t think it will. |

Forcing young children to have to shoot at existing club premises where the number of shooters using airguns will increase dramatically if the bill is passed, will place them in a more heavily lead contaminated environment, this would be counter to public health policies.

In addition our members are taught to be extremely safety conscious and look after their pistols responsibly as they are given training by Scottish Saltires MPC and Scottish PC Tetrathlon Range Officers. Scottish Saltires MPC and Scottish Tetrathlon work hand in hand in training at all levels. 90% of our members start the sport of Modern Pentathlon through Scottish Tetrathlon.

14. **Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?**
There is not currently sufficient provision of air weapons clubs across all areas of Scotland. Many members of Scottish Saltires MPC are not in an area that can support a traditional club due to geography.

Members currently train with Scottish Saltires MPC and Scottish Tetrathlon in various locations and practice on private land without incurring the cost of being members of an Air Weapon Club. If the bill was passed and Scottish Saltires MPC and Scottish Tetrathlon (under the auspice of Pony Club) were to become an approved air weapon club which uses multiple premises across Scotland this would provide sufficient capacity. By virtue of Schedule 1 Exemption 1 Scottish Saltires MPC and Scottish Tetrathlon members would be able to train with Scottish Saltires MPC and Scottish Tetrathlon at various premises and on private land without requiring individual certificates. Schedule 1 Exemption 1 would need to be slightly amended to reflect this.

As many of our members are under 14 years of age Scottish Saltires MPC request that Schedule 1 Exemption 1 be amended to allow a parent/guardian/adult over 21 be allowed to supervise both training and competitions.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
If each of our members were to require an air weapons certificate it will add cost and bureaucracy to a sport/organisation which is well controlled and teaches young people responsibility and respect. If all our members were required to go through the time consuming and costly process of both obtaining a licence and joining an additional club, our members would be unlikely to take up the sport and may also choose to leave the sport.

If passed as is, members will not be able to repair their air weapons either at their own homes or during a competition without the presence of a registered firearms dealer. There are not sufficient firearms dealers to service this requirement and they will add additional cost to enter this sport. Scottish Saltires MPC has proved to be, along with Scottish Tetrathlon, the grass roots organisation for many young athletes who have gone on to become elite athletes in modern pentathlon.

We currently have 70 members regularly competing approx 75% are girls and 70% are under 14 years of age.

Many Scots have gone on to compete at elite level, representing GB and part of the World Class program. Currently competing are 2012 World Champion and 2012 Olympian Mhairi Spence who is from Farr near Inverness, Inverurie’s. Freyja Prentice, reserve athlete for London 2012, junior individual medal winner at World and European level. Joanna Muir from Castle Douglas spent time on top of the world junior ranking list this year. Aberdeen’s Eilidh Prise has won individual youth world and European medals and started 2014 on top of the youth world ranking. Maili McKenzie from Dumfries represented GB at junior world and European championships this year. Mhairi, Freyja, Jo and Eilidh are part of a group of 7 women on the GB world class program on Podium and Podium Potential which is clearly dominated by Scots women. They all started at grass roots level through Scottish Tetrathlon, moving onto Pentathlon as a result of the high standard of performance they showed in Scottish Tetrathlon.

Airgun shooting is a sport accessible to all ages and disabilities. Scottish Saltires MPC has members who have shown so much talent in the shooting phase of Pentathlon they have gone on to represent Scotland at International Junior shooting competitions. This bill will deter people starting recreationally due to the bureaucracy and so stop the development of competitive shooters at all levels.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

The majority of our members are under 17 and as such the air weapons licensing systems would have a huge effect on them. If however we were allowed to become an approved air weapon club and therefore exempt from individual licences this would work for our organisation.

Each person will require an air weapons certificate which will add cost and bureaucracy.

They will not be able to repair their weapons without a registered firearms dealer, again adding cost and time. In addition as they are 14-17 they will probably be unable to drive and therefore find it difficult to access a firearms dealer especially in the more remote areas of Scotland.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?
All competitors require a licence incurring cost and bureaucracy. This would require event and visitor permits. This would be totally untenable for our sport as we often have more than 20 visitors attending our competitions and training events which run monthly. Having tried and failed to get visitor permits to take across to Northern Ireland we know how difficult and impractical such a requirement is.

In 2013 the Irish Pentathlon team came over to Scotland to compete against Scottish Saltires. All competitors were youth's and gained invaluable experience from competing at this level against another nation. The Scottish youths took a convincing win which gave the sport a boost and encouraged participation. This event would be impossible under the current proposals in this bill.

If Scottish Saltires MPC were to become an approved air weapons club as requested previously, according to our interpretation of Schedule 1 section 1b(i) we would not require an event or visitor licence which would allow us to continue to run our Schedule 1 section 1b(i) we would not require an event or visitor licence which would allow us to continue to run our competitions which are only open to and attended by our members.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

We do not agree that a fee should be payable for unsuccessful applications.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

We think that the air weapons licensing system will have a negative effect on the public sector in Scotland. Given that the Firearms teams are already over stretched, resourcing this requirement for licensing of air weapons, clubs, permits will place unprecedented demand on already slim resources.
21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

We believe that in making it difficult or costly to run our events (run, shoot, swim, fence and ride) people will choose not to put themselves through the difficulty of obtaining an air weapons certificate, a visitors permit or joining an additional club, nor to pay the additional costs we will need to charge at competitions to take account of the cost of obtaining event permits. This will mean that our grass roots organisation that currently has up to 70 children from 8-25 competing monthly will no longer exist. In the future we will not have the next generation of Modern Pentathlete or Air Pistol Olympians as they will have no foundation.

The risk of introducing a requirement for an airgun license may encourage applicants to go the full hog and apply for a shotgun/firearms certificate that will thereby increase the number of more high powered/more lethal weapon ownership.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

We respect the bill and are keen to work with it. However as it is currently drafted it would be unworkable for us. If however Scottish Saltires MPC and Scottish Tetrathlon were to become an approved Air Weapons Club with multiple premises for training and competitions accross Scotland and allowing all our members and visitors to use air weapons without holding individual certificates, as detailed above, this would allow them to work within the bill and the continuation of our sport along with the added benefit of a pipeline of elite athletes into Modern Pentathlon and the sport of Air Pistol Shooting to follow in our footsteps.

Allow Scottish Saltires MPC to become an approved air weapons club.

Allow all members within Scottish Saltires MPC NOT to require an air weapons certificate, but that Scottish Saltires MPC will hold the air weapons certificate for all weapons used.

Allow Scottish Saltires MPC Qualified Range Officer to repair, transfer or sell air weapons.

Allow anyone visiting from England, Northern Ireland or Wales to be exempt from visitors permits.
Do not limit the size of visiting groups.
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Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

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*1. Please supply your name and contact details:

Name: Catherine Molloy
Organisation: East Lothian Council
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliament’s “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☑ Professional

☐ Commercial

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☑ Yes

☐ No
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☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation: East Lothian Council

3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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 and the Licensing (Scotland) Act 2005 require updating in various areas. The current procedures for advertising in local newspapers etc should be updated to permit technology based options e.g use of e-mail/advertise on the Council website.

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

This is a concept that could be considered if the licence is of a personal nature. At present, there is adequate regulation in respect of land/buildings.

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

The civic licensing system in Scotland can interact so far as it can assist with land use, if the licence relates to land use. There should be an element of caution applied to ensure that there is no “over regulation” which may stifle regeneration.
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

The civic licensing system in Scotland can assist as it grants licences for those wishing to carry out economic activities.

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

Presently, the civic licensing system does not directly address the above issue. There may be an indirect effect.
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

- Safety
- Accessibility
- Value for Money

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

There is no obvious benefit for customers and/or the local authority

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?
There may be initial disruption in terms of the administration / resourcing a overhaul/ the trade activities. However, a 1 tier system is an efficient outcome as it would streamline legislation and processes. There is also a beneficial practical effect on the public for hiring a taxi and perhaps an economic benefit.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

The above provisions in traduce consistency and get rid of unjustifiable differences.

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

This is a proposal that would be welcomed (in terms of licensing) but may put a further strain on resourcing.
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

The above proposals are consistent and should reduce criminal activity by targeting all metal dealers, regardless of the turnover.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

If so, this should not fall within the remit of the licensing authority. If there is a separate accreditation scheme it should be enforced by another body to ensure objectivity and remove a “dual” role for the licensing authority.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

This is a proposal that would be supported.
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

This requirement may not be needed if there are other processes to deal with related criminal activity. However, this is difficult to assess without input from Police Scotland.

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

There is merit on this proposal but it depends on the practical effect of it on the metal dealers.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

It is a welcome proposal if monitoring criminal activity. It may be viewed as prejudicial if it is not applied to other licences. Consistency should be sought.
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'?

See previous answer. Consistency is required. There will be the potential for complaint if this licence is perceived as being treated differently from others and/or imposing requirements which others do not.
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

Only issue is ensuring that the public is aware of it – there should be as much publicity as possible.

48. Are there additional costs or resource implications on theatres or licensing authorities?

There may be an immediate resource the transition period but long term benefits should negate this.

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?

This should be effected in the usual manner.
8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

Statutory definitions will always allow the possibility of legal loopholes being found or created, and thereafter exploited. The better and more complete the definition, the smaller the opportunity for such opportunities, hopefully.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

This will potentially give the opportunity for a venue to avoid the licensing regime while still having lucrative activities, albeit only three times a year. The likelihood however seems somewhat small.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

It would allow a Council to impose/operate a zero tolerance policy if they wish without consideration of individual applications. This may leave authorities open to allegations of bias against such activities or stifling trade of such a nature.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

The regime mirrors that in place for other licences in terms of Schedule 1 in most respects. Subject to general comments elsewhere regarding the need for some updating and adaption to modern practices, this system should remain adequate.

54. Are there any barriers to licensing authorities operating the new licensing regime?

The potential for objections from applicants will always remain, but this should not generally be considered to be a barrier to the regime being operated.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

No.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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*1. Please supply your name and contact details:

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City/Town:
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Country:
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Phone Number: 

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SUBMISSION ID NUMBER

Submission Number: 113
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☑ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☑ Professional

☑ Commercial

* 5. Do you wish your email to be added to the Committee's distribution list for updates on progress of the Bill:

☑ Yes

☑ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes

☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☑ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland's climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

We don't think it will, as there are sufficient laws in place already to deal with those misusing airguns. Further legislation will not stop criminals being criminals!

We would assume that over stretched police resources having to take the time to process tens of thousands of applications from airgun users may put a strain on their ability to keep up with the ownership and suitability of shotgun and firearm certificate holders and be unavailable for reactive police duties

It will initially increase crime by way of criminalising many airgun owners who benignly fail to apply for a certificate or visitors permit.

There is a risk, that the increased use of airgun pellets(lead) in club premises may increase participants exposure to a more heavily lead contaminated environment – this would be counter to public health policies.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?
There is currently a significant shortage of club premises where there would be sufficient range time and space available for airgun sessions. Current approved clubs cater for several target shooting disciplines, mainly .22 and due to the difference in distances of each discipline they cannot be shot concurrently. Given the lack of club premises in many parts of Scotland, consideration of the time taken to increase the number of approved premises must be factored in, especially as planning application may prove to be a slow process. The right to shoot safely on private property with the landowner’s permission should be retained as current legislation already allows for prosecution if the “missile” is not retained within the landowner’s own boundaries. This existing law could be more frequently applied to those abusing their airguns without further impact on the responsible shooters.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
Without doubt the proposed legislation will eventually reduce the number of people using airguns and whilst this may eventually reduce the number of guns in circulation it will impact only on those who do use airguns responsibly, as the associated cost and bureaucracy will make many leave the sport or not even start, but will probably have little significant impact on those wishing to abuse airgun use.

Given we are a "United Kingdom" with no border controls it will be all too easy for those wishing to use airguns inappropriately to acquire them in south and bring them "unaccounted for" into Scotland, whilst those law abiding citizens wishing to come to Scotland for competition and training will have to apply for a permit and so in all likelihood will just not come, to the detriment of the sport and the Scottish economy.

Airgun shooting is a sport accessible to all ages and many disabilities. The elite sportsmen and women in target shooting, started as recreational shooters, learning respect and responsibility for all guns, very often at a young age, starting off with low powered guns i.e. air rifles and pistols, before being allowed to graduate to more high powered firearms. The reduction in a recreational shooting fraternity due to this bureaucracy will narrow the pool of potential talent that may well provide the next Scottish Olympic or Commonwealth medallists in all shooting disciplines and Modern Pentathlon.

The proposed legislation appears to require all repairs and testing of airguns to be carried out by a registered firearms dealer, which means basic running repairs cannot be done onsite at home, at a competition or during practice/training by owners and coaches who are more than capable, without incurring delays and dealership costs. This means at a practical level many coaching sessions and competitions will not be able to run as there are insufficient RFDs available/interested to service the need.

This section of the document may be better if referring to “significant modifications need to be carried out by a registered firearms dealer.”

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?
Local Government and Regeneration Committee – Air Weapons and Licensing (Scotland) Bill

As an organisation we are involved and follow youngsters shooting performances at Scottish Tetrathlon events with a view to talent spotting. These youngsters start shooting air pistols from 8 years old in many farm barns etc under the supervision of knowledgeable adults, so premises licencing and airgun certification will be another hurdle for both parents and the youngsters and may well be the straw that breaks, so they never even give it a go/start. Currently Scottish Tetrathlon set up their shooting ranges in sport centre gyms and the like, where they can cater for over 100 competitors/day. Currently there are really no permanent club premises that can accommodate these events so premises licencing will have a devastating effect on this sport and therefore all the youngsters concerned, unless Scottish Tetrathlon is granted ongoing event licences that may cover all their competition and training ranges.

Currently air pistol shooting among the youth is flourishing - the Scottish Junior Pistol squad only recently formed, has performed amazingly well already, bringing home 2 bronze and 2 silver medals from a Junior International match at Bisley attended by approximately 175 competitors all shooting airguns. 1 junior boy came 2nd at the British 10m air pistol Championships and won gold in the Junior Rapid Fire championships. These results bode well for the future of competitive air pistol shooting in Scotland and this deserves not to be strangled just as it is starting!

They will not be able to repair their weapons without a registered firearms dealer, again adding cost and time. In addition as they are 14-17 they will probably be unable to drive and therefore find it difficult to access a firearms dealer especially in the more remote areas of Scotland, this then leads to how the gun is to be transported – possibly through Royal Mail/couriers and so giving untold numbers of uncertificated people access to the guns being transported!

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

Not applicable to our organisation

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?
Once at the level where they are shooting competitively we feel sure the individuals will readily comply re obtaining an airgun certificate, however our concern is for the future of the sport as we feel there will be significant resistance/apathy to either the cost or hassle of obtaining a certificate by potential newcomers to the sport and their parents.

Pistol shooting in particular is only just starting to recover from the post Dunblane legislation with regard to number participation. The risk of this legislation further stigmatising a bone fide Commonwealth and Olympic sport justifies a light hand, making it easy for newcomers to the sport being covered by club/event licences and then being eased through the certification system by virtue of being a member of an approved club/association.

Visitors permits having to be granted for those attending competitions may well, as previously mentioned, deter them from entering Scottish competitions, meaning our elite athletes lack meaningful competition on home soil. We feel that carrying an invitation and acceptance letter to an event in Scotland involving airguns should suffice. The police authorities may then have the power to check with the event organiser that any individual non-certified "visitor "is indeed a registered competitor so negating the need for a permit.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

We believe that a minimum, administration only fee should be payable for unsuccessful applications so long as the applicant is given a just reason for the failure of the application and that if it is due to a mere technical error in the paperwork, that it is waived.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

We think that the air weapons licensing system will have a negative effect on the public sector in Scotland. Given that the Firearms teams are already over stretched, resourcing this requirement for licensing of air weapons, clubs, permits will place unprecedented demand on already slim resources.

Whilst we feel sympathy for police when faced with criminals who may “flaunt” an airgun, we believe the legislation should be aimed more specifically at that level.
and not impact quite so much on the responsible airgun fraternity.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

The risk of introducing a requirement for an airgun certificate may encourage applicants to go the full hog and apply for a shotgun/firearms certificate that will thereby increase the number of more high powered weapon ownership and so the number of those guns in circulation.

We do not believe that it is the aim of this legislation, but very much fear that more people will swap low powered airguns for something more powerful.

The number of girls in sport will also decline as within Scotland our junior development squad is now dominated by girls, coming mainly through Scottish Tetrathlon. Some who acknowledge they will never be elite runners/swimmers/pentathletes, but still have the interest to continue with a sport that they have enjoyed and will help their personal as well as sporting development in so many ways.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

We respect the bill and are keen to try and work with it. However as it is currently drafted it will strangle the grass roots development of sporting talent. We therefore seek amendments to ensure the bill can be angled more towards penalising the minority misusing airguns by having them banned from owning any potential weapon, rather than wasting police time investigating the majority.

With no border controls in place, anyone visiting from England, Northern Ireland or Wales should be exempt from visitors’ permits.
Personally I would rather use the term airgun rather than air weapon as the definition of weapon in:

Oxford dictionary is

A thing designed or used for inflicting bodily harm or physical damage

Collins Dictionary;

1. an object or instrument used in fighting

Using emotive words such as "weapon" therefore has a negative impact on our sport.
Air Weapons and Licensing (Scotland) Bill
The Scottish Parliament Local Government and
Regeneration Committee - Call for Evidence

The Law Society of Scotland’s response
September 2014
Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

The Society’s Licensing Law Sub-Committee (the Sub-Committee) welcomes the opportunity to respond to the Scottish Parliament’s Local Government and Regeneration Committee’s call for evidence upon the general principles of the Air Weapons and Licensing (Scotland) Bill (the Bill) and has the following general comments to make.

General Comments

The Sub-Committee refers to paragraph 13 of the policy memorandum accompanying the Bill and has commented extensively on the consultation exercises across the existing licensing regime as follows.

1: Consultation paper- Further Options for Alcohol Licensing – March 2013

2: Taxi and Private Hire Car Licensing – Proposals for change - March 2013

3: Proposal for Licensing Air Weapons in Scotland - March 2013

4: Scottish Government Consultation on Licensing of Metal Dealers – July 2013

5: Consultation on Regulation on Sexual Entertainment Venues – September 2013.
The Sub-Committee has engaged extensively with both Scottish Government and Scottish Parliament in respect of the Licensing (Scotland) Act 2005 and its significant amendments in terms of the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol Etc. (Scotland) Act 2010 and the Alcohol (Minimum Pricing) (Scotland) Act 2012.

The Sub-Committee is a member of the National Licensing Advisory Group at present coordinated by Scottish Government, and welcomes the opportunity to help shape the licensing framework for the benefit of all licensing stakeholders and the public in general.

The Sub-Committee welcomes the introduction of this Bill and in particular welcomes the principal policy objectives which are to strengthen and 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.

With particular reference to Part 2 of the Bill (Alcohol Licensing), the Sub-Committee refers to the following difficulties with regard to the Licensing (Scotland) Act 2005 encountered by both Licensing Boards and the licensed trade which have been highlighted to Scottish Government previously, but not addressed in the Bill.

The difficulties which the Sub-Committee welcomes the opportunity to comment upon at this stage are as follows:-

**Transfer of Premises Licence (Sections 33 and 34) of the Licensing (Scotland) Act 2005**

The Sub-Committee believes that Section 33 (Transfer on Application of Licence Holder) does not always take account of business requirements. Section 34 allows the transfer application to be made by the transferee but only in certain prescribed circumstances.
The Sub-Committee notes that one of those circumstances is set out at Section 34 (3)(d) of the 2005 Act whereby the business is to be transferred. This ignores the situation where a tenant disappears leaving premises closed for some time. It cannot be held that business is being transferred, there being no business left to transfer. The Sub-Committee questions who may make the application in those circumstances.

From a practical point of view, Licensing Boards are having to take the view that the licence has not in fact come to an end and can be resurrected.

Due to these practical difficulties in transferring the licence where a tenant has simply left the premises, many landlords have decided to hold licences in their own names.

This, the Sub-Committee believes, is because of a concern that the tenant will simply surrender the licence. It raises, however, the practical issue of a landlord not being in a position to comply fully with the terms of the Licensing (Scotland) Act 2005 where the landlord lets the premises to a third party and has limited control over the business carried on in the premises.

Also, the 2005 Act does not provide for consent to transfer nor does it provide for a situation where such a consent cannot be obtained although “consents” of this nature are frequently required by Licensing Boards. The Sub-Committee refers again to the situation where the licence holder, in particular a tenant, either disappears or refuses to co-operate.

The Sub-Committee makes specific reference to Section 25 of the Licensing (Scotland) Act 1976 where there was certainty of knowing when an application would be processed. The Act was amended in terms of Section 25A by the introduction of the temporary transfer which allowed the transfer of a licence to coincide with the transfer of ownership or a new tenancy. Unlike the 1976 Act, there is now a lack of certainty as to when an application will be processed and it can be extremely difficult to co-ordinate the conveyancing with the date of transfer leading to issues with the legality of the sale of alcohol due to administrative issues. It is the Sub-Committee’s understanding that it’s due in certain circumstances to the goodwill of Licensing Board clerks that these issues are avoided.
The current lack of certainty with regard to transfer causes significant problems in commercial property transactions, especially in transactions which may involve a number of licensed premises in different Licensing Board or licensing division areas.

In contrast, the Sub-Committee notes that in England and Wales, the terms of the Licensing Act 2003 and in particular Sections 42-46, give effect to a transfer being made by any person who can apply for a Premises Licence and also for immediate effect of the transfer in terms of Section 43 of that Act. There is specific provision for consent to transfer but the Licensing Authority has power to grant the transfer where the applicant can show he has taken all reasonable steps to obtain a consent.

In all the circumstances, the Sub-Committee suggests that the following amendments could be made to the 2005 Act:-

- Section 33 should be amended to provide that any legal person who may become the holder of a Premises Licence may make an application to have the licence transferred.
- Section 34 should be amended to remove the reference to a business transfer.
- Provisions should be made to allow an application for a Premises Licence which has ceased to have effect because of non-compliance with any time limit to be reinstated. Such an application should be competent at the instance of any party who may competently hold a Premises Licence, including a proposed transferee, and should be capable of being made along with the transfer application.
- Transfer applications should be permitted to take effect from a date to be specified with the parties to the transfer, along the lines of the old temporary transfer system under the Licensing (Scotland) Act 1976 or Section 43 of the Licensing Act 2003 which applies to England and Wales.
- The introduction of statutory provisions regarding consent to transfer and to regulate the process where such consent cannot be obtained.
- Introduction of procedure whereby a Premises Licence which has ceased to have effect can be reinstated. While the Sub-Committee appreciates that a time scale would require to be put in place, it suggests that a Licensing Board should have discretion on cause shown to extend such a period to cover exceptional cases.
Where the proposed transferee is not the same person as the current Premises Licence Holder or Designated Premises Manager, intimation of a transfer application should be made to the current Premises Licence Holder and the Designated Premises Manager. Boards could have sufficient discretion to determine when a transfer should be effected if no consent is obtainable and that specific criteria or regulations should be avoided as they often fail to meet unexpected circumstances as is demonstrated above.

**Lack of Site Only Application for Premises Licence**

The Sub-Committee notes that a site only Provisional Premises Licence is not permitted in terms of Section 45 of the Licensing (Scotland) Act 2005.

Detailed information currently required for a layout plan and the operating plan will not yet have been decided at the early pre-construction stage, yet the requirements for a Provisional Premises Licence Application are identical to those for applying for a full Premises Licence, apart from there being no need to specify a Designated Premises Manager and the requirement under Section 50 being simply for a Provisional Planning Certificate. As a consequence, a developer may incur significant time and expense in the preparation of the Provisional Premises Licence Application with there being no guarantee of a grant. Also, from a practical point of view, it is highly unlikely that both the layout plan and the operating plan will remain unchanged throughout the development of a project, resulting in more expense for variations of both layout plan and operating plan at the confirmation stage. Accordingly, if an application for a Provisional Premises Licence is refused, then the applicant has incurred significant expense unnecessarily.

The Sub-Committee refers again to the Licensing (Scotland) Act 1976 and in particular Section 26 (2) of that Act.
While the Sub-Committee recognises that that particular procedure was criticised in that it was considered by Licensing Boards and those who were entitled to object or pass comment on such an application, notably the Police, being given to little information. In order to meet this criticism, the Sub-Committee respectfully suggests that certain specified information, being the types of matters of most concern to Licensing Boards should be provided by the applicant. Before the licence comes in to effect, the full confirmation procedure, including production of a full layout plan and operating plan will require to be produced.

The Sub-Committee therefore suggests that once the Board has affirmed the application, then any changes to the premises identified by the various council departments acting under their statutory duties should, insofar as they are minor changes, be accepted by the Board.

**Surrender of licence**

The Sub-Committee refers to Section 28 of Licensing (Scotland) Act 2005.

This is a new provision in that, in terms of the 1976 Act, there was no specific provision for the surrender of a licence. The Sub-Committee recognises that there are obligations incumbent upon a Premises Licence Holder, not least the requirement to pay an annual fee, and it is accordingly appropriate that there should be a means of renouncing those obligations.

The Sub-Committee refers specifically to the practical issues which can and do arise where premises are owned by someone other than the licence holder. The 2005 Act recognises that parties other than the Premises Licence Holder can be “an interested party” albeit the relevant section of the Act (Section 147) (5) is not yet in force. In any event, the 2005 Act offers no safeguards for such an interested party, in particular a landlord.

From a practical point of view a number of licensing practitioners have encountered the situation where a disgruntled tenant being the premises licence holder has surrendered a licence and disappeared.
It was also noted that some premises licence holding companies can be dissolved without the landlord ever being aware. Also, the Sub-Committee is aware of some situations where the tenant has simply disappeared.

It is for the above reasons that many landlords insist on holding the licence in their own names. They cannot exercise appropriate supervision of the premises on a day to day basis.

It has come to the attention of some Sub-Committee members that this is a preferred option to the very significant financial loss which a landlord faces if his tenant surrenders the premises licence.

On the basis that it is expected of a responsible licence holder to be aware of what goes on in the premises for which it holds the licence but because of this difficulty with the legislation at present, that is often not the case in many leased premises.

The Sub-Committee respectfully suggests the following:-

- Provision should be made, similar to Section 50 of the Licensing Act 2003 applicable to England and Wales, to allow reinstatement of a licence following a surrender.
- Provision should be made for any party having an interest in licensed premises to note that interest with the Licensing Board and to be notified in the event of a proposed surrender of the licence or of circumstances which might affect the premises licence such as a premises licence review or non-payment of the statutory fee. Furthermore, the landlord should be in a position to be represented before a Board to explain why the licence should not be surrendered.
- The Licensing Board should have discretion to waive a time limit on cause shown in the interests of justice.
Air Weapons Licensing

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

The Sub-Committee believes that whether an air weapons licensing system in Scotland will contribute to preserving public order and safety, and reducing crime and advancing public health policy clearly remains to be seen.

It outlines the practical issues with regard to the system proposed whereby air weapons, unlike shotguns, do not have a serial number and are therefore untraceable. The Sub-Committee also notes that on the basis that a single air weapon certificate should cover all weapons held by an individual, there should be a narration of the number and type of weapons held otherwise the police will not know how many air weapons are in fact in circulation and/or if weapons have been disposed of to a third party by a certificate holder. In essence, the air weapons licensing scheme as set out at Part 1 of the Bill, licenses the applicant without any attempt to correlate this to the weapon. Furthermore, the Sub-Committee notes that the certificate will not require to be presented in order to purchase ammunition.

On the basis that pellets can only be fired from air weapons once (albeit darts may be capable of re-use), the Sub-Committee anticipates that air weapons in circulation which remain unlicensed will eventually run out of ammunition. Accordingly, the issue of the regulation of the purchase of air weapon ammunition should therefore be considered.
14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

The Sub-Committee has no particular comment. It believes that air weapons clubs are better placed to answer.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

The Sub-Committee notes the terms of Section 5 (1) of the Bill.

In particular, the Chief Constable may only grant or renew an air weapon certificate if satisfied that the applicant (c) has a good reason for using, possessing, purchasing or acquiring an air weapon.

The Sub-Committee believes that, rather than imposing this condition, the Chief Constable is much better placed to consider the applicant’s reason for having an air weapon on a case by case basis. In particular, it is noted that specific conditions of use are not applied to shotgun certificates under the current legislation. The Sub-Committee believes that this should also be the case in relation to the licensing of air weapons and that the police are best placed to consider whether any offences have occurred such as the reckless discharge of a firearm.

The Sub-Committee also believes that this provision may have the unintended consequence of discouraging those who have a legitimate use for an air weapon from applying for an air weapon certificate.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

The Sub-Committee is satisfied with the provisions at Section 7 of the Bill (special requirements and conditions for young persons) and in particular that a parent or guardian of the applicant must consent in the prescribed form and manner to the applicant making the application.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

The Sub-Committee refers to the permits at Sections 12-17 of the Bill.

In particular, the Sub-Committee is content with this system on the basis that they are time limited and the costs of obtaining such a permit should be relatively low.

The Sub-Committee notes the provisions at Section 17 of the Bill (Event permits) but considers that consideration could be given to the grant of a permanent competition certificate for those who visit Scotland regularly to shoot in competitions.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

The Sub-Committee refers to its comments at 17 above.
19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

The Sub-Committee has no particular view on this provision but believes that any licensing scheme should be cost neutral.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

The Committee is not in a position to comment. It believes that the agencies referred to in question 20 are better placed to answer.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

The Sub-Committee refers to its comments at question 13.

The Sub-Committee notes that there are at present some 500,000 air weapons in circulation in Scotland which cannot be properly traced.

The Sub-Committee is concerned that there may be the potential for a large number of air weapons to be sold off or indeed just given away before the provisions at Part 1 of the Bill come into force as opposed to weapons simply being handed into the police with the resultant effect that many of these weapons may end up in the wrong hands. Some form of minor compensation for surrendering air weapons to the police may counter this potential issue.
22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

The Sub-Committee believes that a suitable transitional period should be put in place in order to allow the giving up of air weapons by those who have no intention ever to apply for a certificate.

With particular reference to Section 11 (1) (a) of the Bill the Sub-Committee suggests that this should read “can no longer be permitted to possess” on the basis that the air weapon certificate is granted by the Chief Constable in terms of Section 5 (1) (d) of the Bill if satisfied that the applicant “can be permitted to possess an air weapon”.

Similarly in Section 11 (2) (a) (i) of the Bill, the Sub-Committee suggests that this should read “is no longer a fit person” on the basis that the air weapon certificate is granted by the Chief Constable in terms of Section 5 (1) (a) of the Bill if satisfied that the applicant “is fit to be entrusted with an air weapon”.

The Sub-Committee also notes the terms of Section 25 (1) of the Bill and questions the requirement for a face to face sale with an individual in Great Britain who may well be outwith this jurisdiction.

General Licensing Issues

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 Sub-Committee is of the view that there are a number of serious issues with regard to the Licensing (Scotland) Act 2005 which is not fit for purpose.

In particular, the Sub-Committee refers to its previous general comments.
24. **Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?**

Neither a Licensing Board nor a Licensing Committee can of course go beyond the scope of the legislation and consider what may be regarded as societal issues.

The Sub-Committee believes that it is instead, for each Board or Licensing Committee to regulate properly the licensing system within its jurisdiction.

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

The Sub-Committee believes that the licensing system in Scotland already interacts with the Land Use Planning System, Community Planning and Regeneration although sustainable growth and regeneration are not statutory considerations for Licensing Boards.

The Sub-Committee, however, makes particular reference to Section 50 of the Licensing (Scotland) Act 2005 where a premises licence application other than a provisional premises licence application must be accompanied by a planning certificate, a building standards certificate and a food hygiene certificate.

It should be noted that a Provisional Premises Licence Application must be accompanied by a Provisional Planning Certificate in respect of the subject premises.
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

The Sub-Committee has no information with regard to the way a licensing system can assist with the delivery of sustainable development and economic balanced areas but does note that in times of the recent economic downturn, increased regulation without addressing the more practical issues such as the provision of licensed premises for the tourist trade etc. in rural parts of the country can be problematic. With particular reference to its response at question 25, the Sub-Committee believes further that commercial requirements and business need should be considered by Licensing Committees and Boards in addition to current criteria.

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

The Sub-Committee has no information with regard to how the licensing system in Scotland supports health and planning addressing health and inequalities and public health well-being. It suggests that evidence should be ingathered in order to consider this.

The Sub-Committee does note, however, that unlike the Licensing Act 2003 applicable to England and Wales, Section 4 of the Licensing Scotland Act 2005 has an additional licensing objective at Section 4 (d) of “protecting and improving public health”. The Sub-Committee notes that a Licensing Board has a duty in terms of the Act to notify the relevant Health Board of a premises licence application.

Whether the licensing system has supported health and planning, addressing health and equalities and public health wellbeing outcomes or not, the Sub-Committee fully supports any initiative, statutory or otherwise, which results in the responsible retailing and consumption of alcohol in Scotland.
Alcohol Licensing

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

The Sub-Committee notes the reintroduction of the fit and proper test in which it will comment in detail later and considers that the Bill should ensure that Boards and committees charged with determining applications should require to consider relevant evidenced objections and representations. Otherwise, it is not in a position to address this particular question.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

The Sub-Committee has no comment other than the fact that Boards, in determining premises licence applications, must always have regard to the licensing objectives and should consider relevant, evidenced submissions.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

On the basis that the five licensing objectives at Section 4 of the 2005 Act have been evidenced as operating successfully, the Sub-Committee questions in what way the Bill can enhance these objectives.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

The Sub-Committee has no concluded view as to whether the re-introduction of the “fit and proper person” test as outlined at Sections 43 - 48 of the Bill will assist with the implementation of the licensing objectives set out in the 2005 Act.
The Sub-Committee notes with concern, however, that a reintroduction of this test may result in objections being made either without evidence or upon facts which are not connected to the running of the premises and also based on allegations as opposed to relevant matters which have either been admitted or proved and resulted in conviction.

The Sub-Committee notes that the 2005 Act was implemented in order to bring in new tests based on e.g. the passing of exams, the training of staff and also relevant convictions and the five licensing objectives as referred to above.

The Sub-Committee does note however, that consideration could be given to such introduction on the basis that it will strengthen the Board’s ability to exclude unsuitable persons from becoming the holders of premises or personal licenses but only if the fit and proper test is properly applied with regard to the rules of natural justice.

In this respect, the Sub-Committee notes that, regarding the fitness and propriety test to a Section 33 transfer of a licence, the Bill, in terms of Section 44 introduces additional powers to the Chief Constable to provide any information in a relation to either the transferee or where the transferee is neither an individual nor a council, a connected person, that the Chief Constable considers may be relevant to consideration by the Board of the application.

The Sub-Committee is concerned with regard to the potential for the Chief Constable to be in a position to make such information available to the Board on the basis of what he considers relevant.

The Sub-Committee believes that the relevancy of information should of course be a matter for the Board and any matters to be brought to the Board should be properly evidenced and directly related to a ground upon which an application may be refused.
The Sub-Committee identifies a practical issue whereby some form of “preliminary plea” may require to be considered by the Board to the effect to that the information being brought by the Chief Constable is not relevant or properly evidenced.

The Sub-Committee also identifies a number of drafting issues with regard to Section 44 (2) (d) of the Bill which inserts Section 33 (11) into the 2005 Act and allows Boards to refuse a premises licence on the basis that the transferee is not a fit and proper person to be the holder of a premises licence.

The Sub-Committee notes that there is no reference to a connected person upon whom a Chief Constable can bring information before the Board.

The Sub-Committee refers to Section 45 of the Bill and again, with reference to a review of the premises licence, notes that there is no reference to a connected person.

The Sub-Committee is concerned that Boards will be able to take this decision on the basis merely of a summary of information.

In the interests of justice, no review should take place without the actual information provided by the applicant being before the Board in reviewing the premises licence.

On the basis that the fitness and propriety of a connected person becomes a ground for review of premises licence, the Sub-Committee suggests that Section 45 (4) (b) of the Bill which inserts Section 39 (2) (a) of the 2005 Act is amended whereby the Board has a discretion in revoking the licence. For example, one director (connected person) of a company may be considered not to be a fit and proper person, but he or she may be one of a number of several directors who are to be considered acceptable.

The Sub-Committee notes the terms of Section 46 of the Bill and in particular Section 46 (2) which inserts Section 73 (5) of the 2005 Act.
The Sub-Committee reiterates its concerns that the Chief Constable may provide to the Board any information in relation to the applicant that the Chief Constable considers may be relevant.

In all the circumstances, while the reintroduction of the “fit and proper person test” may assist with the implementation of the licensing objectives, the Sub-Committee is concerned with regard to the specific provisions at Sections 42 - 48 of the Bill.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

The Sub-Committee refers to its general comments.

Particularly, the Sub-Committee is concerned that the significant cost of a premises application in rural areas has discouraged applications.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

The Sub-Committee is concerned that section 51 of the Bill repeals Section 129 (4) of the Licensing (Scotland) Act 2005 in that Licensing Boards will now be entitled to take into account spent convictions.

While the Sub-Committee accepts that there will always be certain types of licence such as taxi and private hire driver licences whereby spent convictions should quite properly be taken into account, it questions the requirement for this provision albeit it will be a matter for the Board to consider each case on its own merits.

In particular, The Rehabilitation of Offenders Act 1974 was enacted in order to allow people to move on with their lives and not have to disclose what may be a relatively minor offence from some stage from their past.
While it is recognised that there must be certain exceptions as referred to above, the Sub-Committee questions whether this is appropriate with regard to both premises and personal licence applications and questions whether there has been any evidence presented to Scottish Government that the current system has been criticised as a result of Licensing Boards not being able to take spent convictions into account.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

The Sub-Committee refers to its general comments.

The Sub-Committee would also like to highlight the following practical issues it has identified in terms of Part 2 of the Bill

**Section 52 - Offences of supplying alcohol to a child or young person**

The Sub-Committee notes that it is now to be an offence to buy or attempt to buy alcohol on behalf of a child or for a child or to give alcohol (or otherwise make it available) to a child.

While the Sub-Committee welcomes this provision, it notes that a child or young person is to be excluded from this offence.

On the basis that it may be considered more likely that a child or young person would supply alcohol to a child, the Sub-Committee questions the intent of this exception.

**Section 54 - Overprovision**

The Sub-Committee notes that a Board is entitled to take into account the whole of the Board’s area as a locality as in terms of Section 54(2) of the Bill which amends Sections 7 (2) of the 2005 Act.
The Sub-Committee considers this an unnecessary amendment as Boards have always had such an ability.

The Sub-Committee also notes that Section 7 of the 2005 Act is being amended whereby Boards’ mandatory requirement to “have regard to the number and capacity of licensed premises in the locality” is now being changed to a discretionary requirement to have regard to “ (among other things) the number, capacity and licensed hours of licensed premises is in locality.

The Sub-Committee questions the ability of Boards to consider “licensed hours” in considering overprovision.

By way of example, many licensed premises have their licensed hours determined in terms of their operating plans but may well choose not to operate those hours at all times.

The Sub-Committee is aware of circumstances where certain Boards have already prepared overprovision statements in their licensing policies which have resulted in no new premises licences being granted on the grounds of overprovision yet certain premises do not operate either to their full capacity or to their licensed hours.

The Sub-Committee has in the past taken a view that there is no “duty to trade” and, against this background, considers that Boards may be proceeding on misleading information.

The Sub-Committee also welcomes clarity as to what is meant by “among other things” as referred to at Section 54(2)(b)(ii)(a) of the Bill.
Section 55 - Duties to Licensing Boards to Produce Annual Financial Reports

The Sub-Committee, while welcoming this provision, believes that this will place an even greater burden on Licensing Boards and may raise costs to the licensed trade. The Sub-Committee believes that an accounting mechanism, having regard to the “costs recovery only” requirements in the Provision of Services Regulations 1999 has to be considered. In all the circumstances, there has to be transparency as to what happens in the event of a Board having either a surplus or a deficit.

Section 56 - Interested Parties

The Sub-Committee, although noting that the obligation upon the premises licence holder to notify a Board not later than one month after a person becomes or ceases to be an interested party in relation to the licensed premises has never really been enacted, welcomes this provision.

The Sub-Committee was concerned that the provision was so wide-ranging as to be unworkable.

Section 57- Personal Licences: Grant, Duration and Renewal

The Sub-Committee welcomes these provisions on the basis that the longer time limits for making applications for renewal should ease the pressure on Licensing Boards.

Section 58 - Processing and deemed the grant of applications

While the Sub-Committee welcomes these provisions it questions the reference to nine months on the basis that this seems to be an inordinately long period.

The Sub-Committee notes that in terms of the Licensing (Scotland) Act 1976 and its quarterly Boards, applications could be processed and considered within 36 days.
The Sub-Committee questions how this sits with the time limits for certain applications as provided for in The Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007/453) and questions whether a nine month period would be compliant with Provision of Services Regulations 1999.

The Sub-Committee is concerned that the 9 month period only applies to “relevant applications” once determined as such.

The Sub-Committee highlights the practical issues at present and, with particular reference to confirmation of licence, a confirmation application should not begin to be processed until such time as the Section 50 certificates from the various departments of the local authority have been obtained.

This has the practical effect of premises being a position to trade but for the fact that they have to await this confirmation process. As a consequence premises can sit empty for a considerable period of time until confirmation.

The Sub-Committee suggests that confirmation should be automatic once the Board has obtained the Section 50 certificates. This process could be similar to minor variation to change a Premises Manager which can come into effect immediately if requested.

The Sub-Committee suggests that different time scales could be applied in determining different types of applications.

**Taxi and Private Hire Car Licensing**

35. **What benefits should the licensing of taxis and private hire cars deliver for customers?**

The benefits of the licensing of taxis and private hire cars for customers will only become apparent once the Bill has been enacted and sufficient time has been allowed to assess its impact.
However, at this stage, the Sub-Committee notes a marked difference in the limitation policy for taxi licences.

The Sub-Committee notes from Section 60 of the Bill that Section 10 of the Civic Government (Scotland) Act 1982 is to be amended in that the grant of a private hire car licence may be refused if a licensing authority is satisfied that this would result in overprovision of private hire car services in the locality.

This is of course a different threshold than the threshold in place for taxi licences which is a higher threshold in terms of Section 10(3) of the 1982 Act, namely a taxi licence may be refused by a licensing authority for the purpose of limiting the number of taxis in respect of which licences are granted by them, but only if they are satisfied that there is no significant demand for the services of taxis in their area which is unmet.

The Sub-Committee accordingly anticipates that licensing authorities may find it difficult to deal with this distinction.

The unmet demand test is a blanket “no new licence” position, whereas an overprovision test contains a “rebuttable presumption” and therefore new licences can be issued by exception.

36. **In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?**

The Sub-Committee is not in a position to answer this question. It believes those representing consumer interests are better placed to answer.
37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?

The Sub-Committee believes that the impact of this move will vary from local authority to local authority as some local authorities are met with more applications for private hire car than taxi licences and vice versa.

Accordingly this may not be too much of an issue in some rural areas where there is a tendency to apply for private hire car.

The Sub-Committee believes that the cities are to be distinguished to such an extent that a taxi licence, as a result of the limitation policy can have the effect of giving it a value.

Accordingly, the Sub-Committee anticipates some difficulties with this proposed change.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

The Sub-Committee has no view on this matter but notes that the same “knowledge test” will now be applied to private hire car drivers albeit a different limitation policy will be in place.

The Sub-Committee suggests that licensing authorities are better placed to consider whether Sections 60 and 61 strike the right balance in terms of introducing greater consistency while maintaining justifiable differences.
39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

The Sub-Committee has no view on Section 62 provisions, but notes that if vehicles being used for carrying passengers under a contract for its exclusive hire for a period for not less than 24 hours are to be brought the licensing regime then consideration must be given to licensing the driver as well as the vehicle.

Scrap Metal Dealer Licensing

40. Taking the proposals in Sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers’ licensing regime to the extent that metal theft and related criminal activity is reduced?

The Sub-Committee welcomes the removal of exemption warrants for certain metal dealers. It is anticipated that this will have the desired effect on strengthening the metal dealers’ licensing regime in order to reduce metal theft and related criminal activity. In particular, the Sub-Committee notes that the theft of metal from railway lines in particular together with the untold inconvenience to the public as well as the potential for danger to both the public and offenders is a matter which requires to be addressed.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

The Sub-Committee has no view on this matter.

It believes that licensing authorities are better placed to comment.
42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

The Sub-Committee refers to its comments at 40 above.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

It is anticipated that the repeal of Section 31 as provided for in terms of Section 64 of the Bill will have the desired effect of prevention of criminal activities.

In particular, the Sub-Committee notes that many dealers turn around metal very quickly in order to respond to fast changing prices and international metal markets and they are also constrained physically by the limitations of their premises as to how much metal they can store and process for 48 hours.

The Sub-Committee further notes this difficulty against the background of the SEPA licence requirements which places a limit on how much can be stored on a metal dealer’s premises.

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

The Sub-Committee welcomes the provisions of Section 65 of the Bill which inserts a new Section 33A into the 1982 Act whereby in terms of Section 33A(3), if a metal dealer or an itinerant metal dealer pays for metal otherwise than in accordance with Sub-Section 1 (cheque or electronic transfer) the dealer and each of the persons listed in Sub-Section 4 (the metal dealer or anyone acting on his behalf) commits an offence.
The Sub-Committee considers this most welcome initiative in order to combat metal theft.

45. Forms of identification and record keeping:-

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

The Sub-Committee notes the terms of the new Section 33 B of the 1982 Act as inserted by Section 66 of the Bill.

The Sub-Committee notes, however, that metal dealers are already licensed by the Scottish Environmental Protection Agency (SEPA) and, on the basis that it is Scottish Government’s intention to avoid placing an unduly burdensome or bureaucratic requirement on the trade then this proposal would have the trade having to record the same information twice or require information that adds little to the information already required by SEPA.
46. **Mandatory and discretionary licensing requirements:**

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'?

The Sub-Committee has no particular view on this matter other than the mandatory conditions of the Bill should strike the correct balance between the legitimate trade of metal dealing and the combating of metal theft.

**Civic Licensing – Theatre Licensing**

47. **Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?**

The Sub-Committee welcomes the incorporation of theatre licences in terms of the Theatres Act 1968 into the public entertainment licence regime as provided for at Section 41 of the 1982 Act and would indeed welcome further reform in this area by way of incorporation of licences in terms of the Cinemas Act 1985 to be incorporated into public entertainment licences.

With particular reference to the transition period, the Sub-Committee believes that a fair period of time should be afforded and that a last lodging date for Theatres Act Licences should be provided for.
48. Are there additional costs or resource implications on theatres or licensing authorities?

The Sub-Committee further notes that there is a marked difference between the cost of application for a theatre licence which can be as little as £50.00 and a public entertainment licence which can be considerably higher.

Standing the level of the fee, the Sub-committee believes that regard has to be had to the recent case of Hemming and Others v the Lord Mayor and Citizens of Westminster [2013] EWCA Civ 5912 in which it was held that fees charged by Westminster Council were incorrectly calculated after the European Services Directive became effective and accordingly “charges which a Council imposes on applicants/ licences under an authorisation scheme must be proportionate and reasonable under the circumstances to the fees or costs payable under the provisions of the scheme.

Furthermore, the fees must not exceed the costs of administering the process.

The Sub-Committee questions whether consideration has been given to the interplay between the alcohol licensing regime and exemptions to public entertainment licensing. A number of theatre premises in Scotland will operate with an alcohol licence. The 1982 Act exempts alcohol licensed premises from requiring a public entertainment licence. If the stated aim is to replace the theatre licence with a public entertainment licence, then there is a question as to how that would capture those theatres who have alcohol licences, which under the terms of the Act would be exempt. The Sub-Committee notes that this anomaly is dealt with in England and Wales by having theatre as a form of regulated entertainment in terms of a premises licence; with no separate public entertainment or theatre licence required.
If enacted, the net result will be that the majority of theatre premises will be left requiring only their existing alcohol licence and no other licence (unless the theatre operated without an alcohol licence in which case a public entertainment licence would be needed where a local authority has resolved to license theatre as a form of public entertainment). The Sub-Committee suggests that further consideration be given to this issue.

Separately, the Sub-Committee believes that this issue also brings into focus the question of whether a late hours catering licence in terms of Section 42 of the Civic Government (Scotland) Act 1982 is required in respect of premises in respect of which a premises licence has been granted in terms of Section 26 of the Licensing (Scotland) Act 2005 and welcomes clarification in this regard.

49. **How should licensing authorities integrate their current fee charging structure into their public entertainment regime?**

The Sub-Committee refers to its comments above.

**Civic Licensing – Sexual Entertainment Venues**

50. **What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?**

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'
The Sub-Committee notes that Scottish Government’s has taken the view that, in licensing Sexual Entertainment Venues, they consider that there is a “regulation gap” as a result of the judgement in the case of Brightcrew Ltd v The City of Glasgow Licensing Board [2011] CSIH 46.

While the Sub-Committee holds no unanimous view as to whether the Brightcrew decision led to the “regulation gap” referred to above, it suggests that the Licensing Board should administer sexual entertainment venues as opposed to the Licensing Authority. The Sub-Committee therefore suggests that the Licensing Board could regulate numbers by way of its overprovision statement which could be amended to take into account there being no sexual entertainment venues. On the basis of premises already operating as a sexual entertainment venue, a Licensing Board could grant a licence for a sexual entertainment venue in terms of Section 68 of the Bill subject to taking into account the “regulation gap”.

Otherwise, if in terms of Section 68 of the Bill, sexual entertainment venues are to be licensed by the Licensing Authority, the Sub-Committee believes that this could lead to a curious and anomalous situation whereby a Licensing Board grants a premises licence in respect of premises providing adult entertainment all in terms of Section 23 of the 2005 Act, yet the Licensing Authority refuses a licence for sexual entertainment in respect of the same premises where that Authority has resolved in terms of Schedule 2 of the Civic Government (Scotland) Act 1982 to have effect in their area in relation to such venues.

The Sub-Committee is particularly concerned with the terms of Section 45 B (6A) of the 1982 Act as inserted by Section 68 of the Bill whereby a local authority may refuse an application for the grant or renewal of a licence despite the fact that a premises licence under Part 3 of the Licensing (Scotland) Act 2005 is in effect in relation to the premises, vehicle, vessel or stall into which the application relates.
The Sub-Committee anticipates that this provision will be particularly problematic where the Licensing Board has already granted a premises licence and the Licensing Authority thereafter resolves in terms of Schedule 2 (9) Sub-Paragraph (5) (c) of the 1982 Act as amended by Section 45 (B) (1) to fix “nil” as the appropriate number of sexual entertainment venues.

The Sub-Committee remains concerned that a double licensing system of the nature proposed in the Bill could lead to confusion and conflict between licensing regimes which will be brought into effect as a result of this amendment.

51. **The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?**

The Sub-Committee believes that the provisions at Section 45A (9) of the Bill will have the resultant effect of a Licensing Authority having no means of prohibiting such sexual entertainment on the basis that such sexual entertainment has not been provided on more than three previous occasions which fall wholly or partly within the period of 12 months. It may well be that a Licensing Authority that has set its desired number of sexual entertainment venues for localities in their area as nil.

The Sub-Committee believes that this has the unintended consequence of such activity not being subject to the new regime on the basis that it has only been provided for once or twice a year as opposed to it being provided throughout the year.

52. **Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?**

The Sub-Committee refers to its comments at Question 50 above.
53. The Bill relies mainly on the existing licensing regime for sex shops as set out in Section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

The Sub-Committee has no particular view on the existing licensing regime for sex shops being made applicable to sexual entertainment venues.

The Sub-Committee again refers to its comments at Question 50 above.

54. Are there any barriers to licensing authorities operating the new licensing regime?

The Sub-Committee refers to its comments at Question 50 above and believes that this new scheme should be operated by Licensing Boards as opposed to Licensing Authorities.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

The Sub-Committee refers to Section 69 of the Bill.

It is concerned that the six month period within which a decision on a licence applied for in terms of the Civic Government (Scotland) Act 1982 is being in effect extended from six months to nine months.

Accordingly, the Sub-Committee reiterates its comments made with regard to Section 58 above.
For further information and alternative formats, please contact:

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Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Ashley O'Donnell

Organisation: 

Address 1: 

Address 2: 

City/Town: 

Postcode: 

Country: 

Email address (if no email leave blank): 

Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☑ Personal

☐ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☒ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☒ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- ‘sexual entertainment venue’
- ‘audience’
- ‘financial gain’
- ‘organiser’
- ‘premises’
- ‘sexual entertainment’, and
- ‘display of nudity’

The venues are for adult entertainment not necessarily ‘sexual entertainment venue’. One also cannot assume there will be ‘displays of nudity’ in common areas. Many groups of customers go for stag nights for entertainment not necessarily lap dancing.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
Adult entertainment venues should be licensed.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

Local licensing authorities should not have the authority to set number of venues. One it will cause discrepancies city to city and two local licensing authorities do not have knowledge of such establishments.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
These venues cause no harm to anyone. Freedom of choice.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

I completely disagree with the intention to close lap dancing venues and putting through this bill. I work in the hospitality industry and many friends do also and I can say at times I feel more like a slave than my friends who work in lap dancing clubs. Staff in many other professions e.g. cleaners, nurses and others on minimum wage should be the people you are worried about. If this continues pubs will soon close and only virgins will be allowed to get married. Perhaps education on lap dancing and these venues would suit better than assumptions and prejudice.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: City of Edinburgh Licensing Board
Organisation: City of Edinburgh Council
Address 1: Legal Risk and Compliance
Address 2: 4 East Market Street
City/Town: Edinburgh
Postcode: EH8 8BG
Country: Scotland
Email address (if no email leave blank): morag.leck@edinburgh.gov.uk
Phone Number: 01315294304
* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☑ Yes
☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal
☑ Professional
☐ Commercial

* 5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes
☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in.
(Text boxes have no word limit, they will increase in size accordingly).

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?

City of Edinburgh Licensing Board makes comment only in respect of the Licensing (Scotland) Act 2005.
The Act has generally allowed a flexible approach to Boards to deal with alcohol issues within their areas. However court decisions such as Brightcrew and Lidl have demonstrated that the current legislation does restrict the ability of Boards to deal with issues arising from licensed premises in their areas in the manner they would consider appropriate to address those issues. The statutory guidance which was prepared in 2006 before the Act came into force and which Boards require to have regard to has not been revised since then and does not have regard to operational issues which have arisen with the Act or recent case law. Further specific issues are detailed in the responses to alcohol licensing questions below.

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

Alcohol licensing requires to regulate both individual behaviour and communities of space as set out in the five licensing objectives which underpin all decisions made by Licensing Boards in terms of the 2005 Act.
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 no reference to regeneration in the 2005 legislation and in particular the licensing objectives.

All applicants for new premises licences must have obtained planning permission prior to submitting an application under the 2005 Act. There is no interaction with the planning regime beyond this in the Act which specifically limits the Boards powers to address issues where another regulatory regime exists to deal with such issues.

Statements of Licensing Policy allows an opportunity for consultation with local communities and also for Boards to take account of Community Planning when considering the terms of their Statements.

Interaction and support with community planning processes by Boards is however required to take place against the backdrop of the 2005 Act which sets out the statutory framework for administration of the liquor licensing system by Boards. The licensing system should afford sufficient flexibility to allow Boards’ discretion to address local issues.

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

Given the comments above in respect of the statutory framework under which Boards operate there are limited opportunities to assist with sustainable development and economic balanced areas although the Board does seek to promote both where possible in terms of its Licensing Policy Statement.

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?
The 2005 Act includes the specific licensing objective of protecting and improving public health and Health Boards are now statutory consultees in respect of premise and variation applications made under the 2005 Act. Boards can have regard to information from Health Boards and other partners when framing their Policy Statements particularly in relation to overprovision. A representative from the local Health Board also has a statutory place on the local Licensing Forum. These are significant changes from the previous alcohol licensing legislation which took no specific account of health issues.
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

The reintroduction of the “fit and proper” test in the Bill is welcomed as allowing for a reduction in crime and the preservation of public order. However, whilst the proposal is that this ground may be considered in relation to premises licences applications and reviews, transfers and personal licence applications there is no reference to occasional licence applications. It is suggested that both in the interests of consistency and overall effectiveness of the provision that occasional licence applications should be included.

The amendment of the legislation to allow spent convictions to be considered in respect of applicants is also welcomed.

The introduction of an offence in respect of supplying alcohol to children or young persons for consumption in a public place will also allow for a reduction in crime and the preservation of public order if enforced effectively.

The inclusion of young persons within the licensing objective which was previously limited to protecting children from harm rectifies an anomaly which has been present in the Act since its introduction and will allow Boards an opportunity to address matters of concern in relation to young persons and the sale of alcohol.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

See answer to No 29 above – extending the fit and proper test to occasional licences.

The removal of defined “relevant offences” would also assist as this would mean any offence could be capable of being taken into account when considering an application.
30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

For the reasons outlined above the Bill does seek to enhance the licensing objectives particularly in relation to the objectives of preventing crime and disorder and protecting children and young persons. However, the opportunity has not been taken to place greater control on the operation of clubs which enjoy less restrictions than other premises as suggested in the previous alcohol licensing consultation which proposed incorporating the constitution of clubs into the premises licence and allowing the breach of a club constitution in relation to the sale of alcohol to become a breach of licence allowing the Board to review the licence. This Board also suggested that a mandatory condition could be introduced to tighten up the regulation of members clubs by requiring amendments to their constitutions to be notified and preventing amendments that breach the Licensing (Clubs) (Scotland) Regulations 2007/76 and thus ensuring clubs were not becoming primarily commercial operations.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

This will allow for a more in depth examination of all the relevant facts surrounding an applicant including whether the person making an application is “fronting” for another. There is a concern that linking the test to the licensing objectives rather than as a stand alone ground of refusal similar to that found in other regulatory regimes may restrict the use of the provision.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?
The Board is aware that the cost implications of obtaining and maintaining a premises licence have resulted in some cases in smaller outlets where alcohol sales were a low percentage of overall turnover giving up licences.

Separately economic considerations are not encompassed within the licensing objectives which the Board are required to have regard to when considering licence applications.

The provisions of the Act in relation to personal licences, particularly in relation to mandatory refresher training and the automatic revocation of licences if such training is not undertaken within five years of the date of the personal licence being issued, have resulted in widespread concern for Boards and licence holders alike. Boards should be given discretion to decide whether the ultimate sanction of revocation is necessary having regard to the licensing objectives as in other situations where licence holders have breached conditions of licence or acted inconsistently with the licensing objectives.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

See answer 29 above.

Councils as Licensing Authorities are already able to consider any spent convictions where they are satisfied it is in the interests of justice to do so and it is appropriate that Licensing Boards are in a similar position to have as full information available to them as possible when making decisions on applications.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

The issue of occasional licences with a fee of £10 being used as a substitute for making full premises licence applications has not yet been addressed. A more restricted definition of occasional licence should be provided to ensure that such licences are only available for specific “occasions”. Whilst not specifically contained in the licensing aspects of the Bill it is suggested that the exemption from the requirement to obtain a Public Entertainment licence if an alcohol licence is in place should be removed as an occasional licence to sell alcohol should not be used to licence large events where the sale of alcohol is ancillary to the public entertainment taking place.
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?
53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

City of Edinburgh Licensing Board responded to the previous consultation on Sexual Entertainment licensing by offering the view that the licensing of such entertainment could be dealt with by Licensing Boards. In light of the proposals within the Bill to create a new licensing regime to be administered by Councils, consideration will require to be given to ensuring that the new regulations will be aligned to the existing overlapping provisions of the Licensing (Scotland) Act 2005 e.g mandatory conditions for late night premises.

55. Civic Licensing

Do you have any other comments to make on the civic licensing?
aspects of the Bill?
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

Name: **Anonymous**

Organisation: 

Address 1: 

Address 2: 

City/Town: 

Postcode: 

Country: 

Email address (if no email leave blank): 

Phone Number: 

2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

☐ No

3 Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☐ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes
☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☑ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

So many of the terms have negative connotations and are assumptive.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

How can it possibly be monitored? I feel this would be abused.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?

Loss of jobs, loss of revenue, therefore, loss of tax paid and empty units within the city.
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

Firstly I must make clear that I do not have issue with anyone who works in the sex industry. I do, however, have issue with the Scottish parliament making assumptions that because I choose to work in a lap dancing club I am a sex worker and now work in the sex industry. I am a single parent and I freely choose to work in a lap dancing club, no one made me do it. It is strange that in 2014 we remember the Great war that was fought to give us freedom and choice and even more freedom and choice for women you are now taking that away. It also find it appalling that you will vote on a subject you know nothing about and have not actually spoke to the people who work in the industry. I am sure that if the Scottish parliament were to decide to shut down the car sales industry they would consult with staff in the factories etc and people from the industry. I think the SNP should be ashamed of themselves for branding us sex slaves and low life’s who do not deserve a say. It is obviously assumed our jobs are unimportant and that we do not have the right to have a job in the industry we choose to work in.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

Name: William O’Brien
Organisation: North Ayrshire Council and North Ayrshire Licensing
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☑ Yes
☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal
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☐ Commercial

* 5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes
☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes
☑ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

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☑ Equality, climate change and other Scottish Government objectives
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☑ Civic licensing – taxi/private hire car licensing
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☑ Civic licensing – theatre licensing
☑ Civic licensing – sexual entertainment venues
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You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

See comments below on Clause 68.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

See comments below on Clause 68, para. (f).
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

See comments below on Clause 68, para. (i).

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

There has not been a recent occasion to use the existing provisions in North Ayrshire, but they appear to be adequate.

54. Are there any barriers to licensing authorities operating the new licensing regime?

No
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

See paper apart.
This response relates only to the Licensing Parts:

2. Alcohol Licensing [41-59]
3. Civic Licensing [60-73]

and not to Part 1 on Air Weapons [1-40].

General Comment

1. Although there are some good points in the Bill, there is an opportunity to do more. The Bill fails to address matters which have previously been brought to the Scottish Government's attention. This Bill follows:

   Licensing (Scotland) Act 2005 (asp 16)
   Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)
   Alcohol etc. (Scotland) Act 2010 (asp 18)
   Alcohol (Minimum Pricing) (Scotland) Act 2012 (asp 4)

i.e. it is the fifth piece of legislation affecting licensing in ten years. It is disappointing that these matters are again overlooked. Some of the comments made regarding the present Bill are much the same as the comments made in response to consultation about earlier proposals (e.g. the proposed new system to license 'Sexual Entertainment Venues'), yet the Bill appears little different from those earlier proposals and does not appear to have taken account of the earlier comments.

2. The Bill fails to introduce a statutory ouster clause for challenges to Licensing Policy Statements, meaning that such policies are always open to challenge based on the limited set of facts of a particular case, ignoring the wider policy objectives.

3. The 2005 Act should be amended so as to address the issues raised by Brightcrew Ltd. v The City of Glasgow Licensing Board, [2011] CSIH 46 (e.g. by repealing [27(7)(c)], which presently prohibits Boards from imposing any licensing condition which "relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment", and which appears to overlap with [27(9)(b)] ). The list of 'relevant' offences to which Boards are required to consider include many enactments which have no or little relevance to the sale of alcohol.
Part 2 - Alcohol Licensing [41-59]

Cl. 41 - extension of the 'protecting children' L.O. from under-16s to under-18s.

A good change. In general, the distinction between ‘children’ and ‘young people’ is confusing for laymen, who often use ‘children’ to describe everyone under 18.

Is a corresponding extension of the Forum proposed (Sch. 2, Para. 2(6)(d))? 

Cl. 42 LPS periods

It is desirable to link the LPS to the life of Councils. Even if there is some change of membership after an election, there are likely to be some ‘old’ members, so the Policy is not inevitably irrelevant. The ‘new’ Board can introduce a Supplementary LPS, at least to address some points (it is unlikely that the new Board will want to replace the whole LPS).

Cl. 43 - fit and proper

(a) Why is this not being extended to ask whether an applicant for an Occasional Licence is 'fit and proper'?

(b) Is the addition of the word 'otherwise' sufficient to remove the duplication caused by the introduction of 'fit and proper' and the retention of 'inconsistency with the Crime and Disorder licensing objective' as a potential ground for refusal?

Cl. 44 - 'fit and proper' in transfer

(a) If the Police can give "any information in relation to [the Transferee or a Connected Person] that the Chief Constable considers may be relevant", what is the point of the distinction between those offences which are 'relevant' and those which are not?

(b) Sch. 1, Para. 10(2)(e) should be corrected - the fitness of the Applicant is not the issue in a [33] Transfer. It is the fitness of the proposed Transferee that matters.

Cl. 45(4)(b) - referring to a 'fit and proper' review
Introduces [39(2A)]:

"Where, at a review hearing in relation to any premises licence, the Licensing Board are satisfied that the ground for review specified in section 36(3)(za) is established, the Board must revoke the licence."

This provision is unnecessary. It is already the case that if a Review is upheld the Board may (not 'must') take certain 'steps' under [39].

In a Review, there are 2 stages:

1. is a 'Ground for Review' in [36(3)] established?

2. If not, that is the end of the Review. If so, the Board goes on to consider what 'steps' should follow (revocation etc.). The existing [39(1)] is "...as the Board considers necessary or appropriate for the purposes of any of the Licensing Objectives." It is the Board's opinion that counts, not anyone else's - why should 'fit and proper' be different?

The word 'must':

(a) is not consistent with the view that there is a discretion to take no action. Suppose that the Police make a Review Application because the PLH or PM is not 'fit and proper', but by the time the case reaches the Board there has been a change of personnel or the licence has been transferred. The Review would not be likely to be dismissed as frivolous under [36(6)], but there would be no 'steps' either;

(b) is unnecessary - in the more common case where the person in question is still involved with the Premises, it's hardly likely that a Board would say "he is not 'fit and proper', but we won't do anything about it."

If the person complained about was the PM the Board might vary the licence so as to remove him, or suspend the licence. In both variation and suspension the Board has a power under [40] to recall the earlier order - if the Board imposed variation/suspension but the problem identified by the Police was later remedied by a change in personnel, the PLH might invite the Board to lift the order. If the licence had been revoked the Board could do nothing - the PLH would have to re-apply for a licence, and his Premises would be closed until the next meeting of the Board.

Cl. 46 - 'fit and proper' and Personal Licences

Similar issue with to Cl. 44 ('fit and proper' in transfers)
Cl. 46(3) - Notification of Personal Licence application to Licensing Standards Officer

What is this provision intended to achieve? What is the LSO supposed to do when she gets Notice?

The introduction by the Bill of 'fit and proper' suggests that the LSO is to do what the Police used to do under the previous legislation - interview prospective Licensees or Nominees (managers). However, the analogy is false: there are many more Personal Licences under the 2005 Act than there were Licensees or Section 11 Nominees under the 1976 Act (e.g. we have around 400 Premises but 1,755 Personal Licence Holders).

Whoever asks, the questions would be related to what the Applicant said he proposed to do, e.g. "what experience do you have in the licensed trade? Are you planning to manage Premises yourself?". There are different expectations of Premises Managers, e.g., if two Applicants say:

1. "I've never worked in a pub before, but I'll only be working shifts as part of the bar staff"

2. "I've never worked in a pub before, but I want to be the Manager of [Premises]"

they will both get a 10 year licence, renewable forever. Under the 1976 Act, the 'fit and proper' status of the person could be reviewed every 3 years. Is it proposed that the Board should review every Personal Licence every 10 years? (Cl. 46(5) involves the LSO in renewal as well as grant).

Issues:

(a) What if the Applicant is assessed today as 'fit and proper', on the basis of what he says are his immediate plans, but later a Premises Licence is varied to show that he is the Premises Manager? His 'fit and proper' would not automatically be re-assessed, as the nomination is effected as a 'Minor Variation', so the Board is legally obliged to grant it without inquiry (this could happen any time - the vetting is only supposed to be repeated at 10-year intervals, as Cl. 46(5) extends the new [73A] to a Personal Licence Renewal Application):

(i) If he is nominated for Premises in the same area where his Personal Licence was granted, the Board might know how his 'fit and proper' status was previously assessed, but
(ii) a lot of people with 'foreign' Personal Licences work in our area - how would we know what was the basis of his 'home' Licensing Board's assessment that he was 'fit and proper'?

It might be said that it would be for the Police, later, to act if they discovered that Premises were in charge of a person who was not 'fit and proper', and seek a Review, but that is not an instant procedure and there would be no guarantee that an unfit person could not run a pub: is prevention not better than cure?

(b) What if such experience as he has is running a shop, and the LSO concludes that is indeed suitable to be a Premises Manager of an off-sales, but he later wants to run a pub? He couldn't be questioned then, because he would already have a Personal Licence;

(c) Is his experience to be taken into account in judging whether or not his Licensing Qualification is 'appropriate'? (2005 Act, Sch. 1, Para. 4(1)(d)). The terms 'appropriate licensing qualification' is defined in Para. 4(2), but only in relation to Premises Managers. For Personal Licences generally, all that applicants require is a 'licensing qualification', and it does not matter, at the time of application, whether it refers to 'on-sales' or 'off-sales';

(d) What record is to be kept of a 'fit and proper' assessment? There is no National Personal Licence Database. Is the assessment to be endorsed on the Licence? Can a future employer learn it?

Is there to be any way of the Licence-Holder challenging it? Say the Applicant seeks a Personal Licence and is assessed today as 'fit and proper' to work behind a bar, but years later he fails to get a new job as a Premises Manager, because in his perception:

(i) he has now acquired years of experience and is well-suited to the job; but

(ii) the Board has effectively granted him a second-class licence.

Would he have any redress? Could he demand that the LSO re-assess him?

(e) is the Board to have the power to refuse a Minor Variation? If so, the existing [31], giving PM variations immediate effect, would have to be qualified.

2005 Act [72(1)]:

"Any individual aged 18 years or more may apply for a Personal Licence to—"
(a) if the individual is ordinarily resident in the area of any Licensing Board, that Board, or

(b) in any other case, any Licensing Board.”

The Scottish Government has instructed that all Boards can deal with Applications regardless of residence, although if that had been Parliament’s intention then the provision would be different - if it was intended that a person in Scotland could apply to any Board he pleased, [72(1)] would be much shorter because it would not refer to ordinary residence at all - it would omit the whole of (a) and most of (b).

The phrase "in any other case" means that there is a distinction between (a) and not-(a):

(a) If a person lives in Scotland, he must apply to his local Board.

(b) If he lives outside Scotland, he doesn’t have a local Board, so he can apply to any Board.

Whoever asks 'fit and proper' questions (either the LSO or local Police), he is being asked to comment on people who might have no intention to manage premises. If it is to remain the case that a person can apply to whichever Board he pleases, it means that someone will have to comment on Applications relating to Premises in other Board areas (for example, about 13% of our Premises Managers hold Personal Licences granted elsewhere in Scotland - major supermarkets and other retailers move their managers about the country - How would we know what assessment had been made elsewhere, and conversely how would another Board know what assessment was made of a North Ayrshire licence-holder?

If there is to be a ‘fit and proper’ assessment, it should apply only to prospective new Premises Managers, and not to Personal Licence Holders generally.

If the workload of Boards is to be substantially increased, could the £50 prescribed fee be reviewed?

There is no equivalent vetting for Transferees. Who, if anyone, is expected to interview Transferees to assess their ‘fit and proper’?

Cl. 49 - re procedure where Licensing Board receive notice of conviction in relation to a premises licence

This is a welcome change but it does not go far enough.
The Bill might be:

“(7A) If both -

(a) the Licensing Board receive from the Chief Constable a notice under subsection (4)(b) which does not include a recommendation under subsection (5), and

(b) any one or more of the circumstances in Sub-section (7B) exist,

the Licensing Board must decide -

(a) to make a Premises Licence Review Proposal in respect of the Premises Licence, or

(b) to take no further action in relation to the Notice.

(7B) the conditions referred to in Subsection (7A) are -

(a) any offence confirmed by the Notice relates to Licensed Premises within the Board's area; or

(b) any offence confirmed by the Notice relates to a person working or who has worked in Licensed Premises within the Board's area; or

(c) any conviction confirmed by the Notice was imposed by a Court having jurisdiction within any part of the Board's area.”

In (b) "a person working or who has worked": it would not be enough to use the present tense "working", as this would suggest that a conviction is only significant if the person remains in employment on the day of the Board Meeting - a PLH might avoid Board scrutiny by simply dismissing the employee before the Board has occasion to make a decision.

In (c) - "a Court having jurisdiction": there are in fact no longer any criminal courts within North Ayrshire, as both the Sheriff Court and the Justice of the Peace Court sit at Kilmarnock (East Ayrshire). The phrase would cover the High Court, so a conviction which was serious enough to merit prosecution in the High Court would be significant, regardless of the location of the Premises.

Cl. 50- re procedure where Licensing Board receive notice of conviction in relation to a Personal Licence

See note for Cl.49.
Cl. 51 - Relevant offences and foreign offences: spent convictions

(a) A welcome change. The Board might be surprised to be told by their adviser that they could not do now, as a Licensing Board, what they were able to do last week as the Licensing Committee.

Boards are supposed to honour the Licensing Objectives, but the original Act removed from the Board a source of information which:

(a) it had under the 1976 Act, and

(b) still has in every other licensing scheme.

Prior to the 2005 Act a Board could look at ‘spent’ convictions if satisfied that ‘justice cannot be done’ otherwise (Rehabilitation of Offenders Act 1974 [7(3)]).

For the avoidance of doubt add:

"The proceedings of a Licensing Board are “Proceedings Before A Judicial Authority” for the purposes of the Rehabilitation of Offenders Act 1974."

(this express enactment might not be necessary, given that the definition in 1974 Act [4(6)] might well cover the Board anyway, but it would do no harm to express it).

(b) Why not dis-apply ROA altogether, so the Licensing Authority can look at old convictions without even thinking about the ‘justice cannot be done’ question (ROA [7(3)])?

This has already been done for Drivers of Taxis and PHCs, and Landlord Registration - The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013, No. 50. This consolidates amendments previously made by Scottish Minsters - why expand the scope in one context (LR: S.S.I. 2006-194) but narrow it in another (the original 2005 Act)? Is the public interest in regulating the sale of alcohol not as important as it is with hire-car drivers and landlords? If exceptions were thought appropriate in some licensing, why not all of them?

Cl. 52 - Offences of supplying alcohol to a child or young person

(a) Why do these offences apply only to people of 18 or over? By granting under-18s immunity, drinkers would engage youngsters to buy drink for them, knowing that the youngsters could not be charged.
(b) the recipient in [104A] is a 'child'. If the only difference for 'Young person' recipients is be an exception for meals, is there a need for a separate [104B]?

(c) In the North Ayrshire Licensing Board response to the "Further Options" consultation, in answer to Q.2 ("Do you agree that it should be illegal for adults to supply alcohol to an under 18 for consumption in a public place?") North Ayrshire Licensing Board replied:

"The prohibition should not simply be against adults. If an under-18 has already acquired alcohol – perhaps no ‘agency’ sale has taken place – he might have obtained alcohol at home – he might in fact supply it to another under-18. Consider the situation where a group are passing round a bottle – why should it be criminal if the oldest gives the bottle to the youngest, but not vice versa?"

(d) The definition of "public place" has part (c) ("any place to which the public do not have access but to which the young person unlawfully gains access"). This should be extended to include trespassing children.

(e) The position of 'knowingly' In the new [104B....] renders the word redundant. The question is not whether the buyer 'knows' of the purchase (who accidentally buys something?). The target of the provision is surely the buyer who knows or has reasonable belief that the drink he is buying is likely to be supplied to or consumed by someone under-age?

Cl. 53 - Meaning of “alcohol”: inclusion of angostura bitters

No comments.

Cl. 54 - Overprovision

There is no objection to Cl. 54(2)(a) but Cl. 54(2)(b) should not be enacted:

(a) The extension of the Assessment to "Licensed Hours" would not achieve anything significant. Given that nearly all comparable premises have policy hours, so are open for much the same length of time, what would be the point of collecting hours data? The most common deviation from Policy concerns shorter, not longer, hours. This is a legacy of the Transition. To preserve 'grandfather rights' some small off-sales did not ask for the full 10.00 am. to 10.00 p.m. on Sunday (although both [65] and North Ayrshire Licensing Board Policy would allow
this), so their Sunday licensed hours reflect the 1976 Act Permitted Hours. There are few Premises like this now, since most have varied their hours to seek the full period, and of course newer Premises were never troubled by 'grandfather rights' considerations, so sought the full period from the start.

(b) this would be a huge data-capture task. It would require every single Operating Plan to be checked.

**Cl. 55 - Duty of Licensing Boards to produce annual financial report**

(a) This creates additional work for a Board and Council Finance Departments. The same staff, whether legally-qualified or not, deal with all licensing - both alcohol licensing and every other kind of licence (e.g. under the Civic Government (Scotland) Act 1982). Income and expenditure is not separately accounted for, so any financial statement would depend on estimates.

(b) Cl. 55(3)(b) is objectionable for the same reason as [146(3)] in the original Act - "Henry VIII Clauses". The executive should not be entitled to alter primary legislation. There is not even affirmative resolution procedure, so unless the Parliament itself takes the initiative to annul the Minister's order, the Act itself can be amended.

**Cl. 56 - Interested parties**

The 2005 Act provision was inserted by the CJL(S)A 2010, never commenced, and is now to be repealed.

According to Para. 109 of the Policy Memorandum, the Bill effects:

"Removal of the requirement for a premises licence holder to notify a change in interested parties and removal a premises manager from the definition of interested party;"

However, the Bill does not achieve this. The Explanatory Notes are closer to the Bill:

"169. It also amends the definition of an interested party at section 147(5) by permitting that a premises manager can be an interested party. This has the effect of allowing the premises manager to be subject to vicarious liability for offences under s141B."

The 2005 Act's interpretation provision currently includes [147(5)]:

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“(5) For the purposes of this Act, a person is an Interested Party in relation to Licensed Premises if the person is not the Holder of the Premises Licence nor the Premises Manager in respect of the Premises but—

(a) has an interest in the Premises as an owner or tenant, or

(b) has management and control over the Premises or the business carried on on the Premises.”

Clause 56(5) of the Bill is:

"In section 147(5) (interpretation), in the opening words, the words “nor the premises manager” are repealed."

A PM would be a person having "management and control over the Premises", so would still be an "Interested Party". Is the intention to make the PM an Interested Party or not?

**Cl. 57(2) - removal of 5-year bar after revocation caused by lack of training**

(a) If enacted, 2005 Act [74(3)(c)] will read:

"(c) no Personal Licence previously held by the Applicant has been Revoked under any provision of this Act other than section 87(3) within the period of 5 years ending with the day on which the Application was received."

So it might mean that holders who had lost their Licences in December 2014 (after failing to meet the refresher training deadline) might re-apply much earlier than the 5 years.

One of the situations where a person might miss the deadline is where he has booked a place on the refresher course in good time, but for some reason (e.g. illness) misses the scheduled sitting. He might in fact sit the course shortly before the 3 month period expires, and not have a Certificate until after the period has expired. He might have sat the course and obtained a Certificate, but simply overlooked the need to show the Board his Certificate until he was too late.

If the Clause is enacted and then commenced by Order, he might re-apply immediately. Should the Board accept a 'refresher' certificate instead of the usual 'grant' certificate? Following the rules strictly it should not, but is that consistent with the presumed purpose of the training?

In relation to “Scottish Certificate for Personal Licence Holders at SCQF Level 6” the SCPLH website states that
"as of the 1st August 2013 ... only certificates presented with the above codes are based upon the new National Standard."

The strictly-correct response might come as a surprise to someone who has done what the Personal Licence (Training) (Scotland) Regulations 2013-261 required, having obtained a "Scottish Certificate for Personal Licence Holders (Refresher) at SCQF Level 6". Is the content of the 'refresher' course so significantly different from the course that people seeking 'grants' usually take? The trade press frequently comments adversely on the utility of refresher training anyway, but how would it look if someone actually gets a recent qualification but is then told "it's not good enough"?

(b) The provision should also state "regardless of the date of that Revocation and whether or not it occurred before the commencement of this Sub-section"

Otherwise this new provision might not help those people who lost their licences in 2014. The provision would not be commenced before 2015, and it would not be presumed to have retroactive effect.

**Cl. 57(3) - renewal warning period**

The proposal is to extend the period prior to expiry that the Board has to give warning from 3 months to 9 months.

Of itself, this is a good change. If there is to be a warning period then a longer period is better than a shorter period, to minimise the defects in the 2005 Act which were highlighted in the North Ayrshire Licensing Board response to the 'Further Options' Consultation in February 2013 (Q. 52 “further suggestions”, responses (7) to (10)) but which the Bill fails to address (see comments on Cl. 57(4) below).

However, the point of the Board needing to alert a Holder could be questioned - it is his Licence, so he has responsibility for keeping it safe, not the Board - why should Boards spend time and money to tell him what he should do anyway? Recorded Delivery letters cost £1.50 postage, hundreds of letters would be needed, and we have found from the recent 'training refresher' alerts under [87(2)] that some letters sent out are in fact returned undelivered because Licence-Holders have failed in their legal duty to update the Board when changing address.

**Cl. 57(4) - Personal Licence Renewal procedure**

The legislation has always used the terms 'grant', 'issue' and 'have effect' indifferently. They are not the same thing, and the difference is particularly obvious because of the way that the 2005 was commenced: hundreds of Personal
Licences came 'into effect' on Transition Day in 2009, but they were not in fact 'issued' until weeks or months later. Hundreds of Personal Licences in our Board area alone are treated as dated from 1 September 2009, and the same aggregation will occur around September 2019 and in 10-year intervals after.

At present, Holders who wish to renew must lodge their renewal applications in the period of 2 months beginning 3 months before the expiry date of the Licence. The Bill proposes to extend the 'window' to a period of 9 months, starting 12 months before expiry. That amendment is better than nothing, but fails to address the real problem.

The 2005 Act continues to omit a 'deemed continuation' provision (unlike the legislation for Taxis, PHCs and many other activities: Civic Government (Scotland) Act 1982, Sch. 1, Paras. 8(5,6)). Experience of the 1982 Act shows that many people leave it until a day or two before their licences are due to expire that they apply for renewal. They are safe to do that, but a Personal Licence Holder who does that will still become unlicensed, because he would have missed the 'window'. If a Personal Licence holder tendered a Renewal Application a day before expiry, the Board would have to refuse even to accept it for processing - if it was outside the window, it would be incompetent - even if he had a recent training certificate and his application was otherwise in order. There are likely to be the sort of concerns in 2019 which happened about refresher training in 2014.

Since there is no 'deemed continuation' provision, even a Personal Licence Holder who lodges his renewal application within the 'window' faces becoming unlicensed. Under the Bill, he can lodge up to 3 months before expiry. What if he lodges in good time but there are adverse comments from the Police (or, under the Bill, about 'fit and proper'), so the case is put on a Board agenda, and the next available Board is not until after the Licence has expired?

Why not abolish the 'window' altogether? If a person chooses to lodge before expiry, and risk effectively losing the period of overlap if his new Licence happens to be granted before the old one is due to expire, why can't he?

If a Premises Manager loses his Personal Licence, there is a breach of the Mandatory Condition in 2005 Act, Sch. 3, Para. 4(1)(b). The '6 week period of grace' allowed by [54] is not available to the Premises, since the expiry of the Personal Licence is not any of the 'events' listed in [54(2)]:

(a) "the Premises Manager ceases to work at the Premises"

This has not happened. It might be a condition of employment that the employee actually have a Personal Licence, but if the employer dismisses him
Should there not be an addition so as to read “the Premises Manager ceases to work at the Premises in that capacity”? An employer faced with the difficulty of his employee X ceasing to hold a Personal Licence, and hence being unable to continue acting as PM, might appoint another employee who held a live Personal Licence, Y, but meanwhile X would probably continue to work on the Premises, albeit no longer as PM.

(b) “the Premises Manager becomes incapable for any reason of acting as Premises Manager”

He has not become 'incapable', if that is construed as a reference to the Adults with Incapacity (S) Act - compare 'event' (c)(ii) in [28] re individuals who hold Premises Licences and become 'incapable'.

The alternative view depends on accepting that the same word has different meanings in different parts of the Act. Accepting that a lack of a Personal Licence leads to a breach of a Mandatory Condition, he is not 'incapable' of acting as PM - the PLH is in breach of a condition of his Licence, but the PM could only be said to be doing something wrong if, while he continues to act as PM, the Premises sell alcohol. The [1(1)] offence is committed, because although the sale is “under” a Licence, the sale is not “in accordance with” it. However, if the PLH acknowledges that the PM is no longer in a position to authorise sales, the PM would not face prosecution unless he personally had conducted the sale. Since he would remain capable of doing everything else the Premises did apart from selling alcohol (e.g. in a restaurant, taking orders and serving food) he could not be described as 'incapable'.

(c) “the Premises Manager dies”

He's not dead.

(d) “the Personal Licence held by the Premises Manager is Revoked or Suspended”

The Personal Licence has been neither Revoked nor Suspended: it has expired naturally, due to the passage of time.

Even if one of the 'events' had occurred, it would not be enough for the PLH to lodge a Variation seeking to re-appoint the same person as PM, since the Variation Application which should follow should seek “to substitute another individual as the Premises Manager” [54(4)(b)].

If the proposed new PM does not already hold a Personal Licence, there is a substantial chance that the Variation Application would not be granted, since there
would be no guarantee that he would in fact have a Personal Licence at the point where the Board would be in a position to determine the Variation Application (if the proposed new PM does not already have a Personal Licence, an 'immediate effect' Variation under [31] would not be entertained).

Many Personal Licences are dealt with under delegated powers, so the Application for the new Licence might well be processed only a few weeks after the old Licence expired, but what if a Board Hearing was necessary (e.g. if there is a Conviction or if the Board has information suggesting that the Applicant might not be 'fit and proper')?

**Suggested amendment**

The legislation should be amended to state that the date of grant is the date of the Board decision, and the decision should have effect from then, regardless of the date of issue of any licence, decision notice or other document. This suggestion applies to Premises Licences as well as Personal Licences.

The difference has been recognised in one context. The Scottish Executive recognised that not all Personal Licences would in fact be 'issued' before Transition Day, as the Licensing (Scotland) Act 2005 (Transitional Provisions) Order 2009 No. 277 was not made until 23 July 2009, only 5 weeks before Transition Day, creating the 2-month "Deemed Personal Licence" for Premises Managers. The Order went to the Subordinate Legislation Committee on Transition Day itself, 1 September 2009.

The Licensing (Transitional and Saving Provisions) (Scotland) Order 2007 No. 454, Article 23 stated that all Personal Licences 'issued' before 1st September 2009 were deemed to commence then. No provision was made at all for Licences issued later, although in fact many Licences were issued afterwards.

The TSO referred only to the duration provision of the 2005 Act - [77] (the date from which the 10 year life of the Licence is counted) - and said nothing at all about the separate provisions as to refresher training - [87].

The practice of all Boards involved with the Northgate computer system is to count every Personal Licence from 1 September 2009, regardless of date of issue. This was a pragmatic approach - around Transition every Board was concentrating on getting Premises Licences and Premises Managers' Personal Licences granted and issued, so some Personal Licences were not in fact 'issued' until months after the Transition.

When in 2014 the Board sent out training reminder letters (showing the Board's belief that certain dates applied) no licence-holder responded to dispute the dates, but (because of the way that the legislation is expressed) the possibility cannot be
excluded that someone whose Licence has been revoked due to lack of training might then say:

"my Licence was not issued until November 2009, so the deadline was altered accordingly, so the Board was wrong to tell the Police that my Licence had been revoked"

He might have to accept that his Licence commenced in November 2009, so that he himself had acted illegally before then, but he could admit that with impunity since there would be no chance of him being prosecuted for something 10 years before:

(a) the prosecution would be time-barred - the 'trafficking' offence (2005 Act, [1(4)]) can only be prosecuted summarily, and therefore the 6-month time-bar applies (Criminal Procedure (Scotland) Act 1995, [136]).

(b) how would the Procurator Fiscal prove in 2014 that the licence-holder sold alcohol in 2009?

**Cl. 58(2) - new duties to acknowledge applications etc.**

These provisions are unnecessary and would require the Board to generate more paperwork.

(a) New [134ZA] "Duty to acknowledge applications" - Applicants already get a covering letter or a receipt for their payment. Our www already gives the dates of Boards and 'last-lodging' dates. The staff at the counter tell people that either the case is delegated or it will go to the next Board. Why do they need to do anything else?

(b) The new [134ZA(4)] is also unnecessary. The Bill would oblige Boards to issue a notice that an application fails to meet the prescribed requirements. More needless paperwork. What already happens is that the office staff telephone, email or write to the Applicant saying what is needed. If the failure is not remedied, the whole Application is returned and the Applicant is told it is being rejected as incompetent. This system works, so why change it?

(c) New [134ZB] "Period for determination of applications" - North Ayrshire has no need for a deemed grant period: Applications are either:

(i) granted as soon as possible, after any relevant period for objections etc. has expired (under a wide-ranging Scheme of Delegations) or
(ii) placed before the earliest available Board meeting.

I doubt if any Application has ever taken as long as three months to be determined, let alone nine, except in the cases where the Board has continued a case until a future meeting.

(d) New [134ZC] "Deemed grant of applications"

(5): "The thing applied for is to have effect for the duration of the period stated in the application (subject to any limits imposed by this Act)."

How can this be applied to Applications for Premises Licences and many other 'relevant applications' which do not state a proposed duration - the Applicant doubtless will want a permanent grant, transfer or variation?

Cl. 59 ("Form etc. of communications under the 2005 Act")

Is there something missing here, perhaps a reference to electronic communications?

Part 3 - Civic Licensing [60-73]

Cl. 60 ("Refusal to grant private hire car licences on grounds of overprovision")

(a) What is the need for this?

The number of PHCs has fallen in recent years: in North Ayrshire

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<tr>
<td>April 2011</td>
<td>62</td>
</tr>
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<td>53</td>
</tr>
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<td>July 2014</td>
<td>55</td>
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The criterion is 'overprovision'. It is not 'unmet demand' as in the existing limit for Taxis - [10(3)].

We have never had any representations from the public that "there are too many PHCs". It is hard to envisage North Ayrshire Council ever using the proposed power.
(b) What are the Objectives which OVP is supposed to promote?

In the alcohol licensing system, the OVP concept is related to the 'protecting and improving public health' Licensing Objective, one of five objectives in the Licensing (Scotland) Act 2005, [4].

In contrast, the CG(S)A 1982 has no formal 'objectives'. Something might be derived from the existing grounds for refusal (Sch. 1, Para. 5(3)):

(a) the licence-holder or manager is not a 'fit and proper person', or

(b) the vehicle or premises is not suitable for the proposed use.

In alcohol licensing, if the Scottish Parliament was asked how it had enabled Boards to promote the PHLO, it could point to the provisions about:

Overprovision (a potential reason for refusing a new Premises Licence)

The Mandatory Licence Conditions on "Irresponsible Drinks Promotions" and price variations.

If a similar question was asked about the CG(S)A, Parliament would point to the existing provisions for vetting of applicants and vehicles.

If 'fit and proper' and suitability are indeed CG(S)A 'objectives', then the question might be asked "how is a limit on PHCs supposed to promote them?"

The creation of overprovision, without first creating objectives, puts the cart before the horse.

(c) How would 'overprovision' be assessed?

PHCs are mobile. At the moment each vehicle can operate throughout the length and breadth of the Council area. Although the Licensing (Scotland) Act 2005 has a similar provision to the Bill's 1982 Act [3B], allowing the Council to determine 'localities', the 2005 Act removes this discretion from Boards with "Moving Premises": the OVP "locality" is deemed to be the whole Board area: [126(8)(9)]. The existing Taxi limit is based on dividing the Council area into Zones, and restricting a specific vehicle to only one Zone. Although the Bill's [3B] allows a 'whole area' approach, that is not consistent with the 2005 Act.

When Boards reviewed their Licensing Policy Statements, the Health Board was able to provide a vast amount of statistical evidence as to the perceived links
between the consumption of alcohol and a wide range of adverse health indicators (such as alcohol-related hospital admissions). The Police and Fire Authorities could also provide data on the link between alcohol consumption and crime or the incidence of fire-related injury. Therefore the Licensing Board, when conducting the mandatory 'Overprovision Assessment', could make a rational decision on where in its area there was OVP.

(d) Overprovision is anti-competitive

In alcohol licensing, Overprovision can be invoked by health bodies and Community Councils, but it might also be invoked by a trade competitor to prevent another trader entering the market. One Council's [10(3)] policy led to a cycle of appeals, in which the Council was involved in a three-way dispute between a would-be operator and a Taxi trade body, which was eventually described by one Inner House judge as "a sorry saga" (Renfrewshire Council v. (1) Davies and (2) Paisley and Glasgow Airport Taxis Ltd., [2005] CSIH 17).

Why should Councils be embroiled in competition disputes about PHCs?

The Bill should provide that if a Licensing Authority does not found on either the Taxi or the PHC limit, or having adopted one later ceases to apply it, its failure to have one should not be open to court question. Otherwise there could be judicial review at the instance of existing operators.

(e) Overprovision is not consistent with the EU Services Directive

The Directive is implemented by "The Provision of Services Regulations" S.I. 2009-2999. Reg. 22 prohibits a "Competent Authority" from making access to, or the exercise of, a Service activity subject to certain requirements, unless specified conditions are met.

One of the prohibited requirements is:

"quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between persons providing the Service" (Reg. 22(2)(a)).

The conditions for restrictions include:

(a) necessity (an overriding reason relating to the public interest) and

(b) proportionality (the requirements must not go beyond what is necessary to attain the objective).
What is the "overriding reason relating to the public interest"? What "objective" is being attained, so that "proportionality" can be assessed? At present, PHCs can operate freely throughout the Council's area: how would the public interest be promoted if this changed, and they were restricted to Zones? There are few Taxi Stances in rural areas. At the moment, a member of the public who lives outside one of the urban areas phones for a PHC. How would his transport choices be increased if the PHCs he used to call were not tied to a single zone?

(f) Overprovision would create an unregulated market

Experience with the existing limit on Taxi numbers suggests a problem might arise if a similar limit was applied to PHCs.

There is a restricted supply of Taxi Licences, and so Licences have a value (Councils are not told 'officially', but we understand that 'plates' change hands for thousands of pounds).

The 1982 Act contains no provision for transfer. There is therefore a difference between the form and the substance:

In form: a licence-holder (X) goes into partnership with a person (Y), and produces a pro forma document to evidence it. He requests the Council to amend his licence to show that it is now held by the partnership. After a year, X resigns, leaving the licence with the remaining partner Y.

In substance: X has sold his licence to Y. Within a year, and possibly immediately, Y alone will operate the taxi.

This procedure is unregulated. While no doubt there are many perfectly legitimate commercial transactions, the possibility of money-laundering cannot be excluded. Since there is no formal transfer, the Police are not automatically involved. The Police would only be informed if Y was not already a licence-holder himself.

At present, there is no limit on the number of PHCs, so the Licences have no value. A person wanting to join the trade does not have to find someone with one of the scarce licences and raise the funds to buy the licence (where do the funds come from?).

Whereas the Services Directive prevents a Council from being discriminatory in issuing licences (Reg. 22(3)(a), there is no such protection for a party to a private transaction.

(g) who would pay?
The current cost of a [10(3)] survey for Taxis is about £13,000. Councils can pass this cost on to the trade, on the basis that it is in their interest to pay about £60 per licence for evidence to maintain their monopoly.

Could Councils do the same with PHC-OVP Assessment surveys, or would they have to bear the cost themselves? Unless trade bodies are prepared to accept that the proposed policy is protectionist, the Council would be left with the bill.

(h) Unification

Not a matter raised in the present Bill, but the possibility of replacing the present Taxi/PHC division with a single type of hire car has been mooted. If that ever happens, the time and money expended on separate limits for Taxis and PHCs will have been wasted.

Cl. 61 - Testing of private hire car drivers

North Ayrshire Council would be unlikely to use this new power - North Ayrshire Council does not even have a 'knowledge' test for Taxi Drivers, so why have one for PHC Drivers?

Cl. 62 - Exemptions from requirements of sections 10 to 21 of 1982 Act

(a) Repealing the '24-hour contract hire' exemption would be a good move as it could be used to facilitate avoidance. Local operators provide vehicles and drivers (both of which might be unlicensed) for contracts carrying patients to and from hospitals, or moving hospital staff between sites. These vehicles are carrying the public, but the Council might not have checked that they are roadworthy and properly insured. If a car is stopped carrying a passenger, and the driver asserts that he is simply fulfilling a contract, there is no quick way for the Police or the Council officer to verify that.

(b) What application of the new Regulation-making power is envisaged? What are the issues in England and Wales referred to by Delegated Powers Memorandum, Para. 36?

Para. 37 is:

"An example would be where a service is providing some kind of transport as an ancillary part of the wider service where the transport aspect is not the main focus."

What is meant by this?
**Cls. 63-66 (various provisions re metal dealers)**

The Council has no comment crime-prevention measures, except to point out that the repeal of the Metal Dealers’ Exemption Warrants has the advantage that it removes the need for the Council to deal with an Auditor's Certificate every 3 years and issue a Warrant. Since the trader does not have a Licence, there is no fee, so this work is done for free.

**Cl. 67 - Licensing of theatres**

The move from the Theatres Act 1968 to the 1982 Act is welcome.

**Cl. 68 - Licensing of sexual entertainment venues**

(a) The definition of 'sexual entertainment' (1982 Act [45A(3)]) covers the same ground that the alcohol licensing legislation already covers:

“‘adult entertainment’ means any form of entertainment which—

(a) involves a person performing an act of an erotic or sexually explicit nature; and

(b) is provided wholly or mainly for the sexual gratification or titillation of the audience.”

(The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007, No. 336.) Those Regulations apply extra mandatory conditions to Premises Licences for late night venues.

There is no point in duplicating definitions given that the same Premises might both sell alcohol and provide SE.

The proposed amendment to the 1982 Act might simply refer to Adult Entertainment as defined in the Regulations. The Regulations might in turn be amended so that (b) in the definition might refer to ‘the audience or any part of the audience, including a single person’.

The 1982 Act should make clear that the provision of SE at any time is covered, lest there be any suggestion that, since the Regulations themselves are directed after 1.00 a.m., the SE rules also apply only to late night Premises.
(b) If the above definition is adopted, there would be no need for a separate definition of "display of nudity". [45A(4)] defines this separately for "woman" and "man", the latter excluding nipples. Instead of separately providing for men and women, allow for the fact that some people are Transgendered. The person who employed a male-to-female transsexual to display her nipples might claim that the performer was "really a man", especially if she had not registered a new gender under the Gender Recognition Act 2004.

(c) The new [45A(5)] is "Sexual entertainment is provided if (and only if) it is provided (or allowed to be provided) by or on behalf of the organiser." What if the owner of the venue tries to distance himself from the event by saying that all he is doing is providing a venue where customers may act (like 'karaoke') or supposedly 'self-employed' performers operate?

(d) The new [45A(7)(b)] entitles Scottish Ministers to exclude specified places from being SEV. Suppose that the Council has already decided that the appropriate number of SEVs is nil. By re-classifying, the Ministers have overruled the Council. Suppose the Council has already dealt with an Application for specific Premises, and has refused it. If an Order is then made reclassifying them (e.g. saying that the activities are not SE after all), the Premises can operate even though local Members have said they should not. The Delegated Powers Memorandum, Para. 49 indicates that the power would be used to exempt Premises which Ministers thought should not be covered by the new system. If local Members have already applied their minds to a specific proposal, why should Ministers be able to overrule them?

(e) The same comment applies to the further Order-making power in the new [45A(11)].

(f) The new [45A(9)] allows the unlicensed use of Premises for up to 3 times in a year. Exemptions are inconsistent with the idea that the Council can resolve, in advance, that there should be no SE in any locality. If there was an exemption, the public and Councillors might discover that, despite the Council having prohibited SE, it was happening anyway.

(g) The new [45B] allows the Council to Resolve to adopt SE licensing. However, the mere fact that the Council is considering such a Resolution - even it is likely that there will be a NIL limit - might attract Press coverage saying that the Council is 'allowing lap-dancing'. Would it not be better to have the Act provide that all SE is prohibited unless the individual Council has resolved to adopt a licensing
scheme, in which case particular Premises may only operate under and in accordance with a Licence specifically granted by the Council?

(h) At present, the grounds for refusal of a Sex Shop (Sch. 2, Para. 9(5)) are (briefly)

(a) the Applicant is unsuitable;

(b) the business would be carried on for someone who would himself be refused;

(c) the number of Sex Shops in the locality is equal to or exceeds the number which the Council consider is appropriate for that locality (which could be nil – Para. 9(6))

(d) the Licence would be inappropriate having regard to the locality’s character.

The proposed 1982 Act, Sch. 2, Para. 9(5A) renders it difficult for a Council to rely on (c). The new provision is:

"For the purposes of sub-paragraph (5)(c), a local authority must—

(a) from time to time determine the appropriate number of sexual entertainment venues for their area and for each relevant locality, and

(b) publicise the determination in such manner as they consider appropriate."

Therefore, if the Council adopted a licensing scheme, it would also have to carry out a survey (like the 'overprovision assessment' from the Licensing (Scotland) Act 2005) and review it. How would residents of a locality be likely to react if they were told:

"The Council has decided that your area is suitable for a SEV. There’s no application yet, and there may never be, but if there is the Council will probably grant it (assuming the Applicant is suitable)?

Is there not an overlap between the locality provision in (c) and the character provision in (d)?

If the Council has already Resolved under [45] to allow such licensing, it could be said that the issue of principle has been dealt with already. However, while the broad issue of principle
‘there might be sex shops somewhere in the Council area’

has been decided, it is still for the Committee to consider the particular locality; the Committee could still be consistent with the ‘somewhere’ Resolution by saying

‘there will be no sex shop/SEV here.’

(i) ‘relevant locality’: Unlike other 'locality' provisions, where the Board or Council can determine for itself what localities there should be, the 1982 Act excludes discretion, as Para. 9(7) is:

"In this Paragraph “the relevant locality” means—

(a) in relation to premises, the locality where they are situated; and

(b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex shop."

What should be the sequence of events? - The locality depends on the particular application, but localities must also be assessed prior to there being any application.

Cl. 69 - Deemed grant of applications

The new [3(4B)] is:

"A variation of the terms of a licence deemed to have been granted under subsection (4) is to have effect for the remaining period of the licence."

The 1982 Act allows for three alterations to a Licence, not one:

(a) Notification of material change (including change of Day-to-Day Manager): Para. 9(1) and 9(3)

(b) Consent for Alterations: Para. 9(2) (called in North Ayrshire Council ‘Amendment’)

(c) Variation (Para. 10)

The word "variation" only covers (c). The list in (5B) would have to include (b).

Similarly the list in [45C(9)] would have to include Sch. 2, Para. 14(2).
Cl. 70.- Procedure for hearings

This is all unnecessary. Licensing Authorities have been holding hearings under the 1982 Act without the need for external instruction for 30 years, and the Courts have not been flooded with Appellants alleging 'breach of natural justice'.

The 'Further Options' Consultation asked (Q.31):

"Should the Scottish Government provide additional guidance or regulation for Licensing Boards on the conduct of hearings and why?"

North Ayrshire Licensing Board replied:

"No. Each Board has its own priorities, so it would be impossible to lay down a single procedure. Provided that all Boards afford all parties a fair hearing, the details should be left to the Boards."

Comments on the new Sch. 1, Para. 18A (similar comments can be made of the new Sch. 2, Para 24A re Sex Shops and SEVs):

(a) (notices): The Act already specifies that certain notice must be given to Applicants etc..

(b) ("rules of evidence"): In licensing it makes no sense to talk of "rules of evidence". Committees are not Courts, and do not put witnesses on oath:

"7. The scope of the discretion conferred on the Committee by para 11 of Schedule 1 to the 1982 Act is wide. They are entitled to proceed on any type of material which has a bearing on the question which they have to decide, and it is for them to decide on its sufficiency and quality, and the appropriate weight to be given to it. Accordingly, it was for the Committee to decide whether to proceed on the basis of the information provided by the Chief Constable's representative. The fact that the information included hearsay evidence did not impinge on that discretion."

Inner House in Ferguson v Dundee City Council [2006] ScotCS CSIH 51 (emphasis added)

The Bill's phrase looks as though it was copied from the unused enabling power in Licensing (S) Act 2005 [133(3)(b)]. That power has never been used and probably never will be, given that the reason for it (the Stated Case Appeal procedure) was abandoned.
It is very rare for a Board to hear 'evidence', in the sense of testimony - Boards deal with ex parte statements. This 2005 Act provision can be explained by the appeal system originally envisaged by the 2005 Act (Stated Case) which was based on the model of an appeal from a summary criminal Court. It was superseded by CJL(S)A 2010, which returned to a Summary Application procedure as used in the 1976 Act and other licensing legislation. The Summary Application Rules do not prescribe forms of evidence to be used in court (and would not be expected to, given that procedural rules would not be expected to alter the general law of evidence).

(c) (representation): the Convenor can already make a decision as to whether or not the person who attends the hearing, if not the party, is suitably authorised.

(d) (timing): The Act already specifies a schedule.

(e) (expenses): Licensing Authorities have never had the power to award expenses, except that the Licensing (Scotland) Act 2005 entitled a Board to award expenses against an Objector or Review Applicant whose complaint was deemed "frivolous or vexatious" [22(6)-(8), 36(6)-(8)], although neither provision states how the fees are to be calculated - the tables of fees for court actions or solicitors have no application. How would these new fees be assessed?

Cl. 71 - Conditions for Part 3 licences

(Part 3 means Sex Shops and SEVs). No comment.

Cl. 72 - Civic licensing standards officers

There is no objection to this, but the question can be asked "What does this provision add to the existing law?"

Many Councils already have an officer who can exercise the existing powers of an "Authorised Officer of the Licensing Authority" under [5, 11]. The existing officer will already, as part of his job, mediate, supply information, and endeavour to secure compliance with licence conditions - much as a "Licensing Standards Officer" under the Licensing (Scotland) Act 2005 would do. If there is a case to bring to the Committee, he can already bring it. If it is not envisaged that the new CLSO should be a different person from the existing AALO, what is the point of this provision?
Cl. 73 - Electronic communications under the 1982 Act

A welcome provision.

(a) See comment to Cl. 69: the list in Para. 16A(1) omits applications under Paras. 9(2) and 10.

(b) There should be a provision that if a person has used electronic communication to make an Application etc., then he is deemed to have consented to the Licensing Authority also using such means to communicate with him at any time thereafter at the same email address.

(c) Delete (4)(b). Requests for Statements of Reasons are either made orally at the time or by email, neither indicating the consent of the party to receive S/R by email. I send S/R by email saying 'I would not propose to send a hard copy, but will do so if you say you cannot read it.” No-one has asked for a hard copy. If (4)(b) is enacted I’d have to go back to old-fashioned letters.

(d) The proposed presumption of delivery in Para. 16A(7) is the second working day after the day on which it was sent. Why not assume that electronic communications arrive on the same day? e.g. Ordinary Cause Rule 15.2(3)(a)(i) says that personal intimation or fax transmission of a Motion is effective "on the day of transmission or delivery where it is given before 5.00 p.m. on any day”.

Cls. 74-79

Part 4 (General) - no comments.

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Other Matters

Other matters might be considered for inclusion in the Bill. Some of these suggestions were made in the response to the ‘Further Options’ Consultation but were not progressed.

1. The training requirements for Board Members

The Parliament might consider repealing the requirement for repeated training in Sch. 1, Para. 11(2)(b):
"(b) if the member is re-elected, the period of 3 months beginning with the
day on which the member is re-elected."

Why should a Member who has already been trained be re-trained just because he is re-elected? At present, Members who were on the Board before the Local Government election must be re-trained, even if:

(a) they have been on the Board for years, or

(b) they were trained after the last significant amendment to Licensing Law (1st October 2011), (having been elected to fill a vacancy).

Repeated training is unnecessary and is a waste of time and money.

The Parliament might consider removing the obligation of re-training where the Member was part of the previous Board. If ‘old’ Members are to be retrained, perhaps the requirement might be linked to the individual dates of their election: the newest Member of the North Ayrshire Board had been trained in early 2010: what advantage was there in him being unable to sit after the 2012 election (given that he and the other Members were properly trained the day before the election of the new Board but none of them could act the day after the election).

After the local elections in May 2012, all the Boards in Scotland were elected in accordance with 2005 Act, Sch. 1, Para. 2. On the election of the new Board, the previous Board ceased to exist: Para. 4(1)(a)(ii). Each member required to be trained within 3 months, whether he was truly a new Member or he was on the previous Board (Para. 11(2)), and he was not to take part in any proceedings of the Board until he had produced to the Clerk evidence of training: Para. 11(3).

This meant that the new Board could not transact any business until a quorum of Members were trained. Since every Board in Scotland would be seeking training places at much the same time, there was a possibility that there might be some Boards unable to transact the non-delegable Para. 10(2) business for a period of time.

This absence of a Board would have undesirable consequences:

(a) Licence Applicants might be unable to get the grant or Major Variation of Premises Licences, or where hearings were necessary, the grant of Transfers, Occasional Licences, Extended Hours, or Personal Licences;

(b) Review Applicants would be unable to have hearings;

(c) the Police would be unable to seek a Closure Order under [97].
Also, given Para. 11(4), Members, whether newly-elected or re-elected, would cease to part of the Board three months after election. There is the possibility that a Member might not acquire the qualification in time, e.g. because he might have to resit an examination or a training course cannot be arranged in time. The North Ayrshire Board has 10 Members so it could have found after 3 months of existence that it failed to have the quorum of 5 prescribed by Para. 12(1), and there would be no point in the untrained Members then being trained since they would require to re-elected by the Council, and their training would only count if it post-dated their re-election.

Would it be possible to allow a temporary Board to operate for (say) 6 months after the election of the new Board, consisting of such Members who had been on the 'old' Board and were therefore suitably qualified, or for the quorum for all meetings happening in the first 6 months of the 'new' Board to be lower than would otherwise be expected?

This issue was raised by the 'Further Options' Consultation (Q.50) and North Ayrshire Licensing Board replied:

"No. We were aware of the risk but fortunately all our Members obtained training qualifications at the first sitting, so we had no quorum problem. Had this not happened hardship could have occurred. The 'new' Board was elected at the Council’s First Statutory Meeting on 16 May 2012. Until such time as a quorum was qualified, it could not transact business.

The 'old' Board was of course no longer available, so even though those Members had been qualified, they could not sit.

Since all ‘new’ Members were qualified, the next Board dealt with:

(a) 6 Review Applications (4 from the Police making various crime and disorder complaints, one a noise complaint from a neighbour, and a Section 44 Review following a conviction),

(b) 7 non-minor-variations

(c) 3 Premises Licence Grants (2 ‘full’, 1 provisional)

(d) 1 Personal Licence Application

(e) 1 Occasional Licence Application.

Had there been no Board, none of this could have been dealt with for weeks or months. If the Police had wanted a Closure Order there would have been no Board to grant it.
Our Board has 10 members. The quorum is 5. 3 of the 10 were Members of the pre-election Board. 7 were newly-elected.

It might have helped if Members who had been on the pre-election Board did not have to requalify. They were qualified on 15 May but not 16 May, so they could not transact business – how was the public interest served?

It also cost the Council money in paying for training people who were already trained."

2. **Supplementary Licensing Policy Statement**

Amend the requirement to re-publicise fully any proposal for a Supplementary LPS.

The existing structure is cumbersome and has never been used in North Ayrshire. Therefore the only changes to LPS are at the 3-yearly review. If the life of a LPS is to be increased to 4 years to match Council elections, there might be more occasions to draft a Supplementary LPS in the interval.

At present, when the Board intends to make any change to its LPS, no matter how minor, the whole consultation process must be repeated, e.g. for its current LPS North Ayrshire consulted with numerous bodies:

(a) Local Licensing Forum
(b) NHS Ayrshire & Arran
(c) Chief Constable
(d) Fire & Rescue
(e) All Community Councils in North Ayrshire
(f) Community Justice Authority
(g) Alcohol and Drug Partnership
(h) The Council's Senior Manager Building Standards
(i) The Council's Senior Environmental Health & Trading Standards Manager

In addition, a Public Notice summarising the purpose of the LPS and inviting comments was published on the Board's website. The Board had few representations, all from bodies and none from the general public.

Would it not be sufficient if the Board published, on its website, a notice:

(a) setting out the proposed changes,
(b) stating a period for representations, and
(c) stating that if there were no representations within that period the LPS would be held as so modified (it would then be re-published on the
website), but if there were any representations these would be considered at a Meeting and the Board would then decide what modification, if any, was appropriate to its LPS.

3. **Errors**

(a) Correct typo: "identified" is spelled "indentified" in both of the Criminal Justice and Licensing (Scotland) Act's ASB provisions [22(2A), 24A(1)];

(b) Correct typo: "ground for review" is rendered as "ground of review" in [2005 Act 36(5)(b), 37(4)(b)];

(c) Amend [29(4)]. The intent was to apply some of the procedures for Granting Premises Licences to 'Major' Variations (there is no formal title for these, and they are simply not 'Minor Variations'). The provisions applied are:

- [21(1)] - Board to notify neighbours etc.
- [21(2)] - Board must supply copy Application to those persons.
- [22] - Objections and Representations

However CJL(S)A 2010 [183(2)] amended the 2005 Act in two ways:

1. the Police were entitled to make ASB representations - new [22(2A)];
2. the Board was also given a power itself to request an ASB Report from the Chief Constable - [24A].

However, power (2) relates only to the original Premises Licence application, and not a later Variation application.

4. **Private Proceedings**

Amend 2005 Act, Sch. 1, Para. 12 so as to increase the number of situations where the Board may act in private:

(a) where a party to the proceedings requests a private hearing;

(b) where the Board resolves otherwise, using procedures similar to Schedule 7A to the Local Government (Scotland) Act 1973
(c) where the Board carries out the preliminary consideration of whether or not to make a [37] Proposal (If a Proposal is made, the later hearing will of course be in public).

The Further Options Consultation asked (Q.33)

"Should Board meetings be held in public, in their entirety?"

North Ayrshire Licensing Board replied:

"No. In most cases the situation should remain that proceedings, other than deliberation, should be in public, but an exception might be made:

(a) where a party to the proceedings requests a private hearing;

(b) where the Board resolves otherwise, using procedures similar to Schedule 7A to the Local Government (Scotland) Act 1973.

Examples:

(a) the Police brought a review against Premises and narrated numerous incidents. This was followed by a newspaper story with the headline 'Pub was worst in Ayrshire'. The Licence-holder contended that many of the complaints had nothing to do with her, e.g. she herself was the victim of vandalism and racial abuse. While the Board did impose sanctions, it recognised that while the Police had concerns (the headline summarised their view), it did not follow that the licence-holder was wholly at fault. Therefore the sanctions were not as serious as a reader of the newspaper headline might expect.

(b) An applicant for a Personal Licence had a conviction for a sexual offence involving his daughters. His lawyer requested a private hearing, and when it was explained that this was not possible he withdrew the Application rather than publicise the conviction. If he had not done so, not only would he be identified, but there would be a risk the victims would be identified.

In both cases, a public hearing could be freely reported in the Press."

Suggestion (c) arises from later experience. The preliminary discussion takes place in public, at a meeting of the Board, but our practice is deliberately to omit a Report from the Agenda and instead ask the Convenor to introduce as 'Any Other Business' a Briefing Note which is handed out to Members only. The Briefing Note sets out the information which the Clerk thinks may lead to the conclusions that a "ground for review" exists, and that a public Review hearing should later take place. That way the Members know what the circumstances are but the Press do
not: if the Report was public from the start, the Board might decide to take no action, but nonetheless the alleged circumstances might be reported.

5. **Amend the Premises Licence 'terminating events' [28]**

Include among the terminating events the PLH's loss of the right to occupy the Premises. Although it is clear that this would have been the consequence under earlier legislation, the argument has been advanced that the 2005 Act provides a comprehensive code and that the earlier caselaw has been superseded.

6. **Vice-Convenor**

The 2005 Act does not recognise the office of Vice-Convenor, but many Boards have one. Amend Sch. 1, Para. 6 so that the Vice-Convenor can act in the absence of the Convenor, without a Para. 6(5) election.

7. **Consolidation**

This is a general comment about the style of legislation, not only in the licensing field, where piece-meal changes are repeatedly made.

One of the criticisms of the 1976 Act was that it had accumulated so many amendments that it was difficult to follow. The 1976 Act lasted 30 years, and the 2005 Act's complexity has surpassed that in under 10 years.

It is not easy to comment on Bills. If practitioners who use the legislation daily have difficulty following the law, what hope have the general public?

For example:

(a) Cl. 46(4):

"In section 74 (determination of personal licence application)—

(a) in subsection (2), after paragraph (c) insert—

“(ca) no information has been provided under section 73(5) or 73A(2),”,

(b) subsection (5A) insert—

“(5AA) If— ..."
Why repeatedly amend an Act - why not repeal and re-enact? The original subsection (5) was in the 2005 Act. Subsections (5A) and (5B) were inserted by CJL(S)A 2010. The Bill inserts (5AA) between them.

(b) Bill, Schedule 2, Para. 4(2):

"4(2) In Schedule 1 (licensing: further provisions as to the general system)—

(a) in paragraph 5—

(i) the sub-paragraph (2A) which was inserted by section 172(6)(d) of the Criminal Justice and Licensing (Scotland) Act 2010 is renumbered as sub-paragraph (2ZA),"

This is an amendment of an amendment.

8. Transfer

One of the 'trigger' events for [34] transfer of a Premises Licence is where:

"the Premises Licence Holder, being an individual— ... becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)." [34(3)(a)(ii)]

This provision is unworkable and should be repealed.

The person who can apply is (see The Licence Transfer (Prescribed Persons) (Scotland) Regulations 2007 No. 34, Reg. 4.):

(a) any person with Power of Attorney by the Licence Holder; or

(b) any person authorised to act on behalf of the Licence Holder by virtue of the 2000 Act.

(1) It is not stated whether (b) means only a "Financial Guardian" or includes "Welfare Guardian", or even a hospital manager (The Reg: simply says "any person authorised to act on behalf of the Licence Holder by virtue of the [Act]";)

(2) In practice the Guardian/Manager would rarely be able to apply: the 28 day period available for Transfer runs from when the Licence Holder became incapable, and so that period will have expired long before the Guardianship proceedings are concluded with an appointment. It would be necessary for the Applicant for Guardianship to seek an early interim appointment, and even then
the 28 days is likely to have expired long before anyone even lodges the Guardianship application with the Court, since it would not be lodged until the Applicant has obtained suitable medical evidence.

9. Disabled Access and Facilities Statement

In the 2005 Act [20(6)] was introduced by CJL(S)A 2010 but has never been commenced. An Applicant for a Premises Licence would be required to lodge a DAFS.

(a) is the provision ever likely to be commenced?

(b) if so, what if anything should a Board do with a DAFS:

   (i) if the Applicant says 'I do not comply with the DDA and never will'?

   (ii) if the Applicant said, at Application, that he would provide such-and-such facilities within 3 months, but then failed to do so.

The Scottish Government said in correspondence:

“There are no further provisions in the 2005 Act detailing what a Licensing Board should do with such a statement or what impact the statement should have on the determination of the application. ...

The statement is intended to inform the public as to the nature of the disabled facilities at the Premises - it has no bearing on the obligations of the applicant under the Equality Act 2010.

The amended section 20(2) does not require an applicant to confirm whether or not they are in compliance with disability discrimination legislation. There is no requirement in the amended section 20(2) for an applicant to make any commitment to provide disabled facilities at some point in the future. I would remind you that under section 27(7)(c) Licensing Boards may not impose conditions that relate to a matter which is regulated under another enactment.”

So what is the provision for?

10. Relevant Offences

The suggestion that it would be too difficult to remove the concept of 'relevant' convictions from the Licensing (Scotland) Act 2005 is mistaken. On the contrary, it
would be simple. Apart from replacing the many uses of the phrase, the S.S.I. could be revoked.

(a) The 2005 Act's approach has been rendered redundant by the introduction of 'fit and proper': if any information is relevant to the 'fit and proper' question, why should it matter whether a conviction is 'relevant' or not?

(b) Even under the existing law if a conviction is not 'relevant' it might still be the basis of a "Refusal Recommendation":

- Premises Licence Application - [24(8)] (although there is a narrow 'window')
- Transfer Application - [33(7)]
- Personal Licence Application - [73(4)]

There is no Refusal Recommendation available where the Police confirm a conviction under [44]: if the conviction was 'relevant' their notice will be followed by a [37] Review Proposal, so the absence of a specific recommendation power would not be a serious omission, but if the offence is not 'relevant' in the first place then there will be no notice.

(c) The concentration on convictions means that the Board does not have access to the information which a Licensing Committee would have. For example, where there has been a non-court disposal. Suppose the Procurator Fiscal tells a suspected offender:

"I am satisfied that the circumstances reported merit prosecution, but I am giving you the opportunity to discharge your liability to prosecution if you pay £x" (a 'Fiscal Fine' or Conditional Offer under Criminal Procedure (S) Act 1995 [302]), and the offender pays £x.

That is not a conviction, yet a Licensing Authority under CG(S)A 1982 would be quite entitled to infer that the allegation had been admitted and proved. Why can't the Board do this?

(d) See comments above about the possibility of 'rules of evidence' and the reference to the Ferguson case (re Bill Clause 70).

Once it is accepted that any information, even uncorroborated hearsay from an anonymous witness, has the potential to carry weight, then it ceases to be a matter for any Court: the attribution of weight to factors for and against is for the Licensing Authority. There are many cases supporting this view, e.g.

Ranachan v Renfrew District Council, 1991 SLT 625 [2D]
Latif v Motherwell District Licensing Board, 1994 SLT 414 [1D]
Middleton v Dundee City Council, 2001 SLT 287 [ED]
Mejury v Renfrewshire Council, 2001 SC 426 [ED]

It might well be commented that uncorroborated hearsay from an anonymous witness should carry little weight, but that is a question for the Licensing Authority. The question of law "is this conviction 'relevant' ?" should be unimportant.

(e) The Scottish Parliament itself has already accepted the idea that uncorroborated hearsay from an anonymous witness can be taken into account. See Licensing (S) Act 2005, [22(2A)]:

“The appropriate Chief Constable may, under subsection (1)(b), make representations concerning a Premises Licence application by giving to the Licensing Board a report detailing—

(a) any cases of antisocial behaviour identified by constables as having taken place on, or in the vicinity of, the Premises,

(b) any complaints or other representations made to constables concerning antisocial behaviour on, or in the vicinity of, the Premises.”

The Board in (b) would be hearing information given to Police officers by unidentified members of the public - for all the officers knew, the "complaints or other representations" might be made maliciously, and there would be no way of the Board determining who made the representations or of assessing their credibility and reliability. The same might be said of the informants who give the Police 'intelligence'.

(f) Although the licence-holder and the convicting court are obliged to report convictions to the Board, the Police do not even have the right to do so, although they are the most reliable source of information for Boards, both:

(1) because they are likely to do it at all, and

(2) when they do their information will probably be accurate.

Licence-holders often fail to report convictions, whether due to ignorance or intentionally, and Courts almost never do (the only occasion when North Ayrshire received notice was in a case where it happened that the Assessor in the Court was himself a former Board solicitor).

(g) The Act's approach rests on a Scottish Statutory Instrument from 2007 which has never been updated: The Licensing (Relevant Offences) (Scotland)
Regulations 2007 No. 513. It would always be difficult to compile and maintain a comprehensive list of enactments, since new ones are made all the time, but this difficult task has not been attempted and the deficiencies of the existing SSI are simply increasing with time. The Police in practice report everything as 'relevant' anyway. The SSI consists of a seemingly random sample of statutes with inexplicable inconsistencies and omissions. Sometimes whole Acts are included as 'relevant', sometimes only a few sections (omitting other provisions).

Examples:

(1) **Offences against the Police**

Offences of assaulting or obstructing officers were prosecuted under the Police (S) Act 1967 [41], and are now charged under the Police and Fire Reform (Scotland) Act 2012 ([90(1)] assault Police or staff; [90(2)] resist, obstruct or hinder Police or staff). Neither is listed as 'relevant'.

(2) **Statutory Offences based on Common Law crimes**

If a statutory offence appears in the Regs. and that statute has since been repealed and replaced, then on ordinary interpretation rules the ‘new’ offence would also be ‘relevant’.

However, this does not apply when a common law crime is duplicated by a statute, e.g. Breach of the Peace at common law is ‘relevant’ (Schedule, Para. 48(a)). Circumstances which would once have led to a BOP charge are now often prosecuted under Criminal Justice and Licensing (Scotland) Act 2010 [38] ("Threatening or abusive behaviour"). The statutory offence is not ‘relevant’ - the Regs. have not been amended to cover the 2010 Act.

Reg. 2(b) does not help. This only applies to a statutory offence where the statute has since been repealed. A statutory offence would only be relevant if

(i) imprisonment followed (Reg. 2(d)), or

(ii) it was an offence “inferring personal violence” (Para. 1) - maybe Police assault would count, but resisting arrest is doubtful.

(iii) it was a “sexual offence” (Para. 2). Some things which might have once have been charged as common law "Breach of the Peace" are now specific statutory offences, and are defined as ‘sexual offences’, e.g. the ‘peeping tom’ in Raffaelli v. Heatly, 1949 S.L.T. 284; 1949 J.C. 101 might now by prosecuted under Sexual Offences (Scotland) Act 2009, [9] (voyeurism), [26] (voyeurism towards a young child), or [36] (voyeurism towards an older child).

(3) **Breach of Bail and other offences against 'administration of justice'**
Although some common law 'administration of justice' offences are listed in Para. 47:

(c) attempting to pervert the course of justice;

(d) attempting to defeat the ends of justice;

(f) contempt of court;

there are no references to the comparable statutes:

- failing to answer an undertaking given to Police on release from custody (commonly used for minor crimes - effectively a promise to attend Court) - Criminal Procedure (S) Act 1995 [22]; and

- breaking bail by not appearing in Court, e.g. Bail (S) Act 1980 [3(1)(a)], replaced by Criminal Procedure (S) Act 1995 [27(1)(a)].

Since these are not 'relevant offences', the equivalent in England and Wales ("Failure to surrender to custody at appointed time") would not be admissible as 'foreign offences'.

Particular provisions of the Schedule to the SSI

"6. An offence under section 1 of the Trade Descriptions Act 1968 (c. 29) (false trade description of goods) in circumstances where the goods in question are or include alcohol."

(a) Wouldn't offences not involving alcohol be equally concerning to a Board? Put shortly, the conviction shows the person is dishonest. What he was selling does not matter. Why should he not be regarded as 'not fit and proper'?

(b) How would a Board know what the 'goods is question' were, as this would not be noted on an ordinary schedule of previous convictions? The Police letter might repeat the details of the Charge, but even that is not guaranteed. If the Police themselves institute proceedings, e.g. by charging assault, they will probably have a record of the particulars - who, where, when, what - but sometimes the Police themselves cannot say due to the lapse in time.

With many offences the Police themselves are not the Reporting Authority so they might have no information beyond the bare S.C.R.O. details.
Without details, how can anyone determine that the case related to alcohol (Paras. 6, 30, 32) or (Para. 19(a)) Public Entertainment Licence? Surely the Licensee would have to be given the benefit of the doubt?

(c) Not listed are breaches of Regs made under the Food Safety Act 1990: The General Food Regulations 2004/3279; see Regulation (EC) No. 178/2002. Art. 18 of the EC Regs. makes it illegal to refill a lot-marked bottle (as this prevents traceability: all bottles are lot-marked).

"19. An offence under any of the following provisions of the Civic Government (Scotland) Act 1982 (c. 45)–

(a) section 7 (offences), so far as relating to public entertainment licences under section 41;"

Why only PELs? Similar comment to Para. 6.

"19(g) section 57 (being in or on buildings etc. with intent to commit theft);"

Section 58 (so-called 'KT' or the old 'Powers' offence - 'known thief in possession of tools') is omitted, yet it is even greater evidence of dishonesty than Section 57: the person is a repeat offender.

"28. An offence under any of the following provisions of the Road Traffic Act 1988 (c. 52)–

(a) section 3A (causing death by careless driving while under the influence of drink or drugs);

(b) section 4 (driving etc. a vehicle when under the influence of drink or drugs);

(c) section 5 (driving etc. a vehicle with alcohol concentration above prescribed limit);

(d) section 178 (taking motor vehicle without authority, etc.)."
1. Dangerous and careless driving [1 - 3] - should Boards overlook serious criminal offences such as causing death by careless driving because the offender was not drunk?

2. Refusing to give a drinking and driving specimen [6-7] is perhaps more serious than actually being over the limit - typically being committed by drivers who are both over the limit and who are trying to obstruct the Police by refusing a test (common law ‘attempting to pervert’ is relevant, but the statutory equivalent is not).

3. failure to have MOT, licence or insurance [47, 87, 143]; and

4. failing to report accidents [170] (although ‘attempting to pervert’ is relevant)

Are many of these not an indication that the offender is dishonest and regards compliance with the law as of little consequence? Where a Licensing Authority formed such a conclusion, and accordingly held that a Taxi Driver was not ‘fit and proper’, the Inner House did not interfere (Middleton v Dundee City Council, 2001 SLT 287).

30. An offence under either of the following provisions of the Food Safety Act 1990 (c. 16) in circumstances where the food in question is or includes alcohol—

(a) section 14 (selling food or drink not of the nature, substance or quality demanded);

(b) section 15 (falsely describing or presenting food or drink).

See comments (a) & (b) re Para. 6.

32. An offence under section 92(1) or (2) of the Trade Marks Act 1994 (c. 26) (unauthorised use of trade mark, etc. in relation to goods) in circumstances where the goods in question are or include alcohol.

See comments (a) & (b) re Para. 6.

33. An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)—

(d) section 47 (prohibition of the carrying of offensive weapons);

(e) section 49 (offence of having in public place article with blade or point);
(f) section 49A (offence of having article with blade or point (or offensive weapon) on school premises).

What about obstructing a Police search for such weapons - surely as objectionable as the possession offence itself? The offence of obstructing a drugs search is considered 'relevant': [23] MDA 1971 (listed in Paragraph 9(f)).

43. An offence under section 46 of the Gambling Act 2005 (c. 19) (invitation to gamble).

[46] creates various offence of causing or permitting a child or young person to gamble, or sending him info or adverts about gambling. However the principal unlicensed gambling offences in [33] and [37] of the GA 2005 are not 'relevant'.

47. [Common Law crimes] (g) prison breaking.

Is this ever prosecuted at Common Law? The offence under the Prisons Act 1952 [49] (being 'unlawfully at large') is not listed.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #awlbill.

*1. Please supply your name and contact details:

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* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☑ Professional

☐ Commercial

* 5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☑ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☑ General licensing issues

☑ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

We note the position of violence against women groups, who wish to see an end to the existence of sexual entertainment venues. It is the view of AFS that sexual entertainment and the sale of alcohol should be licensed separately, but we would like to see more robust regulation of sexual entertainment venues as a step towards their elimination. We do not agree with proposals to exempt venues hosting sexual entertainment on three or fewer occasions within a 12 month period from licensing requirements. If activity causes sufficient harm so as to require to be licensed, the number of times that activity occurs should not be relevant.

1 Consultation on Regulation of Sexual Entertainment - Summary of Responses, Scottish Government, 2014
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
Alcohol Focus Scotland supports the proposal to separately licence sexual entertainment and the sale of alcohol. This will increase the regulatory requirements on sexual entertainment venues that sell alcohol. Sexual entertainment activities and the sale and consumption of alcohol each pose specific risks to society. It is therefore justifiable and appropriate that premises that offer both the sale of alcohol and sexual entertainment are subject to more extensive regulation than premises that sell alcohol alone.

We welcome the Scottish Government’s acknowledgement of the need to ensure the sexual entertainment and alcohol licensing systems are consistent. It is crucial that these systems are appropriately coordinated and that licensing boards are still informed by applicants and licence holders that sexual entertainment is to be provided on a licensed premises. A separate licensing scheme for sexual entertainment should not erode the responsibility of a licensing board to consider the general and specific risks of selling alcohol in a venue that offers sexual entertainment and to impose measures to minimise risk. For example, whilst alcohol does not cause domestic violence, evidence suggests that it can be a contributory factor. Evidence also indicates that controlling the availability of alcohol can limit and minimise alcohol-related problems, including violence. It is therefore legitimate for a licensing board, in seeking to promote the licensing objectives, to consider the imposition of additional conditions on licensed premises that offer sexual entertainment to reduce the risk of alcohol-related violence within the premises and outwith. Such conditions could include, inter alia, reduced licensed hours, restrictions on all promotional activity involving alcohol, and the use of CCTV.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

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2 Scottish Government letter to Local Government and Regeneration Committee, 1 September 2014, qu. 68
Background of White Ribbon Scotland

The White Ribbon Campaign is an international movement to engage men in tackling violence against women, which began in Canada in 1991. The movement now exists in over 60 countries across the world and an informal steering group was formed in Scotland in 2006 to oversee White Ribbon campaigning, with White Ribbon Scotland registered as a Scottish Charity in 2010. We work with non-perpetrating men to tackle violence against women. We stress that although not all men are perpetrators, we live in a society where women do not have the same equality as men and, as a consequence of this inequality, are victims of gendered violence. The White Ribbon Scotland campaign seeks to engage with men and boys to tackle violence against women by challenging the gender inequality which underpins it. Since 2010, White Ribbon Scotland has campaigned nationally and locally, delivering training in partnership with local authorities, statutory agencies and in schools to raise awareness of the prevalence and nature of men’s violence against women, challenge sexist attitudes, reconsider men’s own behaviours and promote healthy masculinity. Over 2200 members of the public have taken the online pledge to never commit, condone or remain silent about violence against women.

Summary on our position

Sexual Entertainment Venues (SEVs) should not exist in a Scotland free of violence against women, and regulation on behalf of the state condones their existence. Lap dancing is a form of commercial sexual exploitation and therefore a form of violence against women. This is recognised by both the White Ribbon Scotland Campaign and Scottish Government therefore SEVs, which predominantly host lap-dancing and related activities, provide a forum for the perpetration of violence against women first and foremost. Furthermore the prevalence of such establishments are a result of gender inequality, the root cause of violence against women. SEVs normalise and legitimise the objectification and commodification of women, therefore perpetuating gender inequality.

If SEVs are to exist then regulation would be a means of harm reduction. We are therefore in favour of a new system which regulates SEVs, rather than the current system which consider sexual entertainment as an aspect of alcohol licensing.

Q1: Should sexual entertainment and the sale of alcohol be licensed separately? If so, what impact, if any, would a parallel regime for sexual entertainment venues have on alcohol licensing?

Yes, there should be separate licenses. Currently parallel licenses exist elsewhere, for example a cinema require license to show films (Cinemas Act 1985) and a license to sell alcohol (2005 Act). If there is to be licensing of sexual entertainment venues it is important that specific safeguards are to be maintained as a condition of the license.
Q2: Do you agree that sexual entertainment premises should be licensed separately from other forms of public entertainment?

Yes. By licensing SEVs in the same way as cafes, cinemas or restaurants etc scant consideration is given to the human harm involved. By using current licensing procedures it would contribute to the normalisation of commercial sexual exploitation which contributes to the concept that women are objects to be bought and sold. A clear distinction in licensing policy is necessary to fully take into account the potential harm caused to those exploited, and would allow for mechanisms which could analyse and subsequently challenge demand for SEVs.

Q3: Is the definition of an audience as ‘an audience of one’ appropriate?

Yes, if it refers to a performance where only one person is present. This would be the case with private dances, performed in a booth or other private place within the premises. In such a situation it seems difficult to ensure the immediate safety of women in SEVs, and also creates an opportunity where pressure can be exerted for a woman to provide sexual services.

Q4: Is the definition of sexual entertainment sufficiently clear? Are additional measures required to protect the position of artistic performances including, for example, exotic dancing?

Specific reference should be made to ‘nudity or partial nudity’. There have been cases where venues have exploited the language to avoid licensing conditions by encouraging women to wear see-through clothing, or revealing clothing such as g-strings.

There are no additional measures required to protect artistic performances.

Q5: Are there any other venues which should be exempt?

No, there are no other venues which should be exempt.

Q6: Is it appropriate that premises that are used for sexual entertainment on less than three occasions per year should be exempt from licensing?

No. Sexual entertainment should require a license before it can take place, regardless of the main purpose of the venue.

Q7: Is it appropriate that local authorities be allowed to decide that there should be no sexual entertainment venues in their area?

Yes. Considering a purpose of the proposed regulation would be to uphold local authorities’ right to exercise control and to serve their communities, there should be no limits in this regard. Having powers to set the limit of SEVs at ‘zero’ would be the only way that Local...
Consultation on the Regulation of Sexual Entertainment Venues

Authorities could prevent their existence, and in doing so prevent this form of violence against women from taking place within their areas.

Q8: Does the approach detailed above offer an adequate regulatory regime to provide control of sexual entertainment and provide local licensing authorities with the powers to determine the nature of the activities they wish to allow in their areas?

No. Local authorities should have the power to set the amount of venues to be licensed and to determine the activities that take place if a venue is granted a license. This regulatory framework does allow for this; however it is unlikely that sexual entertainment can be controlled purely through regulation. The existence of such establishments create an atmosphere which depicts women in a negative way and women who live or work near lap dancing clubs have reported harassment and verbal abuse by men who visit the clubs.

Q9: Are there any other issues which Scottish Ministers should take into account in considering possible legislation to provide for the licensing of sexual entertainment venues?

Yes. In relation to our position stated above the licensing of sexual entertainment venues contradicts the commitments within the national violence against women framework, Safer Lives: Changed Lives (2009). The foreword states that ‘We must continue to move forward and to take whatever action is necessary to achieve our ultimate aim; to create a Scotland in which violence against women no longer exists.’ Through regulating this ‘industry’ the state is legitimizing commercial sexual exploitation, and with it a prevalent form of violence against women.

In relation to the work of the White Ribbon Scotland Campaign it is crucial that men understand gender inequality to be a root cause of violence against women. There can be resistance when presenting commercial sexual exploitation as ‘violence against women’ due to the disparity between physical violence and exploitation. Both violence and exploitation are forms of abuse, whether committed by the individual or by the state, and this should certainly be at the forefront of any discussion of licensing of sexual entertainment venues.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

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<tr>
<th>Name:</th>
<th>NHS Ayrshire and Arran Public Health Alcohol</th>
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<td>Organisation:</td>
<td>NHS Ayrshire &amp; Arran</td>
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<td>Address 1:</td>
<td>Afton House</td>
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<tr>
<td>Address 2:</td>
<td>Dalmellington Road</td>
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<td>City/Town:</td>
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<td>Email address (if no email leave blank):</td>
<td><a href="mailto:ruthshepherd@nhs.net">ruthshepherd@nhs.net</a></td>
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<tr>
<td>Phone Number:</td>
<td>01563 825877</td>
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2. Please confirm that you have read and understood the Scottish Parliament's “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes
☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal
☐ Professional
☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☐ Yes
☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes
☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☒ General licensing issues
☒ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
Alcohol licensing has the potential to prevent alcohol related harm. The system of alcohol licensing is used to mitigate the risks of harm associated with alcohol consumption by managing and controlling the availability of alcohol. We know that alcohol does lead to significant harm in Scotland. Empirical evidence shows that increasing access to alcohol, through more outlets and longer trading hours, is linked to a range of alcohol-related harms; the increased availability of alcohol has been linked to increased rates of harm.

Overall, the weight of evidence supports the conclusion that restrictions on the availability of alcohol can contribute to a reduction in alcohol-related problems. Investment in improving the effectiveness of the alcohol licensing system, particular in improving the pursuit of the licensing objectives, therefore has the potential to reduce the potential costs of alcohol-related harm that arise in other public services and the wider economy.

11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?


21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?


22. Do you have any other comments to make on air weapons licensing aspects of the Bill?


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3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in.
(Text boxes have no word limit, they will increase in size accordingly).

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?

Overall, the Licensing (Scotland) Act 2005 set out to be a policy-led system for alcohol licensing and, in principle, has the potential to create a robust alcohol licensing system in Scotland. However, the act does not appear to be interpreted consistently across the local licensing boards. For example the ‘typing’ of licensed premises is somewhat objectively decided (e.g. night club versus on-sales without entertainment) and this can have an impact on the opening hours granted.

Furthermore, although difficult, it would be helpful to have more detailed guidance on the assessment and definition of alcohol license overprovision.

Locally there also appears to be differences of understanding and interpretations as to what each of the licensing objectives means, this is especially the case when it comes to protecting and improving public health. For example in one area, we have been told by the licensing board that before alcohol related harm can be considered there has to be evidence that it is connected to a specific premises. Whereas in another they consider the totality and capacity of premises when considering their duty to protect and improve public health.

Although the licensing objectives do not include an objective to promote the economy, alcohol applications are often considered in terms of the economic benefits they could bring to a local area.

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

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The licensing system should seek to regulate communities of space. Such an approach is consistent with the Scottish Government’s alcohol strategy, *Changing Scotland’s Relationship with Alcohol: A Framework for Action*, central to which is a ‘whole population approach’ to reducing alcohol harm, with alcohol policies aimed at the whole population rather than only dependent drinkers.

Whole population measures are important because despite a recent decline, alcohol consumption in the UK remains at historically high levels. A range of factors are likely to have contributed to this, but the interplay between the increased affordability, availability and promotion of alcohol provides a large part of the explanation. Restricting the sale of alcohol through the licensing system recognises that people’s behaviour is influenced by their environment. Physical environments can enable or constrain drinking behaviour, and a key means of supporting behaviour change is to change these environmental factors.

Communities of space can be regulated in terms of the licensing board’s oversight of the availability of alcohol in the community and their ability to reduce this availability through the refusal of license applications. Licensing boards when considering applications can consider the current availability of premises, in terms of number in a defined geography and across their board area, also the type, capacity and opening hours of those premises.

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

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1 BBPA Statistical Handbook 2007
Alcohol licensing boards act completely independently of the rest of the local authority structure. As such all applications are considered on their own merit and the impact this may have on other agendas is not considered. This is how the act requires the licensing boards to function and as such if they were to start to consider other factors the current act would need to be amended accordingly.

Licensing decisions are therefore not currently informed by other council or partnership strategies but this would be helpful.

It is important that the licensing system in Scotland does not operate in a silo when making decisions about alcohol. There needs to be close interaction between alcohol licensing and community planning. Local authorities have Single Outcome Agreements with priorities that focus on addressing alcohol and drug use, and creating positive, healthy local environments for their citizens. It is critical that the alcohol licensing system in the local areas is recognised by all stakeholders, including the licensing board itself, to be a key component of this wider agenda, and that the licensing board’s policy statement complements the community planning strategy.

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

Again with respect to the Licensing (Scotland) Act 2005 regulation of the availability of alcohol in local communities will reduce the economic impact of alcohol related harm not only in terms of hospital admissions years of potentially economically productive life lost but also in terms of sickness absence rates in the local economy and crime and disorder costs.

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?
Alcohol licensing should work to improve health and wellbeing and reduce inequalities by regulating the availability of alcohol to reduce alcohol-related harm.

However, the principle of alcohol availability and the impact this has on consumption is not one generally accepted or understood by many local licensing board members. In addition immediate economic considerations often take precedence over the licensing objectives which if achieved would improve health and reduce inequalities.
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

[Text box]

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

[Text box]

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

[Text box]
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

We are concerned at the removal of the obligation placed on the board to consider the number and capacity of licensed premises in assessment of overprovision (Section 54) of the new Bill. We would argue that the existing level of alcohol availability in terms of number and capacity of licensed premises in a given locality is important evidence for consideration of overprovision in conjunction with information on levels of alcohol related harm. There is good evidence of an association between...
outlet density and alcohol-related harm. Routine collection of this information may facilitate further understanding of this relationship.

In addition under Section 7 subsection 3 of the 2005 Act it may be useful to require that boards consider the level of alcohol related harm in their locality in their assessment of overprovision.

Name/Organisation:

5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any
38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers’ licensing regime to the extent that metal theft and related criminal activity is reduced?

[Text box for response]

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

[Text box for response]

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

[Text box for response]
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

48. Are there additional costs or resource implications on theatres or licensing authorities?

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

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54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill

Joint response from the Wine and Spirit Trade Association and the Scottish Retail Consortium
About the WSTA and the SRC

The Wine and Spirit Trade Association (WSTA) is the UK organisation for the wine and spirit industry representing over 340 companies producing, importing, exporting, transporting and selling wines and spirits. Our members include retailers who between them are responsible for thousands of licences in Scotland. We work with our members to promote the responsible production, marketing and sale of alcohol.

The Scottish Retail Consortium (SRC) is the lead trade association for retailers operating in Scotland and has been representing the retail sector since the Scottish Parliament’s inception in 1999. The SRC membership accounts for over 80 per cent of the retail sector, comprising retailers large and small, selling food and non-food and operating on the high street, in rural communities, out of town and online.

Our members have been in the vanguard of tackling underage sales including supporting the criminalisation of proxy purchasing. As part of the WSTA’s Retail of Alcohol Standards Group (RASG), retailers have pioneered the voluntary introduction of Challenge 21 and subsequently Challenge 25 initiatives and implemented these policies in stores long before legislation required it. These policies have been effective in preventing underage sales.

Our members also recognise the need for joined up working on this important issue. Community Alcohol Partnerships (CAP), created by RASG and supported by the Scottish Government through the Scottish Government Alcohol Industry Partnership (SGAIP) operate in local areas, bring together retailers, local authorities, police and schools to tackle specific problems with underage sales, proxy purchasing and alcohol related crime. Scotland’s first flagship CAP in East Edinburgh was launched in July 2013 by the Cabinet Secretary for Justice.

Through the SGAIP, the SRC in partnership with the Scottish Government has spearheaded the establishment of a multi-stakeholder National Licensing Advisory Group. The Advisory Group aims to act as a driver for greater consistency, better regulatory practice, greater efficiency and cost effectiveness in the licensing system in Scotland whilst also focusing efforts in promoting the licensing objectives and outcomes in the Licensing (Scotland) Act 2005 (“the 2005 Act”).

The industry also provides funding for Drinkaware to develop campaigns and education programmes to encourage responsibility and shift attitudes about the acceptability of drunkenness. The £100m ‘Why let good times’ campaign targeted at 18-25 year olds is just one example.

In addition, the industry has helped to champion a range of other initiatives aimed at reducing alcohol harm by working in partnership with Government and local authorities such as the Public Health Responsibility Deal, and Best Bar None. Through the Responsibility Deal, the industry has agreed to remove 1 billion units of alcohol from the market by 2015 and ensure 80% of alcohol products have appropriate health labels. Although these pledges were initiated through Westminster, they are supported by retailers and producers throughout the UK, including in Scotland. It is initiatives like these, that seek to engage with business rather than prohibit, which have been proven to have a positive impact in tackling alcohol misuse.
General comments

The WSTA and the SRC welcome the opportunity to respond to the call for evidence from the Local Government and Regeneration Committee on the Air Weapons and Licensing (Scotland) Bill.

We recognise that there are areas in Scotland where alcohol misuse is a problem and are determined to play a positive role with Government and others in tackling alcohol-related harm. We support locally targeted partnership schemes, that are properly evaluated and evidence based, and work closely with our members to ensure that alcohol is sold and marketed responsibly, a responsibility our members take incredibly seriously. It is our view that whole of population approaches, whether introduced at a national or local level, are unlikely to effectively target those who misuse alcohol.

We also represent an industry that provides significant employment in Scotland – with well over 100,000 people involved in the retail of food and drink, from rural areas to town centres, and helps to boost economic growth in Scotland. It is therefore important that licensing laws not only uphold the licensing objectives but that it doesn’t unfairly restrict businesses and add unnecessary administrative burdens.

We would therefore echo the sentiment of the policy memorandum which notes: “Alcohol licensing is not, however intended to prohibit responsible consumption nor to undermine the economic interests of the alcohol trade.”

There are many aspects of the draft Bill, which we welcome, particularly the proposals which seek to address a number of anomalies and inconsistencies of the current licensing regime. However, we remain concerned that aspects of licensing law remain overly complex, poorly understood and that the Government has focused on introducing new laws rather than ensuring that existing regulations operate effectively.

While we welcome many proposals contained in the Bill, we believe that further consideration needs to be given to bringing forward a consolidated Act. Since the introduction of the 2005 Licensing Act, there have been four licensing Bills in five years, creating additional burdens for businesses and a further layer of complexity to the licensing regime. Many aspects of the existing licensing regime do not articulate well with the Scottish Government’s Better Regulation agenda: that regulations should be proportionate, consistent, accountable, transparent and targeted. A consolidated Act would go some way to simplifying the licensing regime and bringing it more in line with the five principles of Better Regulation.

So too would a review of licensing laws which impede the responsible sale of alcohol. For example, the multi-buy ban and the requirement for separate alcohol areas significantly limit retailers’ ability to responsibly promote food with alcohol sales. For instance, the ability to promote locally sourced food and drink like locally sourced whisky and haggis to coincide with national celebrations like Burns Night. The restrictions also mean smaller retailers are often forced to sell alcohol in impractical or unsuitable areas, which can lead to a greater likelihood of theft and restrict the way their business operates. One area where we would like to see greater flexibility is the amount of space that retailers are permitted to sell alcohol. Often stores will wish to amend their layouts to take account of seasonal changes in consumer demand or a need to make their stores more accessible for store users. This may mean that at a time of year when they sell less alcohol and would ordinarily seek to amend their shop layout they are unable to do so. If there was greater flexibility for retailers to be able to amend defined alcohol areas then this would allow them to make better use of their shop space.
Another frustration reported by retailers is a final alcohol licence being reliant on sign-off from all other regulations. Recently, a member store was unable to sell alcohol for two days while waiting for sign-off for their bakery sink. While they were able to still bake bread they were unable to sell alcohol, which is surely an unintended consequence?

We have also sought to raise concerns about aspects of the proposed Bill such as re-introducing a fit and proper person test and widening the definition of overprovision, which could damage the trade. It is our view that these proposals, as they stand, are unnecessary, poorly defined and will only add another layer of complexity to the licensing regime, without protecting the licensing objectives.

A further aspect of the current alcohol licensing system which would benefit from urgent attention is the need for updated guidance. The current guidance is no longer considered fit for purpose, which makes it enormously difficult for anyone with an interest in licensing to adequately interpret licensing law. Ensuring that there is consistent, well-defined guidance would help to provide some much needed consistency to the licensing system.

We would be willing to appear before the Committee.

**Licensing objectives**

**41 Protecting young persons from harm**

Our members agree that there needs to be robust laws governing the sale of alcohol to young people and a concerted effort is needed to prevent underage drinking and associated alcohol-related harm in Scotland. Retailers have made significant progress in tackling underage sales, through the voluntary introduction of Challenge 25, which is now mandatory across Scotland, and the development of age verification schemes. A recent review of Challenge 25, *Rising to the Challenge*, found that 86% of 18-24 year olds have heard of Challenge 25 and 79% understood its purpose. However, as underage sales have fallen, there has been a worrying increase in rates of proxy purchasing, whereby friends and family purchase alcohol for young people.

Our members therefore support the introduction of a new offence regarding the unsupervised supply of alcohol to a child or young person in a public place and the widening of the definition of a young person, which is designed to crack-down on so-called ‘drinking dens’.

We are however conscious that tougher laws on underage sales alone are unlikely to sufficiently address the rise in proxy purchasing. This is because proxy purchasing, by its nature, is very difficult to police. Therefore, greater partnership working to address the root causes of underage drinking is vital, which is why our members support the introduction of Community Alcohol Partnerships in Scotland. CAPs are designed to tackle underage drinking in local communities, through co-operative working between alcohol retailers/licensees and local stakeholders such as Police and Councils. In some areas, CAPs have reduced alcohol-related ant-social behaviour amongst young people by up to 40%.

**Statements of licensing policy**

**42 Licensing policy periods**

The proposal to bring the time period of local licensing statements into line with local authority elections and to extend the duration of licensing policy statements is a sensible amendment, which we support. However, it should be pointed out that for many Boards,
reviewing existing policy statements is simply a box ticking exercise, calling into question the need and worth of licensing policy statements for many areas.

**Fit and proper person test**

In our response to the *Further Options for Alcohol Licensing* consultation we pointed out that there is already a robust licence review process, which negates the need to re-introduce a fit and proper test. We also sought a clear definition of ‘fit and proper’ and raised concerns about how objectivity would be achieved? It is our view that these questions have not been properly addressed and without adequate safeguards in place the re-introduction of a fit and proper test could have the potential to be misused or abused by Local Boards. While we appreciate it is difficult to accurately define what a fit and proper test should include, allowing Boards to interpret the definition as they see fit is subjective and undesirable and does not fit with the Better Regulation principles.

There are also concerns, across the trade, that the introduction of a fit and proper test could significantly increase administrative burdens on retailers. Therefore it is very difficult for us to support the proposal to introduce a fit and proper test without appropriate safeguards in place.

43 Premises licence application: ground for refusal

As it stands the grounds for refusal based on a fit and proper test are poorly defined - a point which has been rightly identified by the Committee. While we support the ability of Boards to be able to consider relevant information that may deem a person unfit to hold a licence, there is little direction about what can be considered ‘relevant’ and the current definition is far too broad.

44 Application to transfer premises licence: ground for refusal

Whilst we support the need for Boards to be able to appropriately screen the suitability of licence holders when transferring premises licences, basing this on an ill-defined fit and proper test is undesirable.

45 Ground for review of premises licence

Again, we have concerns that the grounds for a review of a premises licence based on a fit and proper test are far too subjective

46 Personal licence applications and renewals: ground for refusal

As with section 45.

47 Personal licence holders: procedure on receipt of notice of conviction

As with section 45.

48 Personal licence holders: conduct inconsistent with the licensing objectives

As with section 45.

**Relevant offences and foreign offences**

49 Premises licences: procedure in relation to relevant offences or foreign offences
We support the Chief Constable having appropriate discretion to decide whether a hearing is necessary and believe this proposal will limit unnecessary hearings and help to create a more streamlined process.

50 Personal licences: procedure in relation to relevant offences or foreign offences

As with section 49, we support the proposal to streamline the review process and provide the Chief Constable and Boards with wider discretionary powers, in situations where it wouldn’t be appropriate to hold a licence review.

52 Offences of supplying alcohol to a child or young person

As noted above, we support the proposal to introduce an offence for supplying alcohol to a young person. In our response to the Further Options for Alcohol consultation response we sought further details on these proposals to assess the potential ramifications for licence holders and are satisfied that the Government has provided these details. We also highlighted that the current law allows parents and caregivers to set a responsible drinking example by purchasing a 16 or 17 year old a glass of wine or beer to accompany their meal. We welcome the proposal to retain this aspect of the law which will reduce the risk of criminalising responsible licence holders.

Miscellaneous

53 Meaning of “alcohol”: inclusion of angostura bitters

We support this amendment following the change in definition of angostura bitters.

54 Overprovision

We have a number of concerns about the proposal to allow an entire Board area to be considered an area of overprovision. The fundamental principle of licensing is that each application should be determined on its own merits. The licensing regime is not intended to prohibit responsible consumption or undermine the economic interests of the alcohol trade, it is difficult to argue that overprovision doesn’t prohibit both.

The suggestion in the policy memorandum that Boards are “wary of making use of overprovision for fear of legal challenge” is a fallacy: Licence holders would only ever mount a legal challenge if they felt a Board had misused its powers. After all judicial review is an inherent and cherished part of any fair democratic system.

Local Authorities already have the powers to define an area as overprovided for but this needs to be evidence based. The proposal to allow an entire area to be considered overprovided for would alter the onus of proof so licence holders have to prove that a Board area isn’t over-provided for.

Overprovision also fails to deal with the root causes of alcohol misuse. It would be implausible to argue that consumers don’t travel across boundaries that could be considered overprovided, for example from Glasgow to East Renfrewshire to undertake grocery shopping. In addition, overprovision fails to differentiate between a prospective licensee that is a responsible retailer while doing nothing to clamp down on existing licences that may be deemed irresponsible.

The proposal could also have the effect of preventing new businesses from entering the market and lead to a restriction on the rights and freedoms of new businesses against incumbent business in the areas assessed as having ‘overprovision’. There have been many
notable cases of investment opportunities for retailers that have fallen through because a licence wasn’t available in that area. This is a double punishment for responsible consumers who would also be restricted from purchasing a wider range of goods offered by retailers such as fresh fruit and vegetables. It is worth noting that alcohol sales typically make up a very small proportion of total sales for supermarkets.

There is little evidence to suggest that new businesses entering the market would lead to increased consumption or an increase in anti-social behaviour and crime. Given that alcohol consumption and alcohol-related crime in Scotland is falling this proposal will have the impact of restricting trade whilst doing little to impact upon the licensing objectives of improving public health or reducing crime and anti-social behaviour.

55 Duty of Licensing Boards to produce annual financial report

The requirement for Licensing Boards to produce annual financial reports is a welcome proposal. It will increase accountability and is a first step towards operating on a cost recovery principle, as prescribed by the 2005 Act and 2009 EU Services Directive.

57 Personal licences: grant, duration and renewal

We welcome the proposal to amend the current anomaly which prevents licence holders who have their licence revoked for failing to undertake refresher training, from reapplying for a licence within 5 years. Given that many people’s livelihoods depend on the ability to hold a personal licence it was an erroneous aspect of the licensing regime, which was unfair and discriminatory, and we welcome the Government’s decision to rectify this irregularity.

We also support the decision to extend the period in which personal licence holders may apply to renew their licence to 9 months, beginning 12 months before the expiry date of the licence.

58 Processing and deemed grant of applications

This is a welcome proposal which we hope will go some way in addressing the inconsistency of processing times for premises applications, which can be costly for businesses.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

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*1. Please supply your name and contact details:

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Organisation: SPA National Coach
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Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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2. Please confirm that you have read and understood the Scottish Parliament's "Policy on the treatment of written evidence by subject and mandatory committees":

☐ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☐ Yes
☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

☐ Commercial

* 5. Do you wish your email to be added to the Committee's distribution list for updates on progress of the Bill:

☐ Yes

☐ No
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☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

Airgun shooting has no detrimental effect on the Climate

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

The requirement to pay for and be subject to Police vetting. The added burden and stress on law abiding citizens. The loss to the public through the cost of compensation and the administration of surrender, is disproportionate to the benefit to the public.

It does not address the criminal use of air weapons. It does curtail the harmless use of air weapons

The only and similar, use of such measures was at the time of intense anti-terrorist activity in Ulster and so this is implying that we treat the people of Scotland as potential terrorists

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

The cost of compensation for weapons plus the administration of the surrender disposal then the expense of the licensing system is an avoidable expense
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

This bill would be a new base starting point the classification of controlled weapons and has been rejected by other countries of the EU

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

The Government objective of reducing the Criminal use of firearms will not be served well by licensing and may be seen as just another useless gesture and will potentially become a discredit as such
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

The law abiding citizen will comply, but that will not demonstrate any benefit, but they will be made a criminal for some simple non-criminal deed which will become criminal by this bill. e.g. forgetting to renew his licence.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?

The Dunblane legacy has been difficult for pistol shooters in Scotland. We carry an association with one of the biggest and worst criminal acts in living memory and politically pistol shooting has suffered. I have personally represented Scotland at four Commonwealth Games and never ever received financial support from Scotland. Rifle and Shotgun has thrived but, no money is no provision.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

This will be another threat to the law abiding individual. We already have sensible restrictions on where and how we shoot, age related conditions on permission to posses, own, use and store. Licensing is just going to be another cost and inhibitor.
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

Shooting is a discrete activity largely for security reasons, and attracting young people into the sport is mainly by invitation and demonstration. It would not be practicable if the novice had to have a licence before they could try the sport. 14 to 17 year olds are already subject to restrictions which are workable.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

It will just another cost for the enjoyment of the above identified activities.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

As above

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
Only if they are rejected for criminal history

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (e.g. The work of local government, public agencies etc.)?

It will add cost to the already overstressed budget of the Police and Government agencies.

No positive effect for government other than propaganda.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

It will diminish the opportunities of people who do not have the in-built attributes of muscular or athletic sport and the disabled, to enter and enjoy a sport that particularly suites them. Any size, any shape and any age can compete.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

Other than to criminalise some good people who have no intention to behave in a criminal fashion this bill will not reduce unlawful and criminal harm.

I am very supportive of government objectives regarding criminal behaviour and as a retired Police officer I believe we have very adequate powers to achieve those objectives.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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**1. Please supply your name and contact details:**

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<th>Susan Love, Policy Manager</th>
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☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

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☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation: FSB

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.


9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.


10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.


11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

Licensing can cause difficulties in relation to the Services Directive. The directive aims to ensure that businesses within the EU can easily obtain online the necessary permits or permissions to trade elsewhere in the EU. While we appreciate some progress made, in our view, there is still more that could be done to improve such processes, not just for businesses outwith Scotland but more importantly for those wishing to trade in a different local authority area.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

There are elements of the Bill that arguably introduce unnecessary costs or processes for businesses. This would not be in line with the Scottish Government’s approach to better regulation and a supportive business environment, as set out in the government’s economic strategy.
2. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
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18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

The introduction of a certificate scheme is intended to reduce the threat posed by irresponsible use of air weapons. However, it seems reasonable to suggest that the overwhelming majority of air gun owners represent little or no threat to public safety. Consequently, requiring the majority to complete an application process, (which is likely to be costly in terms of time and resources for both applicants and Police Scotland) does not appear to be particularly well targeted legislation.

While the Scottish Government has indicated that it would seek to reduce some duplication by shortening the process for individuals already holding a shotgun/firearm certificate, there is potentially scope to reduce the process further, or perhaps integrate it with the existing shotgun certificate process. Regulation which is targeted and proportionate is more likely to be effective.

Lastly, the Scottish Government may need to consider how to approach enforcement in relation to air weapons purchased online from sellers outwith Scotland.
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

FSB Scotland has made a number of comments about regulation, particularly licensing and its impact on small businesses. We have frequently cited problems with civic licensing (from the Civic Government (Scotland) Act 1982) and questioned whether some of the licensing provisions in the Act, and how they are interpreted by local authorities, remain appropriate. For example, we question whether certain commercial activity still needs to be licensed (window cleaners require a licence but cleaners in your home do not) while second hand bookshops and vintage clothes shops also require a licence in certain areas.

Furthermore, as new types of business emerge, especially in the retail and leisure sector, (e.g. outdoor activities), local authorities respond in different ways, often using the ‘catch all’ Public Entertainment Licence as a means of regulation. While new activities may have been added to such regimes, the conditions and processes attached may not have been updated for some time, thereby leading many businesses (posing a very low risk) to believe that such processes are overly-bureaucratic and unnecessary.

The potential to introduce national standards and systems, as a result of the Regulatory Reform (Scotland) Act 2014, could reduce inconsistency across Scotland. However, it does not address whether certain activities should still be regulated and, if so, how best to regulate.

While a review of the Act was conducted ten years ago and some limited changes introduced, we are disappointed that no consultation opportunity was offered on wider issues of civic licensing (other than those specific aspects in the Bill e.g. metal dealers and taxis) in preparation for this Bill.

Lastly, in relation to liquor licensing, we are aware of a number of concerns about certain practical aspects of the 2005 Act. We have further noted concerns, from both local authority and trade representatives, that the Bill as introduced does not address a number of these difficulties. We are not best placed to comment on some of the technical details but it would be disappointing if an opportunity to ‘fix’ legislation were missed.
24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?

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

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

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

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

The number of licensed premises in Scotland has reduced and while this may, in part, be linked to economic conditions, the increasing complexity of the licensing system may also be a factor. Some FSB members have told us that the level of complexity and cost (e.g. the cost of architectural plans/drawings of properties in addition to the application fee) means it is not worth applying for a licence for premises in which alcohol is incidental to the business. This might include, for example, a small gift shop selling miniatures, or a B&B wishing to serve a dram to guests.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any
potential benefits of a unified system?

It is worth noting that a wide range of vehicles and businesses may currently be licensed under the private hire regime e.g. ‘party’ vehicles, courtesy buses, and chauffeur services. Accordingly, a more flexible approach than that afforded by the taxi licensing regime is perhaps appropriate. This would justify the maintenance of two regimes.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

We are unclear about the impact of this proposal on existing small businesses and, as noted in the BRIA, it is difficult to ascertain the number of businesses or individuals likely to be affected. However, if exemptions are considered, it is worth noting that the exemption should apply to the activity and not the ownership of the vehicle. For example, it would be unfair to require a small business delivering a contract in a rural area to be licensed, but exempt a similar vehicle and contract run by a not-for-profit organisation.
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?

It is worth noting that, in line with new provisions in the Regulatory Reform (Scotland) Act 2014, avoiding an inconsistent pattern of additional local conditions would keep the regime simpler and easier to enforce.
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

48. Are there additional costs or resource implications on theatres or licensing authorities?

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

It is possible that some small venues, such as pubs, clubs or halls, may be defined as sexual entertainment venues due to the 3-event restriction. This may occur in venues where burlesque or ‘stripograms’ perform from time to time.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

It may be worth considering whether grandfather rights for existing businesses would be appropriate, or whether a period of transition should be required following a decision to set a zero limit. This would seem reasonable when discussing the potential to close, perhaps overnight, hitherto legitimate businesses.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

We are disappointed by the lack of consultation (beyond a question in the consultation on taxis) on the requirement to appoint a civic licensing standards officer in each local authority area. As far as we are aware, there has been no wider discussion with business representatives about advice, support or enforcement in relation to civic licensing. Discussion has been restricted to local authorities.

We are not clear how the remit of such enforcement officers will differ from existing environmental health and trading standards officers. Furthermore, it is unclear whether local authorities will simply re-title an existing post, or whether this will be a new post.

Under either scenario, it is highly likely that additional costs will be created which will be passed on to civic licence holders. As outlined above, we are not convinced that further increasing the fees for businesses operating in low-risk areas, and unlikely to benefit from any additional service, is justified.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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*1. Please supply your name and contact details:

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Organisation: Scottish Beer & Pub Association
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Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☐ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes
☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☑ General licensing issues
☑ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

We are of the view that there are adequate powers available to Boards and the police under the Licensing (Scotland) Act 2005 and would not wish to see further restrictions and changes to the Act. We also are of the view that there should be consistency across Board areas in respect of fees, and also in terms of enforcement across the country by Police Scotland.

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

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

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

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

We agree with the principle behind the reintroduction of the fit and proper person test. However, we feel that the definition of what constitutes a ‘fit and proper person’ should be tightened within the legislation, to ensure it is clear and does not allow inconsistent interpretation across licensing board areas.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
Licensing Policy length will be equated to elections, with new policies required within 18 months of local elections.  
**We support this principle.**

Overprovision- this allows in essence for Licensing Boards to determine whole of licensing Board area as an overprovision locality. It also allows for Boards to have regard to (amongst other things) the number, capacity and licensed hours of licensed premises in the locality.

**We are of the view that overprovision areas should be tightly defined and only designated where there is clear evidence of an oversupply of licensed premises.** We would caution that allowing for entire Board areas to be defined as ‘overprovided’ could lead to rural or suburban areas being caught where there is little evidence that there is a problem. This will lead to uncertainty and potential legal challenge.

New duty of Licensing Boards to produce annual financial report.  
**We agree with this principle, allowing greater transparency. Also, where it is demonstrated that income from licence fees has gone beyond cost recovery, licence fees should be reduced accordingly.**

Revocation of a personal licence for failure to undertake training requirements does not have to result in a 5 year ban for applying for a personal licence.  
**We strongly agree with this principle.**

Licensing Board must remind personal licence holder 9 months (previously 3) prior to the licence expiring of need to renew licence and renewal window to be period of 9 months beginning 12 months before expiry date.  
**We agree with this principle.**

Duty to be placed on Licensing Boards to acknowledge certain applications. Licensing Boards must determine relevant applications meeting prescribed requirements within 9 months. Failure to do so means the application is deemed granted (with no conditions permitted to be added).  
**We agree with this principle.**
Official Response

SUBJECT: Air Weapons and Licensing (Scotland) Bill - Stage One Call for Evidence
REQUESTED BY: Local Government and Regeneration Committee, Scottish Parliament
REFERENCE: OR-2014/09
DATE: 29 September 2014
SUBMITTED BY: David Bradwell, Scottish Churches Parliamentary Officer

Preamble

This is a joint submission is made on behalf of:

- The Baptist Union of Scotland
- The Catholic Parliamentary Office
- The Church of Scotland, Church and Society Council
- The Methodist Church
- The Salvation Army
- The Scottish Churches Anti-Human Trafficking Group
- The Scottish Episcopal Church, Mission and Ministry Board
- The United Free Church of Scotland, Church and Society Committee
- The United Reformed Church, Synod of Scotland Church and Society Committee

Response

1. Thank you for the invitation to contribute to the scrutiny of these proposals. Our main interest in this Bill relates to Section 68 and the regulation of Sexual Entertainment Venues. A joint response to the Scottish Government consultation was made by the Baptist Union of Scotland, the Church of Scotland, the Free Church of Scotland, the Methodist Church, the Salvation Army, the Scottish Episcopal Church and the United Reformed Church, which can be found here: http://www.actsparl.org/media/159989/or-ecu-sexualentertainmentvenues-sept13.pdf

2. We have opted not to respond directly to the questions posed in the Call for Evidence as our concerns are of a general nature and restricted to only one part of the Bill. The points we wish to make broadly relate to questions 9, 50, 51 and 52 of the Call for Evidence.

3. The Churches support the establishment of a separate licensing regime for sexual entertainment venues in the terms set out in the Bill. The nature of sexual entertainment is significantly different from other forms of public entertainment. It is, therefore, entirely appropriate that it should be the subject of separate licensing from other forms of public entertainment.

4. Churches acknowledge that sexual entertainment is a legal activity; we are of the view that it should be well regulated to allow for communities’ views to be taken into consideration. Our main concern is that we believe that sexual entertainment demeans the human person

Submission Number: 126
as it presents the body as a commodity; this is in contradiction to the principles of love, humanity and justice which we share with many people in Scotland.

5. The potential for sexual entertainment to be a driver for violence against women, in all its forms, and as a stimulus for human trafficking, are real and contemporary issues which the churches and wider society continue to struggle with; there are clear implications for human rights and equality issues. Regulation alone can only achieve so much, we are also committed to working to change attitudes and behaviours by providing information and improving understanding of the human condition. Our work in this area includes the advocacy and awareness-raising work carried out by the Scottish Churches Anti-Human Trafficking Group.

6. The Churches agree with the creation of a new power for local authorities to determine the appropriate number of sexual entertainment venues in their area, and that this can be set at zero. This mirrors a ‘no casino’ power that local authorities have under the Gambling Act 2005. Local authorities should be required to consult widely in the formation of a policy statement and in reviews of existing policy.

7. We do not support the exemption from licensing for venues which only have fewer than four sexual entertainments in any one year period. The Government have not explained the rationale for this proposal and we have concerns that it simply allows for the continuation of sexual entertainment activity which is unregulated. We should like to hear from the Government, from local authorities, the police and groups working with victims of human trafficking and to combat violence against women if they believe that this is wise, and what evidence they have to back this up; we would urge the Committee to consider exploring this question in particular. We have a broader concern that this exemption could completely undermine a local authority’s decision not to have any sexual entertainment venues if performers could work different clubs, bars, pubs and other places to get around the wishes of the locally elected authority.

8. The argument to regulate sexual entertainment venues is compelling and therefore all venues providing sexual entertainment should be licensed. The issue of strip-o-grams is of concern because they may be encountered by members of the public in venues which do not normally provide sexual entertainment, e.g. when booked to attend a restaurant or bar by a hen or stag party. In the proposed Section 68 (3) we firmly believe that this is a form of sexual entertainment and should, therefore be subject to regulation. We also have a concern for members of staff who might not wish to view or be part of a sexual entertainment performance taking place in an unregulated venue for conscience reasons; a supplementary question we have is what protection and information are employees being offered?

Information requested by the Committee

1. Please supply your name and contact details:
   David Bradwell
   Scottish Churches Parliamentary Office, 44 Hanover Street, Edinburgh EH2 2DR, Scotland.

2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:
   Yes.
3. Please confirm whether you are content for your name to be published with your submission: Yes.

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?
   - Personal
   - Professional ✓
   - Commercial

5. Do you wish your email to be added to the Committee's distribution list for updates on progress of the Bill: Yes.

6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.
   Yes; if you would like a Churches representative please contact the Scottish Churches Parliamentary Office who will be able to arrange for the most appropriate persons to give evidence.

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).
   - Civic licensing – sexual entertainment venues.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #awlbill.

*1. Please supply your name and contact details:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Nicholas Smith</th>
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<tr>
<td>Organisation:</td>
<td>Edinburgh Alcohol and Drug Partnership</td>
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</table>
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☑ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.


9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.


10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.


Page 4 of 10
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

24. Should a licensing system seek to regulate individual behaviour or communities of space (e.g. ‘city space’ etc.)?

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?
The Licensing system gives the opportunity for Licensing Boards to take into account the health inequalities of a local area and the impact that alcohol has on the public health as a part of its Licensing Policy. Boards are also obliged to carry out an assessment of overprovision and develop a Policy Statement which sets out how it will respond to applications in areas which it has identified as “over-provided”. However assessments of overprovision are complex pieces of work and can have a significant impact on a local area. For many areas alcohol is a cross cutting issues which has an impact on levels of violence, acquisitive crime, poor health and outcomes for children. Currently there are few requirements for the Licensing Board to involve local experts in the development of Licensing Policy. This can lead to Boards developing a policy which does not reflect local concerns about the availability of alcohol.

The accountability arrangements of Boards do not reflect the drive towards more local planning. This can undermine local approaches to reducing alcohol related harm. Currently Scottish Ministers may issue guidance to Licensing Boards as to the exercise of their functions under this Act; and it requires that each Licensing Board must, in the exercise of their functions under this Act, have regard to the guidance. Where a Licensing Board decides not to follow the guidance, the Board must give the Scottish Ministers notice of the decision together with a statement of the reasons. Current guidance was developed before the introduction of the current act in 2009 and has not been updated.

Either the current accountability arrangements need to be developed to reflect the needs of local areas or existing guidance should be used to improve the accountability of Boards.

As further evidence Boards are not currently held accountable for the publication of equality impact assessments to accompany their Policy statements.
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

The Bill may enhance the Licensing Objectives. However consideration should be given to Boards producing an annual report setting out how their work has delivered the 5 Licensing Objectives. This is not an unreasonable requirement of a locally accountable body responsible for important local decision-making.
31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: ANDREA BEAVON
Organisation: SCOTTISH BORDERS COUNCIL
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

☐ No

* 3 Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

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☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
Name/Organisation: Scottish Borders Violence

6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

Scottish Borders VAWP felt that the definitions will provide Civic Government Committees with a clear understanding of what is described as ‘sexual entertainment venue’ for making decisions. However, members are unclear if it states in legislation that any staff member working in SEV should be 18 years and over. This should be made apparent.

Mandatory training to support implementation of the Bill should be made available to Civic Government Committees and also organisers to ensure there is an understanding of the impact any licence award will make on the local community and also issues such as commercial sexual exploitation.

Guidance and standards should also be developed for venues/organisers to protect staff against exploitation.

A consequence from the definitions set out under the new licensing regime would be that current premises operating (of which there are approximately 20 across Scotland), will be required to apply for a licence and will be under a double licence regime.
51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

Scottish Borders VAWP felt that by having an exception (three or less) will still allow venues to host sexual entertainment as described by the definition. By allowing venues to host sexual entertainment can potentially desensitize this type of entertainment. Questions were also raised about who would potentially monitor if premises were stating they were having three or less to ensure this was not breached. An additional consequence may be that an organisers could move around venues providing sexual entertainment in a number of different venues.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

The advantages will allow local areas to decide whether to take a zero level or not. This will require them to consult and negotiate with local communities and therefore communities will be able to have a say on whether they feel sexual entertainment should be available in their local areas. By having a licence regime above zero will allow for communities and stakeholder to object.

By having a zero level will also reduce administrative resources required currently for licensing. This will also reduce the potential for lobbying by local businesses to apply for licenses.

By having an agreed level set by Local Licensing authorities will also provide a clear message to communities on their views of sexual entertainment.

Local Licensing authorities should have system in place to review the number of sexual entertainment venues agreed in consultation with communities.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in
section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

Yes by using existing licensing regime should offer adequate regulation of sexual entertainment venues but does require training for committees to fully understand the consequences of potential for commercial sexual exploitation through sexual entertainment venues.

54. Are there any barriers to licensing authorities operating the new licensing regime?

Financial costs to local authorities.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Response from Spittal Street Womens Clinic on Section 68 (Licensing of sexual entertainment venues) of the Air weapons and Licensing (Scotland) Bill

Spittal Street Womens Clinic is a joint initiative between NHS Lothian’s Harm Reduction Team, Chalmers Centre and Sacro’s Another Way service. We offer a range of sexual health services, health promotion and direct referrals to other related services such as Sacro’s Another Way to women involved in the commercial sex industry and/or women who use substances.

As an NHS Organisation we hope the Bill on sexual entertainment will safeguard and improve the physical and psychological health of women providing sexual entertainment and have gender based violence prevention as a key objective.

We have read the relevant section of the Bill and have some general suggestions and more specific comments as outlined below.

1. We feel ‘sexual entertainment’ requires further definition.
2. As well as the number of sexual entertainment venues we believe the Bill should address the density of venues within a city. Having several sexual entertainment venues within close proximity encourages disrespectful behaviour and gender based violence to women both within and out with the venues.
3. Regular inspections of premises by environmental health, police and NHS should be part of the licence agreement and included in the Bill.
4. Could the licence include a requirement of the owners to allow the NHS and associated services access to the venues? Social welfare, housing, and mental health are common problems in women involved in sexual entertainment and we believe services such as ours could improve the health and well being of these women.
5. The Bill could include strict guidance on how dances take place to ensure no contact. Currently we feel it is inadequate to ensure the safety of women.
6. The Bill does not mention payment that women receive and any regulation regarding this.

With regards to specific points in the Bill;

7. We have concerns regarding the regulation of point 45A (9) (no sexual entertainment licence required if entertainment takes place 3 times or less per year). We feel that ‘allowing’ 3 sexual entertainment events to take place a year may lead to abuse of the bill and that all public sexual entertainment episodes should have to have a licence.
8. With regards to section 45B (1A). We feel that allowing under 18s to work at or be permitted to sexual entertainment venues is not acceptable. Although no sexual activity would be taking place we feel that there would be opportunity for exploitation and coercion of potentially vulnerable adolescents and cannot see a benefit in allowing under 18s into such venues in the first place.
Thank you for your reply. Firstly apologies for this late submission, I only noticed that this was coming up when I saw it on the Holyrood website today. I am a long time user of firearms, a former examiner for the Deer Management Qualifications and have served on the Board of the former Grampian Police. I have a continuing interest in the licensing of firearms and a wish to see the process made more efficient and more effective.

There are a number of points relevant to this issue that I would wish to make to the Committee. The licensing of air guns could very easily become a nightmare from an administrative point of view.

Most air guns do not have a serial number so to license them it will be necessary to have them engraved with a discrete number. How is this going to be done and who pays for it? Presumably the owner.

The firearms licencing departments in most police areas have been greatly reduced in capacity so unless there is a substantial increase in the number of knowledgeable persons available to cope with the new licencing system it could easily degenerate into the sort of debacle we have seen recently with the Passport Office. The emphasis there is on 'knowledgeable'.

I presume the air guns will be added to the existing Shogun systems already in use, is the software capable of handling such an increase in volume?

If people wish to give up an air gun will there be compensation paid?

From the point of view of increasing efficiency and reducing administration, there will be many air guns held by people who already have either a Firearms Certificate or a Shotgun Certificate. Given the relative power of those firearms there should be no need to scrutinise the holders for possession of an air gun.

In the above cases it would save a huge amount of time and effort if the air gun was simply added to either the existing FAC or SGC.

While on the subject of FAC and SGC, for the future it would seem reasonable to combine these, most run concurrently anyway. If a person owns a firearm and has been deemed suitable to hold such, there should be no bar to them also holding a shotgun or an air gun. Combining them on one certificate would also seem to be a sensible way of reducing paperwork. Alternatively totally eliminating paperwork by issuing a card instead of a paper certificate would greatly reduce cost and improve efficiency.

There is a huge potential here for either producing the greatest 'fankle' seen in a long time, or starting down a path of increasing efficiency and better customer service.

I would welcome the opportunity to make these points to the Committee in person.

Yours sincerely,
M J Raeburn
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

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*1. Please supply your name and contact details:

Name: Michael McDougall
Organisation: Glasgow Licensing Board
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliament’s “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

☐ No

3. Please confirm whether you are content for your name to be published with your submission:

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☐ Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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 Board agrees that the 2005 Act is, by large, fit for purpose however is of the view that a review of the mechanics contained with the Act is required. Such a review would hopefully resolve the practical difficulties that the Board and stakeholders face on a daily basis. The Board believes that the Act is generally successful in its strategic aims and allows the Board to successfully promote the licensing objectives, subject to the limitations discussed below. However, there are a number of technical problems with the Act’s provisions which places unnecessary strain upon both the Board and stakeholders.

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

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 will 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 specific 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.

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

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?
The Board recognises that one of the five licensing objectives is protecting and improving public health. Therefore, the Board considers matters of public health in relation to various applications and as part of its policy statement.

As the Scottish Government is aware, the NHS can make representations/objections to applications that come before the Board. For the Board to be able to take cognisance of the medical evidence it must be directly relevant and relatable to the premises. The Board does appreciate that this is a significant challenge and recognises the work carried out by the NHS to date. However, the Board is keen to see evidence that presents a direct correlation between alcohol consumption in an area and one or more specific premises.

As part of the Board’s consultation for its 2013-2016 policy statement, it held evidence sessions where various stakeholders were given an opportunity to address the Board on matters of import to them. The Board were delighted to have representatives from Alcohol Focus, Greater Glasgow and Clyde Health Board and the Community Area Partnership attend and address the Board on matters relating to public health. The Board took account of the evidence led by these stakeholders when formulating its policy statement.

The Board would submit that this is the appropriate level of interface between the licensing regime and health outcomes, i.e. stakeholders have an opportunity to submit evidence at a specific stage of the licensing process or through evidence gathering at a policy creation stage and then the licensing body gives this the weight it determines appropriate in the context of the licensing objectives.
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?
The Board is of the view that while the Scottish Government, through the Bill and its supporting documentation sets out a clear desire to ensure that Boards can effectively combat crime and disorder, it falls short in providing the necessary tools in order to enable it to do so.

While the Board welcome the inclusion of the “fit and proper person” test, it is concerned that it will be unable to fully address issues relating to crime and disorder unless amendments are made to the Act to address the limitations and constraints arising from the decision in Brightcrew v- City of Glasgow Licensing Board [2011] CSIH 46. Further, the Board is concerned, if the test is implemented as currently drafted, there will be mismatch in expectation between the police and the Board. The police will doubtless expect the Board to take a robust approach in cases where the Board is still constrained by Brightcrew type considerations.

In short, if the Board is not explicitly given the ability to deal with issues it considers to be of relevance to one or more of the licensing objectives but do not necessarily flow directly from the sale of alcohol, the Board considers that it will be unable to fully tackle issues relating to crime and public disorder, and therefore unable always able to act in the public interest.

Further in relation to the “fit and proper person” test, the Board would welcome the extension of the test to anyone involved in the management of the business or otherwise derives a benefit from it. This would assist in compensating for the removal of interested parties from the 2005 Act.

The Board welcomes the move to allow it to consider spent convictions and recognises that it may be a valuable tool in protecting both the public and the trade. In doing so, the Board suggests that in order to provide certainty, the applicant should be required to disclose all spent convictions for relevant offences. This would allow the Board to come to an informed view as to what weight to attribute to the spent convictions and allows patterns of behaviour to be seen. However, the Board would suggest that clarification should be provided as to this provision’s interface with the approach set out in O'Doherty v Renfrewshire Council (1998 S.L.T. 327) whereby a Committee had to be satisfied that it was necessary to take account of the spent convictions in the interests of justice.

Further, the Board strongly agrees with the introduction of the “fit and proper person” test in relation to the transfer of premises licences. However, the Board is concerned by the ability of the police to provide “any information” that they consider relevant to a transfer application. The Board notes that this is far wider than the matters that the Chief Constable is permitted to bring to the attention of the Board in the case of a premises licence. Therefore, there this requirement is, in the Board’s view, lacking in specification. This may present the Board with a difficulty in dealing with irrelevant information while being under pressure to act in the public interest. The Board does not believe there is a need to place transfer type applications under greater scrutiny than new applications and suggests the provisions within section 23 of the 2005 Act are mirrored here in respect of transfer applications.
29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

Yes, if the Scottish Government wishes the Board to take action on matters that relate to the reduction of crime and preservation of public order that do not relate just to the sale of alcohol, then the Scottish Government should legislate to allow the Board, in certain circumstances, to consider matters that are not solely connected to the sale of alcohol.

Such a change in the legislation would then allow the Board to deal with their concerns relating to crime and disorder without having to consider whether it relates to the sale of alcohol.

Further, the Board notes that the 2005 Act is concerned solely with the regulation of the sale of alcohol and does not extend to the supply of alcohol. The Board’s evidence sessions held in preparation of its latest Policy Statement identified concerns relating to the supply of alcohol by “dial a booze” type businesses. The Board is powerless to regulate these types of activities and to deal with any concerns despite a common misperception that the Board has a locus. Therefore, the Board would suggest that the purpose of the Act be amended so to include certain activities relating to the supply of alcohol and provide either the police or the Board with powers to manage and regulate such operations.

In the Board’s view, the occasional licence system should be reviewed. The Board notes that such licences can be applied for by personal and premises licence holders, and voluntary organisations. The Board is aware that personal and premises licence holders are subjected to the licensing regime to ensure that they are suitable holders of a licence however voluntary organisations are effectively unchecked. The Board has a concern in relation to voluntary organisations that are granted occasional licences without being subject to the Board’s full scrutiny. Therefore, the Board would suggest that voluntary organisations are subject to a “fit and proper person” test. It may also be beneficial to introduce a definition of a voluntary organisation.

Further, the Board notes that the 2005 Act does not provide for mandatory late night conditions to be attached to occasional licences. Therefore, you can have a situation where a non nightclub premises can effectively trade as a nightclub by virtue of an occasional licence. Such premises would not have the benefit of the Board’s mandatory conditions such as a drugs policy etc.
30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

The Board considers that the inclusion of young persons in the licensing objection of Protecting Children from Harm was a critical omission from the Act and welcomes the proposal to amend the objective.

The Board is also supportive of the creation of a new criminal offence in relation to supplying alcohol to a child or young person.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?
The Board strongly supports the proposal to introduce a ground for refusal that the applicant is not, in the opinion of the Board, a fit and proper person to hold a licence, for premises licences, reviews, transfers and personal licences. Although legislative changes brought about by the Criminal Justice and Licensing (Scotland) Act 2010 were intended to address this issue through wider use of the licensing objectives, the courts have consistently refused to extend their application beyond matters directly relating to the sale of alcohol following on from the decision in Brightcrew – v- City of Glasgow Licensing Board.

The Board is routinely faced with submissions that criminal conduct on the part of an applicant or a licence holder which is not connected with the sale of alcohol or does not take place in licensed premises, should not be a matter for the Board, no matter how abhorrent the nature of the conduct. It is of serious concern to the Board that these submissions have found favour in the courts.

While the Board acknowledge the approach which has been taken by the courts, it believes that as a body of elected members it has a greater duty to members of the public to ensure that their safety is not compromised by the granting of licences to individuals who have displayed violent, predatory or otherwise serious criminal behaviour. Decisions to refuse licences to such individuals are not taken with any moral judgement in mind, only an overriding desire to ensure that the safety of the public is protected, which in the Board’s view is the very purpose of any licensing system.

While the Board is supportive of the re-introduction of the “fit and proper person” test, it is of the view that the test, as currently drafted, will have limited impact. The Board believes that as the test is firstly qualified by the reference to the licensing objectives and secondly it must be contextualised within the Brightcrew framework, it will not allow the Board to consider matters that it cannot already deal with by way of the present licensing objectives related grounds for refusal.

Given the above issues, the Board calls upon the Scottish Government to put it beyond doubt that the Board is entitled to regulate other activities taking place on the premises, in addition to the regulation of the sale of alcohol as per the preamble of the Act, and that the application of the licensing objectives are also similarly extended. The Board believes that freeing the “fit and proper person” test from the jurisprudence of Brightcrew is essential in order to provide for the safety of members of the public and to protect the integrity of the licensed trade itself.
32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?
As noted in Q29, the Board sees the lack of control on occasional licences as an issue. The Board believes that the low cost of entry and ease of use has led to the proliferation of occasional licences. While the Board is aware that the Criminal Justice and Licensing (Scotland) Act 2010 amended the 2005 Act to allow ministers to introduce a limit on the number of occasional licences. To date no such limit has been introduced. The Board would therefore, suggest that the Scottish Government introduce such a limit.

Further, the Board is aware that an occasional licence being granted eliminates the need for a public entertainment licence. This can mean that large scale events such as pop concerts can be licensed under an occasional licence which in terms of the decision in Brightcrew can only be regulated in terms of the sale of alcohol. The Board notes that this may be best cured by an amendment to the Civic Government (Scotland) Act 1982 however it does have concerns with situations where a licence holder could hold events without being subject to the checks and balances contained within the 1982 regime. This issue is further exasperated by the fact that the Board cannot impose any conditions upon an occasional licence that are not connected to the sale of alcohol.

The Board has a concern with the applicability of the Act’s transfer provisions in the event of insolvency. The Board notes that the dissolution of a company does not trigger the cease to have effect provisions contained within section 28 of the 2005 Act. Therefore, the Board and applicants are placed in a position of having to deal with licences that are held by the Queens and Lord Treasurers Remembrancer. The Board would suggest that the dissolution of a company should be dealt with by way of the cease to have effect provisions and there allow a section 34 transfer to take place.

Generally there needs to be greater clarity around the meaning of cease to have effect as this appears to be left to the discretion of individual Boards.

Recent events connected to refresher training has highlighted to the Board that there is no expiry date placed upon the personal licence holder’s initial training as the time limit only applies to the date of the licence. Therefore, a personal licence holder could surrender their licence and apply for a new licence making reference to their initial training. This training could be five years old. The Board is of the view that the 2005 Act does not allow it to refuse a personal licence in these circumstances. Furthermore, there is no provision to prevent a personal licence holder from completing their refresher training within days/weeks of their initial training and then merely notifying the Board at the appropriate time. The Board would suggest that this undermines the purpose of the refresher training which is to ensure that staff have an up to date knowledge of the law. The Board would suggest that firstly an expiry date is placed upon the training and secondly that a requirement be put in place so that the refresher training must be carried out within a set period prior to the five year interval.
33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

The Board is of the view that if spent convictions are to be disclosed, then the applicant should be required to disclose all spent convictions for relevant offences. It is only through full disclosure that the Board could come to a view as to what weight it should attach to the convictions, i.e. do the spent convictions demonstrate that there is a pattern of behaviour that is of concern to the Board?

The principal benefit of such disclosure is that the Board would be able to determine whether the applicant has spent convictions which are of a serious nature in terms of the licensing objectives.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

The Board is of the view that section 7 does not prevent a “locality” from being defined as the entire Board area, should a Board wish to do so. As such, no amendment is considered necessary.

If licensed hours are introduced into the equation then the pool of comparative premises that the Board can have regard to may be reduced. Following on from decisions in Tesco Stores Limited v City of Glasgow Licensing Board, the Board is of the view that the current ground for refusal on the basis of overprovision is working reasonably well.

Further, the Board believes that clarification is required in respect of the insertion of the words “among other things”. The Board considers that the Scottish Government would need to issues guidance as to the factors that the Board should consider in respect of these “other things”.

In relation to guidance, the Board notes that section 142 of the 2005 Act allows the Scottish Ministers to issue guidance to Boards as to the exercise of their statutory functions. The Board notes that the Scottish Ministers have not updated the Guidance since it was first published in 2007. The Board is routinely faced with submissions that refer to this statutory guidance. This statutory guidance, by virtue of the passage of time and subsequent amendments to the 2005 Act, is out of date. Therefore, the Board would suggest that the Scottish Ministers issue updated guidance or alternatively, repeal the 2007 guidance.

The Board considers that a comprehensive review of all procedural
aspects of the licensing system is required having regard to the principles of better regulation and the legal obligations placed on Licensing Boards under the EU Services Directive. For example, the processes relating to the processing of applications for transfer, major variation, occasional licences and extended hours should be streamlined and improved.

The Board would also wish consideration to be given to allowing greater flexibility for delegation of certain matters and for it to be able to determine which matters should be subject to a minor variation in order to reduce the volume of uncontentious major variations.

The Board also considers that with the plethora of legislation amending the 2005 Act, there is a need for a consolidated single piece of legislation to be produced in order to improve accessibility to the licensing process in relation to both members of the trade and members of the public.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Michael McDougall
Organisation: Glasgow City Council
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

x Yes

3. Please confirm whether you are content for your name to be published with your submission:

x Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

x Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

x Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

- Yes
- No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

- All of the Bill
- Equalities, climate change and other Scottish Government objectives
- Air Weapons
- General licensing issues
- Alcohol licensing
- Civic licensing – taxi/private hire car licensing
- Civic licensing – scrap metal dealers
- Civic licensing – theatre licensing
- Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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.

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.

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.
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.
4. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?
The Licensing Authority considers the primary objective of the licensing regime to be the protection of public safety.

The Authority is of the view that the licensing of Booking Offices is an essential part of the licensing regime of taxis and PHCs. This licence type is important in ensuring that the public can travel safely and that bookings are evidenced and recorded. However, in keeping with its view of the importance of public safety, the Authority would suggest that the exemption where a booking office licence is not required where there are less than 3 cars is removed. It is the Licensing Authority’s experience that, from time to time, operators who claim this exemption do in fact have more than 3 cars. The Authority is of the view that all operators should require a booking office licence. It is hoped that this would help to improve general accountability.

The Authority would also suggest that the Booking Office concept helps protect the public against rogue operators. The Authority has concerns that suspended drivers or drivers with expired licences are able to continue to trade by utilising a mobile phone from which they take bookings. By virtue of not being subject to the standard conditions of a Booking Office licence, the licensing and enforcement authorities cannot evidence illegal activity. Furthermore, this mobile phone may be located out with the licensing authority’s area.

In preparing for the near future, the Authority would suggest that the Scottish Government examine the interface between the Booking Office legislation and app based booking systems. The legislation should be amended to ensure that any future booking systems are delivered in a way that public safety is protected and that both licensing and enforcement authorities have access to the information that they require to effectively regulate the trade.

Furthermore, the Authority is aware that the licensing regime could be further improved to ensure that it meets the needs of the Authority, the trade and customers. In meeting these needs the Authority would suggest that transfer provisions are introduced into the 1982 Act. The Authority considers this to be a serious deficiency in the Act and while the Authority works around these constraints, it is of the view that proper transfer provisions would be a great help.

The Authority also welcomes the Scottish Government’s commitment to modernising the provisions of the 1982 Act in respect of taxis and PHCs. In keeping with this, the Authority hopes that the Scottish Government examines developments in both the United States and European countries in relation to online taxi booking apps. Such apps will doubtless be introduced to Scotland in the near future and the Authority would suggest that the Government begins to consider whether these apps would require any legislative amendments.
36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

As noted above, the Licensing Authority is of the view that the primary objective of licensing taxis/PHCs is public safety. All stakeholders benefit from a licensing regime focused on this objective, whether it being the Authority knowing that drivers are fit and proper persons or the trade knowing that the public have faith in securing a safe journey home. In meeting this objective, the Licensing Authority is of the view that the two-tier licensing regime for taxis and private hire cars is vital. It is only through restricting private hire cars (PHCs) to saloon like models and prohibiting them taking “there and then hires” that the public can be confident that the vehicle they flag down on the road is indeed a genuine taxi. Any move to remove this differentiation, in the Authority’s view, will compromise public safety by creating uncertainty in the public’s mind.

The Licensing Authority is of the view that this two tiered approach offers other benefits, for example the PHC regime offers a lowers the barrier of entry to potential applicants given that an applicant can use their own vehicle. PHCs also offer a less expensive option to customers given the price differential.

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?
The Licensing Authority agrees with the Scottish Government contention that any such overhaul would cause large scale disruption. In the event that the Authority is required to radically alter its two existing forms of licensing for these activities then the Authority has concerns ranging from the need to update its IT systems to needing to overhaul the signage used by PHCs and taxis.

The Authority would submit that it is not merely a case of updating its existing policies but would involve extensive research and consultation to ensure that public safety is maintained. This would doubtless lead to new signage being required and therefore it would need be developed and contracts agreed for its supply. Furthermore, the Licensing Authority is under contractual obligations in relation to the supply of the current signage. This contract must be honoured unless the Licensing Authority wishes to suffer severe financial penalties.

Further, the Authority would suggest that there would be a need to embark on a large-scale education campaign of the public. The focus of this campaign would be on educating the public as to what is a safe vehicle to hail on a public carriageway.

As well as engagement with the public, there would need to significant retraining of both taxi and PHC drivers to ensure that they are aware of their new role and responsibilities.

All of the above will require the Authority to expend significant resources to achieve. In short, any change to the two tier licensing regime would, in the Licensing Authority’s view, require a substantial lead in period – two years or more.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?
The Licensing Authority is concerned that the Scottish Government’s proposal to require the testing of PHC drivers erodes the difference between PHC and taxi drivers. The Authority understands that taxi drivers are tested as they are subject to “there and then hires” and therefore do not have an opportunity to research a route. However, PHC drivers by the very nature of being pre-booked, have the opportunity to make investigations into how to reach a destination. Therefore, by imposing the same requirement on PHC drivers, it creates an impression that they are trained to an equivalent standard. In short, the Licensing Authority respectfully submits that it sees no reason to impose this requirement upon PHC drivers.

In relation to the proposal to introduce the ground of refusal on the grounds of overprovision, the Licensing Authority would suggest that firstly there is no need for such a ground of refusal and secondly, the difficulty in determining if such overprovision exists makes it impractical for the Licensing Authority to adopt such a policy.

The Licensing Authority is of the view that overprovision of PHCs is best left to the regulation of the marketplace. If there are too many PHCs then the number of drivers required will decrease and therefore the demand for licences will lessen. In the Licensing Authority’s experience, most applicants have an indication of whether employment is available thereby, suggesting that there is a need for drivers. Further, the Licensing Authority is not aware of any evidence to suggest that there is an overprovision of PHCs or that such an overprovision is causing an issue.

Furthermore, determining the provision of PHCs is a very different matter from determining the provision of taxis. Unlike taxis, PHCs do not congregate at ranks and therefore an assessment developed by a specialist third party would be required and it likely that ongoing assessments would require to be carried out by this party to keep the data up to date and relevant. The Licensing Authority would respectfully submit that such a process is unnecessary given its view that overprovision of PHCs is not an issue of import.

The Licensing Authority is also concerned that the implementation of this ground of refusal would lead to a value being attributed to a PHC licence. This, in the Authority’s view, would lead to the creation of a cartel like structure. The relative ease of obtaining a licence helps encourage individuals to apply for a licence and therefore gives the Authority an opportunity to vet applicants. If it became known that the supply of licences was effectively at an end, the Authority would be concerned that this would lead to an increase in unlicensed trading.
39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

The Licensing Authority has no specific comment to make in relation to this matter however, would suggest that the Scottish Government considers the matter of vehicles that are hired out for the transport of passengers that do not fall within the definition of taxi/PHC, e.g. limousines and party buses. It is suggested that the licensing of these activities would help secure public safety and drive up standards.
5.

Name/Organisation: Glasgow City Council

6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

The Licensing Authority has for some time been concerned with the extent of metal theft at both a local and national level. The Authority’s concern was reflected in its previous consultation response in relation to this matter and it therefore welcomes the Scottish Government proposal to remove the exemption warrant system, the requirements relating to recordkeeping and the imposition of cashless payments. It believes that the introduction of such measures can help build a more robust licensing regime that will assist in preventing the easy disposal of stolen metal through metal dealer premises, many of which are currently under no duty to maintain records or carry out reasonable enquiries as to the source of the metal.

Furthermore, the Licensing Authority recognises that this is not a uniquely Scottish problem and believes it is one that should be tackled on a UK wide basis. It notes that many of proposals within the Bill reflect those contained within the English and Wales’ Scrap Metal Dealers Act 2013, e.g. cashless transactions. As such, the Licensing Authority urges the Scottish Government to adopt these measures. Such a consistent approach will, hopefully, prevent Scotland being targeted by metal thieves who are deterred by the measures in place in England and Wales.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?
While the Licensing Authority recognises that the vast majority of metal dealers operate within the law and appreciate the difficulty they face in distinguishing legitimate scrap metal from that which is stolen, it does however have concerns as to metal dealers who facilitate metal theft. The Authority believes that an accreditation system can help tackle this culture by improving the standards of the metal dealing industry.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

The Licensing Authority is strongly supportive of the proposal to remove that the exemption warrant system.

The Authority can see no justification for continuing to provide for an exemption to the licensing requirements based upon turnover. No other licensed activity has such an exemption and it is unclear what the rationale would be for maintaining an exemption in the future to allow any metal dealer the opportunity to remain outwith regulatory control.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?
The Licensing Authority is of the view that the retention of metal requirements should be removed as it recognises that such requirements may not be reasonably practical due to the Metal Dealer’s need to turn scrap metal round quickly and also the requirements of the SEPA Licence in respect of its storage.

The Authority notes that its Trading Standards officers are of the view that once metal has been received and processed by a metal dealer, it is difficult to determine and trace its origin. As such, the retention of metal requirements serves little practical purpose and its aims are best served by robust record keeping requirements.

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

The Licensing Authority is supportive of a cashless payment system being applied in respect of all metal and itinerant dealers as the prohibition on cash transactions for the disposal of metal will, hopefully, assist in reducing the likelihood of stolen metal being disposed off through licensed businesses.

The Authority suggests that any exception to the cashless system will only serve to expose the system to abuse. The most straightforward solution is to ban cash payments entirely. Any deviation from the cashless payment system will expose the system to circumvention and thus undermine its purpose.

This, once again, ties in with the Authority’s belief that it is important to view the Licensing Regime in respect of metal dealers on a UK wide basis. It is noted that England and Wales have adopted a cashless payment system and the Licensing Authority would suggest that it is important that Scotland follow suit to ensure that metal thieves are not attracted north of the border to take advantage of cash payments.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
As the Licensing Authority has stated throughout this document, it is of the view that only by presenting a united front with England and Wales, can metal theft be deterred and combated. And while it does not wish to impose burdensome requirements upon scrap metal dealers however, if Scotland were to adopt more liberal record keeping requirements than England and Wales then the Licensing Authority would be concerned that "regime shopping" would take place whereby organised crime would be attracted to Scotland. This would be due to a perception that it is easier to dispose of stolen scrap metal.

46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and "forensic coding"?
While this Licensing Authority does advocate a universally robust approach to the licensing of Metal Dealers, it does recognise the need to allow licensing authorities to attach additional local conditions to reflect the uniqueness and challenges of their own local area. However, at a national level there should be a suitably robust, mandatory scheme which provides for consistency across all licensing authority areas.

With specific reference to the conditions highlighted in the Scottish Government’s above question, the Authority is of the view that these should form mandatory conditions as they are represent the basic standard of crime prevention that should be expected from metal dealers. A failure to impose these basic standards exposes the dealer and therefore the entire supply chain to organised crime. It is the Licensing Authority’s view that mandatory conditions should seek to protect the supply chain from organised crime and therefore a minimum standard should be imposed.
7. Civic Licensing – Theatre Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

While the Licensing Authority welcomes the repeal of the Theatres Act 1968 and the introduction of theatres into the public entertainment licence, the Authority would draw the Scottish Government’s attention to the need for the Authority’s present resolution to be amended. As the Government will be aware, the process to amend could take up to nine months.

The Authority would also suggest that consideration is given to the repeal of the Cinemas Act 1985 and the incorporation of cinemas into the public entertainment licence regime. The Authority notes that England and Wales have both seen the repeal of the 1985 Act.

48. Are there additional costs or resource implications on theatres or licensing authorities?

As outlined above the Licensing Authority is of the view that its current public entertainment resolution will need to be amended. The lapse in time between the repeal of the 1968 Act and the amendment of the resolution will create real practical difficulties for existing theatres. Therefore, the Licensing Authority suggests that the Scottish Government amend the Bill so to provide for the automatic conversion of existing licences to Public Entertainment Licences. A failure to do so will doubtless impact upon existing theatres’ finances.

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
The Licensing Authority assumes that as the licensing of theatres is being incorporated into the public entertainment licence and therefore is then part of the 1982 Act then it will be subject to the charging structure of the said Act.

Name/Organisation: Glasgow City Council

8. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- ‘financial gain’
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'
Financial gain
The Licensing Authority is concerned that by linking the performance to financial gain this will provide an avenue for venues to argue that performances do not generate any such gain where such an activity is auxiliary to a primary activity, i.e. the sale of alcohol or that the event is free to enter. It is suggested that financial gain is expanded to include where such entertainment is provided auxiliary to another activity where there is a financial gain.

Further, the Authority is concerned that by connecting “financial gain” to the organiser then there may be an argument by the licence holder that the entertainment is done for the financial gain of a self employed performer.

Premises
It is suggested that for the avoidance of doubt, the definition should include reference to private member clubs.

Display of nudity and live performance
In the view of this Authority, the terms “display of nudity” and “live performance” require to be further defined. It is submitted that the aforementioned terms are interlinked and that without clear definition, the term “live performance” is subjective to the reader. It would appear to the Authority that as drafted the definition turns upon the performer’s state of dress. Clear definition is therefore required in order to avoid potential issues regarding interpretation from arising once introduced.

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?
In the view of the Licensing Authority, no such cap should be placed on premises that are used for sexual entertainment. The Authority is of the view that to do so would be contrary to the premise behind the introduction of the proposed licensing provisions and the overarching principles of the 1982 Act, i.e. the preservation of public order and safety and the prevention of crime. It is also the view of this Authority that the potential for criminality can exist during one performance or one hundred performances in a SEV and the number of performances does not reduce that risk. Likewise, the potential for public order and public safety to be compromised can exist during one performance in a SEV or many. SEVs should therefore always be subject to the requisite licensing regime.

Further, in the view of this Licensing Authority, if a cap were to be introduced, it would be extremely difficult to monitor in practice which SEVs had fulfilled their quota of three performances and which had not.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

Whilst the Licensing Authority acknowledges Glasgow City Council’s policy on violence against women and is acutely aware of the risk of criminality and criminal activities such as exploitation, prostitution and trafficking that can be associated with SEVs, it recognises that these venues currently form part of Glasgow’s economy. This Authority is of the view that the ability to introduce a policy setting a cap at zero should be made available to Local Authorities. Transitional provisions for existing premises would need to be considered and the Authority requests that the Scottish Government explicitly states whether such premises benefit from “grandfather rights”. It is important that there is clarity as to whether these premises’ right to trade can be removed. The Authority would suggest that there is the possibility of extensive litigation taking place in the event that a licensing authority, if it decides to set the level of SEVs at zero, refuses to grant an existing SEV a licence. However, the Authority stands by its view that it is important that Local Authorities have this discretion.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in
section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

The Licensing Authority is of the view that the 1982 Act is in need of a refresh and that the inclusion of the licensing of SEVs further stretches the Act. However, the Authority is satisfied that the proposed amendments to establish the licensing regime, is a positive move.

The Authority notes that section 45B(5A)(a) of the Bill states that “from time to time” a local authority must determine the appropriate number of SEVs. The Authority suggests that clarification is required as to what factors the Authority can consider in arriving at the appropriate number of SEV and how often it should carry out a review or what should trigger a review of the number of SEVs.

The Authority suggests that detailed consideration requires to be given to the possible introduction of a national mandatory set of conditions for licence holders of a SEV. It is the view of this Authority that such a set of conditions would go some way to establishing a coherent position on the protection of performers in SEVs. This would be particularly useful when dealing with SEV operators running a chain of establishments in different Local Authority areas. Further conditions should include detailed provision regarding the use and operation of CCTV equipment within SEVs as well as the provision of CCTV tapes and equipment to authorised officers of Local Authorities and the police upon request. Conditions regarding advertising and the distribution of promotional materials should also be contained in such a set of conditions as should the impact of such venues upon children and young persons. A condition requiring each SEV to maintain a list of their performers should also be considered.

In the further view of this Licensing Authority, crucial to the operation of a successful SEV licensing regime are transitional provisions for existing premises as well as detailed enforcement provisions. In order to assist with the regulation of SEVs and to help ensure the protection of performers, members of the public in attendance at the SEV and to reduce the risk of criminality, detailed enforcement provisions akin to those provided in Part 3A of the Bill should be introduced, i.e. Civic Licensing Standards Officers. Transfer provisions for which there is no current provision contained within the 1982 Act should also be considered.
54. Are there any barriers to licensing authorities operating the new licensing regime?

The Licensing Authority welcomes the clarity offered by section 45B(6A) of the Bill namely, that a local authority may refuse an application for the grant or renewal of a licence even if the premises has a licence by virtue of a premises licence under the Licensing (Scotland) Act 2005.

However, the Licensing Authority would suggest that, for the avoidance of doubt, the above section should be amended to reflect the fact that the presence of any other licence does not prevent the Licensing Authority from refusing an application, i.e. a public entertainment licence.

The Licensing Authority would also welcome clarity from the Scottish Government as to whether sexual entertainment venues that are currently licensed under the Licensing (Scotland) Act 2005 should be subject to any quasi-grandfather rights in the determination of their applications for SEV Licences. Clear guidance from the Scottish Government would be helpful in ensuring that the Licensing Authority is not embroiled in expensive litigation.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
The Licensing Authority welcomes the creation of the Civic Licensing Standards Officer. However, the Licensing Authority does suggest that the enforcement triggers in the 1982 Act should be revisited with a process analogous to the review system in the Licensing (Scotland) Act 2005. Such a process would allow for the CLSOs to intervene and work with licence holders in an educational role.

In keeping with the above matter, the Authority would further suggest that it should have the power to revoke licences under the 1982 Act as opposed to merely suspending the licence for the unexpired portion of it. If a matter is serious enough for the Authority to suspend a licence for the unexpired portion, then it follows that the licence should simply be revoked. This would tie in with the above suggest that a review procedure is put in place.

As referred to in previous answers, the Licensing Authority is of the view that licensing objectives should be introduced in relation to civic licensing, e.g. public disorder and public safety. The introduction of such objectives, would allow the Licensing Authority to make decisions to uphold the licensing objectives that may fall out with the fit and proper person test. Furthermore, such licensing objectives would help inform the drafting of policies.

The Licensing Authority welcomes the introduction of provisions that will enable Local Authorities and Licensing Board to comply with certain aspects of the EU Services Directive that was transposed into UK law in early 2010. Whilst the Authority is supportive of these provisions it notes that further work is required before licensing legislation can be considered fully compliant with EU law – particularly in relation to application fees and licence durations.

By way of example Schedule 2 of the Civic Government (Scotland) Act 1982 requires applicants for Sex Shops (and future Sexual Entertainment Venues) to have been resident in the UK for at least 6 months. This is patently at odds with the Directive’s objective of furthering cross-board service provision.
Local Government and Regeneration Committee: Call for Evidence on the Air Weapons and Licensing (Scotland) Bill

1. 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.

2. 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
3. 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
4. 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
5. 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.

6. 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.

7. 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.

Submission Number: 133
8. 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

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

10. 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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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
16. 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.

17. 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 taxies 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.

18. 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.
Evidence to the Scottish Parliament’s Local Government and Regeneration Committee:  
Air Weapons and Licensing (Scotland) Bill

Introduction

SSE welcomes the opportunity to respond to the Committee’s call for evidence. SSE is a UK-listed utility and the broadest-based energy company in the UK. SSE is involved in the generation, transmission, distribution and supply of electricity, in the production, storage, distribution and supply of gas, and in other energy services.

SSE, through its electricity distribution and transmission division, Scottish and Southern Energy Power Distribution, owns and operates both the distribution and transmission networks in the north of Scotland and owns and operates the electricity distribution network in central southern England. Across its networks SSEPD own over 100,000 electricity substations and over 130,000km of overhead lines. Through SSE’s renewables division, SSE Renewables, SSE own over 800 onshore turbines and associated infrastructure.

This response predominately relates to SSE’s network businesses, where it has experienced higher instances of metal theft, but should also be considered relevant for its generation assets throughout Scotland.

General comments

SSE strongly supports the Scottish Government’s proposals to better regulate the scrap metal industry which in turn is hoped will help reduce metal theft in Scotland.

Metal theft from electricity networks and generation sites is not just illegal, but is extremely dangerous and irresponsible. It places the lives of the general public, the culprit and engineering staff at risk, not to mention the disruption it causes to homes and businesses who could find themselves without power as a result.

Since the introduction last year of similar metal theft legislation in England and Wales, intelligence suggests that there has been a shift in offending into Scotland. This can take the form of those perpetrating the thefts moving north of the border, or alternatively, committing the crime in England and Wales and disposing of the stolen metal Scotland.

SSE therefore fully supports the earliest possible implementation of this legislation, in as robust a form as possible.

In particular, SSE believes the removal of exemption warrants, tightening of record keeping and customer identification procedures will help significantly deter metal theft and the critical element for the success of the Bill is the removal of cash payments, which SSE strongly supports.

Specific comments on the draft legislation are provided below under the relevant heading for each section of the draft Bill.
Section 63 — Removal of exemption warrants for certain metal dealers
SSE supports proposals to remove the exemption warrants for metal dealers which will introduce and ensure consistency in the transaction and processing of scrap metal across Scotland.

Section 64 — Abolition of requirement to retain metal for 48 hours
Whilst SSE is broadly supportive of the draft legislation as currently drafted, it does have concerns about the proposal to remove the requirement for metal to be retained on site for 48 hours. SSE recognises that despite the best intentions of the legislation it will be extremely difficult to fully prevent future metal theft in Scotland and for this reason, SSE believe it is essential to maintain the existing 48 hour period to help trace and subsequently recover stolen metal before it is processed.

Section 65 — Acceptable forms of payment for metal
SSE believes the proposals to ensure all transactions are ‘cashless’ will greatly assist in helping reduce the transaction of stolen metal within Scotland’s scrap metal industry. However, SSE would recommend the committee looks to learn lessons from the introduction of similar legislation in England and Wales, when very quickly after the introduction of the legislation a number of scrap metal dealers set up parallel business which would cash cheques on site, effectively allowing the ‘cashless’ transaction regulation to be bypassed. SSE would therefore recommend provisions are included within the legislation to prevent this type of activity being replicated in Scotland and to achieve this objective SSE would suggest restricting payment for scrap metal to ‘electronic bank transfers’.

Section 66 — Metal dealers and itinerant metal dealers: records
SSE strongly supports the requirement for greater record keeping which it believes will be crucial to the success of future metal theft prosecutions and will also act as a further deterrent to help prevent future metal theft. SSE believes that the collation and administration of, for example, ID documents used in transactions, is critical to the success of the Bill. SSE believes that the responsibility of identifying customers’ lies firmly with the scrap metal dealer’s to ensure a legitimate supply of materials to their business. This ‘Know Your Customer’ principle should be in the form of a nationally recognised photographic identification, such as a passport or driving licence.

Additional comments

There are a number of other areas which SSE believes the Committee and Scottish Government should consider to help reduce metal theft in Scotland further.

Accreditation scheme
SSE would support the introduction of a Scrap Metal Dealers accreditation scheme. SSE believe this would be a critical step in building faith in the industry in a similar manner to the Achilles financial scheme, which allows customers to conduct business in the knowledge that there is a vastly reduced possibility of criminal activity.

Prosecution and penalties
Whilst the Air Weapons and Licensing (Scotland) Bill does not include specific provisions regarding the penalties for metal theft SSE believe that utilising the Criminal Procedure Scotland Act 1995 as the basis of prosecution and sentencing does not provide the courts with appropriate sentencing powers. It is SSE’s belief that the maximum available penalties
do not reflect the seriousness of the crimes being committed. SSE would therefore recommend the Scottish Government considers increasing the maximum powers available to the courts, which SSE believes would result in a major impact in reducing offending.

**Definition**
SSE feels the definition of a “dealer” is too specific, in that the requirement to “buy and sell” would preclude, for example, itinerant collectors. SSE therefore believes the Bill would benefit from a broader definition with individual exemptions applied for those falling out of the scope.

**Licences / accreditations**
Scrap Metal Dealers should be obliged to display licences and accreditations prominently within their premises in a similar vein to a company’s obligation to display public liability notices.

**Conclusion**
SSE strongly supports the Scottish Government’s intention to better regulate the scrap metal industry in Scotland to help reduce what is a serious, disruptive and extremely dangerous crime and is grateful for the opportunity to contribute to the Committee’s scrutiny of the Bill.
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed—all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: ACC Wayne Mawson
Organisation: Police Scotland
Address 1: Randolphfield Police Office
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

X Yes

3. Please confirm whether you are content for your name to be published with your submission:

X Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

X Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

X Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

X Yes

No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

X All of the Bill

X Equalities, climate change and other Scottish Government objectives

X Air Weapons

X General licensing issues

X Alcohol licensing

X Civic licensing – taxi/private hire car licensing

X Civic licensing – scrap metal dealers

X Civic licensing – theatre licensing

X Civic licensing – sexual entertainment venues
1. **Air Weapons Licensing**

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

The criminal use of air weapons can have a devastating effect on those who are victims of that criminality. Criminals have used air weapons to kill and injure people. Pets and wildlife are also targeted by those who use air weapons irresponsibly. Property is also damaged.

It would appear that the contents of the Bill, as it relates to air weapons, is to ensure that those who should not have air weapons will not be authorised to possess them. Applicants will require to be deemed fit to be entrusted with an air weapon and have a good reason for the possession of an air weapon. They will only be permitted to possess an air weapon if their possession of such an air weapon will not pose a danger to the safety of the public or the peace. These tests are already carried out in relation to current firearm certification procedures and assist in minimising the risks associated with irresponsible firearm ownership.

Albeit crime in relation to the misuse of air weapons has fallen in recent years to very low levels, it is anticipated that crime relating the misuse of air weapons will fall further if these weapons are removed from those who are unfit to be entrusted with such weapons. Conversely however, with the introduction of a licensing regime, it will be expected that offences in relation to non certification will outweigh considerably the current crimes, such as reckless discharge of a firearm, as those who have not complied with the legislation are discovered and reported.

With an expected reduction in air weapons availability and the criminalisation of non certification, it would be expected that less people will be injured as a result of the criminal use of air weapons.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by...
There are already a number of firearm ranges and clubs in Scotland. They are generally well run and comply with the relevant legislation. There has been no police involvement in the licensing of non certificated air weapon ranges. At this time ownership numbers for air weapons are unknown and therefore Police Scotland are not able to provide an assessment on capacity.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

Those who wish to own air weapons will require to have an Air Weapon Certificate (AWC). To acquire such a certificate, application will require to be made to the Chief Constable and a number of checks will be conducted on each application such as the presence of a criminal history or other adverse knowledge. There will be a fee set for the progression of an application. The air weapon will require to be securely stored. People who have a good reason to possess such a weapon will be free to continue their responsible use of it. That said, should the police come into possession of information that a person no longer has a good reason to possess an air weapon or that person is assessed as being a danger to the public safety or the peace, the AWC would be revoked by the Chief Constable. This will be an incentive for continued responsible air weapon ownership.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?
It is widely recognised that air weapons are very often the first step towards responsible gun ownership and use within the shooting community. There are approximately 60,000 certificates holders in Scotland, the vast majority of who are law abiding citizens who value their access to guns and conduct themselves in a manner commensurate with this responsibility.

Currently a person aged 14 to 17 can borrow an air weapon and ammunition and use an air weapon, without supervision, on private premises where they have permission to use it.

The Bill sets out in Section 7 the conditions which would require to be adhered to when an AWC is issued to a person under 18. Assuming that the Chief Constable attached all of the conditions within Subsection 5 to an AWC, it is suggested that this would hinder the use of air weapons by young people for legitimate reasons. By way of example, a 17 year old student shooting rats with an air weapon in a factory for a friend would be contravening the proposed legislation.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

Apart from requiring an AWC, or visitors permit for those outwith Scotland, there will be little impact upon an individual using an air weapon for business or recreational use. There are, however, some bureaucratic implications in respect of the recording and notifying of the movement of air weapons. These are;

Section 24 – Restrictions on transactions involving air weapons. This section generally reflects Section 3 of the Firearms Act 1968 which deals with Registered Firearms Dealers (RFD). The use of with word transfer, which is subsequently defined as ‘includes let on hire, give, lend and part with possession’ is included in both Section 3 of the 1968 Act and Section 24 of the Bill. A consequence of this is that potentially an individual transferring air weapons could fall under the terms of a dealer and require to be registered as such.

In respect of Section 26 of the Bill, what is the purpose of notifying the Chief Officer of police within 48 hours? This will increase the bureaucratic burden on both the police and the RFD.
18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

Apart from the requirement to obtain an AWC, target shooting, in the appropriate circumstances, would be a good reason.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

There is a cost to the administration of firearms licensing and the proposals contained in the Bill. It is widely accepted that the cost of administering the current firearms licensing system is not covered by the fees charged and the public purse picks up the difference. The firearms licensing fees have not increased since January 2001.

Police Scotland considers that the 1968 Act, which allows for the full refund of a fee should the application be refused, is an anomaly. In the vast majority of current circumstances, when there are no fit to be entrusted queries or medial matters to be considered, the processing work is straightforward. It appears counterintuitive, when considerable investigative resources are deployed to obtain information which allows the Chief Constable to make an informed decision in respect of refusing an application, that the fee should be returned given the vastly increased costs to the public purse.

It may be considered that an applicant applying for an AWC is paying for the process to take place rather than the actual certificate itself. Conversely, it is not equitable, from the perspective of public funds for a person not to pay for the increased public work when anomalies, which the applicant will likely be aware of, are discovered.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?
The system is solely administered by Police Scotland. Enquiries will likely be required, in a minority of cases, with health professionals in an effort to ascertain medical information. The scale of this cannot be assessed at this time.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

Due to the tests involved, there may be an increased application rate for Firearms Certificates under the terms of the 1968 Act as the same tests apply in respect of fitness and good reason.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

It is vitally important, from a processing perspective to balance the monthly demand of applications on the police. Section 8 of the Bill states that an AWC shall last for five years. There are a number of Sections thereafter, Section 9 (2) by way of example where the proposed legislation allows for a certificate holder to align their AWC to conclude with their Firearm or Shot Gun Certificate, which may be of a period of less than five years.

In order to smooth the demand, Police Scotland would wish, that for the first AWC only, that the Chief Constable can decide the length of the Certificate. Accepting that there will be a wave of new applications when the legislation is enacted, the current proposals would mean that the same wave is replicated at five year intervals thereafter, causing undue pressure on the police to manage the resources to satisfy the demand. Alternatively, should the Chief Constable have the ability to vary the length of the first certificate, this brings with it the ability to thereafter smooth the demand, allowing for a more efficient and effective service. At the renewal of the first certificates they would revert to five years. This has the effect of stabilising the numbers of AWCs which require to be processed each month thereafter and allows for the effective planning of resources to meet the monthly demand.

It is also to be noted that there is no budgetary provision within Police Scotland to deal with this legislation. Costs will be incurred in the handing in of air weapons, the bureaucratic processes involved in dealing with
AWCs and the subsequent management of them. Costs will also be incurred in the provisions of prosecution evidence such as ballistics reports and the criminal justice impact upon reporting individuals for contraventions of the legislation.
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

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?

1. Both the LSA 2005 and CGSA 1982 are open to interpretation which has culminated in variations in application of legislation by regulatory authorities across Scotland. An example (LSA 2005) would be where the licence holder is a limited company that has subsequently been dissolved. Legal interpretation on that subject can vary considerably and there remains conflicting views on what action a licensing Board can take. Revised guidance and greater clarity would better inform the application of either act.

2. The CGSA 1982 would benefit from revision, in line with developing business practices, such as Internet taxi bookings, and legislation since enacted (serious organised crime).

3. Neither Act allows regulatory authorities to impose a punitive sanction.

24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?
Yes – Individual behaviour should be regulated and where standards have fallen and/or there is a breach in legislation it is entirely reasonable to hold a licence holder/member of staff to account for any omission or action on their part.

Evidence of conduct, past and present, should also form part of the determination as to whether a licence is granted in the first instance. This would ensure that an individual who may pose a risk to the public is not granted a licence, or in the case of those linked with SOC and criminality, are not legitimised by an inability to regulate and take account of individual behaviour, conduct and associations.

In the absence of individual accountability there would be no incentive to comply with legislation or locally determined policies. This could potentially impinge on regulatory authorities and statutory partner’s ability to ensure standards are met and public safety maintained.

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

Economic growth and regeneration is a priority for every Local Authority and community across Scotland. Regulated and licensable activity will obviously form a considerable part of this. However, economic growth linked to the sale and supply of alcohol should be carefully considered and full cognisance should be taken of the potential wider societal impact.

A holistic approach to the grant of licences, with an emphasis on partnership working and consultation with planning departments; community planning; ADPs, economic regeneration agencies as well as local communities, has the potential to develop a more sustainable and better informed approach to Licensing, representative of local needs and demographics, and plan for the short, medium to longer term growth.

The LSA 2005 presently requires the Licensing Board to produce an over provision policy and to consult with key stakeholders in this process. Through this process there is the potential to develop an overprovision policy that supports expansion of licensed premises in, for instance, city centre areas and/or conversely limit the expansion of licensable activity in areas where there is an evidenced link between overprovision and associated alcohol related offending, vulnerability and health related harm.
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

The licensing system affords an opportunity to regulate licensable activity, ensuring there are appropriate checks and safeguards in place and accountability where there has been any legislative breach. However there is also the potential, through considered regulation, to influence the sustainable development of local economies tailored to local requirements.

In terms of the LSA 2005 Licensing Boards are required to include a statement as to the extent to which it considers there to be overprovision of licensed premises and can implement local policies that govern how many pub; club; restaurant and off sale licenses they will grant a licence in a given area. In considering an overprovision policy they must consult with key stakeholders, such as police, health, trade, community and any other persons the Board thinks fit.

Through this consultative approach the grant of a licence, i.e. what type of premises, capacity, existing provision etc would be fully considered by a number of interested stakeholders, balancing economic growth against potential harm.

Developing a local economy on the sale and supply of alcohol may not be socially or economically viable or indeed sustainable and may cause more by way of socio-economic damage that the employment etc it creates.

Overprovision of licensed premises can increase accessibility and availability and, due to competitive pressures, can deflate the retail price of alcohol. Market elements should also be considered when developing local economic and overprovision policies, neither of which are mutually exclusive.

In terms of legislative provision, overprovision policies can substantially influence the economic buoyancy or otherwise, of a locality area and can be extremely positive or negative in terms of health, income generation and deprivation. However regulatory authorities are limited as to what policies they can implement. For instance, there are no legislative powers for overprovision in terms of CGSA 1982 or in areas such as Gambling. As such, an area can, in theory, have an unlimited number of Tanning Salons or Betting establishments.
27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?

As stated above in terms of the LSA 2005 Licensing Boards are required to include a statement as to the extent to which it considers there to be overprovision of licensed premises and can implement local policies that govern how many pub; club; restaurant and off sale licenses they will grant a licence in a given area. In considering if there is overprovision they must consult with key stakeholders, such as police, health, trade, community and any other persons the Board thinks fit.

Through this consultative approach the grant of a licence, i.e. what type of premises, capacity, existing provision etc would be fully considered by a number of interested stakeholders, taking full consideration of the potential impact on local communities’ health and welfare.

This approach has the potential to positively impact on health related harm linked with alcohol abuse in areas of high deprivation, or where there exists evidence of over selling, over consumption with related offending and vulnerability.

In addition, effective regulation of premises that over sell alcohol and operate against the licensing objectives and legislation, has the potential to improve public health.
4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in.
(Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

1. Amending the licensing objectives to include young persons will potentially enable Licensing Boards (LB) and Police Scotland (PS) to more effectively tackle the sale and supply of alcohol to young persons, associated victimisation and offending.

2. The introduction of Fit and Proper brings Liquor Licensing in line with the CGSA 1982, and allows LB and PS to consider bad character and previous conduct in addition to convictions. However there are limitations in that fit and proper will still be intrinsically linked to the licensing objectives. This may potentially limit the ability to effectively target those linked to and actively involved in SOCG. In applying a fit and proper test to premises licence applicants/holders and connected persons affords comment on more than relevant convictions and fewer limitations as to comments on conduct. It would be advantageous if sec184(2) Criminal Justice and Licensing Scotland Act.2010 or sec 40 (a) LSA 2005 as amended by sec 184 was commenced. This would provide an opportunity to provide comment on interested parties, particularly those linked with SOCG.

3. Extending overprovision to whole areas will potentially facilitate a more holistic approach to the grant of licences, recognising the potential impact on neighbouring communities (particularly where transient populations will be affected).

4. The repeal of section 129 (4) will allow spent convictions to be notified to the LB, better informing the decision making process linked to the licensing objectives. In addition this will further inform if an applicant meets the criteria of fit and proper.

5. The repeal of section 40 A (1) (b) and (2), albeit to date has never been committed, will impinge of PS’s ability to tackle interested parties, such as lease holder, who may be connected or actively involved in SOCG activity. Clarity is sought as to whether the definition of connected person extends to interested parties.
29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

Fit and proper - Is there an onus on an individual to prove that he/she is fit and proper?

There is no prescribed definition to determine the criteria for fit and proper, or otherwise. However it is anticipated that being overly prescriptive would potentially be counterproductive.

However financial transparency provides an indication of links with SOCG and it is anticipated that PS would potentially make comment in relation to this when responding to a LB re an applicant’s suitability.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

Including 16-17 year olds within the licensing objectives will enable LBs and PS to more effectively address the sale and supply of alcohol to 16 and 17 year olds. In addition extended the provisions of the Act to include the supply of alcohol to a child or young persons will enable PS to tackle agent purchase. The provisions in the Bill are however limited to public space. As such there is the potential for an adult to supply a young person within a domestic setting, such as drinking dens.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

Fit and proper test will allow PS to comment on conduct and information held, and potentially spent convictions, better informing the Board when considering whether to approve or refuse a licence.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of
33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

Sexual offences
Crimes of violence
Crimes of dishonesty

Disclosure would better inform the LB’s decision whether to grant/refuse a licence.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

**Overprovision –**

PS welcome the extension of overprovision to whole areas. However there are inherent limitations within the Act that could thwart the application and enforcement of an overprovision policy.

Home deliveries effectively extend the period in which alcohol can be delivered, i.e. any time except between midnight and 6am. This has the potential to increase availability, accessibility and thereby overprovision (vicariously extending “operating” or terminal hours). The sale, supply and delivery of alcohol should be brought in line with core off sales licensed hours, namely 10 am to 10pm. This would remove any inconsistencies across Scotland and would not be dependant on LB’s policies, including overprovision.

In addition if a LB determines an overprovision policy in a given area that includes home deliveries, a neighbouring Board may not take a similar position. This has the potential to undermine what the Licensing Board set out to achieve.
5. Taxi and Private Hire Car Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

35. What benefits should the licensing of taxis and private hire cars deliver for customers?

The Licensing of taxis and private hire cars should ensure that customers have a level of comfort around the suitability of the drivers and condition of vehicles used in this industry.

The licensing regime ensures that legitimate business thrives and provides opportunity to prevent organised crime groups from gaining a foothold in this industry.

36. In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?

No View

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?
From a police perspective the same scrutiny and application of legislation is applied in respect of both taxi types.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

No view.

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

No view.
6.

Name/Organisation: Police Scotland

6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers’ licensing regime to the extent that metal theft and related criminal activity is reduced?

It is anticipated that the proposed amendments, as outlined in the Bill, will improve current business practices and allow this industry to be more effectively regulated, deterring criminals and opportunists who seek to exploit current legislative gaps.

Greater controls over payment methods, record keeping, identity checks and record keeping will certainly benefit legitimate enterprise. Furthermore the removal of exemption warrants ensures that all metal dealers, including those who trade in precious/semi precious metals, will now be licensed, affording greater scrutiny and compliance.
41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers? The following considerations may further improve industry regulation and deter criminal/opportunist exploitation:

1. Standardised conditions, such as CCTV standards;
2. The potential repeal of sec 31 places restrictions on LAs ability to effectively regulate all metal dealers. Local authorities should have the ability, and associated powers, to make addition requirements, such as determine the retention period for holding metal prior to disposal. This is particularly valid for crime prevention purposes in relation to the trade in precious/semi precious metals;
3. Stipulating requirement for photographic ID and address verification (such as utility bill, council tax);
4. Licence must be stored on the premises and produced to a constable immediately on request;
5. Every individual should hold a personal licence, allowing accountability and appropriate action to be taken, in addition to fulfilling training requirement.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

Police Scotland supports the proposal to remove the exemption warrant system. This will enhance crime prevention and disruption activity and allow the police to enter and inspect metal dealers at any time.

The current exemption system is potentially open to exploitation. For instance, a company can technically circumvent control under CGSA 1982, particularly umbrella companies who obtain a franchise under a global name whereby the total income exceeds the required exemption figure but individually would fall below this amount.

Removal of the exemption would place all businesses under the same legislative requirements and standards.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal
activities?

A retention period of 48 hrs should be mandatory, not include Saturday or Sundays, and all metal purchases should be stored on site. This permits police powers to enter and inspect for the purpose of crime prevention and investigation (where there has been an allegation of theft/reset), especially where a business trades in precious/semi precious metals.

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

No minimum amount should be cashless and cash payments would still cause issues within this industry. The opportunity to exploit cash loop holes could potentially increase with the addition of minimum cash payment, i.e. for those unscrupulous traders, payment for a larger, more valuable item could be made by a number of small cash payment transactions, and would also encourage low level offending.

In addition, linked activity, such as cheque cashing facilities sub let on a premise, should be legislated for, reducing the opportunity and real potential for cash to remain part of day to day business.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer's licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

The proposed record keeping requirements are not unduly burdensome; however there remain concerns regarding what proof of identification is taken and how it is recorded.

Photographic identification and proof of address (such as utility bill, council tax) should be the industry standard.

Retaining records on data systems can lend itself to data manipulation and concealment and the preferred option would be hard copy back up records or hard copy receipts with serial numbers.

Records should be retained for three years.
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?

CCTV should be a standard and mandatory condition, to the satisfaction of the Chief Constable, otherwise standards may vary across Scotland. Labelling metal and forensic coding will also account for the provenance of any transaction and make it more traceable.
7. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'
Sexual Entertainment Licence

If enacted there will be a dual licensing for sexual entertainment venues and (alcohol) licensed premises, however this could address the subsequent developments in case law (namely Brightcrew) that has restricted LB’s capability to specifically address issues within licensed premises relating to the sale and supply of alcohol only and not any other activity ongoing on those premises. It may be necessary for a premises licence’s operating plan to make reference to the sexual entertainment however it would be for the SEV licence to regulate how that activity is carried out.

The conditions sought on any SEV licence may need to make reference to the alcohol licence and vice versa and any issues encountered would technically be dealt with by two separate bodies within the Local Authority (Liquor licensing board and the Regulatory Functions committee.) Whilst there is a need for dual licence arrangements, there may be technical difficulties encountered with separating the requirements of the two issuing authorities and there may be a need to ensure that terminal times for both licences are commensurate and that ‘activities’ licensed by the Local Authority only take place within mutually licensed times. There may be separate inspection regimes for both licences held and the Scottish Government needs to ensure that the powers conferred to Local Authority Officers are cross transferable. Typically the Local Authority licensing Standards Officer (LSO) works in tandem with civic enforcement officers, however their respective ‘powers’ of entry and inspection will require to be the same in order to overcome potential legal challenge.

In the event of a suspension or revocation of an alcohol licence, there needs to be a consideration that licensed activities may still continue, where alcohol is not sold, but “bring your own bottle” could technically continue within the premises until a hearing by the other committee can be concluded.

Audience

An audience of one should be applied. Many premises regularly referred to as ‘lap dancing’ venues operate private booths that facilitate titillation on a one to one basis.

Local Authorities should not be given the opportunity to decide whether they wish a regulatory regime for sexual entertainment venues, they should be required to have one. Given the diverse approach regarding local authorities management of SEV’s under public entertainment or alcohol licences there should be little discretion in any new regulatory regime.
Furthermore, national consideration as to what does and does not define adult entertainment needs to be established (as the legislation covering licensing is a national statute and should not be subject to regionalisation). It is clear that any developments may be subject to litigation and we may find further complications in case law, with different interpretations of local authority policy being tested in appeal courts with contrasting outcomes (see Tesco v Aberdeen and Glasgow) Ministers should consider comprehensive mandatory conditions in order to ensure a consistency of approach across the entire country rather than leaving the majority of conditions within the discretion of Local authorities to appoint local conditions. A policy document along similar lines to the Home Office Sexual Entertainment Venues Guidance for England and Wales would also be welcomed.

Advertising including flyers / bill posters /online advertising for any licensed premises shall not portray any sexualised image, nakedness of any figure or any other image that any reasonable person would find inappropriate etc., or alternatively, any promotional advert shall consist of text only, the only advertising image being permissible being any commercial logo of the licence holder. Any advertisement will clearly indicate the licence number of the premises.

In line with other aspects of the Civic Gov legislation, SG should strongly consider that ‘individuals’ taking part in a performance or working within the venue as a performer (whether for payment or not) shall apply for and be granted a personal licence and be licensed by the Local Authority, in addition to the venue being licensed. This will enable greater protection to performers /patrons as well as deter human trafficking which this area has allegedly occurred previously. A ‘personal licence’ will ensure participants are:

- fit and proper
- have a right to work in UK
- identity confirmed
- permit cross reference with other Local Authority data sets

This will ensure that the same protections are in place as taxi drivers, window cleaners etc.

Recommended mandatory conditions that provide consistency re the following would also be welcome:

1. External Appearance of the Premises and Public Displays of Information
2. Control of Entry to the Premises

3. Conduct of performers and Rules relating to performances of sexual entertainment and nudity permitted

4. The protection of performers and the prevention of crime on the premises

5. Record Keeping and Management

6. CCTV

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

A similar system to occasional licences for alcohol should be prescribed for premises wishing to only operate on one or two occasions. There is also the potential that this may be open to exploitation by performers (such as touring production) who may conduct a performance for one night only, but may perform on town and cities on consecutive nights across the country.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?
Local Authorities should be allowed to decide how many premises are allowed in a given area including a figure of zero. However, they should be required to publish a policy for sexual entertainment venues outlining their rationale for each element of the policy.

Each local authority should have a requirement to produce a ‘Statement of SEV’ policy, which will provide the evidential basis underpinning their policy. Any presumption of rebuttal will be open to challenge and may potentially be counter productive / open to protest unless it is published with a statement of reasons and with transparency. Local Authorities that seek to grant SEV licences should include detail of any areas where applications are acceptable/tolerated and where provision of a SEV would not be permissible (e.g. within radius of schools, vulnerable locations etc) This will also inform the community / local residents of what can be expected within an area.

Any policy decision to remove Adult entertainment from a local authority area will require transitional arrangements within a reasonable time frame.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

See response to Q 50.

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Niamh Hegarty
Organisation: Network Rail Infrastructure Limited
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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136
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes
☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal
☐ Professional
☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☐ Yes
☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

- All of the Bill
- Equalities, climate change and other Scottish Government objectives
- Air Weapons
- General licensing issues
- Alcohol licensing
- Civic licensing – taxi/private hire car licensing
- Civic licensing – scrap metal dealers
- Civic licensing – theatre licensing
- Civic licensing – sexual entertainment venues
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

Network Rail, along with a wide coalition of companies across the economy, has been campaigning for several years to tackle metal theft. We welcome the proposed tightening of the law in Scotland.

Broadly we believe that the law in Scotland should be as close as possible under Scottish law to that passed recently for England and Wales, to minimise any attempts to take advantage of differing legislation either by organised crime groups which are able to coordinate and understand the law and exploit this or opportunistic thieves. These amendments will help to achieve this outcome.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

While we would support an accreditation scheme, but this should not be seen as an alternative to legislation.

As has been pointed out elsewhere, the definition of a dealer and itinerant dealer contains a requirement that they “buy and sell metal”. This does not take into account parts of the market, such as itinerant dealers, who collect metal door to door. We would recommend that the definitions underpinning the legislation capture all metal dealing.

We would support the proposals from the British Transport Police and Police Scotland to introduce a national register of metal dealers (including itinerant metal dealers) which could be accessed by enforcement agencies.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

We support the view that retaining metal for a period of 48 hours will be of assistance to law enforcement and should have a limited impact on trade.

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

Network Rail supports the proposal to have a "cash-less" system and does not agree that there would be merit in allowing any transactions, no matter how small, to be carried out by cash. On the contrary, with the cash ban in place in England and Wales allowing cash sales in small volume would simply present a loophole for cross-border sales of stolen metal and undermine efforts to tackle thefts in Scotland.
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
All dealers should face the same requirements. These should be proportionate but also sufficiently rigorous to strongly discourage dealers from risking dealing in stolen metal.

With the change in the law in England and Wales, the requirements for records in Scotland should aim to be as close as possible under Scottish law to eliminate any potential for criminals to take advantage of laxer rules on one side of the border, and of course to not unduly burden dealers on one side or the other of the border.

The period for retaining records should be long enough to provide evidence of regular breaches of the law. The law in England and Wales requires records to be kept for three years, which seems enough to detect patterns of wrongdoing but not unduly burdensome for businesses.

In addition, Network Rail considers that record keeping requirements which reflect those in the Scrap Metal Dealers Act 2013 would be preferable to having two potentially different record-keeping systems as many businesses and organisations, including Network Rail, operate both within Scotland and in England and Wales. Therefore, having a common system will lead to more consistency in the records being kept which may make it easier to track metal which has moved from one country to another.

46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also
attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'?

All mandatory conditions should be consistent with those contained within the Scrap Metal Dealers Act 2013.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

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*1. Please supply your name and contact details:

Name: Gary Sutherland
Organisation: 
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

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☐ Yes

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6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation:

Gary Sutherland

1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

I do not believe it will contribute in any significantly positive way. Adequate laws already exist to ensure that persons misusing airguns are prosecuted and punished without there being any need for more legislation.

Since the introduction of the VCR Act firearms crime has fallen substantially. This is due to the vast majority of airgun users being responsible and law-abiding individuals.

Remember that licensing did nothing prevent the massacres that took place at Hungerford, Dunblane, and more recently in Cumbria. In each case the weapons used were all legally owned and licensed.

Public health may in fact suffer as a result of a reduction in the numbers of pest species such as rats and pigeons that are killed by airgun users under the General License.

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

Most certainly not, especially in more rural areas.

In my own personal case an each-way journey of 97 miles is required to visit my nearest airgun club at Strathpeffer.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
Many airgun owners practice their sport in their back gardens shooting at paper targets. This is a very safe activity that does not require regulation.

Under the proposed scheme this activity may become criminalised.

It should be noted here that the new scheme only applies to sub-12ft/lb equivalent airguns. More powerful airguns are already covered under the existing firearms licensing scheme.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

The scheme may discourage the numbers of young people taking up the sport.

As the recent Commonwealth Games in Glasgow demonstrated, shooting is a popular sport.

Introducing young people to airguns is a good way to teach them respect and safe handling practices for all firearms.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

Pest control professions will no doubt seek and obtain the necessary registration however a substantial amount of the pest control that takes place in Scotland is done by amateur shooters using airguns.

If this is caused to stop then a substantial increase in the number of pest species will be the result along with the knock-on effect on crop damage and public health.

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?
Professional sporting persons will no doubt carry on as at present, albeit with additional cost, however it is the recreational sports person who will suffer as a result of potentially being deprived of their principle practice area – their gardens. The details of the scheme are very vague in this area, failing to denote the size of land that it would permit shooting to take place upon.

I, for instance, own an acre of land that surrounds my home. Would this be considered to be a garden and thus outlawed for shooting?

This would be despite the fact that I practice safe pest control on it as it is also used for the grazing of chickens and pigs, as well as for cultivation.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

No. Under the present shotgun certificate scheme if a license is not granted then the fee is returned. I can see no reason why this should be otherwise for an airgun licensing scheme.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

The scheme would have a significant negative impact upon the police force whose job it would be to process each application for an airgun license.

As was noted earlier, gun crime in Scotland has fallen considerably in recent years and so this would appear to place an unnecessary burden upon our already over-stretched police service.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?
Many airgun users may decide that the additional cost and inconvenience are sufficient for them to decide to obtain a shotgun certificate instead. This would result in there being substantially more true firearms in private ownership than presently.

The introduction of this scheme could (and probably would) force a large number of people to give up their sport leading to a glut of airguns appearing on the market for sale. This would in turn drive down the market prices leading to a significant financial loss for many people. It would seem only fair that they would seek compensation from the Scottish Government for this loss.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

I believe the proposed bill is being introduced not in the interests of reducing crime – this has already fallen considerably in recent years – but more for political reasons: a desire by the Justice Minister to ‘be seen to be doing something’, particularly in the wake of the tragic death of Andrew Morton.

There has been no evidence presented to show that licensing of airguns will have any detectable impact upon the small number of incidents that are still taking place.
Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

Name: Rosie Kendall
Organisation: Midlothian Licensing Forum
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: Scotland
Email address (if no email leave blank): 
Phone Number: 

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SUBMISSION ID NUMBER 138
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

* 3 Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☑ Professional

☐ Commercial

* 5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes

☒ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☐ General licensing issues

☒ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
Name/Organisation: Midlothian Licensing Forum

4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

The creation of new offences of giving, or making available, alcohol to a child or young person for consumption in a public place is welcomed by the Forum and will be a useful tool in ensuring alcohol is consumed in a responsible and appropriate manner.

It is foreseen that this change will increase public reassurance and will have a positive effect on younger generations.

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

Currently anyone can apply for a license in Midlothian even if they have no link to the area. This created challenges for crime and disorder as the Council granting the license application doesn’t necessarily have an interest in the area in which the license will be used. For example individuals from Edinburgh may apply for a license in Midlothian to speed up the process.

It is suggested that a different approach should be put in place to ensure local ownership and responsibility. Which would assist Licensing Board’s across Scotland to ensure only “fit and proper” people are granted licences. One method of this would be for a local licensing Board to only accept applications from those who live or work in the area.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?
Amendment of the duration of a licensing policy statement to align with the term of Local Government elections is a positive change. This will allow the Council’s licensing Policy to align with the Single Midlothian Plan ensuring greater streamlining of key objectives.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

Ensuring those who are granted licenses are ‘fit and proper persons’ will impact positively on the way premises are run. This will assist with achieving community safety objectives and support economic development; both have relevance to crime and antisocial behaviour through cost of crime to local economy.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

There have been discussions in relation to the level of local supply and demand for more licensed premises and the economic impact this has. This has to be demonstrated.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?
34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

Name: Prof Phil Hubbard
Organisation: University of Kent
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
* 2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☐ Yes

* 3. Please confirm whether you are content for your name to be published with your submission:

☐ Yes

☐ No

* 4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

☐ Commercial

* 5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☐ Yes

☐ No
* 6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes
☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill
☑ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☑ Civic licensing – sexual entertainment venues
Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

The clauses on the regulation of Sexual Entertainment Venues has implication for minority sexual rights. EU Court of Human Rights cases have been interpreted to suggest that there is a right to buy and sell sexual entertainment and/or products (see Belfast City Council v. Miss Behavin’ Ltd (Northern Ireland) [2007] UKHL 19 (25 April 2007) and that licensing must not impinge on freedom of sexual expression unless there is a clear justification for doing so in terms of the municipal or civil interest. This implies there is a duty for local authorities implementing the licensing system to be mindful of the rights of individuals to view or provide sexual entertainment, both of which are lawful activities. This may be particularly important in the context of venues targeting LGBT audiences, though the general principle should be the same when considering the rights of all adults to consume or perform Sexual Entertainment: unless there is a clear justification for preventing this happening, particularly in terms of preventing crime and disorder; securing public safety; preventing public nuisance; protecting children from harm; and protecting and improving public health, refusal of licenses for sexual entertainment venues might be deemed as unreasonable in the terms of human rights. Regulation must always be proportionate and reasonable, and mindful of impacts on different social groups, even if large sections of the community find the behaviour of such groups objectionable or immoral.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.
As (9) above. EU Human Rights cases suggest the burden must be on the governmental (municipal) power to justify its regulation of businesses in clear terms in cases where that regulation appears to impinge on freedom of expression.

The danger of introducing a separate licensing system is that it may appear contrary to the 2009 EU services directive if it appears that particular commercial premises are being subject to regulation that is disproportionate. If the introduction of a licensing system for sexual entertainment were read as in any way introducing ‘unnecessary or excessively complex and burdensome procedures, the duplication of procedures…the arbitrary use of powers by the competent authorities’ or ‘disproportionate fees and penalties’ it would be seen as contrary to section 45 of the 2009 EU Services Directive and could be prone to legal challenge on this basis. Any system of licensing of sexual entertainment must be proportionate and non-discriminatory against sex businesses given the regulation of sexual behavior and personal liberties is only justified when this regulation serves another governmental objective which is rational and reasonable (e.g. the protection of children or the improvement of public health). These principles are underlined in Belfast City Council (Appellants) v. Miss Behavin’ Limited (Respondents) (Northern Ireland) (2007), where it was established that certain human rights to expression and rights to use of land can be overridden when it serves other stated governmental goals. Here, the onus is nonetheless on the government concerned to clearly state the goals which the regulatory act is designed to meet. It is also relevant here to note Hemming v Westminster City Council (2013), which ruled that fees must be proportionate and reasonable, and cannot be justified with reference to the operation of a licensing regime, only the cost of an individual application.

In sum, if a new licensing regime is introduced, its intentions and objectives must be clearly stated; its procedures must be clear and any licence fee must be proportionate with the work undertaken to process an application and not in any way designed to discourage applications of this type. If such safeguards are not taken there is a risk that regulation will be challenged via European courts or with reference to EU Human Rights legislation.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?
6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- ‘sexual entertainment venue'
- ‘audience'
- ‘financial gain'
- ‘organiser'
- ‘premises'
- ‘sexual entertainment', and
- ‘display of nudity'
These definitions are relatively clear. However, the definitions as currently offered might extend to However, contrary to the above, it may be worth noting that a number of premises may also fall into the definition of an SEV which have not been considered to be the object of regulation by those drawing up these guidelines. Three instances may be highlighted:

Gay saunas or encounter venues: if a man pays a fee to enter a (gay) male sauna, and then another man strips off in front of him with the intention of sexually stimulating him, there is both nudity, an audience, and financial gain on behalf of the premise owner. Likewise, in some gay clubs there are dark rooms and dance floors where customers may strip with the intention of exciting and stimulating others around them. In Lambeth there are a number of venues of this type licensed as SEVs.

Massage parlour: when a customer pays for a massage, and the masseur performs in a naked or semi-naked state, this may fall within the remit of the definition as currently given. This is problematic given the ambiguous nature of brothels and massage parlours in Scottish law – while brothels are of course illegal, licensed massage parlours are known to be spaces where sex is negotiated between consenting adults for a fee. In such spaces, sexual entertainment could be said to be performed for an audience (albeit, an ‘audience of one’). No premises of this type have been licensed as SEVs in England & Wales though very many could be interpreted as falling into the category as defined.

Swinger’s clubs: there may be swinging venues or sex party venues where organisers charge visitors a fee to attend, and where consenting adults strip to sexually stimulate others. These may fall under the definition of an SEV as currently defined: at present just one club in England & Wales of this type has been licensed (La Chambre, Sheffield).

It should be noted that some of these spaces will not be licensed for the sale of alcohol, but this does not mean that they should escape the remit of the need for licensing as outlined in the Bill. The consequences of introducing licensing must require local authorities to consider if such premises exist in the locale, as regarding such premises as outwith the law is potentially legally unreasonable.

Section 45b could be modified to clarify that the licensing of Sexual Entertainment Venues is in no way related to alcohol licensing; at the moment it implies that the granting of a licence for Sexual Entertainment should not be influenced by the refusal or granting of an alcohol licence. This is presumably relevant in the context of Brightcrew Ltd v City of Glasgow Licensing Board [2011] CSIH 46 in which it was determined that liquor licensing boards should have no say over matters incidental to alcohol sales.

The point is more fundamental: sexual entertainment licensing relates to premises that might not previously have been within the ambit of licensing per se. The meaning of 45(A) clause 11 is pivotal here given Scottish ministers will be able to exempt some displays of nudity from the licensing regime, but this power needs to be carefully deployed.
51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

The justification for this is not clear, and differs from England & Wales. However, this would require any premise providing more than 3 days of sexual entertainment to seek a licence, which will mean that venues providing monthly striptease will need a licence, which is not the case in England & Wales.

On the basis of my research, I would suggest that any venue that offers sexual entertainment less than once a month is unlikely to be perceived by the public as a sexual entertainment venue.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?
The thrust of the proposed legislation, which mirrors that in England & Wales, suggests that this is the case, with case law suggesting that local authorities are able to make judgments about where is, and where is not, a suitable locality based on their interpretation of the contingencies of individual situations. *R (KVP ENT LTD) v South Bucks DC (2013)* and *R (Alistair Lockwood-Thomson) v Oxford CC (2013)* both imply that the discretion available to licensing committees/boards is considerable indeed: this means they can rule a locality inappropriate on the basis of their interpretation of the current and future uses of land. While the decision must be rational and reasonable in light of the facts of the case, it does not appear that licensing committees or boards have to be strictly guided by the weight of local objections, and may overrule or discount objections made by other relevant authorities, including the police. In England and Wales, licences of this type have been granted contrary to the advice of police, and in some cases contrary to the advice of licensing officers. Equally, licenses have been refused by local authorities where there have been no objections or evidence of criminality or poor management.

My analysis of the licensing of SEVs in England and Wales hence leads me to the conclusion that the relevant authority may be accused of exercising an arbitrary power – with no right of appeal – unless any decision is justified clearly in relation to governmental and licensing objectives: to avoid any accusations of unfair and discriminatory decision making the onus is on the local authority to advertise clearly that an application has been made; to solicit the opinions of local people and provide opportunities for representations to be received and to provide as much guidance to applicants as is possible prior to application as to what relevant considerations might be in a given case. Clearly, stipulating a nil limit is defensible within the law, but the presumption of a nil limit without careful consideration of possible locations where an SEV might be permissible would appear to be prejudicial towards this type of business. Considering each case on its merits would appear to be more appropriate than setting a de facto nil limit at the outset for the area under the jurisdiction of the local authority.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations,
revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

The procedures are clear and defensible. There have been few cases in Scotland which suggest that the procedures for licensing sex shops have not been fit for purpose.

54. Are there any barriers to licensing authorities operating the new licensing regime?

The requirement that local authorities must ‘from time to time’ determine the appropriate number of SEVs appropriate to their area and each relevant locality is a vague requirement which does not specify how often this must occur, and the extent to which this must reflect local opinion (e.g. must there be consultation?) In the absence of such determinations, local authorities should endeavour to consider each case on its merits. In a legal sense, it seems legally unreasonable to specify a nil limit for a local authority area without considering all possible localities in which SEVs might be sited. This requires local authorities to specify relevant localities at the outset if they decide to go down this route, and demonstrate that all are unsuitable. Without such justification, nil limits will prove difficult to uphold.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?
Local Government and Regeneration Committee

Air Weapons and Licensing (Scotland) Bill

Submissions from: Students from Abertay University

Submissions Number: 140

The following posters were produced by undergraduate students from Abertay University as part of their assessment of their honours projects on the effects of air rifle pellets. The submissions relate to submission number 109 by Dr Graham Wightman, Operations Leader, School of Science, Engineering and Technology at Abertay University.

The students have provided consent for the assessment posters to be considered by the Local Government and Regeneration Committee as part of our Stage 1 scrutiny of the Air Weapons and Licensing (Scotland) Bill.'
The effect of clothing on air rifle pellet penetration depth into 10% ballistic gelatine

Jonathan Thomson, School of Science, Engineering & Technology
Abertay University, Bell Street, Dundee, DD1 1HG

Introduction

Air weapons have been present throughout history in a variety of forms, from blow pipes to air rifles. In Britain, there has been interest to introduce legislation in order to control these weapons as far back as the sixteenth century.

While they do have a range of genuine uses, from hunting and pest control to sport; the police in Scotland in 2012-13, recorded 171 offences in which an air rifle was alleged to have been involved. These crimes include intimidation and vandalism, however, as many people regard air rifles as toys, air weapons are commonly misused, which results in injuries and even fatalities.

This project was carried out in order to determine whether or not common items of clothing (a t-shirt, fleece and jacket) could reduce the penetration depth of two different air rifle pellet types; a rounded tip (superdome) and a flat head (hobby) (figure 1), at three different ranges (10, 15 and 20 yards) from a wound that could prove fatal, to a wound which would only inflict a minor injury.

Method

10% blocks of ballistic gelatine were prepared using Fluka® type 1 ballistic ordinance gelatine powder.

6 penetration depths for both pellet types at all 3 ranges were obtained and averaged in order to collect control data.

6 penetration depths were then obtained for both pellet types at all 3 ranges from gelatine blocks encased in a t-shirt, a fleece and a jacket. These values were then compared to the control penetration values in order to deduce the decrease in penetration and if this would be enough in order to avoid a fatal wound.

Results & Discussion

The penetration depths achieved by the superdome pellet at all three ranges were deep enough to reach vital organs and could result in a fatal wound (figure 2).

Figure 2 – Superdome control depths

The penetration depths achieved by the hobby pellets, although slightly less than the superdome pellets, still obtained a depth great enough to reach vital organs (figure 3).

Figure 3 – Hobby control depths

The clothing was specifically chosen as all three garments had a different weave. The t-shirt and jacket were both 100% cotton, but the jacket had a much tighter weave, which resulted in a much tougher feel to the fabric. The fleece was 100% polyester with a very loose knit weave, but the fabric was far thicker than the other two items of clothing.

As shown in Figure 4, the t-shirt resulted in far less penetration for both pellet types

Figure 4 – t-shirt penetration depths

Results & Discussion continued

Figure 5 shows the penetration depths achieved for both pellet types shot into the fleece.

Figure 5 – fleece penetration depths

The fleece provided less protection than the t-shirt, even though it was made from a thicker material. This was due to the looser weave of the polyester, which allows the fabric to breath, compared to the t-shirt.

As can be seen from figure 4 and 5, the effect of the clothing increased as the range increased. This effect was observed across all of the clothing types.

The jacket proved to be the most effective and was only penetrated 4 times; twice by each pellet, out of a total of 36 shots. Both of these penetrations occurred at 10 yards and the maximum depth achieved was 3cm.

Conclusion

Items of clothing do provide the protection that can reduce the penetration depth of an air rifle pellet from that of a fatal wound, to a minor or non-life threatening injury. Several factors must be accounted for though, such as air rifle power, pellet shape and weight and clothing type. The weave of the fabric being a major contributor to the protective force given, over the thickness of the fabric.

References


Acknowledgements

I would like to thank my supervisor Graham Wightman for his guidance and support during this study.
Damage Caused to Organs and Clothing by Air Rifle Pellets

Kirsty Wark, School of Contemporary Sciences, University of Abertay Dundee, Bell Street, Dundee DD1 1HG

Introduction
On average there is one fatality in the UK every year from air weapon related incidents. As recent as April and May this year air weapon attacks have occurred. This has caused some concern and debates within our society. It has been known in the area of firearms that different types of bullets can cause damage patterns and can effect the velocity and power of the bullet type. This investigation was carried out to understand the effects of four different pellet types that are commonly used with air weapons. The interaction of these pellet types were studied in ovine organs and clothing materials.

Methods
The results of the damage caused to both the organs and clothing were recorded using a microscope with an infinity corrected eyepiece and captured as an image simultaneously. The use of a CT Scanner was also employed in this investigation to visualise the pellet track through the particular organs used.

Aims
The aims of this investigation were to:
- Determine the damage patterns of the four different pellet types in organs
- Determine the damage patterns of four different pellet types on clothing items
- Investigate the effect of distance on the different pellet design path in gelatine
- Investigate the effect of distance (10 yards, 20 yards and 30 yards) on four pellet types and the damage patterns produced

Results & Discussion
Due to the four different pellet designs it was expected that they would produce different energies and velocities. Therefore the these parameters were measured using a chronograph machine. The results of the energy (ft/lbs.) and velocity (m/s) are shown in figures 2 and 3.

Figure 1 Four pellet types investigated

The four pellet types flat, round, hollow point and pointed can be seen in figure 1 and each pellet is calibre .177 but compose a different design.

Figure 2 Ft/lbs results for each pellet using chronograph

From figure 2 it can be seen that the round and pointed pellets have the same energies and that the hollow point and flat pellets have similar energies depending on the item of clothing used this reduction was possible. I would like to give a special thank you to Kathleen Milne for taking the time to assist me in this project.

Figure 3 Velocity results for each pellet using chronograph

The hollow point and flat pellets only differ by 0.4 Ft/lbs. However figure 3 shows that the flat, pointed and hollow point pellets have similar velocities and that round pellet has significantly less velocity (25 m/s) than pointed pellet which is peculiar as they have the same energies.

Figure 4 CT scan of lung tissue damage at 10 yards

From figure 2 the round and pointed pellets would be expected to travel the furthest distance in gelatine and the hollow point pellet to travel the least distance. The next part of the investigation was to investigate the interaction between pellet type and organ type. Each pellet type was fired into an organ which was set in gelatine and compared to the results showed that:

For the ovine lung the round and pointed pellets would enter and exit the lung tissue at each distance whereas as the flat and hollow point pellets would become embedded within the tissue at 20 and 30 yards. Figure 4 shows the track of a round pellet as it enters and exits the lung tissue at 10 yards.

Figure 5 Damage patterns at 10 yards on lung tissue (a) hollow point, (b) pointed, (c) round and (d) flat

Another experiment was carried out into the damage pattern produced in clothing material from the four different pellet types. These can be seen in figure 6 (a) it shows that the pattern from hollow point pellet is rectangular with fibres curling out of the damaged area. The pointed (b) and round (c) pellets have similar damage patterns to each other. Flat pellet damage is that of a large star like formation with threads curling back from the material. This damage pattern is similar to clothing damage produced by bullets fired from firearms.

Figure 6 Damage patterns at 10 yards with 100% cotton t-shirt (a) hollow point, (b) pointed, (c) round and (d) flat

What was also discovered in this experiment was that clothing material could reduce the distance of the pellets travelled depending on the item of clothing used this reduction was increased when the firing distance was increased.

Conclusion
In conclusion, the power and velocity harnessed by an air pellet is dependent on the pellet type used. The pellet type along with organ type can determine how the pellet travels through the organ and the damage produced.

Air pellets produce puncture like damage patterns. The pellet type has been proven to produce characteristic damage patterns in both organ tissue and clothing material. The effect of distance also has an effect on the damage pattern obtained. These patterns can be useful in order to determine in air weapon incidents what pellet may have been used and what distance the pellet has been fired from.

References

Acknowledgements
At the University of Abertay, firstly I would like to thank my supervisor Dr Graham Wightman for his help and support throughout this project. I would also like to thank Brian Lindsay. I would like to thank Prof. Wilfred Otten for carrying out CT scans at the SIMBIOUS department.

A huge thank you goes to the Tayside Gun Club for the use of their facilities without which this project would not have been possible. I would like to give a special thank you to Kathleen Milne for taking the time to assist me in this project.

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The Use of CT Scanning to Investigate Damage Caused by Air Rifle Pellets
Dr G Wightman, P Dello Sterpaio, R. Cochrane, R. Gray and M. Linton, University of Abertay
Time to Take Stock, 8 June 2012, The Royal Armouries, Leeds

Introduction
Statistics show that offences and injuries caused by air weapons are declining, although air weapons still remain the main source of firearms offences and are a significant source of injuries. [1,2]. Whilst many injuries are minor there has been on average one fatality a year from air weapons. In order to better understand the potential damage that may be caused by these low powered weapons research has been carried out at the University of Abertay.

Initial work looked at pellet penetration into ballistic gelatine and has been previously reported [3]. Subsequent studies have used Computed Tomography (CT) Scanning to study damage caused by air pellets.

Computed Tomography (CT) Scanning
CT scanning uses x-rays to penetrate into materials that are opaque to visible light. However, this produces a 2-dimensional image from a 3-dimensional object. Whilst this can be useful in many cases, as figure 1 shows, this can be misleading.

As can be seen, if objects have different thicknesses or different densities they may produce identical images when viewed in one direction. However, if these 4 arrangements were irradiated at a different angle they would be distinguishable due to the different absorptivities. CT scanning utilises computer power to take a number of 2-D images and combine them into a 3-D ‘object’, or different densities they may produce identical images when viewed in one direction.

Investigation of Pellet Impact on Biological Materials
In all these studies animal materials were obtained from an abattoir and were cast in ballistic gelatine. Whilst this has a limitation due to the natural degradation of the tissue, it allows a simulation to be made with readily obtainable materials and with minimal mess. The CT scan allowed the virtual ‘object’ produced to be rotated and examined from various perspectives.

The initial study looked at the impact of pellets on bone using a cow femur and this has been reported [3]. An example is shown in figure 3a. Good definition was obtained due to the density differences between gelatine, bone and the pellets. In subsequent work soft tissues have been examined using pig heart, pig lung and pig muscle. Here differentiation of the tissue from the gelatine was difficult due to their similar properties. Lung gave the best differentiation due to the entrained air. Figure 3b illustrates the 3D images formed whilst figures 4a and 4b show sections through the tissue.

Investigation of Pellet Impact on Construction Materials
Another area of investigation has been the damage caused by air rifle pellets on plywood, plaster board and brick. One area of interest was the damage that might be caused if the pellet first passed through flesh, and sections of ballistic gelatine were placed before the target to simulate potential flesh wounds.

As expected, pellets were stopped by brick but penetrated plywood and plasterboard. The stopping power of multiple layers of plywood and plasterboard was greater if the boards were in contact with each other, presumably by restricting flexing or crushing of the material.

The use of CT scanning allows the shape and dimensions of the damage to be determined. Figure 5a shows the hole generated in a piece of plasterboard with the irregular shape of the entry and exit. The volume can be determined and was 1070 mm³. By contrast the incomplete penetration produced a hole only 84 mm³ in size.

Conclusions and Future Work
CT scanning is a useful tool in examining the damage caused by air weapon pellets. However, the differentiation of soft tissues in ballistic gelatine is difficult and needs further study. The magnitude of the void produced also needs to be related to the energy loss on impact and this will be the next phase of the study.

References

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The Damage Caused by Air Rifle Pellets When Fired at Porcine Organ Tissue

Michael Linton, School of Contemporary Sciences, University of Abertay, Bell Street, Dundee DD1 1HG

Introduction

For a number of years air rifles and air weapons have been considered as toys, and it is thought that they are relatively harmless. Over the last 10 years throughout the UK, thousands of injuries and deaths have been recorded due to the misuse of air weapons. Currently it is not necessary to obtain a firearms license for the use of an air rifle, as long as the weapon does not possess a muzzle energy of greater than 12ft-lbs or 16 joules of energy. At present, the Scottish government have created a bill which if passed will make it illegal to possess an air rifle without an appropriate license. Westminster parliament have refused to change the laws on air rifles as it would cost too much in compensation. The average person does not know the extent of damage an air rifle pellet can cause. Although an air rifle fire pellets and not bullets they still possess the power to kill.

Figure 1: Two types of air rifle pellet

A pellet contains no gunpowder or explosive and is moved by a gaseous 200°Cx USB micro. Pressure from the barrel propels an air rifle pellet forward. This is the main reason why people see these weapons as toys as the pellet contains no explosive. As can be seen in figure 1, a pellet is very small and is not shaped like a normal bullet, but it has no casing and no explosive area. The aim of this project is to show the amount of damage an air rifle with a muzzle energy of less than 12ft-lbs or 16 joules of energy can cause when fired at gelatine and porcine organ tissue. A number of techniques will be applied to show the amount external and internal damage caused to each organ type. This will be done by a number of analyses including depth of penetration, CT scanning, photographing the entry and exit points and also photographing the deformation of the pellets once they impacted skin, gelatine and organ tissue.

Methods

A number of gelatines were created, some of the gelatines contained organs from pigs. Three types of simulation skin were utilized to further simulate a section of human skin. The gelatines were fired at from distances of 5 and 10 meters. Then a number of analyses were carried out. The analyses carried out were the depth of penetration, CT scanning the gelatine and tissue to assess the amount of internal damage caused. Pictures were then taken of the entry and exit points. Then using a 200 x USB microscope pictures were taken of each of the pellets fired, to measure the amount of deformation which was caused after impact.

Results and Discussion

Once the gelatines were fired upon, the gelatines were then taken to the lab for analysis. The depths of penetrations were recorded using a ruler and the measurements were taken from the point of impact to the tip of each pellet. The pellets fired at the calibration gelatines and the pellets fired at the gelatine containing organs penetrated the same, which was expected as the gelatine is said to be a simulation for human organ tissue. When the simulation skin was attached to the front of the calibration gelatine and fire upon some of the depths of penetrations changed. The chicken skin proved useless as it did not effect the depth of penetration. The pig skin and cow skin did effect the depth of penetration and the results for the cow skin were as follows;

<table>
<thead>
<tr>
<th>Pellet type</th>
<th>Depth of penetration cm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blank gelatine</td>
<td>13.7cm</td>
</tr>
<tr>
<td>Rounded</td>
<td>11.0cm</td>
</tr>
<tr>
<td>Pointed</td>
<td>8.0cm</td>
</tr>
</tbody>
</table>

Skin applied externally to gelatine

<table>
<thead>
<tr>
<th>Skin type: Cow Skin</th>
<th>Depth of penetration cm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of pellet</td>
<td>Rounded</td>
</tr>
<tr>
<td></td>
<td>12.1cm</td>
</tr>
</tbody>
</table>

As can be seen from figure 2 the cow skin has been affected the penetration as the penetration is now 10% less than the blank calibration gelatine. The pig skin stopped the pellets fully and did not allow any penetration and from that information it can be said that pig skin is not a suitable simulation for human skin. The gelatines were scanned before and after shooting to show the amount of internal damage caused. Once the CT scans were taken the images were viewed and analysed on special software called Imagej. This software could calculate the width of the entry and exit points and can also calculate the volume of internal damage caused by the pellets.

Figure 2: Shows the depth of penetration once the skin was added

The pig skin is much harder than the material of the pellet, the pellet is rounder than the repair which is much harder than the material. From the results it can be seen that air rifles pose the power to kill or severely injure. Every year the NHS has to treat people who have been injured as a result of the misuse of air rifles. The information shows that the current laws for the use of air rifles not only in Scotland but in the UK are outdated and need to be amended quickly to prevent or minimise the amount of accidents that can happen by the misuse of air rifles.

Figure 3: Shows a before and after radiographic image of pig liver taken from the CT scanner

Figure 4: Shows the information collected from the Imagej software

<table>
<thead>
<tr>
<th>Pellet type</th>
<th>Width of entry point</th>
<th>Width of exit point</th>
<th>Total volume of damage section</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3.8mm</td>
<td>4.9mm</td>
<td>118.2mm³</td>
</tr>
<tr>
<td></td>
<td>5.5mm</td>
<td>6.0mm</td>
<td>245mm³</td>
</tr>
</tbody>
</table>

The information collected by Imagej which is shown above in figure 4, shows that the entry point is smaller than the exit point for both pellet 1 (Rounded) and pellet 2 (Pointed). The total volume of the damaged section is much larger for the rounded. This is because the pointed pellet has a smaller surface area than the rounded pellet. The rounded pellet has a flatter face which causes more tearing than the sharper more aerodynamic pointed pellet. The rounded pellet caused more damage in all three organs types. The density of the organ determines how much damage that was caused, hence the softer organ exhibited more damage.

Once the CT scans were analysed the next step was to remove the gelatine from the organs and photograph the damage at both entry and exit points. Below is the photographs that were taken for the liver tissue.

Figure 5: Shows entry points (Left), and the exit points (Right) of the pointed and rounded pellets

The last stage in the analysis was the pellet deformation. The photographs taken for this section showed no or little damage to the pellets, this was because the pellets are a much harder material than the ballistic gelatine, skin and organ tissue. If the pellet was to come into contact with a material which was much harder than the material of the pellet, the pellet would deform.

Conclusions

The depths of penetration showed that a pellet can penetrate deep into human internal tissue. The cow skin is the closest simulation to human skin as it did not affect the depth of penetration but it did not completely stop the pellet. The pellet still penetrated deep enough to cause a lot of damage. The only way to identify how close a simulation the cow skin was, would be to compare it to real human skin. From the results from both photography and CT scanning, it was seen that the rounded pellet causes more damage than the pointed pellet, this was due to the rounded pellet having a flatter, larger face. From the results it can be seen that air rifles possess the power to kill or severely injure. Every year the NHS has to treat people who have been injured as a result of the misuse of air rifles. This information shows that the current laws for the use of air rifles not only in Scotland but in the UK are outdated and need to be amended quickly to prevent or minimise the amount of accidents that can happen by the misuse of air rifles.

Acknowledgements

I would like to thank my supervisor, Dr G. Wightman and all the technicians from the school of contemporary sciences for all the help and support throughout the course of this project.

References


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Effects of Air Rifle Pellets on Porcine Organ Tissue

Rebecca Cochrane, School of Contemporary Sciences, University of Abertay Dundee, Bell Street, Dundee DD1 1HG

Introduction
Air rifles were intended to be used for sporting and hunting purposes; however they have also been used as weapons to inflict damage and injury or even death.

This research project aims to investigate the level of tissue damage on a series of porcine organ types which have been moulded into ballistic gelatine and fired with .22 calibre rounded and pointed air rifle pellets. The project will also study whether or not ballistic gelatine is a suitable simulant of organ tissue. The penetration depth, pellet track and wounds of each sample will be observed in detail using CAT scanning and three-dimensional imaging software as analysis tools. The use of chemical compounds to alter the density allows radiographic imaging of the organ tissue and gelatine blocks to be performed. The penetration depths of various pellet types and any pellet deformation will also be investigated.

Materials and Methods
Leg, lung and heart porcine organ tissue was moulded into a 10% solution of pig skin gelatine. The blocks were then fired with .22 calibre pointed and rounded air rifle pellets. CT scanning was then performed on the gelatine blocks which allowed isolation of the air rifle pellets and pellet tracks. The level of tissue devastation was then recorded by examining the entry and exit wounds.

Results & Discussion: Imaging

Figure 1: Porcine Organ Tissue

When scanning the organ tissue and gelatine blocks no differentiation between the two substrates was possible. For this reason barium compounds were utilised. After applying the barium compounds, the lung and leg tissue were identified in the gelatine.

Results & Discussion: Analysis

Figure 2: 2D Radiographic Images with Barium Compounds
(a) Leg Tissue (b) Lung Tissue

Using the 2D radiographic images 3D images were created.

Figure 3: Leg Tissue and Gelatine

Although the 3D images illustrate the organ tissue and gelatine blocks very well, the pellet tracks cannot be easily observed. For this reason the gelatine was removed from each of the organ tissues and the entry and exit wounds were examined.

Figure 4: Lung Tissue and Gelatine

The kinetic energy values of the pellets leaving the muzzle of the weapon were calculated. The resulting figures indicated that the round nose pellet had a higher energy value than the pointed pellet. This can be attributed to the heavier weight of the round nose pellet. Examination of the pellets showed no damage after impact.

Conclusion
The organ tissue and gelatine blocks demonstrated that the pointed pellet yielded a larger depth of penetration compared to the round nose pellet. When the gelatine was removed from the organ tissue the softer lung tissue exhibited larger entry and exit wounds compared to the leg and heart tissue which is composed mainly of muscular tissue. The calibration gelatine blocks and organ tissue gelatine blocks yielded varying penetration depths, indicating the gelatine is not a suitable simulant of organ tissue.

References

Acknowledgements
I would like to thank my supervisor Dr Graham Wightman, Patsy Dello Sterpaio and Grant Thomson and Neil Coupar, SPSA for their time and advice.

Rebekka Gray, School of Contemporary Sciences, University of Abertay Dundee, Bell Street, Dundee DD1 1HG

Introduction

Air Weapons? The one firearm the government fails to see for the danger it is. The effects of firearms are continually reported in scientific journals, results achieved through continuous research, the news and from the voice of the family who loses a loved one! However, air weapons of below a certain power, although as dangerous as any firearm up close, has yet to be licensed. Every year, countless people are exposed to some form of firearm offense and a lot of these offenses include air weapons. This project looks at whether or not it is possible for a pellet to fully penetrate a person with enough kinetic energy remaining, once having exited the body, to then terminate and embed upon impact the surface of a construction material. Several experimental variables were investigated including, construction material, distance from the air rifle and distance between gelatine and the construction material.

Methodology

At the University of Abertay Dundee laboratory the construction materials were measured and cut into the appropriate size. Ordnance gelatine supplied by the company Gelita for this project was mixed and placed into moulds for solidifying. After 48 hours the gels were cut to size ready for firing. When attending the firing range at Tayside Police HQ, chronographic values where obtained from the air rifles and the ft/lbs and kinetic energy where calculated for each air rifle as seen in Table 1. When shooting at the construction materials, firstly no gelatine was placed before to see what happened to the material with direct impact contact. The gelatine was then placed in front of the materials at distances of 0.1 and 1.5cm to see the difference in impact damage. All samples where sent for CT.

<table>
<thead>
<tr>
<th>Air Rifle</th>
<th>Pellet Type</th>
<th>ft/lbs</th>
<th>Kinetic Energy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weihrauch HW 35</td>
<td>Huntsmen</td>
<td>7.93</td>
<td>10.81 KJ</td>
</tr>
<tr>
<td></td>
<td>Bulldog</td>
<td>11.75</td>
<td>15.95 KJ</td>
</tr>
<tr>
<td>Air Arms 5510</td>
<td>Huntsmen</td>
<td>6.5</td>
<td>8.87 KJ</td>
</tr>
<tr>
<td></td>
<td>Bulldog</td>
<td>9.37</td>
<td>12.73 KJ</td>
</tr>
</tbody>
</table>

Results

All the sections of construction material were measured manually for width, length and depth/height, with photographs and notes of any observed damage to the materials taken. The plasterboard which was the weakest of the materials tested showed a large volume of material displacement after shooting for both 5 and 20 metres. The plywood, although not as weak to compression forces as the plasterboard also experienced a movement of material mainly shown as splintering.

Results (continued)

sample and a brick sample with no gelatine at 20 metres. In both 3D images the damage to the construction material is highlighted as a different colour. With the 3D image it can be seen clearly the damage in to the brick sample. However, the damage that was caused to the brick was not were would have been expected as it is to the side of the pellet, which can be seen as a dark shadow on the scan rather than perpendicular.

Figure 1 – a photograph showing a pellet embedding in a brick surface.

Figure 2 – a photograph showing a lead smear on a brick surface.

Figure 3 – 3D scan and volume rendering for the sample, Plasterboard, no gelatine @ 20m.

Figure 4 – 3D scan and volume rendering for the sample, Brick, no gelatine @ 20m.

The sections of construction material tested were scanned using a Computed Tomography (CT) scanner after being shot to observe any structural changes and achieve a more accurate volume of missing material via volume rendering. Figures 3 and 4 show 3-Dimensional images produced for a plasterboard

Conclusions

From the visual analysis and manual measurements taken from the construction materials it is possible to conclude that an air rifle with the power of above 8.87KJ can cause damage to construction materials as dense as brick even at a distance of 20 metres. With the CAT scans it was possible to visualise and accurately calculate the total amount of damage with volume rendering for the construction materials. Although time constraints meant not all the materials could be scanned it was possible to do enough to show that the plasterboard succumbed to the compression forces the most and that the brick was damaged to an extent.

References


Acknowledgements

I would like to thank Neil Coupar from Tayside Police for his help in getting this project off the ground. Without Neil this project would never have happened. I would also like to thank Graham Wightman and Patricia Dello Stepario for their help in different areas of this project. Finally a thank you, to friends and family for their continual support and guidance.
The Behaviour of Air Rifle Pellets in Ballistic Gel
Dr Graham Wightman, University of Abertay

Introduction
Although air weapons are considerably lower in power than other firearms, there is increasing concern that serious injuries can result from their misuse. The present study was therefore carried out to improve understanding of the terminal ballistic behaviour of air rifle pellets. Pellets were fired into ballistic gel under a variety of conditions, and the pellets penetrated further than anticipated from their low cross sectional density. Test firings were also carried out firing pellets into ballistic gel that contained sections of animal bone. Computed tomography (CT) and visual observation were employed to record the interactions.

Background
Extensive research has been conducted on various aspects of firearms, but much less work has been carried out into air weapons. The public perception is that airguns are less hazardous because the projectile has much lower energy: However, most firearms offences within the UK are by air weapons. The majority of these are lesser offences such as vandalism, and minor assault but a number of incidents occur with serious or fatal outcomes. This study was therefore carried out to develop understanding of the behaviour of air pellets.

Experimental Method
Details of the study are given in reference [1]. Four air rifles were used to deliver different power and various variables were examined. In another phase of the study a section from a cow femur was placed in the gel with one face at a predetermined depth and angle to the line of firing. After firing the gel was photographed before the pellets were removed. For 15 of the bone samples, the specimen was taken for examination by computed tomography (CT) scanning before removing the pellets from the gel. CT scanning uses x-rays to take a series of 2-D image 'slices' through the object and these are combined by computer to produce a 3-D image.

Behaviour of Pellets in Ballistic Gel
Most authors use a 10% gel but in the present study this did not give the expected stopping distances. Based on Jussila’s work [2] it had been anticipated that pellets would come to rest within 80 mm, but pellets penetrated further and rebounded off the plastic base of the knife holder (figure 1). A detailed study was therefore carried out of gel properties and their effect on air pellet behaviour. The effect of variables such as Bloom strength, gel concentration, firing distance, air rifle power, and pellet shape were all examined and the effect of these variables were as expected. Figures 2 and 3 indicate the effect of gel concentration, power and range on penetration.

Fig 1. Pellet tracks in gel contained in a knife holder

Fig 2. Penetration

Fig 3. Effect of concentration

CT Scanning of Bone in Gel
CT scanning showed potential as a tool for examining pellet damage. The Bone appeared to be undamaged, and showed no evidence of density change due to compaction, although some scans may show evidence of 'wipe' of lead from the pellet. The pellets were severely deformed on impact. If the pellet strikes the bone at an angle, less energy is absorbed by the impact and the pellet fragments can ricochet and cause further damage.

One advantage of CT scanning is the ability to differentiate different materials and to filter out the bone, thus allowing examination of the pellets in situ by rotating the image in 3 dimensions. Figures 4 and 5 present 2-D images to demonstrate this.

Fig 4 Bone & pellet

Fig 5 Bone filtered from scan

Interaction of Pellet with Bone
The length of the pellet tracks in the gel were measured, and the dimensions of the pellet fragments were recorded. As expected, the deeper the bone is mounted in the gelatin, the less damage is caused to the pellet. It would be expected that a deeper depth of gelatin would slow down the pellet and absorb the energy from the pellets, resulting in lower impact energy. Most damage to the pellet occurs with the smaller angles (direct impact) rather than the larger angles (oblique impact) where the pellet is deflected. Consequently, the distance travelled after impact depends on the angle of incidence.

Fig 6 Impact of pellet. Fig 7 Pellet damage

When a pellet approaches the corner or edge of the bone in a straight line, it sometimes seems to curve in towards the bone at a distance of about 5mm from the bone, as seen in figure 6. The cause is unknown, but may be due to the gel being less elastic due to the nearby presence of the bone.

Energy on Impact
Estimates of the energy losses for each part of the pellet flight were made in order to determine the energy loss on impact with the bone. It was assumed that the pellet experienced a constant retarding force from the gel as the gel yielded, but further studies are required to confirm this and to examine the effect of the impulse at phase boundaries.

Conclusions
Air rifle pellet penetration in ballistic gel under various conditions has been examined, and CT scanning has been used to examine the impact on bone. The dissipation of energy during impact has been discussed.

Acknowledgements
J. Beard and R. Allison, undertook the practical work. The author would like to thank the University of Abertay Dundee, and the Dundee laboratory of the SPSA for the use of facilities and assistance of M. Chisholm, G. Thomson and N. Coupar.

References
Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

Name: Dr Mick North
Organisation: Gun Control Network
Address 1: 
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☑ Personal

☐ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☐ Yes
☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
1. Air Weapons Licensing

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

See Below

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/ users?

See 22

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

See 22
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

We are of the view that the encouragement of youngsters to shoot and take up an interest in the sport should not be given priority over the need for public safety and that the provisions in the system are appropriate.

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

See 22

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

See 22

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
Yes, it is perfectly equitable for all those applying to pay a non-refundable fee. This would help to ensure that only genuine applications are made. The costs of the licensing process, including those for failed applications, should not be borne by the taxpayer.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

If the licensing process is suitably funded then there should be no negative impact. Misuse of air weapons often results in damage to premises and vehicles used by the public as well as injury to workers such as bin men, postmen and firefighters. Restricting the availability of air weapons should reduce these occurrences and the costs involved.

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

None that would affect its aim to improve public safety.

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

For those with a genuine professional need or sporting interest there may be some initial inconvenience and small expense, but this should be balanced against the elimination of irresponsible, careless and unnecessary airgun use, of which serious shooters presumably disapprove. For professionals the costs of licensing could be offset against tax. There will no doubt be more impact of those involved in other shooting activities such as plinking, but as some of these activities cause genuine alarm among other members of the public those concerned might need to consider adapting the interests and undertake an activity with less potential risk to their neighbours and fellow citizens.
Anything that reduces the bureaucracy of the licensing process would be helpful. Gun Control Network believes that those with a firearms or shotgun certificate should not be expected to go through the full licensing process.

It will be essential for the registration process to backed up by a suitably-funded media campaign to guarantee full public awareness. There should also be provision for a hand-in of all the guns of those who do not wish to be part of the licensing system.

**GUN CONTROL NETWORK**

*Air Weapons Licensing*

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

Gun Control Network believes that it is anomalous for one category of gun to be exempt from licensing on the basis of its mechanism of firing. This fails to take sufficient account of the dangers posed by air weapons. They cause serious and even fatal injuries to humans, they maim and kill wildlife and domestic animals, they are used to threaten and intimidate (made worse by the promotion of some air pistols, for example, being modelled on handguns and advertised as looking like the “real thing”) and cause damage to property, all of which impact on the wellbeing of the public. Air weapons are generally lower-powered than other firearms, but while many of the injuries from pellets are of a less serious nature than those caused by other guns, airguns are nevertheless capable of inflicting life-changing injuries including blindness. At present, however, the lack of licensing continues to result in these weapons being treated too casually, and there is still a tendency to regard them simply as boys’ toys. This has lead to a careless and reckless attitude among some owners. Licensing would provide the strongest possible indicator to all potential users that these are dangerous objects with the potential to cause harm and stress to their fellow citizens.

We have been heartened by the fall in airgun crime over recent years and are sure that the provisions in the Violent Crime Reduction Act have contributed to this, which highlights the fact that gun control works. Nevertheless offences involving
air weapons still make up the largest proportion of gun offences. The 2012-13 statistics on firearm offences in Scotland show that one of the two attempted murders involved an air weapon, 43 of the 65 incidents in which someone was injured involved an air weapon and of the 194 instances when a gun was fired 132 of these involved an air weapon.

In a report published by the Home Office in February 2014 on Recorded Firearms Offences for 2012-13 in England and Wales, where the legislation is currently the same as in Scotland i.e. no licensing for most air weapons, the authors commented that it is likely that “air weapon offences largely do not come to the attention of police unless they are fired” and so it is likely that the total is in fact an underestimate of the actual number of offences. Gun Control Network often receives details of airgun misuse from members of the public, not least from pet owners describing incidents involving their animals, and notes reports of attacks on wildlife, especially birds, and this anecdotal information also leads us to believe that the extent of airgun misuse is significantly greater than indicated by the Recorded Offences.

Furthermore whilst the majority of offences with air weapons relate to criminal damage, they can, as the authors of the Home Office report acknowledge, also cause serious injury and sometimes fatalities. It is noted in the report that when air weapons are used in offences regarded as causing violence to people these are more likely to cause injury then when a non-air weapon is used. During 2013 a South Yorkshire man was killed with an airgun and the offender subsequently convicted of manslaughter, and a couple from east London died in a murder-suicide committed by the husband with an air rifle. There have been a number of other fatalities over recent years, the victims often children and young people - GCN knows of at least 15 who were shot by other children and young people who often had access to an unsecured airgun. At the time this submission was being compiled an 11-year-old boy in County Durham was shot in the head with an airgun while watching a football match. The reports of the shooting were accompanied by a shocking picture of the victim with a .22 pellet lodged close to his eye - he could easily have been blinded and said himself that he was lucky to be alive.

It is clear from the many press reports of air weapon incidents which Gun Control Network has compiled over the years that the view that the majority of the offences are caused by “criminals” is misleading. Although some criminals do use airguns to threaten, the reports show that a large number of the more serious incidents are the result of reckless and careless behaviour by people, who otherwise would not be considered criminals but have used their weapons irresponsibly. It also appears that the problems are not confined to young people, as the perpetrators and victims span a wide age range.

One of the main responsibilities of any government is to ensure the safety of the public. Clearly a balance has to be struck between this prime responsibility and the wishes of some citizens to undertake activities, including hobbies and sport, with dangerous objects. The Scottish Government’s proposals would not prevent those with a genuine interest in using air weapons from continuing to shoot but
would make certain that ownership and use are treated with the appropriate degree of seriousness. It therefore strikes the right balance. Although there might be initial difficulties in ensuring that all owners comply with licensing, the need for a licence for all future purchases should result in the pool of air weapons, especially those held by casual owners, diminishing. This reduction would be greatly enhanced by a well-publicised amnesty. Whilst there may be an initial increase in offences as a result of non-compliance with the licensing process, the long term impact will be to discourage those whose casual use of airguns has contributed to the problem of gun crime with an eventual further fall. Licensing provides a means of demonstrating that air weapons are indeed dangerous objects. The knowledge that the Scottish Government views the problem to be serious enough to tighten legislation has no doubt already had an impact, but it is essential that the measure is now followed through. Gun Control Network is in no doubt that this is a significant piece of public safety legislation.
THE, Government at Westminster, introduced a new piece of legislation in to law on Dec 2012 stopping the payment of cash, for the purchase of scrap metal. However this piece of legislation; was ill thought out it was rushed through parliament not to reduce theft, but to find a way to apply a new tax.

Everyone is entitled to be paid cash, cheques, or cards have no legal standing; whereas A Bank note is legal tender!

THE END RESULT WAS A COMPLETE HASH.

There was great stories going about that hundreds of millions of pound of stolen metal both ferrous/nonferrous being sold to Scrap merchants, if the Police and that includes transport police new of this flagellant breach of the law why was none of these scrap merchants brought to book, I honestly thought that Grimes brothers/Hans Christian Anderson, had risen from the grave, Lord Oliver Henley endorsed the Police statement of the amount that was stolen; why did he not ask the question, why was this material not recovered, and what happened to the convictions, now the new rules allow scrap merchants to dispose of the scrap metal immediately; they have removed the part where all metal that where bought must be tagged and remain for fourteen days before they could be disposed of.

The Scottish governments, questionnaire on should the Scrap metal merchants, pay cash for the materials they have purchased, or should payment be made by cheque, or debit card.

Unfortunately this was not thought out properly, Cheques and debit cards are only good if you have cash in the account, people who have to receive payment can demand cash, that is their right, but if the government wish to dispense with cash as a means of payment, they will require to pass a law in parliament, to dispense with the coin off the realm.

If the government is determined to implement this legislation, to reduce and curb the theft of metal; or is it a means to collect more tax, remember tax has already been paid when said material was first purchased; that is the real question.

To reduce the theft, one must control the way scrap metal is disposed off. You must separate the waste management licence, from the scrap metal brokers licence; since the inception of the waste management licence, theft of metal has increased, any one can apply for a waste carriers licence, or a recycling licence, there is no control, unlike the Brokers licence, there is a curtail on your trading hours Monday to Saturday 7am 5pm Sat 7am 12noon. All mater is logged with the type, weight, name of seller, car registration, time and what was paid, and they must sign, for the cash payment, the material must be retained in the brokers care for fourteen days, this is how its always been, the police come in and sign the book, if material has been stolen, the police can ask for a copy of the tape from the cctv.

What is required is a league table, in three divisions.
Small, 0/5,00000 pounds turnover

Medium, 5,00000, 3,000000 pounds turnover

Large, 10,000000 +, pounds, excluding V A T

Those in the 10million pound bracket would have the most to lose,

Those in the 10million bracket, who pass the criteria, under the new set-up would be nominated would be afford the position of recommended Government preferred buyer of scrap metal from local authorities, former nationalised industries and government contractors.

The holders of waste carriers, and recycling licences issued by S E P A, D E F R A. Would be excluded from the purchase of buying scrap material. They would be curtailed to recycling and the carriage, of waste, they would be under the control of S E P A

New rules and conditions would need to be introduced, including severe fines and jail time, any convictions, would result of losing their licence to trade in the purchasing of scrap and the confiscation of their yards and machinery. This may sound harsh but needs must.

The regions, for purchasing scrap metal would be divided into areas like Lothian’s, Border, Strathclyde, Central, ECT,

All this can be discussed to set the rules cost of new licences the people who would determine, the new conditions and cost would be invited to take part, and PHS it would also discourage the money laundering, from rogue traders

This proposal would curtail the transfer of stolen materials; in fact it would reduce the stolen metal by 90%, this is only part of the proposal we can discuss this in greater detail later.

Joe McCann
Introduction to Uber

Uber is a smartphone app that allows customers to book a private hire vehicle or taxi at the touch of a button within a matter of minutes. Riders download the app from the iTunes, Android or Windows app store, create an account with their personal and credit card information, and then can see the nearest available drivers and their ETA to their desired pickup location.

Uber launched in the UK in 2012 in London, and is now in Manchester and Leeds with plans to expand further in 2015. Uber is fully compliant with the private hire and taxi legislation in the UK and the safety of our passengers and drivers is our number one priority.

Uber brings a number of clear benefits to the UK market:

- More choice for consumers and drivers;
- Technology brings increased efficiency that allows lower fares - drivers can earn more by being more productive, while consumers pay less;
- More flexibility for drivers to run their own businesses. That means they can work for Uber when they want and on a non-exclusive basis;
- We equip drivers with real time data on demand, so they can make more money and serve our customers more effectively.

Our conviction is clearly shared by our hundreds of thousands of riders here in the UK who now take millions of trips with Uber every month. Over the coming months we want to continue to do more to create jobs and help reduce congestion and deliver cleaner, safer streets in the UK’s major cities.

Passenger and driver safety is our first concern for Uber in every market in which we operate. To ensure we provides the safest and most reliable ride in town, Uber employs various mechanisms, which are catered to the city in which it operates.
Rider safety

- Professionally licensed: In the UK, every Uber driver holds a private hire driver and vehicle license from the licensing authority (which includes an extended criminal records check). Uber itself are licensed private hire operators in every jurisdiction we operate in and have formally applied in both Glasgow and Edinburgh.
- Insurance: No matter the Uber service (uberX, uberXL, UberEXEC, UberLUX, UberTAXI), from the moment a rider is picked up to the moment they are dropped off, their ride is covered by commercial liability insurance. Uber ensures each partner driver maintains the requisite cover.
- Driver profile: Safety starts before a passenger gets in the car. Once a rider has requested a ride, he or she is passed their driver’s name, photo, registration and vehicle type, so they can be 100% sure they are getting in the right car, with the right driver, and both are licensed and insured.
- No street hailing: The Uber app pinpoints a rider’s location, allowing for true door to door service, allowing riders to wait comfortably in their home, office, or other pick up location until their car has arrived.
- Share a live map of progress: Riders also have the option to “share their ETA” allowing family members or anyone of their choosing to follow their ride in real time to ensure a transparent and safe arrival.
- Anonymous ratings: After every trip, riders are asked to anonymously rate their driver on a scale of 1 to 5, adding trust and improved quality of service, and providing us with real time feedback on driver performance. Drivers work hard to keep their ratings high and know that the Uber culture of accountability goes both ways (drivers rate riders too).

Driver safety

- Anonymous ratings: Driver feedback is important too. Just as riders have the opportunity of anonymous rating, so do our partner drivers. We take a zero tolerance approach to any rider behaviour that makes drivers concerned for their own safety, their vehicle safety or is in any way abusive toward drivers or in violation of the terms of service.
- No random pick ups: Before their first trip, Uber riders are required to create an account with their personal information. Rides can only be requested through the app, meaning drivers know whom they are picking up in advance and there is a detailed record of every trip.
- Fully cashless: Fares are charged automatically to the rider’s credit card so a driver never has the risk of carrying cash or fear of being robbed.

As the Committee heard in its hearing on 21st January 2015, Uber currently offers a range of five services to passengers in London. Firstly, uberX is the low-cost option for fast and reliable service. This option seats up to four people and the majority of these vehicles are Toyota Prius’. uberXL offers a larger service, seating up to 6 passengers in London, and up to 8 in Manchester. UberEXEC is the next level up, offering up to four people discreet executive quality. Beyond this, UberLUX is the high-end offering from Uber offering ultimate luxury and style. Crucially, each of these options involves a professional driver with a private-hire license and commercial insurance. Finally, understanding the critical role that black cabs play in
the London market, Uber offers UberTAXI. This service allows customers to access this iconic, knowledgeable and versatile service through the use of an app.

Importantly, in contrast to the evidence the Committee received on the 21st January 2015, we are entirely transparent about the various options available to our customers.

In 2014, Uber’s London operations underwent the largest ever compliance inspection by TfL with over 22,000 documents inspected and were found to be compliant with existing legislation. The use of technology has helped to provide greater transparency and a greater incentive for the industry to assure its own compliance with the industry’s regulations.

**Why Uber is submitting evidence**

In the UK, every single independent Uber partner-driver and their vehicle is licensed and regulated by the local regulator as a private hire or taxi driver. Therefore, we have a significant interest in the shaping of future taxi and private hire vehicle legislation.

Uber is committed to understanding and engaging on the key issues for taxi and private hire passengers in the UK, whilst also remaining in close contact with all relevant stakeholders as Uber develops its role in the taxi and private hire vehicle market.

We believe the Uber platform adds significant value to the transportation sector. The addition of our new technology and choice is contributing to the ongoing debates and questions regarding how best to shape regulation in the sector. We are keen to work with the Local Government and Regeneration Committee, Government and stakeholders to make sure that people in Scotland get the best value, most efficient and safest service they possibly can.

We believe to best plan for the future, it is imperative that the Committee hear from the entirety of the Taxi and Private Hire Vehicle industry, especially as we enter a period of exciting growth.

**Structure of response**

Our response to the Committee sets out our thoughts on the Bill’s primary Taxi and Private Hire Vehicle issues, using the examples of Uber’s existing business in the UK. The response is structured around two main questions from the online form:

“**What benefits should the licensing of taxis and private hire cars deliver for customers?**”

“**Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?**”
This written document also addresses a number of points raised in the 21st January 2015 hearing. However, Uber will also be on hand throughout this process to help the Committee answer any questions it may have.

“What benefits should the licensing of taxis and private hire cars deliver for customers?”

Uber believes that the Scottish Government should use this Bill as an opportunity to begin to move the market towards a firmer long term footing, and ensure that consumer waiting times - especially at night - are kept to a safe, low level. In particular, the Committee should be encouraging:

- Wider adoption of mobile internet technologies by all market players to improve the user experience and as the basis for more efficient operational management. This will enable a sustained high level of weekday service while ensuring drivers achieve the activity levels that they desire (whether they work fulltime or part-time);
- Encourage the emergence of services that promise a larger pool of drivers and mobility options at times of peak demand. Here passengers, and in particular vulnerable ones, will be the main winners as faster pickups mean greater safety.
- The emergence of pooling services with their attendant environmental, congestion and consumer benefits. Uber is at the forefront of all of these developments, and is of course ready and willing to assist the NTA as they work through the exciting new opportunities for consumers and for drivers.

Uber is complementary to public transportation, and offers an effective solution to the “last mile” problem, when the final destination is not near a bus / train / tube station.

Data collected indicates that Uber is a transportation solution that people want to use not only in the city centre, but also in more distant neighborhoods and the airport. Uber can also offer a mobility alternative to neighbourhoods that are currently underserved by transportation solutions.

With the necessary liquidity, Uber could position itself as a reliable and complementary addition to Scotland’s mobility solutions (train, metro, bus, bicycle, etc.), thereby reducing the need to own a private vehicle.

The map below shows the coverage of Uber journeys in London. 40% of these rides begin or end in areas of the city traditionally characterised as being ‘underserved’ by public transport. These trips may link families; customers with local businesses, nightlife, or entertainment options; make airport trips more affordable by cutting out the need to pay daily parking fees, and facilitate public transport access.
Map showing Uber trip coverage of London.

Uber provides consumers with a reliable option that complements existing public and private transportation options. Metro and light rail can provide frequent, speedy, and convenient service across an urban area, but they only go so far. Uber ensures that no matter when or where someone needs a ride home, they can get one.

Indeed, Uber helps solve this “last mile” problem in areas beyond the reach of existing mass transit networks, offering residents a reliable connection that feeds them into public transportation networks.
This promotes the use of the buses, trams, and other public transit options for those heading out for a night on the town by removing the calculation of whether the same public transport option will definitely be reliable or even operating for the return trip—particularly late at night. At the same time, these benefits also ensure public transit becomes a more viable alternative for commuters, resulting in fewer cars being driven into the core of London. This is more than merely intuitive or anecdotal. Uber’s trip data for the last quarter of 2014 demonstrates that nearly three-quarters of Uber rides in London are “one-way trips,” meaning that riders completed their start or return journey using another transportation option.

Across the world, the taxi and private hire market is becoming increasingly competitive and innovative as the distinctions between taxis and private hire blur. Rather than rely on an enforced monopoly, every company has to compete on price and the quality of its service. Uber has tested many different business models across the 54 countries we operate in. As described in the Introduction to Uber, London is a great example of this – Uber now offers a range of services through uberX, uberXL, UberEXEC, UberLUX and UberTAXI. Beyond our model, in London,
Kabbee allows you to compare the prices from thousands of minicabs, whilst Hailo, ubuCabs or GetTaxi allow you to book a black cab through your iPhone. Furthermore, the Addison Lee app allows you to book one of its 4,500 minicabs, whilst greentomato allows you to use a hybrid. All these technologies provide the potential for a significant expansion of the market, allowing many more people to be able to afford to use taxis regularly. As such, platforms such as Uber must be seen as additive, not abstractive, to a market where greater choice will benefit both the customers and the drivers.

“Do the changes made by sections 60 (overprovision of private hire car licenses) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?”

Proposals to grant licensing authorities the power to refuse private hire car licences on grounds of overprovision is potentially severely detrimental to the interests of consumers in Scotland. The concept of quotas of taxis in jurisdictions limits choice for passengers, effectively guarantees that services are over-priced and does not allow different providers to compete on the basis of quality of service.

Quotas have been criticised and discredited by every competent and unbiased authority that has examined the issue. In 2003, the Office of Fair Trading published the results of an inquiry into the regulation of taxis and minicabs in the country. Its conclusions were:

- Quantity restrictions, where used by local authorities, should be removed;
- Quality and safety regulation should be proportionate to public policy goals, so as to avoid them become an implicit barrier to market entry
- Price flexibility should be permitted, even while regulated fare caps remain necessary to protect vulnerable groups.

More recently, in 2007 the OECD undertook arguably the most thorough cross-country analysis of the history and impact of taxi regulation.1 The key findings of the report were:

- Entry restrictions are unjustified: ‘Restrictions on entry to the taxi industry constitute an unjustified restriction on competition. Regulatory capture frequently means that these restrictions lead to large transfers from consumers to producers, economic distortions and associated deadweight losses.’
- Entry restrictions do not benefit drivers OR consumers: ‘Although entry restrictions are often justified on equity grounds there is no evidence that drivers fare better in restricted markets. On the other hand, higher prices and lower availability disproportionately affect low-income consumers of taxi services.
- Market reforms work: ‘Increasing numbers of OECD countries have removed or loosened supply restrictions on taxis. The results of these reforms have been strongly positive, with reduced waiting times, increased consumer

satisfaction and, in many cases, falling prices being observed.’

- Reforms should be carried out quickly: ‘In highly restricted taxi markets, immediate implementation of an open entry policy is likely to be politically challenging. However, adopting staged approaches delays the achievement of reform benefits and poses major practical risks that reform will be stalled or reversed. Immediate reforms have been completed successfully in some highly restricted markets.’

Supportive, innovation-friendly regulation is important: ‘Removing entry restrictions does not imply removing quality based regulation. Indeed, supportive regulation is a precondition for fully achieving the potential benefits of adopting an open entry policy. That said, remaining regulatory arrangements must not unduly inhibit the development of innovative service offers and industry models.’

This vision of a ‘Supportive Regulatory Environment’ that is friendly to innovation has been set out by the OECD in great detail. This environment focuses on removing unnecessary restrictions on competition while maintaining quality regulation in the following areas:

- No entry restrictions: entry restrictions ‘constitute an unjustified restriction on competition’;
- Positive conduct regulation: sanctions against ‘refusals of short trips, “no shows” and other forms of poor driver behavior’;
- Vehicle standards: age or testing regimes;
- Driver standards: ‘typically…a “fit and proper person” test, designed to ensure passenger safety’;
- Facilitating innovation: ‘…for example, if price regulation is to be retained (see below) care must be taken to ensure that it does not inhibit the development of premium services or, on the other hand, of shared ride arrangements’.

Not only does the concept of overprovision not deliver the intended benefits for consumers, it raises the barriers to entry for drivers, effectively preventing the sector from growing and creating jobs.

In January 2014, Edinburgh City Council released a transport analysis of the trends seen between the 2001 and the 2011 Census. Edinburgh has seen both a rising proportion of households who do not own a car, and a declining proportion of people who drive to work. Nearly 40% of households in Edinburgh do not own or have access to their own car or van – well above the Scottish average of 34% and exceeded only by Glasgow (51%) and Dundee (42%). The number of Edinburgh households without a car (over 89,000) is higher than at any time since the 1970s.3

Uber’s technology and the possibility to get a car on demand has introduced an enormous efficiency on the market (where before, the supply was unable to meet the existing demand), allowing:

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Drivers to complete more trips per hour and hence increasing their income.

Lowering the price for users.

Uber is a complementary transportation solution at a price point that enables regular usage. We have seen in other cities that POP has the potential to drastically reduce the role of private cars in cities, and thereby reduce urban pollution and congestion.

Services like Uber - and our competitors - also lay the groundwork for a future of much greater sharing of transportation within cities. Uber effectively optimises the utilisation of capital and resources - light transportation users who stop or reduce the use of a private car could reallocate their capital / resources previously dedicated to their private vehicle. But for further innovation to succeed, market liquidity is vital.

A move to allow for limitations to the number of licenses in different local authorities as per Section 60 of the Bill could be extremely damaging to both the growing number of consumers and the drivers involved. Rather, the Scottish Government should foster an environment that encourages choice and competition to the benefit of both passengers and drivers.

With this in mind, it is also our belief that Section 61 of the Bill is an unnecessary burden on private hire drivers, which has the potential to limit the choice and competition in the market. With the advent of technology, drivers are able to deliver an efficient service to their customer without the need to have passed a test. Whilst there will always be a place for the knowledge gained by a taxi driver, the option should be available to driver and passenger alike in a competitive market.

21st January 2015 Hearing and other notable points

Safety

Whilst we stated the safety aspects of appropriate licensing earlier in this submission, we would like to repeat here that Uber is committed to the highest safety standards. We understand the fundamental importance of safety to our customers and drivers so we ensure that our technology goes above and beyond in terms of public safety.

Furthermore, we give passengers the opportunity to give honest feedback about the Uber driver taking them to their destination. Drivers that do not consistently keep our customers happy, foster an environment in which the customer feels safe, and get good ratings are removed from our service.

As a whole, technology is making us safer and deterring crime. In the 1990s, immobilisers, smart keys and vehicle tracking helped to deter vehicle theft.\(^4\) Car crime fell from 4.3mn thefts in 1993 to fewer than 1.1mn in 2011.\(^5\)

Today, new ‘kill switches’ or biometric protection such as the iPhone’s TouchID can help to deter the new wave of smartphone theft – but much more important than


property crime is the potential impact of tech on personal safety. One paper from 2012 found a strong negative correlation between mobile phones and violent crime in America.\(^6\)

Uber’s entry into the Chicago market saw crimes in taxi-cabs fall by 20%.\(^7\) The persistent communication and opt-in GPS tracking offered by today’s phones offer greater security and protection, while ensuring privacy is not breached without our consent.

Uber is also proven to reduce drink driving in cities. A new report conducted in partnership with Mothers Against Drunk Driving (MADD) reveals that when empowered with more transportation options like Uber, people are making better choices that save lives. In California, Uber's home state and largest market, drunk-driving crashes fell by 60 per month among drivers under 30 in the markets where Uber operates following the launch of uberX. That’s an estimated total of 1,800 crashes prevented since July 2012.

Platforms like Uber lead to little incentive for taxi touting. Indeed, the Uber app automatically pinpoints your location to provide true door-to-door service meaning the customer can remain safe indoors until a driver arrives. Through the app, your driver profile (including his name, license plate number, photo, and rating) will appear upon request of a car, meaning the customer knows exactly who is picking them up. Furthermore, passengers are asked to provide feedback following their journey meaning Uber drivers are entirely accountable for their levels of service.

**Accessing quick, efficient services at the click of a button**

With an increasingly connected world, passengers demand things to be faster, better and cheaper. At Uber, we believe that our app offers passengers this opportunity.

Our riders not only like the convenience of having us at the touch of a button, but it also delivers for them the speed with which they are used to accessing other services such as online shopping with next day delivery, or instant film viewing online. Indeed, on average in central London, Uber’s Estimated Time of Arrival (ETA) is just over three minutes.

We also offer value to our customers, who can have fantastic, affordable and easy ways to get places, simply on their phone. From low-cost to luxury cars we offer affordable choices for passengers with varying budgets and requirements.

**Fares and Payment Options**

Uber is a supply and demand service that provides a range of options based on a customer’s travelling needs. In particular, Uber is proud to be opening up a private hire service to people who could not previously afford this through access to uberX. In an article for the London Evening Standard, Lucy Tobin wrote that: “The fact is, for those without a corporate expense account or a banker’s salary, or who happen not to live in central London but still need to get home late, the new minicab apps are making it much cheaper and easier to do so”. In extreme cases of peak demand,

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\(^6\) Unfortunately, the data was not good enough to test the direction of causation.

\(^7\) Uber’s Impact on Taxi Crime in Chicago, 2014, [http://blog.uber.com/chicagotaxicrime](http://blog.uber.com/chicagotaxicrime)
Uber’s prices flux and react to the market and are fully transparent with the customer.

**Accessibility**

In his evidence, Dr Cooper raised the issue of accessibility for disabled passengers. Uber is constantly taking steps to increase broader disability mobility and is confident that our technology will prove a great benefit.

For example, we are ensuring that we offer a range of services that are accessible to all passengers in London; and the addition of the black taxi onto the Uber platform directly provides a wheelchair accessible vehicle option for Londoners. Moreover, the ability to access a black cab direct through the Uber app – rather than hailing in the street – is a safe and reliable option for wheelchair users.

Our technology has allowed us to tremendously increase mobility for our riders with disabilities, and we continue to work hard on features to accommodate all riders’ needs. We use all available resources to make Uber the most user-friendly product to those with disabilities.

Notably, our VoiceOver iOS compatibility means that the Uber app provides a safe transportation option for the visually impaired community that is adaptable to their needs. From booking the ride, to selecting the vehicle and rating the driver – everything can be done using the iPhone’s Siri function. Meanwhile, service animals are always welcome in all Uber vehicles.

Furthermore, for the deaf or hard of hearing, assistive technology such as visible and vibrating alerts can help users to navigate the Uber app. With various text prompts and visual features, audio is not needed for full functionality of the Uber app.

Importantly, whilst there was a discussion of monopolies in the hearing, in many cities, Uber has been shown to be additive to the taxi and private hire vehicle market, not abstractive. The choice and competition that our platform brings to the market is not therefore detrimental to the options that are already available for disabled passengers.

**Addressing environmental concerns**

Uber is also committed to doing its part for the environment and is having a positive impact. Uber already has over 5,000 hybrid vehicles on its platform in London, driving between 2,000 - 3,000 miles per month. Also, as addressed above, due to more efficient booking systems, Uber drivers spend less time driving around with no passengers in the car, ensuring better asset utilisation. This is an area where new data will be collected as Uber develops its offering in London, and we are of course keen to keep the Committee updated on this.

**Conclusion**

Uber welcomes the opportunity to engage with the Local Government and Regeneration Committee’s consultation into the Air Weapons and Licensing (Scotland) Bill.
Whilst the Bill itself is a wide-ranging piece of legislation, there are a number of issues relating to taxi and private hire provision in Scotland which are of direct concern to Uber. Notably, we call upon the Government to foster an environment that encourages choice and competition in the market in the interests of consumers and drivers.

Given the depth of discussion regarding Uber in previous oral sessions, we would appreciate the opportunity to provide more detail on our plans for Scotland in person before the Committee.
Introduction

The Gambling Commission (the Commission) offers this briefing note to the Local Government and Regeneration Committee (the Committee) on the Air Weapons and Licensing (Scotland) Bill to assist further in their consideration of the powers of Licensing Standards Officers (LSOs).

The subject of the powers of LSOs is raised in COSLA’s submission to the Committee at section 8. (Submission number 133).

The Commission’s submission is written in order to provide background and context to COSLA’s note in order that the Committee is provided with the opportunity to give the proposal informed consideration.

The Commission considers that COSLA’s proposal in regard to the powers of LSOs is helpful and provides the most efficient means currently available to correct a drafting error in the Gambling Act 2005 (the Gambling Act).

The Commission is able to provide further explanatory detail should the Committee consider that helpful.

Background

The Gambling Act has three licensing objectives:

- preventing gambling being a source of crime and disorder
- ensuring gambling is conducted in an open and fair way
- protecting children and vulnerable people from being harmed or exploited by gambling

The Gambling Act created a co-regulatory structure for the licensing and regulation of gambling\(^1\). The responsibility is shared between the Commission and licensing authorities. In Scotland licensing authorities are licensing boards constituted under section 1 of the Licensing (Scotland) Act 1976. (Now replaced by the Licensing (Scotland) Act 2005.)

The system is financed, in general terms, by means of fees paid by operators. The Commission receives fees in relation to operator licences and licensing authorities receive fees for premises licences and other local gambling permissions.

In Scotland the fee structure for premises licences is set by Scottish Government. (In England and Wales an upper limit is set by the Department of Culture Media and Sport.)

The fees received by licensing authorities are set in order to meet the cost of licensing, inspection and enforcement.

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\(^1\) Further details of the different responsibilities is included at Appendix1
Broadly speaking the division of responsibilities for regulation is that the Commission takes responsibility for issues which have a greater impact or risk at a regional, national or GB-wide level. Licensing authorities are best positioned to manage matters which are more localised in impact. (For example ensuring gambling premises comply with the codes of practice, including matters related to social responsibility.)

The understanding of how best to make this shared regulatory structure work effectively, ensuring for example that there is a clear appreciation as to who is best positioned to act in any given situation involving non compliance or illegality, has evolved a great deal since the Gambling Act was introduced. (Although for reasons set out below the current situation in Scotland has unfortunately not developed in the same way.)

**Scotland, the Licensing (Scotland) Act 2005 and LSOs**

There are three classes of persons who have powers of entry (and a range of other authorisations) under the Act. They are, in general terms, Commission enforcement officers, constables and ‘authorised persons’. This latter category is the one from which licensing authorities obtain the relevant permissions for staff to undertake inspection, compliance and enforcement activities.

LSOs are appointed in Scotland under the Licensing (Scotland) Act 2005 (the Licensing Act) and have a range of functions under the legislation. For example supervising compliance with the requirements of the Act and inspecting and reviewing premises.

However at section 304 (2) of the Gambling Act, (a section which empowers licensing officers in England and Wales), it refers to ‘officers’ of licensing authorities. Scottish Licensing Boards do not have employees or officers as such. Consequently our understanding, and this is a view shared by COSLA and LSOs, is that the enforcement powers under the Gambling Act cannot be exercised ‘as of right’ by a LSO.

The Commission developed an Advice Note\(^2\) (July 2013) on this matter, as COSLA’s submission to your Committee notes. This sets out our understanding of how, using other legislation, LSOs or others, might be able to act as ‘authorised persons’ under the Gambling Act.

Due to the original drafting error Licensing Boards and LSOs remain unsure as to the extent of their powers and have therefore felt unable to engage in gambling regulation to any extent across Scotland.

Our ‘Licensing authority statistics 1 April 2009 – 31 March 2014\(^3\), an annual compilation of licensing authority gambling related activity, demonstrates that activity in Scotland remains low in comparison to that in England and Wales.


\(^3\) [http://www.gamblingcommission.gov.uk/Licensing-authorities/Information-for-licensing-authorities/Licensing-authority-returns.aspx](http://www.gamblingcommission.gov.uk/Licensing-authorities/Information-for-licensing-authorities/Licensing-authority-returns.aspx)
AS COSLA’s submission indicates, the Bill currently under consideration may provide an opportunity to clarify the power of LSOs in relation to gambling regulation. This would enable them to take on the important public protection role in gambling that they currently fulfil in relation to alcohol.

Appendix 1

The Gambling Commission

The Commission was set up under the Gambling Act to regulate commercial gambling in Great Britain. The Act came fully into force on 1 September 2007. The Commission is an independent non-departmental public body (NDPB) sponsored by the Department for Culture, Media and Sport (DCMS).

The Commission regulates commercial gambling in Great Britain, including:

- arcades (excluding unlicensed Family Entertainment Centres)
- betting
- bingo
- casinos
- gaming machine manufacturers and suppliers
- gambling software providers
- lottery operators and external lottery managers (excluding small society lotteries)
- British based remote gambling operators
- The National Lottery

The Commission does not regulate spread betting, this is the responsibility of the Financial Conduct Authority.

 Licensing Authorities

Licensing authorities have a range of specific responsibilities, including the following:

- licensing and regulating premises for gambling activities
- considering and granting notices given for the temporary use of premises for gambling
- granting permits for gaming and gaming machines in clubs and miners’ welfare institutes
- regulating gaming and gaming machines in alcohol licensed premises
- granting permits to family entertainment centres for the use of certain lower stake (category D) gaming machines
- granting permits for prize gaming
- considering and granting occasional use notice for betting at tracks
- registering small society lotteries

Written submission from the Scottish Taxi Federation

First, I would like to thank the Chairman and the LGR committee for providing The Scottish Taxi Federation with the opportunity to give oral evidence at the meeting on 21st January 2015, and;

Second, this supplementary written evidence, is submitted for the committee’s consideration primarily because our previous submission was based solely in response to the four issues raised by the video released by the LGR committee.

This submission addresses and gives clarity to our position in regard to the proposed additions to the Civic Government (Scotland) Act 1982, as outlined in section 3, Civic Licensing, of The Air Weapons and Licensing (Scotland) Bill 2014, as they affect the Scottish licensed taxi and private hire car trades.

Refusal to grant private hire car Licences on grounds of over provision

The Scottish Taxi Federation does not oppose the principle of providing Licensing Authorities with this option. However, we are most concerned with the assertion contained within the Governments Financial memorandum, which makes it clear that the Government expect, but cannot quantify, that it is likely there will be an increase in court challenges following any decision by a Licensing Authority to refuse an application for a private hire car licence on the grounds of over provision. The Memorandum goes on to say that this should not be a concern for Licensing authorities as any costs incurred by the authority in this regard can be recovered from licence fees.

It is the position of the Scottish Taxi Federation that the adoption of a policy that is tantamount to a laissez-faire approach, is a sign of abrogation of responsibility and fails to provide a benchmarking standard which in effect abandons the trade and requires further costs to be borne by our members. It is our considered opinion that the adoption of any such policy is at best irresponsible. That said the Scottish Taxi Federation is fully supportive of a position that would avoid Licensing Authorities the cost of expensive court challenges, but to simply pass this on to others is not, in our view, the answer.

In its original submission to the Governments consultation paper, the STF suggested that the burden of proof, in terms of proving there exists an under provision, should rest firmly with the applicant. While we understand that this suggestion may court controversy, it remains our contention that a responsible applicant will have undertaken all due diligence in meeting the legal requirements of the application process and will also have researched an associated business plan. Not only would this result in a fully comprehensive application. more importantly, it would dissuade spurious and speculative applications in the first instance.

As stated, our position may be controversial, but it is our belief that it is more acceptable than the adoption of a position that could leave the licensed trade facing
higher costs in fees, that can only be recouped by increased tariffs that passed on to the end user, the hiring public.

**Testing of private hire car drivers**

The Scottish Taxi Federation welcomes training regimes which may include such as, disability awareness, general customer awareness, dispute resolution, knowledge of conditions of licence, the highway code etc. However, we feel that to require private hire drivers to undergo a test of their knowledge of their licensing area, will prove to be an additional burden that Licensing Authorities may well be able to do without. In addition, by the nature of their advance booking criteria, private hire drivers are aware in advance of the passengers intended destination and as a consequence, they are in a position to take advantage of technology such as satellite navigation systems. It is this very essence that separates the private hire car driver from the taxi driver. Many PHC drivers restrict their operation to specific areas that do not entail City wide travel. Additionally, they do not use fully adapted vehicles for the conveyance/carriage of passengers with a disability. Given the nature of their role in transport provision and taking full account of the requirement of advance booking, the stance taken by the STF remains that PHC drivers need not undergo testing in topographical knowledge.

Additionally it is our position that many private hire drivers, take up this employment with a view to graduating to a full taxi drivers licence status once they have gained sufficient knowledge and confidence to take the taxi drivers test. Thus, private hire drivers in essence help to generate a continuous flow of drivers into the taxi industry and provide the second tier service the public have come to expect from the private hire industry. It is our assertion that if this interim passage through the private hire ranks is closed, then the taxi industry in the longer term may well suffer from a shortage of drivers.

**Exemptions from sections 10 to 21 of the Civic Goverment (Scotland) Act 1982**

The STF fully supports removal of the exemption from the Licensing regime that is currently enjoyed by those who use section 22 (c) to gain such exemption. As it currently stands, this section of the Act is being used to facilitate the hiring of drivers and vehicles that do not then require to come under the scrutiny that licensed operators and drivers require to face. This is not conducive to best practice and in our opinion compromises public safety.

**Two Tier Vs one tier licensing System**

This subject was introduced during the scrutiny of those giving evidence to the LGR committee on 21st January 2015, and as Secretary of the Federation I am bound to say this aspect of discussion came as something of a surprise. Indeed it was even suggested at one point that taxis should perhaps not be involved in the provision of services which may be considered as work for private hire cars only. This suggestion is as erroneous as it is incredulous and demonstrates either a distinct lack of knowledge of legislation, regulation and the actual working practices of the taxi trade or a total disregard of said procedures and legislation.
To fully answer this question, it needs to be recognised that taxis, or as they were formally called, hackney carriages, have been plying their trade since before the days of the Hansom Cab. Private hire cars on the other hand only came into being following the advent of the 1982 Act, which created a two-tier licensing system. It was clearly appreciated by the Government responsible for the drafting of the ’82 Act, that taxis had been plying their trade or many years, both on the basis of there and then hires and also by dint of two-way radio connections, now referred to as the private hire element. This aspect was fully recognised and accepted by the Government at that time and the Act catered for the taxi industry to continue in this dual role. In addition to this recognised factor, at the same time the decision to restrict the private hire car element to the role of being hired by the practice of advance booking only was arrived at.

It is the opinion of the STF, that time and circumstance have conspired to prove that this decision was not only correct, but that it would also provide the public with an alternative service not available at that time. This has stood the test of time, proving to be just as fit for purpose now as it was in 1982.

The Scottish Taxi Federation strongly believes that the two-tier system of operation should continue as it has been well proven since 1982, that the public would not wish this choice to be denied them. It is equally clear that most licensing areas in Scotland would be unable to cope with the additional taxis that would populate their streets if a one-tier system were to be invoked.

In this regard it may be worth considering the potential situation in Glasgow or Edinburgh for example, if within a short space of time either City were be faced with having to cope with some 3000 to 5000 taxis driving through their streets looking for work. Taxi rank spaces in all areas in Scotland are at a premium, with Glasgow in particular, able only to provide spaces for some 330 taxis. Would the other newly created taxis simply cruise the streets adding to the already poor City centre environment, congestion and pollution problem?

In addition to the foregoing, it must also be taken into consideration that many of the incumbents in the taxi section will have invested heavily in their businesses and may well struggle in this new environment to meet their commitments, ultimately going to the wall.

In this type of scenario would the Government the be prepared to consider compensation?

There is clearly a need to consider all of the ramifications attached to making such a monumental change that switching to a single tier licensing regime for taxis would mean to all concerned. It is the position of the Scottish Taxi Federation that the current two-tier system is fit for purpose, meets environmental and social requirements, provides fully for the traveling public and the taxi and phc trades alike.

I trust the additional evidence contained in this submission will prove to be helpful to the LGR committee.
TAXI APPS, IMPACTS AND THREATS
James M. Cooper

1.0  Context, Background and introduction

This paper addresses the issues around taxi apps, a new(ish) technology synonymous with the development of the smartphone, impacts and issues arising. After a sluggish initial move into the taxi market, most likely reflecting (perceived) barriers to entry, development has been rapid. New entrants appear regularly and in number, with a few with sufficient market capitalization, size and velocity to become dominant. Market players such as Hallo, Uber and, to a lesser extent, TaxiMagic, have achieved a sustainable market share. Other players may achieve home market dominance, such as the Hail-a-Cab app in Houston, USA; regional market recognition, e-cab in Europe; or brand allegiance such as (any of) Yellowcab apps across the USA. Local, regional and international size and distinctions reflecting both the market reach of any player, and the sometimes significant regulatory differences across different geographies. The latter point, that no one city looks like or regulates in exactly the same way, has both acted as a barrier (to most), and an opportunity (for some), on which more later.

The taxi app has created significant differences in opinion, application and outcome, best described as market disruption, an issue that fundamentally changes the market in which it operates. Here then we need to consider a discussion that does not simply refer to the concept of taxi transport, but its ancillary markets: the booking technology and the platforms on which these products are offered, and alternatives to the traditional licensed vehicle. In short the ‘taxi’ product has changed and will continue to change to reflect the issues of marketing, app technology and access (to the market). Moreover, as the apps themselves cross traditional licensing distinctions, their development will necessarily impact on the regulatory and control mechanisms in place. This does not suggest that all such ‘incursions’ across regulatory boundaries are legal, with many arguing that they are not, but rather identifies the fact that the app, at best, challenges the distinctions historically applied to the taxi market and, at worst, allows for widespread illegal operation. The role of the new entrant app company, associated public and political opinion is critical in the success of this route to market, and brings with it significant and fundamentally opposing views.

Not that this form of change is new, simply the platform and, to some extent, the speed. The latter will be important as we discuss the (apparent) inability of the regulator to control the development and potentially illegal operation of the new entrants, whether as a result of vastly differing responses (cycles), ineffective regulation, regulatory capture and/or political maneuvering, of which more later. We also need identify the exponential growth of the operating platforms themselves, based around the ownership of smartphones, and the relatively late entry of taxi apps amongst transportation apps. Effectively many in the traditional taxi industry responded late, responded slowly, and responded badly. In fact, it may be suggested the traditional taxi industry is still at least 2 years behind the market leaders in app technologies - positively prehistoric in app development terms. This also is a significant issue.

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2.0 A brief history of the app, market entry and market equilibrium

Let us be clear, the taxi app offers and requires a significant change in the market. New apps can offer the consumer a better product, one that is easier to use, and one that offers a better service - particularly where the app reduces or removes some of the barriers to quality. This is an intentionally aggressive statement and is unlikely to please the traditional industry, but we need to account for, even realize for the first time, the nature of the new product and the significant benefits associated with it. In short service quality levels associated with app use are (or appear to be) different and better. A taxi company offering the same services as they did pre-app are not competitive to the app generation, however good their product was prior to app competition. More on quality and barriers to quality later.

Apps themselves have developed rapidly in the period since about 2008. Prior to this date apps served a limited purpose, had limited reach, and small numbers of users. Indeed it may be helpful to define generations of apps, and note the effective life of each:

1st Generation: Taxi Listing Service (electronic phone book)
2nd Generation: App to dispatch (including White label)
3rd Generation: App to driver, traditional taxi
4th Generation: App to driver, other license categories (including unlicensed)
5th Generation: Cross platform app, user multi choice - blurs regulatory boundaries
6th Generation: Price Comparison (not yet in wide use)

Here then a fundamental difference in the speed of development, and therefore the need to control for a new set of impacts if such controls are deemed necessary. Apps emerging at a frequency of a new generation of app in around 8 months, compared to a major regulatory shift possibly once in every 80 years! In short the regulatory process is poorly equipped to deal with the speed of change resulting from apps. Effective regulation, a need to consider and address negatives in the interest of the public and the need to assess and develop, falls considerably behind the speed of ‘innovation’ leading to the accusation of ‘regulatory capture’ or simply that of incompetence and irrelevance of traditional control. The accusation of incompetence leveled against regulatory authority is not limited to app protagonists alone, but may also be a comment on the part of the traditional industry under pressure. It is not clear whether such a ‘perfect storm’ is actually in the interest of the traditional industry.

3.0 Entry to the market / Market Regulation

Conflict between market participants, market regulators and city authorities arises around a number of focal points. The entry of apps is, and continues to be, new, with constant re-invention, clever avoidance of constraints, and smart moves to obtain public support and discredit opposition in equal measure. The new entrant is nothing if not intelligent. App companies may also use administrative structures to their advantage, leading to the accusation of political maneuvering, and sometimes of ‘dirty tricks’. Moreover, as the challenge to regulation may span across differing administrative authorities, including differing authorities in the same location, responses are rarely coordinated, and often contradictory. The issue is of particular relevance in locations where traditional taxis are licensed by a city or county, whilst limousines are licensed by the state.
A further issue relates to the forms of technologies being used. Apps are technology led, achieving what is possible on the back of the smartphone itself, but also market oriented, in that the technologies satisfy a desire for innovation to an extent that was not present before. Differing speeds of response, and differing approaches to regulation, have also contributed to a confused market, where few responses are applied evenly across the board, and many too late. The opportunity to label any innovation as ‘technology’ rather than ‘transport’ also plays into the (lack of) control being applied.

To the technology company, the (short) 5 years in development represent a multiplicity of app lifetimes, allowing for technology companies to appear mature, even unassailable. While regulators struggle to accommodate, adapt or oppose the change wrought by the new technology. Here also the politicking of the newcomers as effective lobbyists in their own right. Fighting, exposing and ridiculing become ‘fair’ trade practices and with great effect given that many regulatory decisions are half political to start with, the power of the argument, short term and biased it may be, but effective and free market. Why regulate for an old industry when you have a better more effective new one? It is possible even to suggest a political class ready and willing to venture to the market knows best, small government or the ‘dead hand’ of the regulator, in preference to the tried and tested methods of the past. Technologies, politics and effective advocacy have converged to create the circumstances for a radically different local transport market. Not all of this is bad for (some) intending passengers, indeed the masterstroke may actually have been to have polarised the market response to those that love and those that hate the new entrant, as by default those that hate, hate all, including the bits that might actually be good. An approach that appears clever, as a marketing tool, but questionable as to whether this is really appropriate to the future of the small vehicle for hire market?

4.0 Market Threats

Notwithstanding the potential accusation of analysis falling into the hate (or love) camp, an evaluation of the market is appropriate, indeed now necessary. In this section we consider the potential changes that follow from the development of the taxi app, and the nature of that change. Two threats appear to be exercised frequently:

- That the traditional taxi will no longer have a role / that the taxi will be left with all of the trips that a new entrant does not wish to take,
- That the regulating authority is no longer appropriate / fit for purpose / is guilty (victim) of regulatory capture

Both have some merit, as the new entrant will, in line with classic economic principles, seek to maximize profit by capturing business, of which some will be from existing operators. This is true, of course, in any new market entrant whether focused on a taxi app, or other form of company, but is especially true in the instance of app developments as these provide an easy route to market without many of the hurdles faced by the traditional taxi company. Some arguments are made in relation to market take, that the total numbers of trips remains static, while the newcomer removes from existing supplier, but this is not fully represented in statistical analysis. A more likely scenario is that the market moves to a new point of equilibrium, with some growth in demand, but a lack of growth in the traditional taxi sector. In short the market may have grown to a new equilibrium point, but the traditional taxi supplier is seeing erosion of market share, a loss of business, or both.

Moreover, as the market becomes saturated at the new point of equilibrium, the only method of
growth becomes market take from other suppliers - distinct parallels of this exist in the market for cellphones. In addition, as the supply of vehicles has grown, the market for drivers becomes disputed, with examples of driver shortages quoted in a number of US cities.

It can also be noted that, as the app itself does not necessarily fall into an existing regulatory category, the app based supplier can access (has accessed) a variety of vehicle types crossing traditional operational and legislative boundaries. The offset between regulations, entry in to an unknown no-mans' land, becomes an effective tool to avoid regulation whilst appearing to be victim of 'regulatory ambiguity'.

The same opportunity is more limited in the case of the traditional taxi supplier, limited by existing investments, often significant, in the traditional taxi supply model. Investments including operational base, licenses or medallion purchases, and compliance with the regulated requirements of the taxi sector. The existing, legal and paid up regulated taxi industry has done no more than comply with the enforced regulations pertaining to their sector, making the plaintiff cry for a 'level playing field', both reasonable and understandable on detailed inspection; though many reviews, surface level journalism and political response may fail to identify with this position. The more aggressive a response is on the part of the traditional taxi industry, the more they appear to fall into a trap set to make them appear hostile, unmoving or un-moveable. The most aggressive, the accusation of 'dirty-tricks' made by the traditional industry of the new entrant also appears the most likely to backfire.

The difference both in starting point and (apparent) compliance with the law, or lack thereof, has resulted in a very negative view on the part of the traditional trade of the new market entrants. Accusations of a lack of a level playing field are common place amongst traditional operators who, having invested in a given set of legal requirements, find their opposition avoiding, ignoring, or openly opposing the regulatory status quo. Indeed it is often observed that the new market entrants have become particularly professional in turning traditional market complaints to their own advantage, stylizing the traditional market players as unable to accept change, unable to move with the technologies. Indeed the accusations when reflected back on the traditional taxi industry present an almost Luddite view of a traditional industry bent on destroying rather than embracing the new technologies now available, whether this is an accurate portrayal or not.

Nor is the regulatory community immune to attack, with new entrants placing severe strains on the licensing authorities, forcing decisions on entry, permission to operate, and fundamental changes in regulations that have applied to the taxi industry over decades and centuries. Of these the most effective accusation appears around the concept of 'regulatory capture'. Effectively the accusation that a regulator has moved from the role of protecting the public - a legitimate and honorable role, to protecting the industry - without regard to what is appropriate and in the public interest. The accusation, and any defense offered by the regulator may result in the perception of a truth, placing the regulator in the same position as the traditional operator, being defensive, and apparently seeking to prevent rather than empower new technologies, a situation that may be stylized by the new entrant as opposition to advancement, in the case of the strict regulator; and as regulatory ambiguity, where regulator responses are slow and/or thoughtful. Neither particularly helpful to the regulator seeking to define a proper regulatory response and potentially the death of the regulator themselves.
5.0 Market Opportunity

Having identified threats, it is also legitimate to address opportunities. Without question the app provides a significant benefit to many users, although not all. Access to services through smartphones has become commonplace and there appears no possibility that this will diminish. Indeed, the speed of market growth, addressed in many technology articles, suggests an almost unlimited future for the smartphone and its use, to the extent that the discussion should not only address the potential development of the app, but also the next generations of the smartphone and the increased opportunities these will offer.

That said, the discussion related to the taxi app considers the potential of current and next generation apps. Opportunities include those that facilitate access, rather than facilitate booking of taxis, with a new generation of vehicle types, and significant new life entering previously exclusive and often underused vehicle categories. Passenger benefits include:

- Rapid expansion in the number of vehicles available, often addressing market issues in night time supply
- Increased choice between vehicle types, reflecting differing qualities of vehicles and different price options
- New vehicle types including instant vehicle rental (eg: Car2Go etc.) and for profit rideshare\(^2\) (now often referred to as Transportation Network Companies - TNCs).

Consumer choice is expanded, prices become variable, as many non-taxi taxi like vehicles are not controlled for price; and quality choices, including the perception of quality, become important. Reliability, or perceived lack of reliability, will also play a part in the decision of the consumer. In short the market has shifted, and a new equilibrium will follow. New entrants have an inherent benefit of sitting outside the traditional licensing structure, unencumbered by existing costs, and able to offer new service types with apparent impunity, and with support of many friends and extremely effective marketing and lobbying teams.

Many benefits exist, most can be applied, but the long term interests of the traveling public remain appropriate and must be achieved. The market benefit of today should not be at the expense of the service in the future, nor at the expense of those communities unable or unwilling to access services by app. The latter also including accessible services, opening up a significant discussion on the general lack of equitable accessibility in app based provision.

6.0 Political Aspects and compliance issues

Further argument relates to the route to market chosen by some app developers. In developing this argument we need to highlight the nature of a regulatory body within an administrative and political structure, to an extent that has not been explored in preceding analysis.

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\(^2\) The term 'rideshare' is separately defined in the USA and largely inaccurate for application to apps such as Lyft, Sidecar etc. (collectively TNCs). Its use in existing literature to define new entrant apps supporting private car hire is largely a result of a lack of a more appropriate term. The use of the term 'for profit rideshare' in this text is intended to highlight the concept of TNC type vehicles using a term that has been applied in previous literature.
To be effective regulation has to perform a function in the public interest. The setting of regulations and their oversight will typically fall to regulators, commissions or police departments, the latter in a small number of cases. The commissions in turn define regulations that (appear to) serve the public interest. Most commissions have a political element, in that they are tied to a mayoral or city function associated. Moreover, as the decisions made within the commissions have a city policy element they may also have to pass through a city vote. Prior to apps this process was largely perfunctory, taxis neither inviting nor receiving significant attention, with the possible exception of a period of deregulation in the 1980s.

Since the initial development of apps this has changed, with some app technology companies identifying the political element in the existing process as a method of applying pressure / stating an argument in a way that had not been developed to the same extent in the past. The system by which regulations had always been scrutinized became a powerful tool to influence the passage of a code, or indeed to prevent it. The intervention at city level has grown rapidly to an area of significant expertise and lobbying.

Accusations are also made regarding the potential manipulation of the process by intervention into the performance of surveys and analysis. In this accusation the mail bases, personal contacts or simply well known websites available to technologies are used to influence the numbers of responses made from a pro-technology respondent group. This may include responses made by individuals with an interest in the technology rather than the city or location undertaking the analysis. A similar influence is less likely from a less technical party, effectively one without an app in widespread use. Some evidence of biased samples can be seen in some studies.

6.1 Effective Regulation

To what extent regulation continues to be possible, desirable, even legal, will become a significant area of discussion. With the advancement of lobby groups for the new technologies, the regulator has come as much in the firing line as the traditional operator. Indeed some literature seeks to paint the two as complicit.

At this point a small health warning is necessary. The extent to which the reader will agree with the following will really depend on their own perceptions, but in reading this, please consider what regulation actually is intended to achieve. The regulator does not have a role to oppose or limit development, rather to ensure it occurs without impacting negatively on the public. Moreover, while one group may be lining up to endorse the new product, not all users will. The new technologies work well and are a significant improvement for some, even for many, but may also result in loss of accessible service, and a denigration of the industry that may impact over time. Arguments related to the legality and use of ‘Dirty Tricks’ should be taken seriously every bit as much as the counter argument of regulatory capture. Both equate an abuse of a system, and both should be investigated.

So how should regulators respond. Indeed what responses are open to them?

Here we take a sideways step and suggest we look again at the fundamental reasons why we regulate in the first place. Possibly a major exercise that appears out of proportion to the scale of the problem, as it appears now. But necessary never-the-less. Certainty of purpose is an effective baseline from which to regulate, and adapt. Lack of clarity, regulation at the permission of any one
group, even regulatory capture, fails to deliver, and will fail when placed under intense and repeated pressure. Here then in steps:

- Do we regulate well, and why. Have the fundamental reasons for regulation changed, and can we justify the approach we have adopted.
- Do we analysis on the basis of fact, or simply the appearance of assessment. Are the facts and data presented actually accurate and do we ask the right questions?
- To what extent are the decisions based on fact, rather than rhetoric, and how have authorities acted to remove overt political pressure
- If the new market paradigm is visible, in our authority or elsewhere, is the form of regulation identified in preceding steps going to remain fit for purpose, and can we justify it sufficiently well.

The approaches to assessment, control and quality of data will need to be updated as well as the measures used to deliver services in the public interest. In exactly the same way as in the existing taxi industry, what has worked to date, and appeared to work well, will not be good enough in the future. New technologies and new entrants have changed the market, it is imperative that the regulation, control and delivery of services move as a result. Failure to do so, will result in failure in the traditional market, however remote that may currently appear.

6.2 Effective Legality

Throughout the analysis thus far, we have alluded to, but not directly confronted legalities of operation or approach. While this has many variances in opinion, the questions remain and are legitimate. Here too we need to acknowledge the legislated authority of the regulator to develop and enforce law. It is not, should not and can not be the role of the individual passenger to ensure all aspects of the service they are using is legal, that is the legitimate and correct role of the regulator. Bluntly put, the passenger has neither the time nor the competence to ensure that the vehicle they use is insured, has passed safety inspection or that the driver has knowledge and required testing. These are all roles of the regulators. Moreover, it would appear inappropriate to permit or delegate this responsibility to the company providing the service, whether they call themselves a transportation or a technology company, or indeed anything else for that matter. The conflict of interest in a supplier of services also being the certification agency is simply to great.

We also need to identify the the areas where legality is challenged. This appears to relate, at present, to:

- Presence of (appropriate) Insurance
- Avowance of regulated requirements
- Inability to supply to all, including accessible

7.0 Impacts of market change, short and long term

- Duty of regulator to the public for sustainable services in the taxi market
- Use of market capture
- Reduction in effectiveness of traditional trade and negatives arising therefrom
- Poor and minority communities
Supplementary written response from the British Metals Recycling Association (BMRA)

BMRA responded to the Local Government and Regeneration Committee’s invitation to provide evidence ahead of the committee’s scrutiny of the Air Weapons and Licensing (Scotland) Bill. BMRA would like to submit some further evidence that builds on our original submission and on subsequent discussions with members of the committee.

We believe that it could prove very difficult to amend the Bill in its existing form in order to produce a clearly understood, modern piece of legislation. We have attempted to demonstrate this by annexing an amended form of wording to this submission.

Major Issues

Cash trading

We welcome any measures that will deter metal theft by removing opportunities for the anonymous disposal of stolen material for cash. However, this has to be on the basis that the AWLS Bill will minimise the creation of new unfair competitive opportunities for those operating on the margins of the licensing regime at the expense of compliant dealers.

The AWLS Bill seeks to ban cash payments using virtually identical text to the Scrap Metal Dealers Act 2013 (England & Wales), but contains significant weaknesses relating to the licensing regime itself that would provide readily-exploitable loopholes for unscrupulous operators.

See proposed clause 12 in annexe 1.

Date of processing

S33B(4)(b) of the CGSA (as amended) calls for a dealer to record the date on which metal is processed, including its description and weight prior to the processing operation.

Such a requirement will be difficult in a typical metal recycling facility where material is continually received and sorted for processing in economical quantities. Compliance with the requirement would require the batching of all material through processes that are intrinsically continuous. This would require a substantial increase in the land allocated and licensed by SEPA for the purpose of metal recycling and would threaten the economic viability of many Scottish businesses.

See proposed clauses 13 and 14 in annexe 1.

Register of licences

It appears that responsibility to maintain registers of metal dealers remains with each licensing authority (CGSA Schedule 1, para 14 refers), although a mobile collector’s licence will remain valid for collections anywhere in Scotland (CGSA S 32(2) refers).

Local registers may be appropriate for the other activities regulated by the CGSA. However, the collection and sale of scrap metal, particularly by a mobile collector,
frequently involves collections and transportation throughout multiple local authority jurisdictions. That means enforcement agencies may have to access and consult registers for distant local authorities in order to establish whether an individual or a business is licensed.

Failure to set up a national register of metal dealers, potentially managed by SEPA who already maintain registers of all these businesses in on one form or other, would constitute a lost opportunity to assist enforcement agencies in the detection and prosecution of metal theft and breaches of the CGSA. A national register also enables citizens to satisfy themselves that they are dealing with a licensed buyer of scrap

**See proposed clause 7 in annexe 1.**

**Production of licences**

We can find no requirement for a metal dealer or mobile collector to display a copy of a licence.

CGSA S5(4) allows a person who may be carrying on an activity which requires licensing five days to produce the licence. We consider that placing an obligation on metal dealers to display copies of their licence on their premises, and for mobile collectors to display their license/s on their collection vehicles, would be a useful measure to assist enforcement agencies in identifying illegal dealers.

**See proposed clause 10 in annexe 1.**

**Verification of identity**

CGSA (as amended) S33B(5)(c) says that a dealer must “keep a copy of any document produced by a person to verify that person’s name and address”. However, we cannot find any requirement placed on a dealer to verify the identity of a person supplying or receiving metal for recycling (‡ see below under “Methods of payment”). If such a requirement is introduced it is essential that the person whose identity is to be verified, and the form of acceptable documents, is set out clearly and unambiguously.

**See proposed clause 11 in annexe 1.**

**Methods of payment**

Electronic transfer definitions and associated record-keeping requirements are very poorly defined in the AWLS Bill. Examples include:

- no exclusion for barter transactions (payment in kind). This omission offers up the opportunity for those wishing to circumvent the proposed prohibition on buying scrap metal for cash by exchanging scrap metal for another commodity on which such a prohibition does not exist. “Payment in kind” is not an uncommon industry practice and this could be significant loophole.

- no definition of the type of permissible electronic transfer enabling the use of cash cards without any “know your customer” checks

**See proposed clause 12 in annexe 1.**
**Metal dealer definition**

The Bill’s definitions of a metal dealer and an itinerant metal dealer in the CGSA S37 are not changed by the AWLS Bill and require a person both to buy and to sell metal before they qualify.

One significant implication is that a mobile collector who collects from households without making payment for the items or materials he collects would not require a licence, and would thus remain outside the scope of the AWLS Bill. Furthermore, there is scope for a person collecting general waste and other materials, but actually earning a substantial proportion of his income from separating out and selling scrap metal, to escape the licensing regime. Similarly, skip hire operators and demolition contractors generating a substantial amount of their revenue from sale of scrap metal could escape the definition and need for licensing. Furthermore car breakers are not covered by the definition, a situation exacerbated by the absence of a definition of scrap metal.

We note that CGSA S37(2) excludes manufacturers’ buying of scrap for manufacture of other articles from the definition of metal dealer, providing scope for creative interpretation of both “manufacture” and “other articles” to evade licensing. For example, a metal dealer who has a small furnace for the manufacture of aluminium ingot would fall outside the scope of the AWLS Bill. We believe that the AWLS Bill should be amended to capture “all persons carrying out a business consisting of buying or selling scrap metal”, with some specific exemptions for manufacturers disposing of their own surplus materials or offcuts. A clear and comprehensive definition of metal dealer, to include vehicle dismantlers and other businesses generating a significant proportion of their income from sale of scrap metal is essential.

See proposed clauses 1 & 17 (4) in annexe 1.

**Powers of Search and Seizure**

We consider the existing powers vested in police officers under Section 60(1)(c) of the Civic Government (Scotland) Act 1982 to enter and search premises occupied by a metal dealer without warrant to be draconian, particularly in the light of the levelling of playing field for regulation of all metal dealers through the removal of the exemption warrant system. The AWLS Bill provides an opportunity to regularize the situation by removing specific additional powers in respect of metal dealers’ premises and vehicles.

**General**

The definitions relating to metal dealing in CGSA S37 are weak. Crucially they do not define scrap metal, and many measures that apply to a mobile collectors and site operators are listed separately, thus complicating the structure of the document and providing scope for confusion.

We have not dealt here with the repeal of certain provisions of the CGSA that would be needed if some or all of these proposals were adopted.
BMRA proposed revisions to the scrap metal dealers section of the Air Weapons and Licensing (Scotland) Bill

BMRA has given serious consideration as to how the existing Metal Dealers clauses of the Bill could be amended to provide effective legislation to control those aspects of the trade in metal for recycling that are of concern to legislators, the police, the legitimate industry and the victims of metal theft. We have concluded that the current Bill Part 3 Clauses 63 to 66 along with the proposed amendments to the Civic Government Act 33B to 33D could not be successfully improved and that a redraft of the appropriate clauses of the Weapons and Licensing (Scotland) Bill would be an appropriate solution.

The following text leans heavily on the Scrap Metal Dealers’ Act 2013, but seeks to reduce some confusion arising from the framing of that Act, and also to extract definitions into a single section.

We have generally not tried to insert or amend cross-references to other legislation that may apply in Scotland, however references are made that may not apply in Scotland. Where these are recognised they are marked [………..?].

Proposed Text

The Licence

1. Requirement for licence to carry on business as scrap metal dealer
   (1) No person may carry on business as a scrap metal dealer unless authorised by a licence under this Act (a “scrap metal licence”).
   (2) See section 17(4) for the meaning of “carry on business as a scrap metal dealer”.
   (3) A person who carries on business as a scrap metal dealer in breach of subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level …….

2. Form and effect of licence
   (1) A scrap metal licence is to be issued by a local authority [Sect 17(10) refers].
   (2) A licence must be one of the following types—
      (a) a site licence, or
      (b) an mobile collector’s licence.
   (3) A site licence authorises the licensee to carry on business at any site in the authority’s area which is identified in the licence, including collection and delivery of scrap metal in connection with business at the licensed site.
   (4) A site licence must—
      (a) name the licensee,
      (b) name the authority,
      (c) Include a unique serial number for scrap metal licences issued by that authority,
      (d) identify all the sites in the authority’s area at which the licensee is authorised to carry on business,
      (e) state the date on which the licence is due to expire.
   (5) A mobile collector’s licence authorises the licensee to carry on business as a mobile collector in the authority’s area.
   (6) A mobile collector’s licence authorises scrap metal collection activities by one natural person only (“the licensee”).
(7) A mobile collector’s licence must—
(a) name the licensee (sub section (6) refers),
(b) include a photographic image of the licensee’s face (sub section (6) refers).
(c) name the authority,
(d) include a unique serial number for scrap metal licences issued by that
authority, and
(e) state the date on which the licence is due to expire.

(8) A licence is to be in a form which—
(a) complies with subsection (4) or (7), and
(b) enables the licensee to comply with section 10 (display of licence).

(9) Ministers may by order prescribe further requirements as to the form and content of
licences.

(10) A person may hold more than one licence issued by different local authorities, but
may not hold more than one licence issued by any one authority.

3. Issue of licence

(1) A local authority must not issue or renew a scrap metal licence unless it is satisfied
that the applicant is a suitable person to carry on business as a scrap metal dealer.

(2) In determining whether the applicant is a suitable person, the authority may have
regard to any information which it considers to be relevant, including in particular—
(a) whether the applicant has been convicted of any relevant offence;
(b) whether the applicant has been the subject of any relevant enforcement
action;
(c) any previous refusal of an application for the issue or renewal of a scrap metal
licence (and the reasons for the refusal);
(d) any previous revocation of a scrap metal licence (and the reasons for the
revocation);

(3) In determining whether a company is a suitable person to carry on business as a
scrap metal dealer, a local authority is to have regard, in particular, to whether any
of the following is a suitable person—
(a) any director of the company;
(b) any secretary of the company;
(c) any shadow director of the company (that is to say, any person in accordance
with whose directions or instructions the directors of the company are
accustomed to act).

(4) In determining whether a partnership is a suitable person to carry on business as a
scrap metal dealer, a local authority is to have regard, in particular, to whether each
of the partners is a suitable person.

(5) The authority may consult other persons regarding the suitability of an applicant,
including in particular—
(a) any other local authority;
(b) the Scottish Environment Protection Agency;
(c) an officer of a police force.

4. Revocation of licence

(1) The authority may revoke a scrap metal licence if it is satisfied that the licensee
does not carry on business at any of the sites identified in the licence.

(2) The authority may revoke a licence if it is no longer satisfied that the licensee is a
suitable person to carry on business as a scrap metal dealer.

(3) A revocation under this section comes into effect when no appeal under paragraph 9
of Schedule 1 is possible in relation to the revocation or variation, or when any such
appeal is finally determined or withdrawn.
(4) In this section “the authority” means the local authority which issued the licence.

5. Further provision about licences

Schedule 1 (which makes further provision about licences) has effect.

6. Supply of information by authority

(1) This section applies to information which has been supplied to a local authority under this Act and relates to a scrap metal licence or to an application for or relating to a licence.

(2) The local authority must supply any such information to any of the following persons who requests it for purposes relating to this Act—
   (a) any other local authority;
   (b) the Scottish Environment Protection Agency;
   (c) an officer of a police force.

(3) This section does not limit any other power the authority has to supply that information.

7. Register of licences

(1) The Scottish Environment Protection Agency must maintain a register of scrap metal licences issued by authorities in Scotland.

(2) Each entry in the register must record—
   (a) the name of the authority which issued the licence,
   (b) the unique serial number for scrap metal licences issued by that authority,
   (c) the name of the licensee,
   (d) any trading name of the licensee,
   (e) the address of any site identified in the licence,
   (f) the type of licence, and
   (g) the date on which the licence is due to expire.

(3) The registers are to be open for inspection to the public.

(4) The Scottish Environment Protection Agency may combine its register with any other register maintained by it.

8. Notification requirements

(1) An applicant for a scrap metal licence, or for the renewal or variation of a licence, must notify the authority to which the application was made of any changes which materially affect the accuracy of the information which the applicant has provided in connection with the application.

(2) A licensee who is not carrying on business as a scrap metal dealer in the area of the authority which issued the licence must notify the authority of that fact.

(3) Notification under subsection (2) must be given within 28 days of the beginning of the period in which the licensee is not carrying on business in that area while licensed.

(4) If a licensee carries on business under a trading name, the licensee must notify the authority which issued the licence of any change to that name.

(5) Notification under subsection (4) must be given within 28 days of the change occurring.

(6) An authority must notify the Scottish Environment Protection Agency of—
   (a) any notification given to the authority under subsection (2) or (4);
   (b) any variation made by the authority under paragraph 3 of Schedule 1 (variation of type of licence or matters set out in licence), and
   (c) any revocation by the authority of a licence.

(7) Notification under subsection (6) must be given within 28 days of the notification, variation or revocation in question.
Where an authority notifies the Scottish Environment Protection Agency under subsection (6), the Scottish Environment Protection Agency must amend the register under section 7 accordingly.

An applicant or licensee who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level ..............

It is a defence for a person charged with an offence under this section to prove that the person took all reasonable steps to avoid committing the offence.

Closed of unlicensed sites

Schedule 2 (which makes provision for the closure of sites at which a scrap metal business is being carried on without a licence) has effect.

Display of licence

(1) A scrap metal dealer who holds a site licence must display a copy of the licence at each site identified in the licence.

(a) The copy must be displayed in a prominent place in an area accessible to the public.

(2) A scrap metal dealer who holds a mobile collector’s licence must display a copy of the licence on any vehicle that is being used in the course of the dealer’s business.

(a) The copy must be displayed in a manner which enables it easily to be read by a person outside the vehicle.

(3) A scrap metal dealer who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level ..............

Conduct of business

Verification of supplier’s identity

(1) A scrap metal dealer must not receive scrap metal from a person without verifying the person’s full name and address.

(2) That verification must be by reference to documents, data or other information obtained from a reliable and independent source.

(3) Ministers may prescribe in regulations—

(a) documents, data or other information which are sufficient for the purpose of subsection (2);

(b) documents, data or other information which are not sufficient for that purpose.

(4) If a scrap metal dealer receives scrap metal in breach of subsection (1), each of the following is guilty of an offence—

(a) the scrap metal dealer;

(b) if the metal is received at a site, the site manager;

(c) any person who, under arrangements made by a person within paragraph (a) or (b), has responsibility for verifying the name and address.

(5) It is a defence for a person within subsection (4)(a) or (4)(b) who is charged with an offence under subsection (4) to prove that the person—

(a) made arrangements to ensure that the metal was not received in breach of subsection (1), and

(b) took all reasonable steps to ensure that those arrangements were complied with.

(6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level ..............

(7) A person who, on delivering scrap metal to a scrap metal dealer, gives a false name or false address is guilty of an offence and is liable on summary conviction to a fine not exceeding level ..............
12. Offence of buying scrap metal for cash etc

(1) A scrap metal dealer must not pay for scrap metal except—
   (a) by a cheque which under section 81A of the Bills of Exchange Act 1882
       [Scotland?] is not transferable, or
   (b) by an electronic transfer of funds (authorised by credit or debit card or
       otherwise).

(2) Ministers may by order amend subsection (1) to permit other methods of payment.

(3) Payment in kind (with goods or services) is not permitted.

(4) If a scrap metal dealer pays for scrap metal in breach of subsection (1), each of the
     following is guilty of an offence—
     (a) the scrap metal dealer;
     (b) if the payment is made at a site, the site manager;
     (c) any person who makes the payment acting for the dealer.
     (d) any person who receives the cash payment from the scrap metal dealer.

(5) It is a defence for a person within subsection (4)(a) or (4)(b) who is charged with an
     offence under this section to prove that the person—
     (a) made arrangements to ensure that the payment was not made in breach of
         subsection (1), and
     (b) took all reasonable steps to ensure that those arrangements were complied
         with.

(6) A person guilty of an offence under this section is liable on summary conviction to a
     fine not exceeding level ...............

13. Records: receipt of metal

(1) This section applies if a scrap metal dealer receives any scrap metal in the course of
    the dealer’s business.

(2) The dealer must record the following information—
   (a) the description of the metal, including its type, form and weight
   (b) the date and time of its receipt;
   (c) if the metal is delivered in or on a vehicle, the registration mark (within the
       meaning of section 23 of the Vehicle Excise and Registration Act 1994
       [Scotland?]) of the vehicle;
   (d) the full name and address of the person from whom the metal is received

(3) The dealer must keep a copy of any documents used to verify the name and
    address of the person from whom the metal is received, and must cross-refer the
    record of the transaction to the relevant copy.

(4) If the dealer pays for the metal by cheque, the dealer must keep a copy of the
    cheque.

(5) If the dealer pays for the metal by electronic transfer—
    (a) the dealer must keep the receipt identifying the transfer, or
    (b) if no receipt identifying the transfer was obtained, the dealer must record
        particulars identifying the transfer.

14. Records: disposal of metal

(1) This section applies if a scrap metal dealer disposes of any scrap metal in the
    course of the dealer’s business.

(2) For these purposes metal is disposed of—
    (a) whether or not it is in the same form in which it was received;
    (b) whether or not the disposal is to another person;

(3) Where the disposal is in the course of business under a site licence or an mobile
    collectors licence, the dealer must record the following information—
(a) the description of the metal, including its type (or types if mixed), form and weight;
(b) the date and time of its disposal;
(c) if the disposal is to another person, the full name and address of that person;
(d) if the dealer receives payment for the metal (whether by way of sale or exchange), the price or other consideration received.

15. Records: supplementary
(1) The dealer must keep the information and other records mentioned in sections 13(2), 13(5) and 14(3) for a period of 3 years beginning with the day on which the metal is received or (as the case may be) disposed of.
(2) If a scrap metal dealer fails to fulfil a requirement under section 13 or 14, or this section, each of the following is guilty of an offence—
(a) the scrap metal dealer;
(b) any person who, under arrangements made by the licensee has responsibility for fulfilling the requirement.
(3) It is a defence for a person within subsection (2)(a) or (2)(b) who is charged with an offence under this section to prove that the person—
(a) made arrangements to ensure that the requirement was fulfilled, and
(b) took all reasonable steps to ensure that those arrangements were complied with. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level.....

Supplementary

16. Offences by bodies corporate
(1) Where an offence under this Act is committed by a body corporate and is proved—
(a) to have been committed with the consent or connivance of a director, manager, secretary or other similar officer, or
(b) to be attributable to any neglect on the part of any such person,
the individual as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.
(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and omissions of a member in connection with that management as if the member were a director of the body corporate.

Definitions

17. Interpretation and definitions
(1) “metal” means any metal (including any precious metal) and any alloy of any metals, whether old or new and includes manufactured articles, whether old or new, made wholly or partly of metal, of any of the materials commonly known as hard metal or of cemented or sintered metallic carbides;
(2) “Scrap metal” includes—
(a) any old, waste or discarded metal or metallic material, and
(b) any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.
(3) The Secretary of State may by order amend the definition of “scrap metal” for the purposes of this Act.
“scrap metal dealer” means a person who carries on a business, whether or not authorised by a licence,
(a) which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
(b) as a motor salvage operator (so far as that does not fall within paragraph (a)).
(c) “mobile collector” means a scrap metal dealer who—
(d) carries on business as a scrap metal dealer otherwise than at a site, and
(i) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.
(e) For the purposes of subsection (a), a person who manufactures articles is not to be regarded as selling scrap metal if that person sells scrap metal only as a by-product of manufacturing articles or as surplus materials not required for manufacturing them.

“site manager” means a natural person named in a site licence as a site manager or proposed to be so named in a site licence application.
(a) For the purposes of subsection (4)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists—
(i) wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap,
(ii) wholly or mainly in buying written-off vehicles and subsequently repairing and reselling them,
(iii) wholly or mainly in buying or selling motor vehicles which are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities mentioned in sub-paragraphs (i) and (ii), or

“site” means any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there).

“licensed site” means a site identified in a scrap metal licence.

“premises” includes any land or other place (whether enclosed or not).

“metal store” means a place where metal is received or kept in the course of a metal dealer’s business;

“local authority” means needs a proper definition that will cover the designated licensing authorities for the purposes of scrap metal licensing in Scotland.

“relevant offence” and “relevant enforcement action” mean an offence or enforcement action which is prescribed for the purposes of this legislation in regulations made by Ministers.

“Officer of a police force” includes a constable of the British Transport Police Force.

“processing”, in relation to metal, includes melting down and any process whereby the composition or form of the metal or of any article which is made of the metal is altered so as to make it substantially less identifiable than before the process, and “process” and “processed” shall be construed accordingly.

“trading name” means a name, other than that stated in the licence under section 2(4)(a) or 2(7)(a) under which a licensee carries on business as a scrap metal dealer.

For the purposes of Section 11, the person whose identity is to be verified may be:
(a) the a natural person making delivery and,
(b) in the case of scrap metal received from a business, the corporate entity supplying the scrap metal.

all references to keeping copies or records of transactions may refer equally to paper or electronic copies.
(17) For the purposes of sub-sections 13(2)(a) and 14(3)(a) the “description of the metal” should be proportionate, that is to say the level of detailed description expected for items in bulk loads will be less comprehensive than for single items.

18. Consequential amendments

(1) The following are repealed—

(a) [Relevant sections of the CG(S)A + XXX?]
SCHEDULES
SCHEDULE 1
FURTHER PROVISION ABOUT LICENCES

Term of licence

1. (1) A licence expires at the end of the period of 3 years beginning with the day on which it is issued.
   (2) But if an application to renew a licence is received before the licence expires, the licence continues in effect and—
       (a) if the application is withdrawn, the licence expires at the end of the day on which the application is withdrawn;
       (b) if the application is refused, the licence expires when no appeal under paragraph 9 is possible in relation to the refusal or any such appeal is finally determined or withdrawn;
       (c) if the licence is renewed, it expires at the end of the period of 3 years beginning with the day on which it is renewed or (if renewed more than once) the day on which it is last renewed.
   (3) Sub-paragraphs (1) and (2) are subject to section 4 (revocation of licence).

Applications

2. (1) A licence is to be issued or renewed on an application, which must be accompanied by—
       (a) if the applicant is a natural person, the full name, date of birth and usual place of residence of the applicant,
       (b) if the applicant is a company, the name and registered number of the applicant and the address of the applicant's registered office,
       (c) if the applicant is a partnership, the full name, date of birth and usual place of residence of each partner,
       (d) any proposed trading name,
       (e) the telephone number and e-mail address (if any) of the applicant,
       (f) the address of any site in the area of any other local authority at which the applicant carries on business as a scrap metal dealer or proposes to do so,
       (g) details of any relevant environmental permit or registration in relation to the applicant,
       (h) details of any other scrap metal licence issued (whether or not by the local authority) to the applicant within the period of 3 years ending with the date of the application,
       (i) details of any conviction of the applicant for a relevant offence, or any relevant enforcement action taken against the applicant.
   (2) If the application relates to a site licence, it must also be accompanied by—
       (a) the address of each site proposed to be identified in the licence (or, in the case of an application to renew, of each site identified in the licence whose renewal is sought), and
(b) the full name, date of birth and usual place of residence of each person proposed to be named in the licence as a site manager (other than the applicant).

(3) If the application relates to a site licence, the references in sub-paragraph (1)(g), (1)(h) and (1)(i) to the applicant are to be read as including any person proposed to be named in the licence as a site manager.

(4) The Secretary of State may by order amend sub-paragraph (1) or (2) to alter the requirements as to what information must accompany an application.

Variation of licence

3. 

(1) A local authority may, on an application, vary a licence by changing it from one type to the other.

(2) If there is a change in any of the matters mentioned in section 2(4)(a), 2(4)(b), 2(7)(a) or 2(7)(c), or sub-paragraph 2(1) of this schedule, the licensee must make an application to vary the licence accordingly.

(3) But the power to amend the name of the licensee does not include the power to transfer the licence from one person to another.

(4) An application under this paragraph—

(5) is to be made to the authority which issued the licence, and

(6) must contain particulars of the changes to be made to the licence.

(7) A licensee who fails to comply with sub-paragraph (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding level ………

(8) It is a defence for a person charged with an offence under this paragraph to prove that the person took all reasonable steps to avoid committing the offence.

Further information

4. 

(1) The local authority may request (either when the application is made or later) that the applicant provide such further information as the authority considers relevant for the purpose of considering the application.

(2) If an applicant fails to provide information requested under sub-paragraph (1), the authority may decline to proceed with the application.

Offence of making false statement

5. An applicant who in an application or in response to a request under paragraph 4(1)—

(1) makes a statement knowing it be false in a material particular, or

(2) recklessly makes a statement which is false in a material particular,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level ……..

Licence Fees

6. 

(1) An application must be accompanied by a fee set by the authority.

(2) In setting a fee under this paragraph, the authority must have regard to any guidance issued from time to time by Ministers

Right to make representations
7.  
(1) If a local authority proposes—
  (a) to refuse an application made under paragraph 2 or 3, or
  (b) to revoke or vary a licence under section 4,
the authority must give the applicant or licensee a notice which sets out what the authority proposes to do and the reasons for it.

(2) In this paragraph and paragraph 8 the applicant or licensee is referred to as “A”.

(3) A notice under sub-paragraph (1) must also state that, within the period specified in the notice, A may either—
  (a) make representations about the proposal, or
  (b) inform the authority that A wishes to do so.

(4) The period specified in the notice must be not less than 14 days beginning with the date on which the notice is given to A.

(5) The authority may refuse the application, or revoke or vary the licence under section 4 if—
  (a) within the period specified in the notice, A informs the authority that A does not wish to make representations, or
  (b) the period specified in the notice expires and A has neither made representations nor informed the authority that A wishes to do so.

(6) If, within the period specified in the notice, A informs the authority that A wishes to make representations, the authority—
  (a) must allow A a further reasonable period to make representations, and
  (b) may refuse the application, or revoke or vary the licence under section 4 if A fails to make representations within that period.

(7) If A makes representations (either within the period specified in the notice under sub-paragraph (1) or within the further period under sub-paragraph (6)), the authority must consider the representations.

(8) If A informs the authority that A wishes to make oral representations, the authority must give A the opportunity of appearing before, and being heard by, a person appointed by the authority.

8.  
(1) If the authority refuses the application, or revokes or varies the licence under section 4, it must give A a notice setting out the decision and the reasons for it.

(2) A notice under this paragraph must also state—
  (a) that A may appeal under paragraph 9 against the decision,
  (b) the time within which such an appeal may be brought, and
  (c) in the case of a revocation or variation under section 4, the date on which the revocation or variation is to take effect.

Appeals

9.  
(1) An applicant may appeal to a magistrates’ court [Scotland?] against the refusal of an application made under paragraph 2 or 3.

(2) A licensee may appeal to a magistrates’ court [Scotland?] against the revocation or variation of a licence under section 4.
(3) An appeal under this paragraph is to be made within the period of 21 days beginning with the day on which notice of the decision to refuse the application, to include the condition, or to revoke or vary the licence under section 4, was given.

(4) The procedure on an appeal under this paragraph is to be by way of complaint for an order and in accordance with the ...........[Scotland?].

(5) For the purposes of the time limit for making an appeal under this paragraph, the making of the complaint is to be treated as the making of the appeal.

(6) On an appeal under this paragraph, the court [Scotland?] may—
(a) confirm, vary or reverse the authority’s decision, and
(b) give such directions as it considers appropriate having regard to the provisions of this Act.

(7) The authority must comply with any directions given by the court [Scotland?] under sub-paragraph (6).

(8) But the authority need not comply with any such directions—
(a) until the time for making an application under......... [Scotland?] (application by way of case stated) has passed, or
(b) if such an application is made, until the application is finally determined or withdrawn.
SCHEDULE 2
CLOSURE OF UNLICENSED SITES

Interpretation
1. (1) For the purposes of this Schedule, a person has an interest in premises if the person is the owner, leaseholder or occupier of the premises.
(2) In the case of a local authority, the powers conferred by this Schedule are exercisable only in relation to premises in the authority’s area; and “the local authority”, in relation any premises, is to read accordingly.

Closure notice
2. (1) This paragraph applies if a constable or the local authority is satisfied—
(a) that premises are being used by a scrap metal dealer in the course of business, and
(b) that the premises are not a licensed site.
(2) But this paragraph does not apply if the premises are residential premises.
(3) The constable or authority may issue a notice (a “closure notice”) which—
(a) states that the constable or authority is satisfied as mentioned in sub-paragraph (1),
(b) gives the reasons for that,
(c) states that the constable or authority may apply to the court for a closure order (see paragraphs 4 and 5), and
(d) specifies the steps which may be taken to ensure that the alleged use of the premises ceases.
(4) The constable or authority must give the closure notice to—
(a) the person who appears to the constable or authority to be the site manager of the premises, and
(b) any person (other than the person in paragraph (a)) who appears to the constable or authority to be a director, manager or other officer of the business in question.
(5) The constable or authority may also give the notice to any person who has an interest in the premises.
(6) Sub-paragraph (7) applies where—
(a) a person occupies another part of any building or structure of which the premises form part, and
(b) the constable or authority reasonably believes, at the time of giving the notice under sub-paragraph (4), that the person’s access to that other part would be impeded if a closure order were made in respect of the premises.
(7) The constable or authority must give the notice to that person.

Cancellation of closure notice
3. (1) A closure notice may be cancelled by a notice (a “cancellation notice”) issued by a constable or the local authority.
(2) A cancellation notice takes effect when it is given to any one of the persons to whom the closure notice was given.
(3) The cancellation notice must also be given to any other person to whom the closure notice was given.

Application for closure order
4.
Where a closure notice has been given under paragraph 2(4), a constable or the local authority may make a complaint to a justice of the peace [Scotland?] for a closure order (see paragraph 5).

A complaint under this paragraph may not be made—
(a) less than 7 days after the date on which the closure notice was given, or
(b) more than 6 months after that date.

A complaint under this paragraph may not be made if the constable or authority is satisfied that—
(a) the premises are not (or are no longer) being used by a scrap metal dealer in the course of business, and
(b) there is no reasonable likelihood that the premises will be so used in the future.

Where a complaint has been made under this paragraph, the justice [Scotland?] may issue a summons to answer to the complaint.

The summons must be directed to any person to whom the closure notice was given under paragraph 2(4).

If a summons is issued under sub-paragraph (4), notice of the date, time and place at which the complaint will be heard must be given to all the persons to whom the closure notice was given under paragraph 2(5) and 2(7).

The procedure on a complaint under this paragraph is to be in accordance with the Magistrates’ Courts Act 1980 [Scotland?].

Closure order

This paragraph applies if, on hearing a complaint under paragraph 4, the court is satisfied that the closure notice was given under paragraph 2(4) and that—
(a) the premises continue to be used by a scrap metal dealer in the course of business, or
(b) there is a reasonable likelihood that the premises will be so used in the future.

The court may make such order as it considers appropriate for the closure of the premises (a “closure order”).

A closure order may, in particular, require—
(a) that the premises be closed immediately to the public and remain closed until a constable or the local authority makes a certificate under paragraph 6;
(b) that the use of the premises by a scrap metal dealer in the course of business be discontinued immediately;
(c) that any defendant pay into court such sum as the court determines and that the sum will not be released by the court to that person until the other requirements of the order are met.

A closure order including a requirement mentioned in sub-paragraph (3)(a) may, in particular, include such conditions as the court considers appropriate relating to—
(a) the admission of persons onto the premises;
(b) the access by persons to another part of any building or other structure of which the premises form part.

A closure order may include such provision as the court considers appropriate for dealing with the consequences if the order should cease to have effect under paragraph 6.

As soon as practicable after a closure order is made, the complainant must fix a copy of it in a conspicuous position on the premises in respect of which it was made.

A sum which has been ordered to be paid into court under a closure order is to be paid to the designated officer for the court.

Termination of closure order by certificate of constable or authority
6. (1) This paragraph applies where—
(a) a closure order has been made, but
(b) a constable or the local authority is satisfied that the need for the order has ceased.

(2) The constable or authority may make a certificate to that effect.

(3) The closure order ceases to have effect when the certificate is made.

(4) If the closure order includes a requirement under paragraph 5(3)(c), any sum paid into court under the order is to be released by the court to the defendant (whether or not the court has made provision to that effect under paragraph 5(4)(a)).

(5) As soon as practicable after making a certificate, the constable or authority must—
(a) give a copy of it to any person against whom the closure order was made,
(b) give a copy of it to the designated officer for the court which made the order, and
(c) fix a copy of it in a conspicuous position on the premises in respect of which the order was made.

(6) The constable or authority must give a copy of the certificate to any person who requests one.

Discharge of closure order by court
7. (1) Any of the following persons may make a complaint to a justice of the peace [Scotland?] for an order that a closure order be discharged (a “discharge order”)—
(a) any person to whom the relevant closure notice was given under paragraph 2;
(b) any person who has an interest in the premises but to whom the closure notice was not given.

(2) The court may not make a discharge order unless it is satisfied that there is no longer a need for the closure order.

(3) Where a complaint has been made under this paragraph, the justice [Scotland?] may issue a summons directed to—
(a) such constable as the justice considers appropriate, or
(b) the local authority,
requiring that person to appear before the magistrates’ court [Scotland?] to answer to the complaint.

(4) If a summons is issued under sub-paragraph (3), notice of the date, time and place at which the complaint will be heard must be given to all the persons to whom the closure notice was given under paragraph 2 (other than the complainant).

(5) The procedure on a complaint under this paragraph is to be in accordance with the Magistrates’ Courts Act 1980 [Scotland?].

Appeals
8. (1) An appeal may be made to the Crown Court against—
(a) a closure order;
(b) a decision not to make a closure order;
(c) a discharge order;
(d) a decision not to make a discharge order.

(2) Any appeal under this paragraph must be made before the end of the period of 21 days beginning with the day on which the order or the decision in question was made.

(3) An appeal under this paragraph against a closure order or a decision not to make a discharge order may be made by—
(a) any person to whom the relevant closure notice was given under paragraph 2;
(b) any person who has an interest in the premises but to whom the closure notice was not given.

(4) An appeal under this paragraph against a decision not to make a closure order or against a discharge order may be made by a constable or (as the case may be) the local authority.

(5) On an appeal under this paragraph the Crown Court may make such order as it considers appropriate.

Enforcement of closure order

9.

(1) A person is guilty of an offence if the person, without reasonable excuse,—
(a) permits premises to be open in contravention of a closure order, or
(b) otherwise fails to comply with, or does an act in contravention of, a closure order.

(2) If a closure order has been made in respect of any premises, a constable or an authorised person may (if necessary using reasonable force)—
(a) enter the premises at any reasonable time, and
(b) having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.

(3) Sub-paragraph (4) applies if a constable or an authorised person (“the officer”) seeks to exercise powers under this paragraph in relation to any premises.

(4) If the owner, occupier or other person in charge of the premises requires the officer to produce—
(a) evidence of the officer’s identity, or
(b) evidence of the officer’s authority to exercise those powers,
the officer must produce that evidence.

(5) A person who intentionally obstructs a constable or an authorised person in the exercise of powers under this paragraph is guilty of an offence.

(6) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding [level 5 on the standard scale in England & Wales].

(7) In this paragraph “an authorised person” is a person authorised for the purposes of this paragraph by the local authority.
Supplementary written submission from Glasgow City Council

Briefing Note: Applications for Metal Dealers Licence Summary of applications received by the Glasgow City Council for Metal Dealer’s Licences issued under the Civic Government (Scotland) Act 1982

Introduction

The Council issues the following types of licence under the Civic Government (Scotland) Act 1982 in connection with the regulation of metal dealers:

- Metal Dealer’s Licence
- Itinerant Metal Dealer’s Licence
- Metal Dealers’ Exemption Warrant

The Council has issued these licences since the relevant provisions of the 1982 Act came into force in 1984.

Metal Dealer’s Licence

Since 1984 the Council has received 184 Applications for Metal Dealer’s Licence under section 29 of the 1982 Act.

The following table provided a summary of the number of applications received over the last eight calendar years and the outcome of those applications.

<table>
<thead>
<tr>
<th>Year</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
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<td>10</td>
</tr>
<tr>
<td>No. Granted</td>
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<td>14</td>
<td>6</td>
<td>10</td>
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<td>8</td>
</tr>
<tr>
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<td>0</td>
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<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
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</table>

Table 1: Applications for Metal Dealer’s Licence since 2007

There are 39 Premises that currently hold a Metal Dealer’s Licence issued by the Council.

Itinerant Metal Dealer’s Licence

Since 1984 the Council has received 85 Applications for Metal Dealer’s Licence under section 32 of the 1982 Act.

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1 Applications received in late 2014 have yet been determined
The following table provided a summary of the number of applications received over the last eight calendar years and the outcome of those applications.

<table>
<thead>
<tr>
<th>Year</th>
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<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
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</thead>
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<td>0</td>
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<td>0</td>
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*Table 2: Applications for Itinerant Metal Dealer’s Licence since 2007*

Prior to 2010 the last application for Itinerant Dealer was received in 1995.

There are 34 individuals that currently hold an Itinerant Metal Dealer’s Licence issued by the Council.

**Metal Dealers’ Exemption Warrant**

Since 1984 the Council has received 106 Applications for Metal Dealers’ Exemption Warrants under section 29 of the 1982 Act.

The following table provided a summary of the number of applications received over the last eight calendar years and the outcome of those applications.

<table>
<thead>
<tr>
<th>Year</th>
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<th>2008</th>
<th>2009</th>
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<th>2011</th>
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<td>4</td>
<td>1</td>
<td>2</td>
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<td>5</td>
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<tr>
<td>No. Refused</td>
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<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

*Table 3: Applications for Metal Dealers’ Exemption Warrant since 2007*

There are 11 Metal Dealers’ Exemption Warrants currently in force.
Supplementary written submission from Scottish Business Resilience Centre

As requested, I include some case studies on metal theft in Scotland—

Incident at Shieldhall Glasgow, November 2011. Thieves attempted to steal 2 x 132,000 volt cables from a tunnel under the dual carriageway that runs parallel to the M8. Thieves set fire to the cables in the hope of fusing them. The knock on effect was as follows:

- Power loss to 50,000 houses
- M8 was closed for 4 hours creating a four mile tailback stretching passed Glasgow airport
- Areas within the Southern and General Hospital lost power
- 20 trains were cancelled or delayed due to a junction box being knocked out
- Fire Fighters were unable to fight this fire due to the extreme heat within the tunnel and the possibility of residual charge within the cable
- The road above the tunnel actually melted due to the heat, road was closed for months as there was a debate about who was responsible for it.
- A total of 16 appliances, 90 personnel attended this incident which lasted 22 hours
- Initial cost of incident was put at over £3 million

In 2014, thieves stole four meters of cable from an electrical substation in Gourock. This resulted in loss of power to 280 houses. Due to the power surge four individual house fires were reported. One person was treated for smoke inhalation.

In 2012, an incident occurred at a category B listed building. The first crews to attend this fire reported quantities of stripped cable on the floors where the fire began.

- Giving a grand total of 685 personnel utilised throughout incident
  - 175 Police officers were utilised throughout the duration of this incident, including 2 chief inspectors, 6 inspectors, 12 sergeants, 137 constables and 18 control staff
  - 510 Fire and Rescue Service personnel were utilised, and there were 99 fire appliance movements to the incident during the course of the fire-fighting activities
- All surrounding properties including 90 residential flats were evacuated
- The entire incident lasted 51 hours from when the first emergency call was received
- Overall cost reported at £19 million
During the last few years, a number of incidents occurred involving the theft of dry riser outlets used for delivering water to upper levels during a fire in multi-storey buildings. Valves were stolen from 20-storey blocks in Kestrel Road and Lincoln Avenue, each containing 114 flats, and two 24-storey blocks in Kirkton Avenue, with 138 flats in each.

- One month after the thefts were spotted, fire-fighters tackled a blaze on the 19th floor of one of the Kirkton Avenue block, in which a female resident needed hospital treatment.

- Similar incidents have also occurred—
  - In 2012, 6 outlets were stolen from Kennishead Ave, Pollok
  - In 2013, 17 risers were stolen from Govan
  - In 2013, risers also stolen from Kings Court in Aberdeen
  - In November 2014, dry riser outlets stolen from multi-storey block in Cumbernauld

- Following these incidents, scrap metal sites were visited to raise awareness of the thefts, which resulted in a number of items being recovered.

- The British Metals Recycling Association (BMRA) also has a website to alert scrap metal dealers to certain stolen items.

One fatality in North Lanarkshire, in 2013, as a result of attempted theft of live overhead cables.
Supplementary written response provided by Gary Walker on behalf of SEPA

Section 34 offences: The Environmental Protection Act 1990 (as amended)

The proposed penalty provisions for Scrap Metal Dealers licensing are comparable with the penalties for ‘duty of care’ offences in section 34 of the Environmental Protection Act 1990 (as amended).

The section 34 duty of care requirements are in some respects similar to the proposed requirements of the Scrap Metal Dealers licensing system. For example, section 34 includes a record keeping requirement where transfers of waste between parties must be recorded on a written transfer note. That written record must, amongst other things, include the identity of the persons involved, the date, time and place of transfer, and a description of the waste. Transfer notes must be retained for 2 years.

The penalty for failing to comply with the duty of care requirements (section 34 (6), EPA 1990) is as follows -

Any person who fails to comply with the duty imposed by subsection (1), (1A) or (2A) above or with any requirement imposed under subsection (5) above shall be liable —

(a) on summary conviction, to a fine not exceeding the statutory maximum; and
(b) on conviction on indictment, to a fine

The statutory maximum is the same as that proposed for the Scrap Metal Dealers licensing system: £5,000.

Section 33 Offences: The Environmental Protection Act 1990 (as amended)

By contrast, the penalties for failing to obtain a waste management licence (section 33 of the Environmental Protection Act 1990 as amended) are much higher. Waste management licensing conditions can be used to impose technical standards for storage (e.g. containment or impermeable surfacing), operating restrictions (e.g. that all end of life vehicles must be depolluted), as well as record keeping requirements.

A person who commits an offence under this section is liable —

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £40,000 or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.

It is SEPA’s view that the requirements associated with waste management licences are more onerous than the proposed Scrap Metal Dealer requirements and that the difference in the level of penalty is understandable.
THE Government at Westminster, introduced a new piece of legislation in to law on Dec 2012 stopping the payment of cash, for the purchase of scrap metal. However this piece of legislation; was ill though out it was rushed through parliament not to reduce theft, but to find a way to apply a new tax.

Every one is entitled to be paid cash, cheques, or cards have no legal standing; whereas A Bank note is legal tender!

THE END RESULT WAS A COMPLETE HASH.

There was great stories going about that hundreds of millions of pound of stolen metal both ferrous/nonferrous being sold to Scrap merchants, if the Police and that includes transport police new of this flagellant breach of the law why was none of these scrap merchants brought to book, I honestly thought that Grimes brothers/Hans Christian Anderson, had risen from the grave, Lord Oliver Henley endorsed the Police statement of the amount that was stolen; why did he not ask the question, why was this material not recovered, and what happened to the convictions, now the new rules allow scrap merchants to dispose of the scrap metal immediately, they have removed the part where all metal that where bought must be tagged and remain for fourteen days before they could be disposed of.

The Scottish governments, questionnaire on should the Scrap metal merchants, pay cash for the materials they have purchased, or should payment be made by cheque, or debit card.

Unfortunately this was not thought out properly, Cheques and debit cards are only good if you have cash in the account, people who have to receive payment can demand cash, that is their right, but if the government wish to dispense with cash as a means of payment, they will require to pass a law in parliament, to dispense with the coin off the realm.

If the government is determined to implement this legislation, to reduce and curb the theft of metal; or is it a means to collect more tax, remember tax has already been paid when said material was first purchased; that is the real question.

To reduce the theft, one must control the way scrap metal is disposed off. You must separate the waste management licence, from the scrap metal brokers licence; since the inception of the waste management licence, theft of metal has increased, any one can apply for a waste carriers licence, or a recycling licence, there is no control, unlike the Brokers licence, there is a curtail on your trading hours Monday to Saturday 7am 5pm Sat 7am 12noon. All mater is logged with the type, weight, name of seller, car registration, time and what was paid, and they must sign, for the cash payment, the material must be retained in the brokers care for fourteen days, this is how its always been, the police come in and sign the book, if material has been stolen, the police can ask for a copy of the tape from the cctv.

What is required is a league table, in three divisions
Small, 0/5,00000 pounds turnover

Medium, 5,00000, 3,000000 pounds turnover

Large, 10,000000 +, pounds, excluding V A T

Those in the 10million pound bracket would have the most to lose,

Those in the 10million bracket, who pass the criteria, under the new set-up would be nominated would be afford the position of recommended Government preferred buyer of scrap metal from local authorities, former nationalised industries and government contractors.

The holders of waste carriers, and recycling licences issued by S E P A, D E F R A. Would be excluded from the purchase of buying scrap material. They would be curtailed to recycling and the carriage, of waste, they would be under the control of S E P A

New rules and conditions would need to be introduced, including severe fines and jail time, any convictions, would result of losing their licence to trade in the purchasing of scrap and the confiscation of their yards and machinery. This may sound harsh but needs must.

The regions, for purchasing scrap metal would be divided into areas like Lothian's, Border, Strathclyde, Central, ECT,

All this can be discussed to set the rules cost of new licences the people who would determine, the new conditions and cost would be invited to take part, and PHS it would also discourage the money laundering, from rogue traders

This proposal would curtail the transfer of stolen materials; in fact it would reduce the stolen metal by 90%, this is only part of the proposal we can discuss this in greater detail later.
Dear Assistant Chief Constable

Air Weapons and Licensing (Scotland) Bill
Local Government and Regeneration Committee

I refer to the above Bill and the issue of fees for licenses which was discussed during the evidence session on 3 December 2014.

During questioning there was discussion around the fee level that might be set for an application for an air weapons license. Subsequently the Committee became aware the Home Office had issued a consultation document on proposals to increase firearm license fees. The Committee have noted the proposed increases along with the suggestion the revised fee levels are set to achieve full cost recovery for the police albeit at such time as a new online system comes into force.

The Committee have requested I write to you to obtain the views of Police Scotland in relation to the Home Office consultation and in particular your views as to whether the proposed new levels will achieve their aim in Scotland relating to full cost recovery.

I would be grateful to receive your views in this regard and given the timetable we are working to on the Bill it would be helpful if I could have these by 12th January 2015.
I am copying this letter to Aileen Bearhop in the Scottish Government as the Committee would also welcome the Government’s views on the above.

Yours sincerely

David Cullum
Clerk
Local Government and Regeneration Committee
9 January 2015
Your Ref:
Our Ref:

David Cullum
Local Government and Regeneration Committee
Room T3.40
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Mr Cullum

Air Weapons and Licensing (Scotland) Bill
Local Government and Regeneration Committee

I refer to your letter of 19 December 2014 in relation to the fees for Air Weapon Certificates and the recent consultation issued by the Home Office in respect of wider firearms fees.

It is the position of Police Scotland that a fee increase is well overdue, the last increase being in 2001. Police Scotland welcome an increase, but recognise that the proposed fees for Firearm and Shot Gun Certificates and other associated certificates remain under the true cost of firearms licensing to the police at this time. You may be aware that the initial work completed by the Association of Chief Police Officers for England and Wales, using an activity based costing approach, suggested that the true cost to the police of a grant of a Firearm or Shot Gun Certificate was £189.

The increase in fees is a step in the right direction, and it should remain under review until the fees reflect a full cost recovery basis, whilst the police on a UK wide basis continue to work on becoming more cost efficient by utilising such measures as e-commerce. E-commerce reflects the application process for a UK passport, where an applicant will apply for a Firearm or Shot Gun Certificate online. You will understand that the fees which are proposed by the UK Government are directly
linked to the roll out of e-commerce, which is intended to be piloted in a number of English forces this year. Whilst Police Scotland is committed to the principle of e-commerce, with the introduction of i6 imminent it is not considered appropriate to introduce e-commerce at this time.

As you will understand, the Home Office consultation related to Firearm and Shot Gun Certification and the more intrusive enquiries required for these proportionately more lethal firearms. We assessed, in December 2013, that the cost to Police Scotland in carrying out proportionate checks in respect of air weapon certification would be approximately £85 per application.

It is the view of Police Scotland that once a fee has been reached that reflects full cost recovery, the fee should be index linked, to prevent the shooting communities and the police ending up in a similar to position to where we are today.

I trust this will assist in advising your considerations.

Yours sincerely

Nelson Telfer
Assistant Chief Constable
Local Policing West
Supplementary written submission from the Institute of Licensing

I refer to my attendance at the evidence session on 10 December 2014 in connection with the Air Weapons and Licensing (Scotland) Bill, on behalf of the Institute of Licensing. The Committee will recall that I was asked to present further written evidence in connection with the three technical areas I sought to discuss; namely:

**The Licensing (Scotland) Act 2005 ("the 2005 Act")**

- Transfers of Licences
- The option to have a "site only" provisional licence
- The status of a surrendered licence

**Transfers of Licences**

The provisions for transfers of licences are found in s.33 and s.34 of the 2005 Act. The provisions do not adequately deal with the reality of licensing practice and are in dire need of revision. As I said at the evidence session, if there was one aspect of the 2005 Act which every clerk and private practice solicitor and licensing practitioner would wish to see fixed it is this. The difficulties caused by the drafting in s.33 and s.34 are as follows:

**The Act does not deal with dissolution of companies.** As the Act is silent on this matter, the position of a licence held by a dissolved company is far from acceptable. In some areas this can involve having to seek a restoration of the company to the company register which requires a formal process in the sheriff court which can take many months and thus negate the business which may be trying to carry on at the premises. It may well be the case that company "A" holds the licence but company "B" is trading the venue. In such circumstances company B or the individual is left without a livelihood. A licence held by a dissolved company cannot, on the face of it, be transferred at all. Some licensing boards are willing to treat the licence as bona vacantia but this requires dealing with the QLTR who demand a significant payment to consent to allow the licence to be transferred. The Act should be amended to recognise dissolution, and provide a mechanism to deal with it such as allowing a person who has a right to occupy the premises transfer the licence absent any letter of consent.

**The Act bears no relation to Scots property law or conveyancing: the purchase and sale or leasing of licensed premises is firmly embedded in Scots property law.** The Act does not reflect common practice such as the completion of sales taking place dependent on the grant of a transfer of a licence. This can cause chaos when considering large corporate or commercial deals involving a large number of premises where transfer processing times vary across Scotland and it is impossible to agree on one "date" for the sale to complete, the "hive down" to occur, or whatever corporate/commercial transaction is being pursued. These difficulties are manifestly worse when the deal relates to properties in England as well as Scotland, such as a company buying pubs on both sides of the border. In many cases management companies or vehicles can be used and they end up being licence holders for a long period of time even though they do not operate the premises; this exposes them to liability and can jeopardise the commercial deal as a whole.
The Act does not provide for an interim or deemed grant: much of the issues over conveyancing could be fixed if the Act could allow a transfer to be "deemed granted" upon lodgement, pending final decision. This used to be the case under the Licensing (Scotland) Act 1976 where there was a two-stage "temporary" and "permanent" transfer; allowing the temporary transfer to take effect immediately whilst the permanent was considered. This is also the case in the English Licensing Act 2003 which provides for a transfer to take effect on lodgement of the application (s.43, Licensing Act 2003)

The Act is overly prescriptive in whom can apply: the Act lays down certain circumstances where only certain parties can make an application. This includes a simple case of where the "business" is to transfer (s.34(3)(d). However, if the premises is not trading for whatever reason, is there in fact a "business" to transfer? Some licensing boards refuse to accept transfers where the business is not a "going concern". This is overly prescriptive and the Act does not explain what is meant by the "business" transferring. The answer to this is to allow ANY PERSON to make the application provided they can demonstrate they have a right to occupy the premises. Again we would draw your attention to the provisions of the English licensing system and sections 42 and 43 of the 2003 Act.

The 28 day deadline for lodgement is overly prescriptive: the Act imposes a 28 day deadline for the lodgement of transfers under certain circumstances ie when the licence holder dies, becomes mentally incapable or declared insolvent. This time period does not adequately reflect the reality of the timing particularly in relation to insolvencies. It is common for an insolvency practitioner to be appointed sometime well after the initial declaration of insolvency. The 28 days is already running at this point before the insolvency practitioner is even aware of it. 28 days might also be deemed to be too short notice for a family member dealing with a death or a person declared incapable. If the 28 days passes without an application being lodged, the licence "ceases to have effect" (see below re surrender). This quite often means a trading business and the jobs and livelihoods that the business represents is closed down because the licence is "lost".

The Act does not deal with certain types of insolvency: as mentioned above, the Act requires a transfer to be lodged within 28 days of the licence holder being declared insolvent. The only person who can apply for the licence is the appointed insolvency practitioner. But the Act does not cover every single type of insolvency.

The Act does not make it clear who is liable: who is liable for licensing offences where a transfer is pending? The Act does not deal with this. The outgoing owner may still be on the licence and therefore liable; yet he may no longer be involved in the premises. It is very common because of the issues noted above for a conveyancing transaction to settle meaning party A has no legal involvement in premises at all; yet because the transfer of the licence to party B has not been approved, party A could still be liable for criminal offences, be cited to hearings and so on.
Provisional "Site Only" Applications

The 2005 Act does not allow a process which I referred to as a "site only" provisional licence. Provisional licences are sought where premises are yet to be built or under construction. Provisional licences must be accompanied by the same level of detail as full licences. This causes difficulties because having to lodge layout plans for a premises which may not even be built is not easy. It means that applicants are lodging fictitious plans just to get the application in the system. Applicants and developers need commercial certainty of knowing a licence will be granted before a multi-million pound investment crystalises and a premises is built. You cannot have a 5 story hotel, for example, being built without knowing the licence is secured. Applications therefore need to be lodged very early in the process. It is not easy for developers and applicants to secure funding from lenders or capital venture funds and so on unless the commercial certainty of the licence is secured. Yet the Act requires the same level of detail for a provisional licence as it does for a full licence.

The Institute of Licensing therefore suggests the Parliament should re-introduce the old "site only" provisional licence route. Under s.26(2) of the Licensing (Scotland) Act 1976 it was perfectly competent to have a new licence application lodged but without the full detail of layout. Planning would not be jeopardised because planning permission needs to be in place even where a provisional licence is lodged. A certificate from the planners must be lodged with any new licence application. The use of "site only" applications worked for 30 years under the 1976 Act without falling into disrepute. The licensing board would still see the general location of the premises, they would still see the operating plan detailing matters such as trading hours, activities, description of the premises, and so on. In our submission the "site only" provisional licence would be the exact same existing 2005 Act process but without having to lodge a detailed layout plan.

Surrendered Licences

Section 28 of the 2005 Act says that a licence which has been surrendered "ceases to have effect". But that Act does not state what that means. Is it irretrievably gone, or is it in the ether, capable of being brought back to life? Under the 1976 Act the licences could be brought back to life by way of a transfer application. It would be useful to have the 2005 Act allow this to occur. Licences can be surrendered out of spite. There are numerous examples of this across Scotland; where in a landlord/tenant relationship the tenant holds the licence and surrenders the licence to spite the landlord following a fall-out over unpaid rent or any other dispute they may be having. This leaves the landlord with a public house or other type of premises with no licence and the only way back is to apply for a new one. But that is no mean feat as grandfather rights would no longer apply meaning the premises would be subject to modern building regulations and in some cases might not be capable of getting a licence back due to the exorbitant cost of works. Take a Scottish castle or large country house which is licensed. If that licence were surrendered it may be very difficult for that premises to meet current regulations and therefore no new licence could be granted. In addition to this, the premises may be situated in an overprovision zone meaning they are faced with a rebuttable presumption against getting the licence back, and just because the premises held a licence before does
not mean a new one will be granted. And all this because the licence was surrendered out of spite.

Under the 1976 Act it was accepted that a surrendered licence could be re-activated via a transfer: see Tong v Glasgow District Licensing Board 1992 GWD 19-1125 Sh Ct. That is what the Institute would prefer to see occur under the 2005 Act.

**In Summary**

In respect of all three of these technical issues, the Institute is aware that the Law Society of Scotland Licensing Sub-committee has offered to draft provisions and submit these drafts to Parliament for consideration. The Sub-committee is a body representative of both local authority clerks and private practice solicitors. The Institute strongly suggests that Parliament invite the Sub-committee to provide the proposed drafting to cure the various defects which are noted above.

Can I offer my thanks again to the Local Government and Regeneration Committee for their willingness to allow me to raise these concerns on behalf of the Institute, and licensing practitioners generally. If further evidence is required either by way of written submission or in person at the Parliament I will be happy to make myself available.
15 January 2015

Kevin Stewart MSP
Convener
Local Government and Regeneration Committee

By email

Dear Mr Stewart,

Thank you for the opportunity to give oral evidence on the current Air Weapons and Licensing (Scotland) Bill (Dec 17, 2014).

As discussed at the evidence session, I enclose examples of good and bad practice in the current licensing regime and the implications for the functioning of the system. In assessing practice Alcohol Focus Scotland has applied accepted principles of good practice for public bodies\footnote{Public Bodies: A Guide for Departments, Chapter 8: Policy – Openness and Accountability. Cabinet Office, 2006. \url{https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80085/PublicBodiesGuide2006_8_policy_openness_0.pdf}}. The following has largely been drawn from work carried out by Alcohol Focus Scotland, supplemented with specific enquires made in response to your request.

The following areas have been covered:

1. Accountability and transparency
2. Working with stakeholders

If you require any further information from us please do not hesitate to get in touch.

Yours sincerely

Dr Deborah Shipton
Alcohol Focus Scotland

Summary

Accountability and transparency

Although licensing boards must seek to promote the licensing objectives (s.6.3(a)) there is no mechanism in statute that defines how licensing boards should report on their performance against their policy; the represents a significant accountability and transparency deficit.

Existing mechanisms to ensure accountability and transparency - such as publishing of policy statements and data - are not consistently adhered to, calling for more robust measures hold licensing boards to account.

The use of evidence in policy development has increased, although it still remains limited in overprovision assessments.

Working with stakeholders

There is growing engagement and participation of some stakeholders - largely health and police- in the licensing process.

There is less evidence of feedback from licensing boards to stakeholders.

Legislation to strengthen the reporting mechanisms - such as a statutory requirement on licensing boards to annually report on their performance, including summary licensing data – would begin to address the current accountability deficit and would support continued and improved engagement of stakeholders.

1. Accountability/transparency

There are three main accountability mechanisms with respect to the licensing board:

- Licensing boards are formally accountable to Scottish ministers.
- Local licensing forums have an “oversight” role.
- In any healthy democracy the broader stakeholders in any process should have access to the necessary information to be able to hold the main actor to account. In alcohol licensing the main stakeholders are the community, police, health, social work and the trade.

[In addition, all licensing board decisions are open to legal challenge, however, in practice this is not a not an accessible means of accountability for most stakeholders]

For the above mechanisms to function effectively it is crucial that the necessary information is made available by licensing boards in an accessible way.

The Licensing (Scotland) Act 2005 stipulates that the following are published:

- A statement of their policy (s.6)
- An overprovision statement (s.7)

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2 The Licensing (Scotland) Act 2005 states that “Where a Licensing Board decides not to follow any guidance issued under subsection (1), the Board must give the Scottish Ministers notice of the decision together with a statement of the reasons for it.” (S.142). When asked at the Scottish Licencing Law & Practice conference 08/11/13, no clerks reported ever given such notice when departing from the Guidance.

3 The Licensing (Scotland) Act 2005 states that “Forums must keep under review the operation of this Act in the Forum’s area and, in particular, the exercise by the relevant Licensing Board of their functions” (S.11).
However, there is considerable variability in how effectively licensing boards comply with these requirements.

**Policy and overprovision statements:**

The policy statements and overprovision statements are key documents that inform interested parties of how licensing boards will exercise their discretionary powers. Six months after the deadline for publishing the policy statement and overprovision statement 25 of the possible 40 policy statements (from the licensing boards and divisions) were published and only 19 of these had overprovision statements. Alcohol Focus Scotland is unaware of any action being taken as a result of Boards not publishing policy statements or overprovision statements, suggesting a significant accountability deficit.

A review of the published licencing policy statements\(^5\) and overprovision statements for the period 2013-2016 identified some good and bad practice in the statements. For the majority of policies the evidence base for the policy approach was not demonstrated; with limited assessment of the harms associated with the licensing objectives. Four policy statements (Glasgow, Aberdeen, Dumfries and Galloway and Highlands) stood out for use of evidence to support the policy direction. Similarly, for the overprovision policy there was limited use of evidence to support the position taken. Without clear evidence supporting policy and overprovision statements decisions would be open to legal challenge. Details of good and bad practice in other aspects of the policies (presentation and readability, children’s’ access, occasional licences, etc.) can be found in the report.

**Public register of information:**

Using standard on-line searching mechanisms Alcohol Focus Scotland was able to locate only 16 publicly available registers of licensing data covering 19 of the 40 licensing board areas and divisions. The register for South Ayrshire\(^6\) is an example of an easily locatable register in an accessible format with good searchable functions. For most premises licences in the South Ayrshire register there is a map, details on the type of premises (on- or off-sales), details and dates of variations to the licence, and a layout plan of the property. However, other online registers provide details only of the premises’ name and location, which provides little meaningful information to stakeholders. Not all registers are available online, for example, the register for Angus is only “available for inspection by contacting the Licensing Section”; this is likely to have significant implications for the accessibility of this information.

However, even the best of the published registers falls short of allowing any effective oversight of the process; many published registers provide insufficient primary information and none of the registers provide the summary information necessary to monitor the functioning of the licensing board’s practice over time. As an illustrative example, although details of occasional licences are included in many of the published registers, the lack of summary data means that currently it is not possible to determine trends in granting occasional licences over time.

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\(^4\) “premises licences, personal licences and occasional licences”, information “in relation to the Board’s decisions in relation to applications” and “other decisions of the Board”.

\(^5\) Review of statements of licensing policy 2013 to 2016. Alcohol Focus Scotland

http://www.alcohol-focus-scotland.org.uk/media/89685/review-of-statements-of-licensing-policy.pdf

\(^6\) http://www.south-ayrshire.gov.uk/licensing/register.aspx
Monitoring of performance

Although licensing boards must seek to promote the licensing objectives (s.6.3(a)) there is no mechanism in statute that defines how a licensing board should report on their performance against their policy and as far as we are aware none of the licensing boards undertake such monitoring. There are a number of areas of licensing boards’ practice that are relevant to the effective functioning of the process and, as such, are important areas to be monitored:

- Developing and monitoring performance indicators that relate to the 5 licensing objectives
- Decisions and reasoning behind decisions
- Reasons for reviews & processes that initiate a review
- Local conditions placed on licences
- Summary information on licences – personal, premises and occasional (e.g. total number, the type (large supermarkets, convenience stores, pubs, clubs, restaurants etc.), capacity; new licences granted each year: total number, type, capacity, if in an over-provision area; licensed hours: standard operating hours granted, seasonal variations, extended hours granted; objections: total number made, category of objector (police, public health, community, public, etc.) and final decision; extended hours granted each quarter/year; number of occasional licences granted (including information on capacity and hours), hours and for what reasons)
- Details of licensing boards’ meeting practices that promote accessibility and inclusiveness
- Processes to support community and other stakeholders to be involved.

A non-exhaustive review of meeting minutes (Forum meetings and joint Board & Forum meetings) was conducted by Alcohol Focus Scotland. Although examples of effective monitoring were not found, the following provides some illustrative examples of how current practice can be built on to improve the monitoring of licensing boards’ functions:

- Aberdeen City Forum made a recommendation for their licensing board to develop a “reporting framework which demonstrates how the implementation of the policy will promote the five licensing objectives” and provided a template for the reporting framework that clearly links to the five licensing objectives (February 2013). To date the licensing board has not taken forward this reporting framework.
- Glasgow licensing board reported on their “key indicators used to measure performance in administering the Act” (meeting minutes Dec 9th 2014). The indicators are administrative indicators (e.g. the time taken to process application) rather than policy and performance related. However, extending the indicators set to include information related to the five licensing objectives would begin to create an effective monitoring system.
- Fife and Highlands: these two licensing boards regularly provide updates of their decisions to their local licensing forum. Currently these updates are limited in the areas covered and as such do not provide an opportunity to monitor the regime. However, expanding the content of their updates would provide a better monitoring process.

Accountability and transparency - relevance for legislation: the above highlights examples of where existing legislation is not adhered to with respect to the provision of both policy statements and data, with no evidence of any action being taken. The full functioning of the licensing regimen is therefore compromised without effective accountability or transparency processes in place. Examples of seeds of some monitoring practices have been evidenced. It is widely recognised that annually reporting is the main vehicles by which public bodies should inform parliament and the
public about their activities and expenditure. Legislation to strengthen the reporting mechanisms - such as annual reporting of progress against policy statements – would begin to address the current accountability deficit.

2. Working with stakeholders and Forums

Development of robust policy statements, overprovision statements and the broader operation of the licensing regime is dependent on a constructive relationship between the licensing boards (board members and the clerk) and both statutory and non-statutory consultees. Opportunities for interaction between Boards and stakeholders include: informal and formal consultations and evidence gathering; the annual joint meeting between the local licensing forum and the licensing board; interactions with stakeholders around objecting or supporting specific applications; and the work of the License Standards Officer.

Consultation with stakeholders:

A review of the various consultation methods used for the development of the 2013-2016 licensing board policy statements identified that licensing boards adopted a variety of consultation processes to gather evidence from partners. Most Boards circulated draft polices and invited open comment, some Boards provided more structure, for example, through the use of questionnaires to guide the submissions. More extensive and varied processes tended to result in the most responses from stakeholders. Some Boards adopted multi-phased approach, and at least one Board conducted oral evidence sessions. Details of the Glasgow City consultation are provided for illustrative purposes:

- The Glasgow City licensing board carried out a pre-consultation exercise, which involved gathering information via questionnaires on specific areas of policy, followed by 12 face to face evidence sessions with responding individuals and organisations. The draft policy was then developed and consulted on, receiving 42 responses. Site visits of all proposed overprovision areas were conducted by licensing board members. Overall, this approach resulted in relatively high engagement in comparison to other parts of Scotland.

Although most policy statements reported that the licensing board gave due consideration to views of consultees very few Boards demonstrated, within their policy statements, how the information gathered through the various consultation processes was used to inform the policy development. However, Glasgow City and North Ayrshire did refer to the views of the consultees in their policy.

Stakeholders providing evidence to licensing boards:

Significant capacity building activity by Alcohol Focus Scotland and others was carried out in 2012/13 to foster closer working relationships and greater understanding between licensing personnel and public health practitioners. Since the 2010 licensing policy stakeholders - such as police and health - have increased engagement and participation in the licensing process in Scotland. Some illustrative examples of where licensing board areas have sought and/or received information from stakeholders for their policy development is described below:

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• In 2013 Renfrewshire licensing board consulted on their policy statement and received 13 formal responses, including from fire services, police, the Forum, community groups, health and trade. Drawing on these responses the licensing board produced a paper on potential overprovision areas for further consultation, seeking input from both statutory and non-statutory partners.

• NHS Grampian Public Health, with some support from the Aberdeen City ADP, made a submission to the Aberdeen City Council Licensing Board, providing additional information in support of potential areas of overprovision in relation to on and off sales. This information was subsequently used by the licensing board when it came to finalise its Statement of Licensing Policy.

• In 2013 NHS Highland presented the licensing board with three options for an overprovision policy supported by comprehensive evidence including data on the cost of alcohol harm, alcohol related crime, house fires, alcohol consumption, behaviour, hospitalisations and mortality together with information on access to alcohol, geographical variation within the Highlands and public opinion. After consultation with wider stakeholders the licensing board adopted NHS Highlands primary recommendation for their overprovision policy.

• In Edinburgh a small task group was formed from across the Alcohol and Drug Partnership to produce a report on alcohol related harm across the city. This included data on alcohol related crime, hospital and morbidity levels, alcohol related fires, numbers of licensees by licence type. Where possible this was presented by intermediate zones (smaller geographies) to help identify areas of the city with higher levels of both alcohol related harm and alcohol provision. The report also included some recommendations for the Forum and Board to consider. Although the licensing board opted not declare any areas overprovided - instead identifying 7 areas of “serious and special concern” - it remains that significant efforts were made by stakeholders.

**Relationship between licensing boards and local licensing forums:**

The [evaluation](http://www.scotcen.org.uk/media/40774/evaluation-of-the-licensing-scotland-act-2005-final-report.pdf) of the Licensing Act 2005 conducted by NHS Health Scotland\(^\text{10}\) identified problems with the Forums working relationship with Boards (pg 41). Some License Standards Officers reported that some Boards “took little cognisance of Forums” or “had very little contact with them”. With Forums currently the only body with an oversight role it is imperative that there are effective working relations between Boards and Forums.

**Partnership working - relevance for legislation:** The effective functioning and monitoring of the licensing process is dependent on constructive and productive working relationships between all stakeholders involved. Participation of stakeholders in the process has increased and there are examples of good practice. However, there is less consistency in Boards feeding back to stakeholders or evidencing their policy directions and no evidence of licensing boards effectively reporting on their performance. Effective feedback to stakeholders is crucial for their continued engagement in the process. Legislation to strengthen the reporting mechanisms by Boards would support continued and improved engagement of the broader stakeholders.

Supplementary written submission from the British Transport Police

First of all – we have not asked all Local Authorities, so do not have the completely definitive picture, but:

Local Government Association state that, although the staff that deal with the Scrap Metal Dealers Act 2013 are not the same as those who deal with fly-tipping issues, the latter is very high on local authorities agendas, so they would have expected it to have come up if the Act had caused problems – so no central awareness of any linking factors.

Local authorities in the Midlands were approached to ascertain if they had any historical, anecdotal or statistical data linking the two and none had any evidence of an increase due to the Act.
CORRESPONDENCE TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Correspondence from the Scottish Government, 6 February 2015

The Committee wrote to all 14 NHS Boards in Scotland on 12 January 2015 regarding the alcohol licensing provisions contained at Part 2 of the Bill. During evidence sessions, there was some debate around the extent to which Health Boards seek to interact with licensing boards when the latter are considering applications.

Letter from the Committee clerk

NHS Ayrshire & Arran
NHS Borders
NHS Dumfries & Galloway
NHS Eileanan Siar
NHS Fife
NHS Forth Valley
NHS Greater Glasgow & Clyde
NHS Lanarkshire
NHS Lothian
NHS Orkney
NHS Tayside
NHS Shetland; NHS Highland and NHS Grampian

Correspondence from Assistant Chief Constable Nelson Telfer, Police Scotland, following the Committee meeting on 29 January 2015, 23 February 2015

Correspondence from the Scottish Government regarding written evidence, 23 January 2015
Dear David

Thank you for your letter of 19 January asking for clarification of a number of points in relation to the Air Weapons and Licensing (Scotland) Bill. I take your questions in turn.

**Air Weapons**

- “Notwithstanding paragraph 51 of the Policy Memorandum, additional clarification is sought of the Scottish Government’s rationale for 14 – 17 year olds being subject to special requirements and conditions and also whether there are any statutory impediments to setting the age limit lower? The Committee are somewhat exercised generally around age limits compounded by prospective changes to the voting age.”

Section 7 of the Bill places additional requirements on 14 to 17 year olds granted an air weapon certificate. Specifically, under-18s are prohibited from buying or otherwise owning an air weapon, and can only be granted an air weapon certificate for a limited range of purposes. This is consistent with the existing Firearms Act 1968, which prevents under-18s from buying any firearm (including shotguns and air weapons), and restricts the reasons for which an under-18 may be granted a firearm or shotgun certificate. The 1968 Act in turn follows the EU Weapons Directive 91/477/EEC, which states that member states should not allow under-18s to buy firearms, or to acquire them except for a limited range of purposes. The list of conditions at section 7(5) of the Bill is broadly consistent with the purposes authorised by the Directive.

The EU Directive does not apply to air weapons and there is therefore no statutory impediment to setting a lower age limit for air weapon certificates. However, the Scottish Government believes that, where potentially lethal firearms are concerned, it is appropriate to maintain consistency with the approach in Great Britain and the
The current lack of a ‘fit and proper person’ test has been criticised by the police, Licensing Boards and those within the alcohol trade.

- The Policy Memorandum envisages that licensing boards may be able to consider police intelligence when applying the fit and proper test. The Committee has been told that licensing boards must operate according to the
principles of natural justice – which would include giving an applicant/licensee the opportunity to see and respond to any evidence, and may require information to be rejected if it does not meet certain evidential standards. Does the Scottish Government agree with this position? Can you provide examples of the types of police intelligence the Scottish Government envisages licensing boards will be able to take into account?"

The Scottish Government would agree with the view that a Licensing Board must operate according to the principles of natural justice. It would be the view of the Scottish Government that the existing legislation is compliant with the principles of natural justice and the amendments proposed in the Bill do not alter this. For example, the consideration of premises licence must be determined at a hearing and such a hearing must take place at a meeting of a Licensing Board. Where the police make representations concerning a premises licence application, the Board must give a copy to the applicant (s.22(3)(a)). Thereafter, at the hearing, the applicant or their legal representative will have the opportunity to dispute any of the information provided to the Board as they see fit. Similarly, where there is to be a review hearing of a premises licence, s.38(3) provides that the Board must provide the licence holder with notice of the hearing and a copy of the premises licence review proposal or application. As per the previous example, at the review hearing the applicant or their legal representative will have the opportunity to dispute any of the information provided to the Board as they see fit.

It is for the Board to determine the weight that it places upon the evidence placed before it and their decision would be open to appeal.

The term police intelligence is broad and potentially misleading. It can, for example, include incidents witnessed by a police officer or reports received in an area. We understand that the police are currently considering best practice in relation to the presentation of intelligence to Boards. This process will be informed by Board practice and case law.

Metal Dealers

- “The Committee understands that only a person (“a metal dealer) who ‘buys and sells’ metal would require to be licensed under the Bill and that this would allow itinerant dealers who collect metal without paying for it and then sell it, to operate without a licence. It would also exclude other people who deal in scrap metal, such as demolition contractors who sell on metal recovered from their building work. Could you explain the thinking behind the decision taken to define a metal dealer in this way and what might the Scottish Government position be on widening the definition to someone who ‘buys or sells’ metal?”

The Bill currently before the Committee does not define metal dealers or itinerant metal dealers. In both circumstances the definition, and thereby those regulated by the licensing regime, is provided in s.37 of the Civic Government (Scotland) Act 1982. Instead the provision in the Bill, with regards to metal dealers, are intended to modernise and strengthen the regulatory regime of those currently defined as metal dealers or itinerant metal dealers.

That said, the Scottish Government is aware of the arguments that expanding the definition of a dealer to include those at the periphery who come into possession of
metal and then sell it, may assist enforcement. We are considering the implications of widening the definition of metal dealers and itinerant metal dealers. We are conscious that a wider definition may give rise to a new risk that the licensing requirement is wider than envisaged and may inadvertently capture people who are not in any sense scrap metal dealers e.g. a plumber who acquires metal when replacing piping and then sells it. Finally, it is perhaps worth noting that demolition contractors and mobile collectors who do not offer payment (i.e. they sell but do not buy metal) do not seem obvious outlets for stolen metal.

- “The Committee has heard that itinerant dealers currently evade the requirement for a metal dealer’s licence on the basis they have a waste carriers or a waste management licence. Can you respond to this suggestion and clarify the differences between the scrap metal and waste licensing requirements?”

Metal dealers operate under a dual licensing requirement, with two licences that run in parallel with separate objectives. The metal dealers licence is aimed at classically civic licensing objectives i.e. preventing crime and disorder, preventing nuisance, protecting public safety. The waste carriers licence is geared toward environmental protection and safe carriage and disposal of waste. If an individual is conducting activities that fall within the licensable activity under both licences then they require two licences. It would not be permissible for an individual with only a waste carrier’s licence to buy and sell metal by arguing that the metal was only waste.

- “The Committee has been advised it can be difficult for licensing authorities to maintain oversight of itinerant dealers that are licensed by that authority but operate elsewhere across Scotland. Presumably, the system would also allow itinerants to bypass any additional requirements imposed by a single licensing authority and still operate in other areas. The Committee notes that itinerant dealers operating in England and Wales are required to hold a licence from each local authority in which they operate. How does the Scottish Government respond to the points above, how does it anticipate local authorities will monitor the operation of itinerant dealers when working outwith the local area and would it consider changing the current arrangements to require itinerants to hold a licence for each authority area in which they operate? Or to obtain a national licence?”

Any licensing system balances effective regulation against disproportionate administrative burden. In the case of itinerant metal dealers, the Parliament, in passing the Civic Government (Scotland) Act 1982, felt that the balance fell in allowing an itinerant dealer to work nationally as opposed to having to seek up to 32 different licences to operate across local authority boundaries.

We accept that enforcement may be strengthened by limiting the scope of a licence. That said, we would not regard it as an insuperable problem. If an individual comes to the attention of either a licensing authority or the Police then they can check the position with the issuing authority.

- “A number of organisations have suggested the Bill should require metal dealers to display their licence, which would assist enforcement. Such a provision is included in the 2013 UK Act. Why has the Scottish Government not included such a provision in the Bill and would it consider doing so?”
We are considering the merits of this suggestion. However, it is currently the view of the Scottish Government that such a requirement could be delivered by existing secondary powers and does not require provision to be made for this in the Bill.

- “Metal dealers have indicated that the requirement to record the date when scrap metal is processed could be problematic. This is because metal is sorted and consolidated with other similar material. How does the Scottish Government respond to these comments?”

The Scottish Government sees the force of these arguments and will consider bringing forward an amendment at Stage 2.

Public Entertainment Venues

- “Concerns have been raised about the amount of time necessary before a local government resolution in relation to a public entertainment licence can come into force. Does the Scottish Government consider there is a case for reducing the current requirements from nine months?”

The Scottish Government is open to suggestions for an alternative period. Nevertheless, we are conscious that that a period of reasonable duration is required between a decision to expand a licensing requirement and the requirement coming into force. In some circumstances it would be the case that a business would be licensed for the first time and it is reasonable that they have time to apply for a licence and also to make any changes to their operations that may be required as a condition of the licence.

Sexual Entertainment Venues

- “There is concern some venues may claim that, as the performers are self-employed, there is no financial gain to the venue. This even although the Bill provides for a sexual entertainment venue licence to be required where there is direct or indirect financial gain. Local authorities have raised concern that the requirement for any sort of financial gain could lead to protracted legal action. Does the Scottish Government consider the definition currently takes this into account?”

Yes. The Scottish Government notes the evidence offered to the Committee in Oral evidence on 14 January from Professor Hubbard. He said,

‘The provisions clearly refer to direct or indirect financial gain. There has been no case in England in which anybody has challenged the idea that somebody providing free striptease entertainment may not be benefiting indirectly from increased patronage, which results in increased alcohol sales. I think that the definition is adequate in that sense.’

The Scottish Government shares that view and is also of the view that the same principle of ‘indirect gain’ would apply to someone facilitating self-employed performers.
“There is confusion amongst stakeholders as to what sort of venue might be captured by the definition of a sexual entertainment venue, in particular, private members’ clubs, massage parlours, gay saunas etc. Is it the Scottish Government’s intention to include these premises within the licensing regime and if not which premises does it intend to exclude under inserted 45A(7)(b)?”

The Scottish Government has no specific list of premises that would be excluded under 45A(7)(b) but it is conscious that such a power may be necessary if the concerns raised in evidence by the Federation of Scottish Theatre arose i.e. theatrical performances found themselves subject to licensing.

In respect of the types of venue raised in the question, if they meet the licensing definition in terms of the activities conducted on the premises and the need for financial gain, then the Scottish Government is content for them to be licensed. We note that nothing in the licensing regime would serve to permit or mitigate illegal activity if offences are being committed e.g. brothel keeping, trading in prostitution or use of premises for unlawful intercourse.

“What is the Scottish Government’s rationale behind setting the age of 18 years under which a person should not undertake employed duties at a time when sexual entertainment is being provided?”

The Scottish Government believes there is a clear public interest in young people not working within the premises of a sexual entertainment venue when sexual entertainment is being provided. The age limit seemed appropriate given the nature of the entertainment. This is in line with age limits in respect of related activity such as the age when alcohol can be purchased or sold unsupervised.

“What is the Scottish Government’s view on whether Licensing Boards or Licensing Committees are best placed to implement the sexual entertainment venues licensing regime and the reasons to support the view expressed?”

We consider that the Local Authority (Licensing Committee) is best placed to regulate sexual entertainment venues as the licence is a civic licence regulated under the Civic Government (Scotland) Act 1982. Licensing Boards are responsible for alcohol licensing under the Licensing (Scotland) Act 2005. In terms of the regime set out in the Bill, sexual entertainment venues would be in a position comparable to theatres, cinemas, concert venues and others who may find themselves needing both an alcohol premises licence as well as a civic licence.

Wider licensing matters

- “The Brightcrew case – arguably – prevents licensing boards exerting control over types of entertainment beyond sexual entertainment which might appear in a licensed premises’ operating plan – e.g. music and, if the Bill becomes law, theatre. Why should the law be strengthened in relation to sexual and theatre entertainment but not in these other areas?”

The Brightcrew case arguably does not create any new legal principles but rather restates the principles set out in the Licensing (Scotland) Act 2005. The Act permits a Licensing Board to regulate the sale of alcohol and premises on which the alcohol is sold and any other purpose connected to the sale of alcohol. This provides some of
the rationale for establishing a new licensing regime for sexual entertainment venues (indeed the Brightcrew case highlighted the limitations faced by Licensing Boards in this area). That said, we believe that a Board can adequately deal with a variety of matters that are conducted on the premises that can more closely be held to be connected to the sale of alcohol and it would not be helpful to Boards or licence holders to create a raft of new licences.

- “On a similar vein could the Scottish Government comment on suggestions that the use of occasional licenses can in some circumstances avoid more stringent tests being applied.”

As the Committee is aware, the Licensing (Scotland) Act 2005 sets out the legislative process for applying for an occasional licence. The occasional licence is a licence which covers a premises other than a premises that holds a premises licence, and can be made by a premises licence holder, a personal licence holder or a voluntary organisation. It can only have a period of not more than 14 days. There are limits on the number of occasional licences that a voluntary organisation may apply for. The 2005 Act also lays down conditions to attach to occasional licences. Generally speaking, the conditions replicate those for full premises licences.

The licence is for covering events that, by their very nature, could be infrequent and last for only a short space of time.

The Committee will wish to be aware that upon receipt of an occasional licence application the Licensing Board must give notice of it to the appropriate Chief Constable and the LSO. Any person may object to the occasional licence application. Grounds for refusal are effectively the same as that for premises licenses, with the exception of overprovision.

- “Has the Scottish Government given any consideration to the consolidation of licences more generally, for example, cinema licences with public entertainment licences?”

Sections 1 to 3 and 5 to 16 of the Cinemas Act 1985 are reserved under B5 of the Schedule of the Scotland Act 1998. It would be outwith the competence of the Scottish Parliament to legislate on the contents of these sections, which are primarily relating to the licensing of premises for the use of film exhibition.

We would consider it desirable for greater consolidation of licensing to occur where appropriate. In the case of theatre licensing there was considerable feeling from theatrical groups that regulation was burdensome which is why the Bill proposes that the licensing of theatres should be carried out under the public entertainment licensing provisions of the Civic Government (Scotland) Act 1982.

- “Is there consistency across the various licensing regimes as to what is considered minor and major variations to licences and how these are dealt with by the licensing authorities?”

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

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

There are separate arrangements under the civic licensing regimes within the Civic Government (Scotland) Act 1982. For Part II licences, Schedule 1, para 9 covers the notification of changes and alterations, and para 10 covers the variation and suspension of licences. Sex shops are contained with Part III of the Act and Schedule 2, paras 14 and 15 refer.

There are no existing plans for reform in this area either in respect of alcohol or civic licensing. There are no existing plans for reform in this area, although we would particularly welcome views from stakeholders about the current list of specified minor variations if they are concerned that issues that should be subject to a full hearing under the alcohol licensing regime are being treated as minor variations.

I hope this assists the Committee’s deliberations and I apologise for missing your deadline for responding.

Quentin Fisher
Air Weapons and Licensing (Scotland) Bill Team Leader
Letter to NHS Boards

Dear Chief Executive

The Local Government and Regeneration Committee is currently taking evidence at stage 1 of the Air Weapons and Licensing Bill. In particular they have been considering the alcohol licensing provisions contained at Part 2 of the Bill.

At the Committee meeting on 17 December the committee heard from health professionals, a member of a drug and alcohol partnership as well as a licensing board solicitor. There was some debate during the meeting around the extent to which Health Boards seek to interact with licensing boards when the latter are considering applications. This relates in particular to the provision of information to licensing boards on local health concerns which links into the licensing objections and potential overprovision within areas.

The Committee have asked that all Health Boards be contacted to advise the extent of their relationship with their local licensing boards, how much information they provide license boards and the extent to which local health concerns linked to alcohol are brought to the attention of the licensing board.

I would be grateful if you could provide this information for each license board within your Health Board area. The Committee would also welcome any comment you might wish to make on the extent to which the information you provide, if any, is in your opinion influencing licensing decisions.

I am afraid the Committee require this information no later than 31 January to allow them to complete scrutiny of the provisions in the Bill.

Many thanks

David Cullum
Clerk
Local Government and Regeneration Committee
Education and Culture Committee
Written response from NHS Ayrshire & Arran

Thank you for your recent enquiry, made on behalf of the Local Government and Regeneration Committee, requesting the following information:

- The extent of NHS Ayrshire & Arran’s relationship with our local licensing boards;
- How much information we provide to licensing boards;
- The extent to which alcohol-related health harms are brought to the attention of the licensing board;
- The extent to which the information provided to licensing boards is in our judgement influencing licensing decisions.

Primary, secondary and tertiary prevention of alcohol-related harm is strategically led in NHS Ayrshire & Arran by our three Alcohol and Drug Partnerships (ADPs), one covering each of our partner local authority populations (North, East and South Ayrshire). Our three ADPs at present jointly fund a senior pan-Ayrshire public health post. This has enabled a sustained focus on working within our local licensing systems to: raise awareness of the association between alcohol availability, consumption and harm in the population; advocate for a reduction of alcohol availability in the population; and support licensing boards in achieving their objective to protect and improve population health.

The remit of this role includes reviewing all\(^1\) alcohol licence applications submitted to North, East and South Ayrshire licensing boards. Each application is assessed in terms of its relative potential to increase the availability of alcohol, and so alcohol-related harm, in the population. Where the application is judged to increase availability in an area with high levels of alcohol-related harm, a representation in writing and through attendance at the licensing board meeting is made to this effect. Routinely published information on alcohol-related mortality and hospital admission rates are provided as part of these representations. This post also enables us to link to our three alcohol licensing boards through representation on the Alcohol Licensing Fora of North, East and South Ayrshire.

In addition, the post-holder annually convenes a meeting of the three licensing clerks. This provides a more informal opportunity to consider the health intelligence licensing boards require to achieve their objective of protecting and improving public health.

Finally, as part of the consultation for their 2013-2016 Licensing Policy Statements, each licensing board requested health intelligence to inform their assessment of overprovision. In response, reports were compiled and submitted by our Alcohol and Drug Partnerships, including: a brief review of the evidence of what works to reduce alcohol-related health and social harm; data relevant to the five licensing objectives (including geographical mapping of harms to highlight areas of particular concern); and public consultation findings.

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\(^1\) Occasional licenses are not notified to health as there is no mandatory requirement that licensing boards consult on these.
The extent to which the provision of the above information is influencing the decision-making of licensing boards is difficult to assess. The association between the availability of alcohol in the population and average harm levels is not a readily apparent concept. Board members have made comments which reveal an individual level perspective which does not appear to appreciate the impact of increased availability on consumption and harm at a population level (e.g. “How will the refusal of this off-license application stop Jane Smith from buying alcohol from other licensed premises in her area?”). There also appears to be a tension between a desire amongst board members to embrace opportunities for economic regeneration and the five licensing objectives they are tasked with achieving. The balance in this tension will inevitably be influenced, amongst other things, by the values and opinions of individual board members. What can objectively be stated in response to this question is, that despite advocacy for the reduction of availability in areas with high levels of alcohol related harm, 92% of alcohol licences applied for in East Ayrshire in 2014 were granted, with a corresponding figure of 100% in South Ayrshire. The percentage of applications granted in North Ayrshire in 2014, where they have declared the area as overprovided, was slightly lower at 80%.
Written response from NHS Borders

1. Extent of relationship with local licensing boards:

NHS Borders is represented on the Local Licensing Forum which has responsibility to:

- review the operation of the Act in their area and the exercise of the Licensing Board’s functions, and
- advise and make recommendations on matters they see appropriate

It is also a requirement for Licensing Boards to notify Health Boards of all applications and major variations (excluding occasional licences). The Alcohol & Drugs Partnership (ADP) Support Team on behalf of NHS Borders scrutinises the application and variations making comments on applications where applicable. Representatives from Public Health (Director of Public Health/ADP Support Team) will then make representations concerning any application put before it. This can include the requesting the Board to consider applying certain conditions to the licence.

NHS Borders are also a consultee on the Licensing Board Policy Statement including the overprovision statement and work with the ADP to provide commentary.

2. How much information is provided to Licensing Boards: NHS Borders provides data to the ADP who drafted on behalf of the Local Licensing Forum the ‘Alcohol Profile’ (2013/14 update has recently been circulated to Licensing Board members). This aims to collectively present information from a range of stakeholders including NHS on alcohol both locally and nationally to help support policy development and decision making. The Licensing Board chair is also a member of the ADP.

3. Extent to which local health concerns linked to alcohol are brought to the attention of the licensing board: recent formal agreement of processes to scrutinise applications and variations alongside available data through the Alcohol Profile has allowed a representation to be made to the Licensing Board on the 19th December 2014. This included recommendations which were taken on board by Licensing Board and a requirement put in place for this to be implemented.
Written response from NHS Dumfries & Galloway

NHS D&G has recently prepared a report for the Council’s Licensing Board on overprovision. Whilst the report was welcomed the evidence presented was not fully accepted by Elected Members and the conclusions regarding overprovision are not being acted upon in areas of greatest concern. We do work closely with Licensing staff on a range of licensing issues including a –reduce the strength ‘campaign with local off-licenses; tackling street drinking and advising on new applications. Please let me know if further information is required.
Written response from NHS Eileanan Siar

Further to your request to provide information on the extent of the relationship between the Health Board and the Licensing Board and linked matters, I am pleased to furnish the following information:

Western Isles Health Board and Western Isles Licensing Board

The Western Isles is one of the smaller licensing board areas, serving a total population of around 26,000. There are both on and off sales licensed premises and the Health Board receives statutory consultations on licensing applications. With a small population and limited number of premises, the number of licenses granted as new or reviewed is very low and therefore interaction between the two bodies is relatively low. The major relationship between the Health Board and Licensing Board in recent years has been through the Outer Hebrides Alcohol and Drug Partnership, of which both the Chief Executive of the Health Board and Chairman of the Licensing Board are members. The ADP has led on the activities with the Licensing Board around the ‘proof of age’ and appropriate selling of alcohol. The Licensing Board’s approach to specific issues such as overprovision, with which the Health Board is in agreement, and the Health Board, through its membership of the Local Licensing Forum, provided information for the revision of the licensing policy statement 2013-2016.

The new Director of Public Health is developing the relationship between the Health Board and the Licensing Board and is bringing the current health information to the Board’s attention. At present there are no specific concerns from the Health Board for the Licensing Board in terms of applications for new licenses or for licence extensions.
Written response from NHS Fife

NHS Fife has a standard response to the question from the Licensing Board about the health aspects within licensing applications. There is no formal over-provision policy in Fife so we are unable to comment on individual applications.

Dr Hannah, Deputy Director of Public Health, currently chairs the Fife Licensing Forum and the Forum receives a copy of the minutes of the Fife Licensing Board meeting. The Forum has also had a joint meeting with the Board which will now go ahead on an annual basis and the over-provision policy will remain a top agenda item.

The Board is supposed to be considering local data on licenses and alcohol-related harm as part of its over-provision policy. They have a copy of a recent study by Public Health into over-provision and more recent updates from the ADP but still no signs of an over-provision policy.

Some five years ago, the Board members were given a presentation on mapping data from the ADP, the Police and the Council to assist in the formulation of an overprovision policy. While Councillors showed interest, nothing was taken forward and so it remains.

Overprovision is a concept more suitable for planning policy than licensing policy these days as the supermarkets have completely changed the face of the supply of alcohol over the last twenty years.

Relations between the Forum and Board are much improved from where they were 3 years ago and the Forum continues to provide a reasonable and consistent line of advice to the Board on Licensing matters.”
Interaction with Licensing Boards

Within NHS Forth Valley area we have relationships with three Licensing Fora – one in each of the three Local Authority areas, i.e. Stirling, Falkirk and Clackmannanshire.

The input to these Fora varies. The Health Board provides information on alcohol related statistics to the related statistics to the Licensing Fora which informs the Licensing Boards.

Public Health receives some information on licensing applications and has made representation at the Licensing Board to raise objections on the grounds of overprovision. This has met with little success in influencing the approval process in the face of legal challenge.

Although the supply of alcohol appears to exceed a health amount for the local population, we have found it challenging to win the case that an individual premises license should be refused.
Written response from NHS Greater Glasgow and Clyde

I am responding to your request for information for the Local Government and Regeneration Committee. The Committee has asked about the extent of NHS Greater Glasgow and Clyde’s relationship with local licensing boards including how much information we provide to licensing boards and the extent to which local health concerns linked to alcohol are brought to the attention of licensing boards.

NHS Greater Glasgow and Clyde includes 6 licensing boards and our response is similar for all of them.

**Renfrewshire**

In Renfrewshire the Licensing clerk sends the Community Health Partnership (CHP) all major variations and new licenses to comment on. The Alcohol and Drugs Partnership officer and the CHP Head of Planning and Health Improvement reply to any that they have concerns about – either with an objection (if it clearly contravenes the Licensing Policy), or with conditional recommendations (if we have concerns about e.g. access for children). The response always quotes the relevant evidence and statistics for the particular area the applications refers to and is copied to the Police. The CHP is invited to all Licensing Boards where they have responded to any applications. Their experience recently has been that all of our comments and objections have been ignored. They had a few successes a few years ago, but there have been some recent applications granted which sit firmly in the overprovision area and have had both police and health objections.

The current Renfrewshire Licensing Policy has a very small town centre overprovision area, and when the policy was reviewed last November (2013), the CHP submitted a significant response asking for the current area to be slightly extended and for the policy to designate an overprovision area for off sales only in some of the peripheral areas to Paisley. The CHP gave evidence about the link between availability of alcohol and health and submitted additional information about domestic violence, crime, fire, etc. The CHP response was endorsed by the ADP and Alcohol Forum. The Board decided to deal with overprovision separately, and are consulting now (a year later). The CHP has submitted the same request, and has updated the information – consultation closes 16th January.

The NHS has presented the health and wellbeing survey results to both the Licensing Forum and a joint meeting of the Forum and the Board.

**Inverclyde**

Licensing Boards in Inverclyde are held quarterly with additional meetings called as and when required. All new and major variations are sent to the Community Health and Care Partnership (CHCP) for consultation and a response if appropriate. Objections are made on a very individualised basis and usually an objection is only made if the application is for a new off license as opposed to a new restaurant or variation in hours etc. The response from the NHS tends to be short, factual and states the data in relation to the geographical data zone area that the licensing application is within. Available health data related to alcohol related brain damage; admissions and death is used. Any other information is included if it is thought to be
of benefit to highlight e.g. proximity to schools if it is for an off sales licence. For new restaurant applications or major variations, recommendations tend to be made rather than objections and may include information relation to data zones and the health data as above. A recommendation that only a small percentage of the floor space (e.g. 10%) is available for alcohol display has been utilised more recently.

This short evidential approach to objections was taken following advice from the Licensing Clerk. Whilst attendance by an NHS representative at the Licensing Board has not been particularly successful in persuading the members to object to an application, it has helped build a better relationship and understanding from both the NHS and the elected members on the roles both have, which has proved beneficial.

Police Scotland and the NHS representative previously used to discuss each application where one or both organisations had evidence to support an objection prior to its submission, which was useful to ensure they were not contradicting each other. However a change in Police personnel has unfortunately meant this hasn’t continued. Occasionally the CHCP has been contacted for information by local community members who are planning to put in an objection to an application.

In addition to the Licensing Board interaction, the NHS previously chaired the Inverclyde Licensing Forum and was able to use this role to help influence the Board through provision of reports to the Board on Overprovision (which subsequently led to an Overprovision area being determined at the most recent Policy review) and reviewing the Children and Young People’s Policy.

**East Renfrewshire**

Over the last three years East Renfrewshire (ER) Community Health and Care Partnership (CHCP), on behalf of NHS Greater Glasgow and Clyde Director of Public Health (DPH) has been working to build and strengthen our relationship with ER Licensing Board, and its members.

Several key activities have facilitated this:

- Work with Licensing, ADP and Police Scotland colleagues to provide a review of alcohol and crime related data and make recommendations based on this on the extent of overprovision locally. This information is reviewed and updated regularly.

- Standardising the process in which licensing applications received by the CHCP and DPH, are considered in light of health and crime related data and other evidence available, and any objections submitted are reviewed on a case by case basis.

- Any health objections noted are submitted in writing and priority given to the invitation to attend in person to speak to any objection at the relevant local licensing board meeting.

- The NHS does not object to every application, each is assessed on an individual basis.
• Any objection on the basis of local health concerns is supported by the most current evidence as cited in the above local review, which also included a community public and licence trade consultation.

• From experience and feedback the information provided is focussed, and cited against the licensing objectives of protecting and improving public health and protecting children from harm.

• Each objection is assessed based on the quality and best available information supplied in the application.

• The relationship with ER Licensing Board has been strengthened as a result of all of the above to date and is important to acknowledge in any local partnership work.

With regards to influencing local licensing decisions in ER there have none upheld to date.

What is worth noting is that there have been a few examples where local applications being granted, have been subject to amendments being requested and further evidence being requested.

This is with particular reference to protecting children from harm and the health concerns raised highlighting this.

East Dunbartonshire

The CHP, through the Head of Planning and Health Improvement, influenced shaped and informed the development of a East Dunbartonshire Overprovision statement and policy through the undertaking of a specific community consultation and questionnaire, seeking local residents knowledge and views to the availability of alcohol within distinct geographies across East Dunbartonshire. This feedback was collated with other partners data to provide a comprehensive review to local alcohol provision/ overprovision. Further, the Licence Board receives reports summarising local data, trends and attitudes to alcohol and alcohol consumption identified within local Health and Wellbeing surveys.

The CHP liaises closely with senior colleagues within East Dunbartonshire Council, The National Police and Fire and Rescue Services to share insight and to develop a consistent approach to the public health and safety implications of a Licence application. The Head of Planning and Health Improvement considers and responds accordingly to Licence applications, alongside attending Licence Board meeting and appeals to offer expert health and public health insight to a specific application.

Glasgow

The Glasgow City CHP appointed a dedicated Health Improvement post was created in April 2013 until April 2017 to provide information, objections and representations to the City of Glasgow Licensing Board. Prior to this post being created there were only a limited number of representations provided to the Board regarding individual licensing applications and these were limited to the early days of the 2005 Act.
Therefore, within Glasgow City the role of the NHS in providing representations is in its infancy.

The Glasgow City Licensing Forum includes representatives from health, including the Director of Public Health. The Forum was constructive in advising the Board on its overprovision policy and worked in conjunction with health, police and other bodies in its creation. In particular, local statistics relating to alcohol related emergency hospital admissions were used in the creation of the overprovision policy.

Since October 2014, 4 representations/objections have been made by the NHS based on the licensing objectives of Protecting and Improving Public Health and Protecting Children from Harm.

A letter of representation/objection contains health related information relating to the intermediate data zone where the premises are located. Long term health effects including alcohol related deaths and emergency hospital admissions are provided with a comparison to Glasgow City and national figures. All objections are related to a licensing objective and are augmented, wherever possible, with local and national research evidence.

Glasgow City Licensing Board receives a high volume of applications and variations (many within the city centre) and it is not thought appropriate for all to receive a health representation/objection. Thereby, there is a system in place to decide which applications are responded to. The NHS will always, in future, object to an application if the premises are cited within a designated overprovision area or an area deemed by licensing policy to be ‘of concern’. The NHS will also object to new applications within an area where there are significant levels of alcohol related health harm or where other concerns are noted within the application, for example a premises providing off-licence sales wishing to be located near a school.

**West Dunbartonshire**

In November 2012, West Dunbartonshire Licensing Board requested support from West Dunbartonshire ADP to collate and translate a range of data to support the development of the Licensing Policy Statement 2013 – 2016.

A working group, led by West Dunbartonshire ADP with support from Police Scotland, Licensing Standards Officers, WDCHCP Health Improvement Team, Scottish Fire and Rescue Service, NHS GG&C Public Health and Alcohol Focus Scotland (AFS) was established to collate, analyse and report health, crime, fire and environmental data relevant to the objectives of the Licensing (Scotland) Act 2005, in particular:

- Protecting and Improving Public Health
- Protecting Children from Harm

Statistical evidence used in the development of the previous (2010 – 2013) Licensing Policy Statement was used as the baseline and the impact of alcohol on the area as a whole and by Intermediate Data Zone (IDZ) was assessed.
The final report “Liquor Licensing in West Dunbartonshire - Overprovision: What does the evidence say?” was presented to the Licensing Board by Keith Redpath (Chair, West Dunbartonshire ADP) and Gail McClymont (Superintendent, Police Scotland).

In November 2013, West Dunbartonshire Licensing Board ratified its updated Licensing Policy Statement. The overprovision statement within the policy makes reference to the evidence provided and concludes that there is overprovision of public houses, nightclubs, off-sales and local convenience stores and supermarkets in 17 sub-localities (all except one) of West Dunbartonshire. However, the overprovision statement also contains the following:

“The Board recognises the positive health benefits associated with increased employment opportunities as a factor that applicants may use in support of their application and a factor that may in appropriate circumstances rebut such a presumption. In particular the Board will expect to be addressed on the benefits of granting the application in terms of each licensing objective.”

In 2014, the ADP Lead Officer and the Deputy Clerk to the Licensing Board were invited by Public Health England to the Home Office to share information regarding the overprovision work carried out in West Dunbartonshire.

In order to inform the 2016-2019 Licensing Board Policy Statement it has been agreed that work on gathering the data and statistics should begin in mid-2015.

As a response to the statutory requirement for health representatives to be notified of premises license applications (as introduced in the Alcohol etc. (Scotland) Act 2010) a senior officer from the Community Health and Care Partnership (CHCP) was identified as the individual responsible for signing off comments in response to individual applications.

In addition a sub-group of the ADP was established in 2010, with specific responsibility for reviewing and commenting on individual licensing applications. Membership of that subgroup consists of the Head of Mental Health, Addiction Services and Learning Disabilities (Chair), ADP Lead Officer (Vice Chair), the Joint Manager, West Dunbartonshire Addiction Services, the Health Improvement Lead with responsibility for Alcohol and a Consultant in Public Health Medicine (NHS GG&C).

The sub-group reviews applications and where necessary meets to discuss these and a formal response is submitted to the Clerk of the Licensing Board. The response indicates clearly whether or not an objection is being raised. In these instances, evidence of alcohol related harm e.g. Alcohol Related Deaths, Hospital Discharges, Alcohol Related Mental Health Hospital Discharges and Incidences of Alcohol Related Brain Damage for the specific locality is summarised.

A representative, usually the Chair or Vice Chair of the Sub Group, attends Board meetings to present objections to the licensing board. The ADP receives information regarding applications and their individual outcomes.
This approach enables elected members on the Licensing Board to make more informed decisions regarding individual applications. As a result of the information provided there has been a positive response from the Elected Members of the Licensing Board, particularly in relation to their raised awareness and appreciation of how health issues impact on the wider population of West Dunbartonshire. The ADP is currently reviewing how the information regarding the impact on the health of the local population affects the outcome of applications. This will be fed back to the ADP at a meeting in early 2015.

A recent interim review has indicated that during the period March 2014 to date a total of 21 applications were received. Of that total:

- 5 objections, on the grounds of Protecting and Improving Public Health and Protecting Children from Harm were submitted
- Of these, 2 applications were subsequently refused, 1 was withdrawn and 2 were granted.

The remaining 16 applications were not objected to, however information in relation to the health effects of alcohol for each individual data zone was provided for noting; this has meant that the majority of granted applications were for restaurants and Elected Members of the Licensing Board used this information to stipulate additional "conditions of grant"; these included:

- a reduction in hours when alcohol could be sold
- a commitment not to sell high alc vol beers
- stipulating that children and young people need to be accompanied by an adult and be expected to vacate the premises, except when they are present for a specific function, by 10.00pm
- one organisation volunteering to exclude children from the premises by 8.00pm, and
- larger organisations offering to provide licensing specific training for smaller (local) organisations.

The Head of Mental Health, Addiction and Learning Disabilities and the ADP Lead Officer are members of the West Dunbartonshire Licensing Forum. The relationships between the Forum, Board and ADP have been highlighted as an example of best practice and have led to the receipt of a CoSLA award in 2013.

**Some notable issues relating to health representations;**

As per the 2005 Act, the NHS is a statutory consultee. However, the Licensing Board is not duty bound to provide the NHS with the same level of information as other consultees (with the exception of community councils). The Board is only required by law to provide the NHS with a summary of the licensing application. This can cause issues as the NHS does not have full and ready access to information such as the operating plan and other crucial aspects of the application.
Similarly, at Board Meetings, the NHS are required to speak to their representation as per any other objector and unlike other statutory consultees (again, with the exception of community councils). It is acknowledged that this is perhaps due to the limited extent to which the NHS has offered representations in the past but we consider that the opinion of health could be given greater credibility in line with other consultees. The current situation appears to create a system where the NHS is not an equal partner in the licensing process.

Regarding health evidence within the current regime, the NHS is limited in the types of information it can provide and it is difficult to provide health statistics based purely on overprovision. The NHS deals with health information based on population level health and with licensing boards concerning themselves with individual premises it can be difficult to establish a connection. With regard to areas designated as overprovided for within licensing policy, it has been experienced that the Board can still move to grant an application despite firm health evidence. Also, academic research on outlet density and related health harm can also prove difficult as very little, if any, research proves causality and it is unlikely that ‘correlation’ alone would stand up to legal probate. Therefore, it can prove difficult to ascertain which aspects of health evidence boards might find useful.
Written response from NHS Lanarkshire

Background

At the Committee meeting on 17th December the Committee heard from health professionals, a member of an Alcohol and Drug Partnership (ADP) as well as a licensing board solicitor. There was some debate during the meeting around the extent to which Health Boards seek to interact with licensing boards when the latter are considering applications. This relates in particular to the provision of information to licensing boards on local health concerns which links into the licensing objections and potential overprovision within areas.

The Committee have asked that all Health Boards be contacted to advise 1) the extent of their relationship with their local licensing boards, 2) how much information they provide to license boards 3) the extent to which local health concerns linked to alcohol are brought to the attention of the licensing board and 4) the extent to which the information you provide, if any, is in your opinion influencing licensing decisions.

The extent of NHS Lanarkshire’s relationship with their local licensing boards

There are five licensing authorities in Lanarkshire: a board in North Lanarkshire and four divisions of the South Lanarkshire board: Clydesdale; East Kilbride; Hamilton and Rutherglen/Cambuslang. The extent of the relationship to date with the two licensing boards within Lanarkshire has its roots primarily in the relationship of the existing five licensing forums that feed into the respective boards. The forums must consist of no more than 20 members, and should include one member of the Council’s Licensing Standards Office and one further member must be a representative of the Chief Constable, Strathclyde Police for the Forum’s area, thereby leaving a maximum of 18 places to be filled. The respective Councils must seek to ensure as far as possible that the membership of the Forums are representative of the interests of persons or descriptions of person who have a general interest in the undernoted areas: - holder of premises licences and personal licences; persons having functions relating to health, education or social work; young people and persons resident within the Forum’s area.

The Licensing Forums are required to meet on at least four occasions per annum and in addition meet with their relevant Licensing Board. The Licensing Boards liaise with the Executive Director of Corporate Services in relation to the discharge of their duties and act as facilitator between the Board and the Forums. Where the Licensing Board decides not to follow the advice or recommendations of the Forum, reasons for that decision must be given to the Forums.

Within Lanarkshire there is robust relationship within each of the five forums and this has taken much effort at relationship building to help the forum members understand their role, the licensing objectives and their sphere of influence particularly in relation to the public health objective. What has been
recognised is the need for there to be a stronger representation and capacity from a health perspective to attend the board meetings when applications are being considered. This ideally needs to be done in conjunction with Police Scotland and initial discussions to work in this way have been undertaken. There are time and capacity issues however in undertaking this task. We are currently considering how this can be done on a locality basis with several health representatives rather than just the one individual as applications/board meetings can come forward on a regular basis and from five different forum areas.

**How much information we provide license boards**

A number of reports have been prepared and presented to all licensing boards and forums:

**Alcohol: The Facts in Lanarkshire**

This report was prepared in September 2012¹ as a starting point to understand better the alcohol-related issues across Lanarkshire that licensing boards and forums may be able to influence through policy and decision-making. It was written by Dr Harpreet Kohli, Director of Public Health, NHS Lanarkshire. This report aimed to provide a Lanarkshire perspective on alcohol-related issues in relation to the five licensing objectives, noting that 'protecting children from harm' forms part of the other objectives. The report is not an exhaustive list of alcohol-related information but there is evidence that alcohol plays a significant part within these objectives. Councils are required to establish local licensing forum(s) for their area under the Licensing (Scotland) Act 2005. Forums keep the operation of the licensing system in their area under review to give advice and recommendations to licensing boards. The report also stressed that while this does not include reviewing or offering advice or recommendations in relation to any particular application or case before boards, boards have a duty to have regard to the forums’ views and must offer reasons on occasions where it takes decisions against the advice of the forum. This report was subsequently presented to each of the licensing boards within Lanarkshire and their respective licensing forums.

**Action on overprovision in alcohol licensing: experiences from ADPs & Public Health**

This report² provides a summary of research carried out by Dr. Niamh Fitzgerald, Lecturer in Alcohol Studies at the University of Stirling which was commissioned by the Lanarkshire Alcohol & Drug Partnership. The research sought to describe the perspective of Alcohol and Drug Partnerships, public health representatives and other stakeholders who have experience in this work. Its focus is on how to take forward actions to robustly identify, raise

¹ Alcohol: The Facts in Lanarkshire 2012: [http://www.lanarkshireadp.org/ResourcesLinks/LicensingTrade/Documents/Alcohol%20-%20The%20Facts%20in%20Lanarkshire%202012%20Final.pdf](http://www.lanarkshireadp.org/ResourcesLinks/LicensingTrade/Documents/Alcohol%20-%20The%20Facts%20in%20Lanarkshire%202012%20Final.pdf)

² Action On Overprovision In Alcohol Licensing: Experiences From ADPS & Public Health: [http://www.lanarkshireadp.org/ResourcesLinks/LicensingTrade/Documents/Lanarkshire%20Overprovision%20Report%20Final.pdf](http://www.lanarkshireadp.org/ResourcesLinks/LicensingTrade/Documents/Lanarkshire%20Overprovision%20Report%20Final.pdf)
awareness of, and build support for licensing policy that recognises overprovision where relevant.

The findings from the research are intended to inform NHS Lanarkshire, who are at an early stage in this work, about the best ways to approach the issue of possible overprovision of licensed premises. All five licensing boards have received copies of the report and had opportunities to discuss the implications, particularly in view of the policy statements on overprovision.

Re-thinking alcohol licensing

This report was written by Petrina MacNaughton and Dr Evelyn Gillan, (Alcohol Focus Scotland, SHAAP) with input from members of the expert group on public health and licensing and was shared with all 4 licensing boards. It explains the new legislation that came into effect in 2009 and the introduction of objectives together with a duty to formulate a statement of licensing policy that requires the commitment of the licensing boards as well as support of local authorities and other public agencies as well as the engagement of local communities.

Licensing Resource Toolkit

These are a range of resources that Alcohol Focus Scotland developed to facilitate and support good licensing practice. The toolkit aims to provide guidance on key areas of the new approach to licensing and promotion of the licensing objectives. There are three factsheets that cover evidence gathering, assessing overprovision and writing a statement of licensing policy and all four licensing boards in Lanarkshire have been provided access to these documents.

The extent to which local health concerns linked to alcohol are brought to the attention of the licensing boards

As highlighted above, this is primarily done through the respective forums however it has been noted for some time that there needs to be greater efforts from the health board (working in particular with Police Scotland) to provide robust evidence when considering new licensing applications in relation to the public health objective as well as the other four licensing objectives. This is still communicated via the licensing forums and this is a cause of frustration as the respective forums believe they have little influence over this, despite the fact that in more recent times the forums are grasping the importance of providing evidence based on licensing objectives rather than stating

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3 Re-thinking alcohol licensing report:
http://www.alcohol-focus-scotland.org.uk/media/1096/rethinking-alcohol-licensing.pdf

4 Using evidence to support policy and decision-making:

Statements of licensing policy - Using policy to guide licensing decisions

Developing an effective overprovision policy:
http://www.naadp.com/resources/site1/general/factsheet%203%20overprovision.pdf
subjective views. This has to do with the effort that has gone into relationship building with forums to get them to trust “health” inputs to the forum.

It has been recognised for some time that in Lanarkshire there is a need to gather the views of public and local communities as an important part of the process of influencing licensing board members and decisions in relation to the public health objectives. This was one of the main reasons for the Lanarkshire ADP financing the attached research into overprovision. Ongoing work to date includes collaboratively working with communities using community development approaches such as participatory appraisal and/or asset mapping.

The Director of public Health also convened a meeting to which all four Board members and forum members were invited to discuss the contents and implications of Alcohol: the facts in Lanarkshire and he has offered to meet with Board members as and when necessary or requested to do so. There has however been no further uptake of this offer to date other than the initial meeting to discuss, Alcohol, the facts in Lanarkshire.

**The extent to which the information we provide influences licensing decisions.**

Information provided by Police Scotland has influenced licensing decisions and there is still the belief that, if there were strong representation at Board meetings when applications are being considered, this would have a greater influence. This requires long term significant effort from senior health board representatives or other health leads to further develop and establish links with board convenors and clerks and to continually discuss issues in relation to the public health objectives.
Written response from NHS Lothian

Thank you for the opportunity to contribute to the Committee’s deliberations. I am replying on behalf of NHS Lothian. I note that you are interested in the extent of the Board’s relationship with their local licensing boards, how much information they provide license boards and the extent to which local health concerns linked to alcohol are brought to the attention of the licensing board.

NHS Lothian has four licensing boards in its area – City of Edinburgh, East Lothian, Midlothian and West Lothian. NHS Lothian has had extensive and sustained input into the Edinburgh Licensing Board and at times extensive input into the other three boards.

While we welcomed becoming a statutory consultee, this was a new area for detailed public health involvement and it has taken a little while to understand the way the licensing system operates and how best to contribute. The five licensing principles remain a very strong statement of the public interest. However there has been a significant learning curve to be able to contribute to this work and it is to some extent unsurprising if progress has been patchy. Licensing is its own, very legalistic world and health considerations have not previously been so prominent in the consideration of boards.

Licensing Forums

We have also tried to cover the four licensing forums and support their work with inputs and suggestions for other presentations to assist their deliberations. The best Forums engage the community councils who can be powerful advocates for the public interest. For instance, the Edinburgh Licensing Forum has a good mix of diverse trade, community reps and statutory representatives.

However, it is difficult for a Forum to scrutinise the work of its Licensing Board when there is such a dearth of data. It is very hard to extract meaningful statistics and trends from licensing boards. Evaluating changes in licensing policy is very difficult. The proposal for an annual report may help to overcome this issue, particularly if the Scottish Government put a minimum dataset into guidance for Boards. Currently, for instance it’s not easy for a Forum to tell if the number of offsales in their board area has increased or decreased or stayed the same. Boards and Forums are further hampered by not having access to aggregate sales data for their area. It is essential that Boards and Forums have a clear idea of the amount of consumption of alcohol in their area. The Health Board can’t supply this data. Rather than relying on estimates which do not go down to even local authority level, a Board could receive on a confidential basis annual sales data from each licensed premises and therefore have a reasonable proxy for the amount being consumed in their area, perhaps broken down by locality. No indicator will be perfect but this will be closer than using self reported surveys of alcohol use. Otherwise all attempts to control the effects of alcohol are hampered by a lack of specific, local information on consumption.

Local Alcohol and Drug Partnerships have also had a very helpful input, particularly in the coordination of evidence from the various partners and also in Edinburgh around engaging with other interested parties such as economic development.
City of Edinburgh.

I routinely attend the City of Edinburgh Board on behalf of NHS Lothian and we have objected to 39 applications in the three years from December 2011 to December 2014, mainly focusing on new off-sales applications on the basis that 70% of alcohol sales are through off sales in Scotland. NHS Lothian has contributed significantly to the last two Licensing Board policies and in particular to the debates about overprovision. Four years ago NHS Lothian contributed substantially to the statistical and evidential input into assessment of areas of overprovision including an analysis of the licensing board’s data geographically to help inform the debate. At that time the Edinburgh Licensing Board was interested in declaring the whole of Edinburgh as overprovided for off-sales. This led to the Licensing Board at that time to turn down three applications for off-sales (see case study). However, the policy was somewhat equivocal about the position and did not formally declare the overprovision, merely that it was minded to but recognised that the Act did not give a specific power to declare a whole area as overprovided for, only a locality or localities.

Case Study

On the 19th March 2012, Edinburgh Licensing Board adopted a revised statement of licensing Policy incorporating a new policy on the overprovision of off-sales licenses. At their following meeting on the 23rd April 2012 three applications for off-sales licenses in the City were turned down with reference to this policy. One of these applications was from one of the big four supermarkets for a provisional license for a new ‘convenience’ supermarket in the city centre in an area where there is a comparatively high density of off sales outlets and where residents are affected by alcohol related harm (as evidenced by the rate of alcohol related hospital admissions).

This decision was taken to appeal in the Sherriff Court by the applicant. Legal opinion was sought by the Licensing Board which cast doubt on the legal strength of the wording of the Board’s Policy and its reasons for refusal (The statement of reasons). Subsequently, all parties agreed to the decision being ‘remitted’ (sent) back by the Sheriff Court to the Licensing Board for re-consideration. The Court did not provide a judgment on the Policy or the decision.

Meanwhile in May 2012 local government elections took place and this led to a change in Convenor and in the membership of the Board. The remitted decision was inherited by this newly constituted Licensing Board and, at their first meeting, after hearing representations from all parties involved, the license was granted, reversing the decision of the previous Licensing Board. At subsequent meetings the other two licenses that had been refused were also granted.

East Lothian

NHS Lothian has had input into both the Licensing Board when considering its policy and also in the Licensing Forum. The Alcohol and Drugs Partnership that covers East Lothian led on a report of statistics and evidence to which NHS Lothian contributed. This assisted the licensing board in declaring the whole of East Lothian
overprovided for. At the moment NHS Lothian is looking to provide more permanent input since a key staff member moved on.

**Midlothian**

NHS Lothian contributed to the development of a report on overprovision which has led to the licensing board declaring Dalkeith Town Centre as overprovided for. NHS Lothian has submitted its first objection to an application in January 2015. We also attend and contribute to the Licensing Forum in Midlothian.

**West Lothian**

Public Health have presented to the Licensing Board on two occasions in the last 4 years around the issue of availability and health harms in West Lothian. The Alcohol and Drug Partnership coordinated a very detailed consideration of the overprovision issue under the previous board but this did not lead to any change in the policy locally. NHS Lothian has not objected to any specific applications yet in West Lothian. The Forum has been active in West Lothian and NHS Lothian colleagues have been contributing to its deliberations, including chairing the Forum latterly.

**Overprovision**

I would like to end with a consideration of the assessment of overprovision as this has dominated much of our interactions with licensing boards. At the heart of this debate has been a consideration of what board members, Clerks, legal representatives and objectors consider as evidence.

The **Licensing (Scotland) Act 2005 – Section 142: guidance for licensing boards and local authorities** was published by the Scottish Government in April 2007. Section 3 covers overprovision. Since the guidance was published Boards have grappled with the issue of overprovision and found it quite difficult to come to a satisfactory conclusion, although a number of Boards have come to a variety of conclusions, including locally in Midlothian and East Lothian.

One of the reasons for the difficulties that some boards have experienced in this area is that the wording of the guidance is problematic and to some extent contradictory in relation to the burden of proof that it suggests is required to make a declaration of overprovision in a locality or localities in a Board area.

The burden of proof is defined as the obligation to prove one’s assertion. There are two standards in legal cases, one for civil cases and one for criminal cases. At paragraph 47 it states that a “dependable causal link” needs to be “forged between the evidence and the operation of licensed premises in a locality”. This wording appears to confer a high burden of proof on the objector, perhaps as high as ‘beyond reasonable doubt’ which is the standard in criminal cases.

Paragraph 48 states that “consideration should be given as to whether aggregated information and evidence from a number of sources points compellingly towards a particular conclusion”. It might be argued that “compellingly” is closer to a notion of the civil burden of proof – on the balance of probabilities.
Epidemiology has been defined as the science and practice which describes and explains disease patterns in populations. It is very much concerned with analysing patterns scientifically and understanding the causes of disease and ill health. Establishing causation is a central concern, not for its own sake but so that action can be taken to protect and promote health and prevent harm. Epidemiology provides information for action.

The notion of the balance of probabilities sits well with public health notions of causality and the levels of evidence on which to base action to promote and protect health. In public health we aspire to ascribe causality on the basis of a careful judgment against a framework of guiding questions. Over the years helpful criteria have been put together to aid the judgment as to whether an observed association is most likely to be based on cause and effect. What is the strength and consistency of the association? How specific is it? Are we sure which comes first? Is there a dose-response curve? Is there a biologically plausible explanation? Do experiments such as ending the exposure result in a change in the situation. Are there similar situations that provide an analogy?

It cannot be emphasised enough however that these helpful questions are just that and cannot remove the element of judgment from a decision. Proof is defined as the evidence establishing a fact or the truth of a statement. But in all areas of policy making we hardly ever have overwhelming evidence of the effectiveness of interventions. Correlation is not causation but it is important to investigate a correlation and look to evidence from other areas and countries to come to a judgment.

There has clearly been a variation in the degree to which some Licensing Boards are prepared to come to a judgment and this has coloured the success and to some extent the level of engagement of health in licensing. Given how long effective tobacco control has taken, it would be unreasonable perhaps to expect overnight success in a relatively new area such as licensing. But it is also clear that licensing has a very important part to play in promoting and improving public health.

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Written response from NHS Orkney

A consultation was carried out by the licensing board in 2012 and despite what was felt to be a convincing argument that the health of people was being impacted by overprovision in Kirkwall the outcome that was reached was that there was no overprovision in Orkney.

A change in the relationship between the Health Board and Licensing Board has occurred following a meeting in October 2014 that was held to launch our Community Action plan on Alcohol. At that meeting detailed health data on the effects of alcohol on the health of local people was shared and this had a great impact on members of Licensing who attended. They are now acknowledging that there is a significant problem with alcohol locally. This is a substantial step-change as up until then there had appeared to be a reluctance by the Licensing Board to consider that there was an issue with alcohol in Orkney.

In Orkney there is interaction between the Health Board and Licensing via the Public Health department and also the ADP. The Director of Public Health is invited to Licensing Board meetings.

The Public Health Manager and Substance Misuse Development Officer for the ADP attend the Licensing Forum meetings.

Objections to licensing requests are submitted to the Licensing Board if it is felt that there are public health issues.

Currently the law on overprovision is not clear and Licensing Boards as a result are hesitant to refuse licences on the grounds of overprovision for fear of legal action being taken. Tightening of the definition of overprovision would clarify matters and give Licensing Boards more confidence in their decision making.
Written response from NHS Tayside

Angus Licensing Board

NHS Tayside has very little direct interaction with Angus Licensing Board. Early work to describe the extent of alcohol provision and alcohol related social harm is being built on by the collaboration of an NHS Tayside Information Analyst with Angus ADP colleagues so that data from Local Authority, Police and Health can be used to scope out the extent of alcohol related harm to health and to society. NHS Tayside has responded to individual requests for health information in relation to specific applications to the Licensing Board.

Dundee City Council

NHS Tayside, in collaboration with community planning partners, completed a comprehensive assessment of alcohol related harm in the City and a statement on licensing over provision. Dundee City Licensing Board have since made a statement to the effect that the city is overprovided for in terms of licensed premises and so there is an onus on applications to show that the granting of a new licence would not contribute to over provision. NHS Tayside colleagues have been present in person to support objections to the granting of new licences.

Information to the Licencing Board regarding individual applications is contained in a letter (at ANNEXE A) and includes specific alcohol related harm information relevant to that area within the city.

It is the experience of members of the Licencing Forum that attendance in person adds weight to the objection.

Perth and Kinross Council

NHS Tayside has participated in the ADP initiated and chaired Alcohol Scoping Meetings over recent months and has, with the input of community planning partners, completed a report outlining the health and social harms and describing the alcohol provisions within Perth and Kinross. Public Health has participated in the Alcohol Licensing Forum and as yet not attended a Licensing Board.

Overall, it is encouraging that community planning partners in each of the three local authority areas are keen to address the issues of health and social harm related to alcohol. NHS Tayside remains committed to working with the Licensing Forum within each area and building on the work already ongoing.

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Principle General Services Officer
Support Services
Dundee City Council
21 City Square
Dundee
DD1 3BY

Dear ____________

Re: Application for Premises Licence at ________________

We are writing on behalf of ____________ to register our objection to the above application for a premises licence. The basis for this objection is that granting a licence for this premise will not promote the Licensing Objectives, namely:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

In particular this premises lie within ___________ area. Evidence presented within the Dundee City ADP Assessment of Overprovision Report indicates that in this area ________ (enter any specific relevant information regarding evidence of health or social harm). In addition this particular application includes ______ (enter any specific information in regard to concerns e.g. children on premises, late opening hours etc).

It is well recognised that access to and availability of alcohol is linked to increased consumption and consequent health and social harm to individuals and communities.

The Dundee Licensing Board has recently taken a commendable position as part of its Licensing Policy and declared the whole City (with the exception of the central waterfront) overprovided for all alcohol premises. This means the Board has adopted a position of ‘rebuttable presumption’ against awarding any premises licenses, with the onus being on applicants to prove their specific application will not contribute to overprovision situation.

Given that no credible evidence has been provided to demonstrate that this specific application would not contribute to overprovision, we would urge the Licensing Board to refuse this application.

Yours sincerely

Consultant in Public Health Medicine
Written response from NHS Shetland; NHS Highland and NHS Grampian

Scottish Public Health Network

Interaction between NHS Boards and the local Licensing Boards

NHS Shetland

Sarah Taylor, the DPH in Shetland is a member of the local Licensing Forum, and feed in via that through into the Licensing Board. She works directly with colleagues in Environmental Health and Legal Services in the Shetland Islands Council who support the Licensing Board. She noted that she had fed into the recent updating of Shetland's Licensing Policy through those routes.

NHS Highland

Liz Smart, CPH in Highland covers this remit. She noted that 'Alcohol Focus' had published a report about licensing and the overprovision statements; this provides a good summary of the work in Highland.

(see http://www.alcohol-focus-scotland.org.uk/campaigns/controlling-availability.aspx)

She views the biggest challenge to effective public health input is that the Highland Licensing Board always give consideration to the local economy (on sales in particular) rather than take on the boarder public health issues.

NHS Grampian

Chris Littlejohn, CPH in Grampian covers this remit. He commented that Aberdeen City Licensing Board had declared over-provision of off-licenses across the city (excepting restaurants; and two specified, more rural localities outwith the city proper), and over-provision of on-licenses in two defined areas of the city centre. The Board's Statement of Licensing Policy (SLP) for 2013/16 identified that Health Board information was used in reaching this decision. The Health Board routinely submits objections to Aberdeen City alcohol licensing board where applications are in breach of the SLP, with around 50% of objections being upheld by a decision to refuse a license.

Similar information did not influence Aberdeenshire's three licensing boards, or Moray's licensing board, in the same way, as they all declared no over-provision. The public health led Alcohol Licensing strategic group agreed that the opportunity cost of the time and resource required to submit objections in the face of licensing boards' explicit rejection of any link between outlet density and harm was too great (plus the pragmatic fact that their SLPs provide limited grounds on which to object), so we do not routinely submit objections to the other Boards.

General he reports positive relationships with all the Licensing Forums across Grampian. In Aberdeenshire, they report developing working relationships with the Boards' legal teams, and with local Forum support we have had alcohol-related mortality and hospitalisation data included in their annual reports this year.
23rd February 2015

Your Ref:

Our Ref:

Mr Sean Wixted
Assistant Clerk
Local Government and
Regeneration Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Mr Wixted

LOCAL GOVERNMENT AND REGENERATION COMMITTEE
AIR WEAPONS AND LICENSING (SCOTLAND) BILL

I refer to the Committee’s meeting of 29 January 2015 and its consideration of the above noted Bill when Police Scotland was requested to provide some additional information following the evidence session.

In pursuit of the request, I would offer the following information:

Registered Clubs

The Licensing (Scotland) Act 2005, brought Members Clubs within the licensing mainstream and now require a Premises or Occasional Licence to permit the sale and supply of alcohol. However there remain a few anomalies in the licensing regime specifically pertaining to prescribed Members Clubs, such as:

- Members Clubs are not included in an assessment of overprovision and cannot be refused a Premises Licence or variation on those grounds;
- There is no requirement to have a DPM; and,
- There is no requirement to have the sale and supply of alcohol authorised by a personal licence holder (also applies where an occasional licence is in effect).

This creates a potential situation where Members Clubs can use Occasional Licences to circumvent obtaining a Premises Licence and the statutory safeguards that this would place on them by the 2005 Act for the responsible sale or supply of alcohol, by applying for multiple Occasional Licences to cover extended periods or not necessarily having them managed by a properly qualified person.

It would be advantageous if these legislative loopholes were addressed, ensuring that Members Clubs were subject to the same regulation as other licensed premises.
Occasional Licences

An application for an Occasional Licence in respect of unlicensed premises may be made by the holder of a premises or personal licence or by a person representing a ‘voluntary’ organisation. The term “voluntary organisation” has never been defined and it would be helpful if this was clarified, as otherwise there may be room for dispute as to the types of organisation entitled to make an application.

In some cases, use of Occasional Licences under the 2005 Act has enabled situations where this type of licence has been used as a substitute for a Premises Licence or even for a Public Entertainment Licence (PEL).

This can result in a position where organisers for large scale events, such as music festivals where alcohol can be sold, are able to apply for an Occasional Licence and circumvent the requirement for a PEL. A PEL ensures appropriate safeguards are in place regarding the operation of such events. Furthermore, in light of the “Bright Crew” decision, Licensing Board’s can only challenge issues directly concerning the sale and supply of alcohol. An Occasional Licence for a large event would not provide sufficient scope to address other safety related issues that occur, unless a PEL was in place.

In addition the use of Occasional Licences is open to potential exploitation; for instance, where the applicant is associated with, or linked to, organised crime, or is believed to be sympathetic towards proscribed organisations within the UK. Such applications are not common place; however there have been applications made from Members Clubs under the auspices of fundraising events, i.e. for a charity, which coincides with football fixtures or other noticeable religious or “cultural” events.

Often there is little information provided by the applicant to confirm who they are fundraising for, as this is not a legislative requirement or required to be completed on the application. Whilst this in itself is not indicative of dubious fund raising activity, there may be circumstances where police held intelligence would present some concern.

Taxis and Private Hire Vehicles/ Booking Office Licences

Sec 21(1) of the Civic Government Scotland Act makes it an offence for a private hire car driver to pick up passengers in an area for which they do not have a licence. Furthermore, an operator and booking office is only permitted to use taxi or private hire cars licensed by the authority in whose area it operates and cannot use those licensed by an adjacent authority.

Following an extensive police enquiry regarding a particularly problematic booking office, a report was submitted to a Local Authority Regulatory Committee regarding a Private Hire Car Booking Office operating outwith the conditions of licence. Their website listed various telephone numbers which detailed numbers outwith their licensed area of operation and the practice of accepting bookings for journeys that commenced and concluded outwith their conditions of licence was specifically confirmed. Following the hearing, their licence was suspended, however this is now subject to appeal.

This practice is not unique and there remain ongoing issues where booking offices have taken hires, via phone or on-line, with the journey commencing and ending in another Local Authority area for which they are not licensed to operate.
Given some of the work that is taking place to introduce Civic Enforcement Officers across Scotland, this is perhaps an area of business that could be considered suitable for that role.

**UBER**

The Local Government & Regeneration Committee (LGRC) raised a related issue whereby taxi companies were using mobile phone applications (apps), to receive, accept and allocate Private Hire Car (PHC) bookings and made specific reference to UBER.

UBER is an American based company, founded circa 2009 and backed by Google, and operates a Taxi/Private Hire app service in over 50 countries with a global turnover in excess of $40 billion. The company has attracted considerable interest and publicity in the media where there have been numerous reports that have generated concern specifically regarding their alleged use of unlicensed drivers.

Media reports claim that UBER has been banned from operating in many countries including some EU states, such as France and Germany. In the UK, UBER currently operates in London, Manchester and Leeds. At present there is insufficient information to substantiate the claims documented in the media, given that different licensing regimes exist within both a UK and worldwide context.

It would also appear that much of the concern surrounding this company stems from Taxi and PHC drivers who are naturally apprehensive as to the competitive nature of UBER and the potential threat to their livelihood.

UBER has recently made application to Glasgow and Edinburgh, as well as in Bristol and Newcastle, for booking office licences in each respective city. The Chief Constable’s primary concern is public safety and dialogue is currently ongoing to obtain assurances that UBER will operate within the confines of the Civic Government Scotland Act 1982 and Local Authority imposed conditions.

If so satisfied, then any subsequent breach of conditions or offending would be addressed, as they would with existing operator or booking offices, and a report submitted to the relevant regulatory authority for consideration and disposal.

**Sexual Entertainment Venues**

Sexual Entertainment Venues (SEV) can be licensed in terms of the Licensing Scotland Act 2005 if they wish to provide for the sale or supply of alcohol. Licences are granted in accordance with the submission of an operating plan. An operating plan details what activities are to take place on the premises where alcohol will be sold for consumption. Police Scotland will monitor such premises to ensure they are complying with the requirements of the 2005 Act and respond to any allegations of criminality.

Sexual Entertainment Venues have reputedly been associated with criminality and concerns have been raised from third parties regarding potential exploitation issues. However, most of the information regarding SEV’s is anecdotal. Police Scotland relies on intelligence gathering to establish whether there may be criminality involved and then can take appropriate action. Furthermore, issues relating to the operation of a SEV which have come to the attention of the police, have also encountered
difficulties when making representation to Licensing Boards when not directly related to the sale and supply of alcohol (Brightcrew).

I trust the foregoing is helpful, should any further information be required, or should you wish to discuss any aspect of this matter in more detail, then Police Scotland would be pleased to assist and Chief Inspector Morag Stewart of the Licensing and Violence Reduction Division will facilitate any requests. Chief Inspector Morag Stewart can be contacted by e-mail on morag.stewart@scotland.pnn.police.uk or by telephone 0141 532 2424.

Yours sincerely

Nelson Telfer
Assistant Chief Constable
Supplementary written submission from the Scottish Government Bill Team

We have studied the responses to your call for evidence and continue to follow the evidence gathering sessions held by the Local Government and Regeneration Committee with considerable interest. While evidence has, of course, been provided in respect of the provisions of the Bill, much has also been said about a wide range of issues that are not included within the Bill. In respect of alcohol licensing, we have been clear that the proposals in the Bill are intended to improve the existing system but that they do not comprise a radical overhaul.

The alcohol licensing regime is particularly complex and the range of stakeholders is wide. It is therefore important that any changes are carefully considered in the round to avoid unintended adverse consequences. We believe that the proposals relating to provisional ‘site only’ applications and surrendered licences have the potential to undermine facets of the existing regime and would not be widely supported by other licensing stakeholders. Licensing Boards need to be in possession of full and accurate information to inform their determination of overprovision and make decisions about individual licences.

However, we continue to consider the concerns raised in relation to the existing law on transfers of alcohol premises licences. We note that in the evidence gathering session on 19th November, Fiona Stewart on behalf of the local authority licensing clerks in the SOLAR Licensing Subcommittee, while sharing many of the concerns about the existing legislation’s approach to transfers, flagged that clerks were likely to have different views on how to resolve them.

It remains our intention that the alcohol licensing regime operates effectively to meet the aspirations of the various stakeholders and legitimate interests.
Delegated Powers and Law Reform Committee

5th Report, 2015 (Session 4)

Air Weapons and Licensing (Scotland) Bill at stage 1
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Nigel Don (Convener)
John Mason (Deputy Convener)
Margaret McCulloch
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
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:

\(^1\) 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](http://www.scottish.parliament.uk/S4_Bills/Air_Weapons_DPM.pdf)
• 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;

• 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
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**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative Procedure</td>
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</tbody>
</table>

**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

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<tr>
<th>Power conferred on:</th>
<th>a local authority</th>
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<tr>
<td>Power exercisable by:</td>
<td>Resolution/ determination</td>
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<tr>
<td>Parliamentary procedure:</td>
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<td>Power exercisable by:</td>
<td>Guidance</td>
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<tr>
<td>Procedure:</td>
<td>None</td>
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</table>

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

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<th>Power conferred on:</th>
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<tr>
<td>Power exercisable by:</td>
<td>Regulations</td>
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</table>
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.

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.
Finance Committee

Report on 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—

¹ Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 23
Part 1 – Air Weapons

Part 2 – Alcohol

Part 3 – Civic Licensing
  o Taxis and private hire cars
  o Metal dealers
  o Public entertainment venues
  o Sexual entertainment venues
  o 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.”

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

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2 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 32
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.

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 overstretched Firearms Licensing administrations in Scotland.”

³ Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 28
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.”

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 of 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.”

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.”

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.”

**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.”

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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
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 Bill Team acknowledged this omission in oral evidence and undertook to look at the issue “and, perhaps, revisit it”. 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.”

**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.

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8 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 29
9 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 27
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 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.”

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”

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.”

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

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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.”  

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—

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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.”

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.”

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

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14 Scottish Parliament Finance Committee, *Official Report, 4 February 2015, Col 34*
assessments 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.”

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—

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

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15 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 31
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.”

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.”

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. 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.”

16 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 36
17 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 36
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”.

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.

**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—

“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.”

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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.”

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.”

CONCLUSION

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

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21 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 33
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. BASC did contribute to the consultation preceding this Bill in 2013. In our response we did comment on the financial assumptions made. We did state that “the cost that will be associated with the introduction or 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”. We recommended that there should either be no fee or that it should be set at no more than £20, to ensure a maximum take up. We also disagreed with contention that a fee should be charged for each air weapons application, whether successful or not.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. We do not believe that our comments on the financial assumptions have been accurately reflected in the FM. 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.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. The Bill does not have direct financial implications for BASC, apart from the amount of staff time that has been spent, firstly through the SFCP and now dealing with the Parliamentary progress of the Bill. BASC members will be financially affected if and when they apply for an Air Weapon Certificate.

The indirect financial implications from the Bill for BASC are the costs associated with advising members, and others, on the implications for their own recreational shooting or, for trade members, on the implications for their businesses.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. We do not consider that the estimated costs in the FM are accurate for the following reasons.

   a) We agree that there could be an estimated 500,000 air weapons in Scotland.
b) We accept that there could be between 10,000 and 30,000 new applications for air weapon certificates (or more) in the first licensing round, along with applications from some 40,000 existing certificate holders. (We accept that the costs of processing these applications should be relatively small.)

c) The SHOGUN IT system is not yet fully functional for all existing certificates in Scotland, though expected to be functional by mid-October. How easy it will be to incorporate air weapon certification remains questionable until it is proven with existing certificates.

d) Our main concerns relate to the “Processing Costs” outlined from Para. 66 onwards. An assumption is made that “extensive, detailed background checks and home visits will be necessary only in a very small proportion of cases”. 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.

It is assumed that the majority of air weapon owners use them for informal target shooting in their garden and we note that the Policy Memorandum states (para. 64) “Ministers do not believe that target shooting in such an environment (in gardens or other urban of 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”. With this in mind we feel that a large number, possibly 50% of applications, will give such informal target shooting as their good reason. We do not know what decision-based mechanism could be used to determine whether this would be acceptable or not without enquiry officer involvement and/or a home visit. Instead of 2% of applications requiring “detailed process incl. home visit” we feel that this would be nearer to 50%. 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.

e) We agree that the costs for applications from existing certificate holders should be greatly reduced due to much of the required information already being in place. What will not be known, however, is the good reason for requiring an air weapon certificate. Just because a person already has a shot gun or firearm certificate does not mean that they would automatically satisfy one or more of the good reason requirements for an air weapon certificate. This raises the issue of considerably more enquiry officer hours being required to attend to the applications of this group of possibly 40,000 applicants than was otherwise envisaged, at greater expense, and exceeding the anticipated full-cost recovery (Para. 104.)
Finally, the costs associated with processing are predicated upon Enquiry Officer and Administrative Officer costs. In Para. 62 it is noted that the current licensing service employs 66 administrative staff (including enquiry officers) and 25 police officers. The costs for the serving police officers will be greater than those for administrative staff but these are not featured in the summary of the anticipated costs.

f) We note that in Para. 78 it is estimated that some 500 air weapons could be tested, following investigation or seizure after the introduction of this legislation. This implies to us that both Police Scotland and the Scottish Police Authority anticipate low compliance rates with the licensing requirements if that number of air weapons are anticipated being seized. We are not sure how this equates with the much smaller number of summary prosecutions under the licensing provisions of the Bill (between 50-100 per annum, Para. 85) and how this then affects the costs anticipated in the Tables in Para. 88.

g) In Para. 99 reference is made to the “well-established system of visitor permits for firearms and shotguns under current firearms legislation”, implying that those coming to Scotland with an air weapon will be used to this form of permit. The majority of those coming to Scotland with air weapons, whether for competitive target shooting, pony club activities or for sporting shooting, will come from the rest of Great Britain. Visitor permits are neither currently necessary nor available for other GB residents so this will be a new regime for such visitors. For many, particularly groups of young people, this additional cost will act as a disincentive.

h) We note that Scottish Government supports the notion that fees will be payable “regardless of whether or not a certificate is granted”. (Para. 101.) This is not the case with applications for either firearms or shotgun certificates and this may encourage applications for these certificates rather than air weapon certificates.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

6. BASC will be able to meet the financial costs incurred as a result of this Bill. These will include informing members of changes to legislation and advising them on their applications for air weapon certificates.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

7. While we feel that the FM identifies the margins of uncertainty, and the timescales, it underestimates the true costs that will be associated with, in particular, processing of certificate applications.

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. The only costs not identified will be those relating to appeals by those either refused an air weapon certificate or those whose certificates are revoked. Costs will be incurred by licensing staff and Police Scotland legal services as well as by the appellant (or organisation financially supporting their member’s appeal) and by Sheriff Courts. We believe that a provision should be entered for such costs. Current appeals can incur legal costs (from both sides) of up to or greater than £20,000.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

9. We cannot identify any future costs at this stage.
1. 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.

2. 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**

3. 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**

4. 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**

5. 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.

6. 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.

7. 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.
8. 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

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

10. 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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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

16. 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.

17. 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 taxies 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.

18. 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.
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

Did you have sufficient time to contribute to the consultation exercise?

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

4. Taxi and Private Hire Licensing
The FM notes that the introduction of overprovision of Private Hire Vehicles will incur substantial ongoing costs to licensing authorities:

- Preparation of a resilient Overprovision Policy and maintenance of that policy;
- Instruction of an Assessment of Private Hire,

Costings of £10000 and £15-20000 respectively appear low. Although the FM is correct in pointing out that the licensing system should be self-financing and that extra costs would be recouped from fees, these are financially very difficult times and any substantial fee increase would impact on business feasibility and quality of service.

Similar concerns arise from the introduction of the discretion to insist that Private Hire Drivers as well as Taxi Drivers pass a knowledge test.

The Scottish Government’s insistence that this discretion should only be used when there are knowledge problems within the Area’s Private Hire Driver community highlights an issue which the licensing authority will be left to resolve: except for complaints the Private Hire trade is not clearly visible; the hire is pre-booked with forewarning of the destination.

With the introduction of mandatory Civic Licensing Standards Officers a level of enforcement will be expected of licensing authorities. This expectation is likely to increase within ever reducing resources. A completely invisible area is that of the presently exempted provision of services under a contract for the exclusive use of the vehicle for a period of not less than 24 hours. Removal of this exemption whereby a licence will be required for the vehicle and each driver, failing which an offence is being committed, would be an enforcement nightmare and resource intensive. The fact that Scottish Ministers could introduce a Statutory Instrument to create an exemption for unintended
Abolition of the licensing of Theatres
It is to be noted that the inference that theatres would likely be covered by a Public Entertainment Licence, fails to appreciate fully that Theatre licensing is presently mandatory whereas it is up to each licensing authority to determine whether to license places of public entertainment and if so what type of entertainment to cover.

The licensing authority will require information upon which to decide whether there is a need to license theatres as places of public entertainment. For authorities not licensing places of public entertainment this will be a substantial and detailed process. For those presently with PEL, the process may be less detailed but will include significant press publication fees for statutory notices if the authority’s resolution is to be widened to include theatres.

Introduction of licensing of Sexual Entertainment Venues
As it will be a decision of the licensing authority whether to license Sexual Entertainment Venues, this will involve detailed consultation, Committee and officer time and press publication fees for statutory notices and Committee and officer time in preparing and issuing a policy on the appropriate number of SEVs for its area, which limit may be zero. It is extremely unlikely that an authority would receive an application: most of the wasted effort would be avoided by making it a mandatory licensed activity.

Introduction of Civic Licensing Standards Officers
For many authorities this will be a new appointment or appointments. The licensed trade would not be appreciative of the significant increases which this and other proposals would necessitate. Many changes will attract extra costs as the practicalities of the text become discernible.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

6. 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.
Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
FINANCE COMMITTEE CALL FOR EVIDENCE
AIR WEAPONS AND LICENSING (SCOTLAND) BILL:
FINANCIAL MEMORANDUM SUBMISSION FROM
DUMFRIES AND GALLOWAY LICENSING BOARDS

Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

Did you have sufficient time to contribute to the consultation exercise?

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

4. As stated in the FM many of the proposals could, at least at first flush, appear to foster better use of resources:-

- Five year period for Licensing Policy Statement (However a lot can happen in five years; Supplementary Licensing Policy Statements may very well be necessary during the 5 year period; this would reduce any suggested savings)
- Review on convictions for relevant or foreign offences not being mandatory
- The requirement on Councils to produce a Financial Statement on income and expectations will supplement financial discipline and reporting: the foundations will be within the ABB framework.
- Personal Licence Holders: Presently where a Personal Licence Holder fails to comply with the refresher training requirements the consequent revocation of the Personal Licence would mean that 5 years would have to elapse before reapplying. The Bill’s proposal is to allow immediate reapplication. The FM expects reduced costs and reduced business disruption although possible savings cannot be accurately qualified. What this fails to appreciate is that –
  - The Board would still have to revoke the Personal Licence
  - More importantly the proposal negates any need for undertaking refresher training: the Personal Licence is revoked; if the person is a designated Premises Manager, revocation of the Personal Licence is an event allowing 6 weeks operation without the authority of a DPM
  - meantime the person can reapply for a Personal Licence immediately; the only check on this could be Police comments and recommendation for refusal of the application but on what grounds? The legislation would allow the immediate reapplication and the breach of the previous licence received its statutory sanction-revocation. There would be increased uncertainty, more hearings with real potential for appeals meaning additional resources.
Although the FM is correct in stating that it is difficult to estimate additional costs for Boards if the fit and proper person criterion were introduced it should be recognised that:

- This is not the return of the Pre 2005 Act ‘fit and proper person’ but one enmeshed within the Licensing Objectives.
- Although this might appear appropriate, there is an existing ground for refusal relating the impact on the Licensing Objectives. Drawing on the Licensing Objectives within the ‘fit and proper person’ criterion would likely lead to complicated and lengthy appeals; the likelihood is that the logic of the leading case of Brightcrew will prevail and unless focussed squarely on the sale of alcohol, the Board’s assessment of fit and proper would irrelevant.

**Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?**

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

6. 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. This situation could arise with the introduction of the new ‘fit and proper person’ ground for refusal and the introduction of the power of the Board to determine that its whole area is subject to overprovision of licensed premises.

**Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?**

**Wider Issues**

**Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?**

8. It is recommended that the Scottish Courts Service should be looking to increase training of members of the Judiciary and officers of Court on Alcohol Licensing Law both civil and criminal. The need for this was very recently indicated in the criminal appeal by Terrence Feeney.

Lady Paton commented ‘we extend sympathy to the justice for several reasons:

- The complexity of the legislation and its amendments
- A party litigant presenting has own case who did not draw attention to [the due diligence defence]
- The Crown’s apparent failure specifically to mention the[the due diligence defence]
- The fact that the justice’s legal assessor does not appear to have drawn his attention to the [the due diligence defence]’
The reference to the complexity of the legislation and its amendments draws attention to the fact that numerous Acts have amended the Licensing (Scotland) 2005 and the Bill will greatly add to this: only the sophisticated and well-resourced can hope to keep their understanding of the 2005 Act complete and up to date. This is an obstacle to access to justice for many party litigants. A consolidating statute is overdue

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*
FINANCE COMMITTEE CALL FOR EVIDENCE

AIR WEAPONS AND LICENSING (SCOTLAND) BILL:

FINANCIAL MEMORANDUM SUBMISSION FROM

EAST AYRSHIRE COUNCIL

Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. Yes but no comment on financial assumptions.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Not applicable.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. Yes. Cost impact would generally be minimal, although potentially additional costs re: taxi over-provision and Civic Licensing Standards Officer are possible as indicated by the Bill. It is anticipated any impact would be recoverable from fees.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. As best can be determined at this time from information provided in bill.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. Yes, costs anticipated to be minimal - can be met via fee recovery.

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?
7. Yes.

Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. Yes, subject to areas noted in bill as being unable to quantify.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
9. Potentially - but unable to quantify until subordinate legislation known.
FINANCE COMMITTEE CALL FOR EVIDENCE

AIR WEAPONS AND LICENSING (SCOTLAND) BILL:

FINANCIAL MEMORANDUM SUBMISSION FROM

GLASGOW CITY COUNCIL

This response to the Financial Memorandum in respect of the Air Weapons and Licensing (Scotland) Bill details the views of both the City of Glasgow Licensing Board (“the Board”) and Glasgow City Council’s Licensing Authority (“the Licensing Authority”). Each response is clearly marked to indicate which body is responding.

COSTS – the Board

In relation to the “fit and proper person” test, the Financial Memorandum suggests that “any additional cost is likely to be minimal”. The Board would broadly agree that a properly implemented “fit and proper person” test would result in minimal increased costs however, as detailed in our response to the consultation, the view of the Board is that 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. In particular further drafting of the bill must clarify the relationship between the “fit and proper person” test and the Brightcrew v City of Glasgow Licensing Board decision (i.e. that the Board can only have regard to matters flowing directly from the sale of alcohol).

The Licensing Board also notes that the Financial Memorandum intimates local authorities are able to retrieve any increases costs through licensing fees. Whilst the Civic Government (Scotland) Act 1982 provides an open-ended fee structure to recover costs the 2005 Act does not. The Licensing (Fees) (Scotland) Regulations 2007 provides a fee structure that, in practical terms, caps the amount of income that a Licensing Board can realistically expect to recover each year. If the uncertainties around the “fit and proper person” test and its relationship with Brightcrew are not addressed then Boards may face increased litigation costs with no realistic way to recover those costs.

The Licensing Board notes and welcomes the proposal to remove the requirement for Licensing Boards to review a licence if the holder gains a conviction. This will save the Board’s time and resources as it notes that there are mechanisms in place to ensure that any noteworthy convictions are brought to its attention by either Licensing Standards Officers or Police Scotland.
The Licensing Authority notes the Financial Memorandum’s position that a Licensing Authority may choose to carry out an assessment of private hire services but that such an assessment would only carried out when there is a perceived problem of overprovision.

Many licensing authorities including Glasgow already adopt a limitation of numbers policy in respect of the issuing of Taxi Licences. The 1982 Act requires authorities to review any such limit at least once every three years. When carrying out a review the authority can make reliable assessments using factors such the demand at taxi ranks in their area or using data supplied by the night time economy.

The Licensing Authority is of the view that an analogous approach could not be implemented to assess private hire demand. Given the differences in operation between the taxi and private hire car sectors it would be extremely complex to measure demand in the private hire sector. Any model used to make the necessary assessment would require to be developed by a specialist third party and it likely that ongoing assessments would require to be carried out by this party. The costs of development and continuous assessment would then be passed onto the trade through increased fees.

Should these provisions be introduced then this Authority would, in order to ensure that no unnecessary costs are passed to applicants, encourage the Scottish Government to provide clear guidance on what factors would reliably evidence the overprovision of private hire services in a local authority area.

Sexual Entertainment Venues

The Licensing Authority welcomes the introduction of a new licensing regime for sexual entertainment venues (“SEVs”) however it does share the concern intimated by the Financial Memorandum that fee income may not cover the potentially substantive legal costs incurred in the litigation of applications refused by the Authority. 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.

The Licensing Authority would respectfully 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. In particular the Scottish Government must provide clear guidance to local authorities as to whether sexual entertainment venues that are currently licensed under the Licensing (Scotland) Act 2005 should be subject to any quasi-grandfather rights in the determination of their applications for SEV Licences.
Civic Licensing Standards Officers

The Licensing Authority cannot, at this stage, comment fully as to the cost implications of the creation of CLSOs. While in general terms the role would have to be funded by the Licensing Authority and costs recovered by way of licensing fees, the Authority will require further details of the CLSOs’ powers and duties. Once it has this clarity, then the Licensing Authority will carry out a review of its existing staff and its existing resources. At this stage it will take a decision as to the most appropriate way to staff this role. However, the Licensing Authority notes that it does not funds to meet an additional LSO’s salary and if such a post was to be created then, as noted above, the Licensing Authority would need to absorb the costs itself and reclaim the monies through licensing fees moving forward.

Licensing of theatres etc

As noted in the Licensing Authority’s consultation response, it welcomes the repeal of the Theatres Act 1968 and the move to have it considered as part of the public entertainment regime. However, the Licensing Authority would suggest that there will be costs associated with the amending and publishing of the public entertainment resolution.

The Licensing Authority would use this opportunity, to again, urge the Scottish Government to introduce provisions to allow the necessary amendment to the resolution to be expedited. This would help reduce the costs to theatre owners etc.

WIDER ISSUES – the Board and the Licensing Authority

Both the Board and the Licensing Authority are aware that they are under a statutory obligation (albeit it from different sources) to recover only their costs through licensing fees in relation to the licensing regime. As such, both bodies agree with the contention contained within the Financial Memorandum that any costs should be recovered by way of the licence fees. However, it should be noted that it is difficult, if not impossible, for the bodies to pre-emptively raise fees at this point to take into account the Scottish Government’s proposals and therefore when introduced the bodies will need to initially absorb the cost of CLSOs or overprovision assessments. Both the Board and the Licensing Authority cannot effectively cost or evaluate the resources needed until there is certainty as to the legislation’s effect and implementation. Therefore, there will always be an overlap where the bodies will rely upon Glasgow City Council in meeting the costs incurred by new legislation.
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. Yes, both the Council and the Licensing Board of North Ayrshire responded to the original consultation, but there was no comment on the financial assumptions.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. N/A

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. Yes. The financial implications outlined in the Bill can, in most cases, be addressed by increasing fees in line with cost recovery, subject to the statutory maximum limits. The exception to this is the new statutory requirement to employ a Civic Licensing Standards Officer.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. Yes

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. The financial implications outlined in the Bill can, in most cases, be addressed by increasing fees in line with cost recovery, subject to the statutory maximum limits. The exception is the new statutory requirement to employ a Civic Licensing Standards Officer which will be an additional cost. This cost should be provided for by the Bill.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
7. This is difficult to assess but would appear to be reasonably reflected.
Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. No. The Bill requires an annual statutory financial return to gather and assess information on each of the licensing objectives. This could result in some increased costs relating to a time-recording system, given that expenditure and income requires to be analysed by activity.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. It is not easy to estimate this with any certainty at present; it is felt that the FM is fairly comprehensive.
Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

1. SARPA did contribute to the consultation preceding this Bill in 2013. In that response we commented on the financial assumptions made. We did state that “the cost that will be associated with the introduction or an air weapon licensing scheme will be very high” and that it could place a massive burden on the already over-stretched Firearms Licensing administrations in Scotland. We 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. We disagreed with contention that a fee should be charged for each air weapons application, whether successful or not.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. We do not believe that our comments on the financial assumptions have been accurately reflected in the FM. The recommendations that we made relating to realistic financial costs have largely been ignored. Given the number of non-club and non FAC airgun owners the assumption that most applications for an air weapon certificate (98%) will be dealt with without the need for further inquiry is unrealistic.

Did you have sufficient time to contribute to the consultation exercise?

3. Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

4. No, In order to meet new demand for new airgun users who wish to continue their hobby we (SARPA) would need to move most clubs from small sites which in most cases are low cost or gratis to larger commercial site to accommodate the increase in membership, currently we have only two such clubs and those are barely financial viable if we are to sustain Air gun shooting as a low cost accessible sport. Our membership would have to carry the individual licence cost as well as additional facility costs and “Club” or “Facility” licence cost.
Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

5. We do not consider that the estimated costs in the FM are accurate for the following reasons.

   a) We agree that there could be an estimated 500,000 air weapons in Scotland.

   b) We accept that there could be between 10,000 and 30,000 new applications for air weapon certificates (or more) in the first licensing round though this number does seem underestimated 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.

   c) An assumption is made that “extensive, detailed background checks and home visits will be necessary only in a very small proportion of cases”. This would indicate that the level of checks will be very basic, in which case is the licence of little benefit, or the level and volume of checks has been vastly underestimated.

   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.

   The most numerous use for airgun use is informal target practice on private lands, given by ministers would have informal target shooting abolished unless the Chief constable is satisfied that the arrangements “can be carried out without risk to the public” indicating some form of site visit by a competent officer would be required, we estimate this would take significantly more that the proposed 1.5 hrs.

   d) We agree that the costs for applications from existing certificate holders should be greatly reduced due to much of the required information already being in place, these individuals have already be deemed safe and competent with firearms though any “good reason” for holding an additional air weapon may well differ from other weapons they may hold.

   e) No clear indication of process or requirements has been made for licencing of facilities or Clubs, as most of the clubs are private and run on private grounds it may well be that this requirement will not be applicable but where it is there may be the requirement for detailed visits beyond what is expected for an individual.

   If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

6. SARPA as an association of clubs has a genuine concern that the additional and costs may well force some of its clubs to close, the increase in club demand will require a wholesale upscaling of the organisation by private shooters forced to
Join clubs to maintain their rights to shoot. While we are working with other bodies to try and source suitable sites to establish more clubs these, come at significant financial cost not only for the lands but also for the additional requirements to meet both able bodied and disability shooter requirements. The same level of public finance support should be made available for airgun shooters as is made available to other minority sports.

*Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?*

7. While the FM have identified reasonable timescales, by virtue of sheer numbers and time police time commitment we feel FM may have vastly underestimated the true full cost of processing applications and renewals for certificate applications.

**Wider Issues**

*Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?*

8. The FM has captured the sources of costs, court and legal costs may require additional attention.

Given the value of equipment held by some individuals which is held perfectly legally at this point in time, and that they may not receive any compensation for the surrender of their equipment, many may well challenge any decision through the courts should they be refused a licence.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

9. We cannot identify any future costs at this stage.
Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. No.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. N/A

Did you have sufficient time to contribute to the consultation exercise?
3. N/A

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

4. Based on the information provided in the Financial Memorandum which describes how the costs were estimated the costs for the Scottish Prison Service appear to be reasonable estimates.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. Yes as above.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. Yes

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
7. Yes
Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. N/A

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. N/A
FINANCE COMMITTEE CALL FOR EVIDENCE

AIR WEAPONS AND LICENSING (SCOTLAND) BILL:

FINANCIAL MEMORANDUM SUBMISSION FROM

THE SCOTTISH TAXI FEDERATION

Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. The Scottish Taxi Federation confirms it took part in the consultation exercise preceding the above Bill. It further confirms that at no stage of the consultation did the question of financial assumptions arise and therefore we were not required to make any comment.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Since we were not asked for and therefore made no comment the answer is no.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. The Bill does not directly affect the Scottish Taxi Federation as an organisation. However, in light of the Government’s comments that additional costs should be charged to licence fees, it is clear that our members will be directly affected.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. As stated in (4) above, the additional costs referred to may not affect our organisation directly, but it is clearly the case that individual members will be affected. 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 the weakness in the legislation, should simply be passed back to licence fees.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. Licence holders are in effect are being punished for a system that the Scottish Government acknowledge in advance, is more likely to be challenged.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
7. This is difficult to answer since the assumptions are just that and not based on factual evidence.
Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. In terms of the Civic Licensing Section, the FM does not capture factual costs mainly by its admission that these are based purely on assumptions.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. Yes, but these cannot be quantified in advance.

10. The FM suggests that the likely cost to a Local Authority of undertaking an assessment of private hire car services might be in the region of £15 to £20 k every three years. How is it possible to arrive at such a conclusion?

There currently exists no methodology or measurement tool by which a Local Authority can measure that the numbers of private hire cars operating within its Licensing area is sufficient or otherwise. This of course means that one will have to be devised and with respect, such a measurement tool, because of the nature of the private hire operation, will be difficult if not impossible to achieve. It will therefore be equally difficult to quantify the cost of such a measurement tool assuming it is possible.

11. The courts have long accepted the SUD measurement used to determine demand for taxis, is in fact a legitimate methodology and have also decreed that 3 years between such surveys may be considered too long. It is also a fact that SUD surveys can and do cost more than the £15 to £20 k suggested. For example, it is our belief that in the case of Edinburgh City, the last SUD report may well have exceed these figures by some distance.

In Summary

The Scottish Taxi Federation is of the view that the FM has got things badly wrong in terms of its cost assumptions. It may be that it has been assumed that the cost of administering the over provision section and the possible court challenges, will only be charged back to the Licence fees for private hire car operators. If this is the case, then the legislation needs to make this clear otherwise Local Authorities will be free to make their own interpretations and as has been proven all too often in the past, these do not always work out as anticipated.
FINANCE COMMITTEE CALL FOR EVIDENCE
AIR WEAPONS AND LICENSING (SCOTLAND) BILL:
FINANCIAL MEMORANDUM SUBMISSION FROM
SOUTH AYRSHIRE COUNCIL

Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

1. Licensing officers have previously submitted responses to consultation exercises on alcohol licensing, taxi and private hire car licensing, licensing of metal dealers, and licensing of sexual entertainment venues. The primary focus of these responses was licensing, not financial matters. However, the Scottish umbrella licensing group SOLAR will also provide a collective response to this consultation. Finance officers have not been involved in any previous consultation exercise.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. Not applicable.

Did you have sufficient time to contribute to the consultation exercise?

3. Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

4. We make the following comments:

ALCOHOL
- Licensing objectives & statements of policy: existing attributable costs are small and therefore any saving derived would be minimal.
- Greater powers for Licensing Boards & Police: this would likely result in more or longer hearings, however any additional costs would be minimal.
- Removal of automatic requirement for a hearing: existing attributable costs are small and therefore any saving derived would be minimal.
- Licensing Boards annual financial report: What purpose would this report serve? What format would it take? Would it require to be audited? In our experience, where fees are linked to the rateable value of premises this bears little correlation to the amount of work involved with a licensed premises and accordingly it is not wholly accurate to say that fees are based on cost recovery. For example, the charge for an occasional licence comes nowhere near to covering the cost of the associated administration process. In our view a significant level of cross-subsidy exists the within 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. For smaller authorities, the need to separately allocate costs and staff time would also introduce an additional administrative burden at a time when local authorities are seeking efficiencies.
TAXIS & PRIVATE HIRE CARS
- Overprovision: South Ayrshire Council estimate the cost of assessing overprovision to be in the region of £30,000 - £50,000 on a tri-annual basis. As this could result in legal challenges, it is a policy decision unlikely to be adopted by South Ayrshire Council.
- Testing of private hire care drivers: Drivers are currently required to undergo training at their own expense. This requirement would be maintained.

METAL DEALERS
- Metal theft is an issue within South Ayrshire.

PUBLIC ENTERTAINMENT VENUES
- The abolition of theatre licenses will have no financial implications.

SEXUAL ENTERTAINMENT VENUES
- At present, South Ayrshire has only one venue which is licensed for adult entertainment, although it is not currently trading. Consequently, there is no fee income against which to offset the cost of appeals against unsuccessful applications.

MISCELLANEOUS & GENERAL
- Civic licensing standards officers: The role of civic licensing standards officer is currently performed within South Ayrshire Council, however the introduction of this Bill may likely increase the demand for this role. This could require the Council to increase the full-time equivalent complement with no additional funding or income available to do so.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. Refer to Q4 above.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. No. Local authority funding continues to face pressures and Councils do not generally possess sufficient budget to create additional posts (e.g. Civic Licensing Standards officers) or to fund additional costs arising from legal challenges (e.g. private hire car overprovision, sexual entertainment venues, etc). On the assumption that additional central funding would not be made available, it would then fall to either local authorities or the licensed trades to fund the difference; however these business tend to operate at low margins, particularly in the current economic climate, therefore it may be preferable not to further burden these industries.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
7. No comment.
Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. We consider that the Police Service of Scotland may incur additional costs from the introduction of a ‘fit and proper person’ test.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. None that we are currently aware of.

Other comments

Further to above, South Ayrshire Licensing Board is particularly concerned that the fee for occasional licences has not been reviewed. The current fee is insufficient to cover the cost of the work involved to process the licence application. In 2013/14 the Board processed over 660 occasional licence applications.
Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. No.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Not Applicable.

Did you have sufficient time to contribute to the consultation exercise?
3. Not Applicable.

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. In order for the Council to produce an annual report of income and expenditure for Alcohol licensing fees, staffing costs, property costs etc are required to be split over three diverse areas – Liquor, Civic and Registration. There may be additional costs as a result of remedial work required, particularly in preparing the first report. Other costs will be the additional staff time required to prepare the annual report.

Any savings found as a result of the need to review the Policy Statement every five years as opposed to every three years would be minimal, particularly if the Board feels the need to amend the Policy during that period.

With regard to additional costs as a result of the ‘fit and proper’ person test this will depend on the number of reports received from Police Scotland under this heading. The Council have no indication of how many reports we are likely to receive however we do not expect to be inundated with them. Costs are therefore likely to be minimal.

The removal of the obligation to review a licence if the licence holder gains a conviction would result in minimal savings based on the number of reviews held to date.

If the Council were to go down the lines of requiring an assessment of private hire services, it is suggested that the costs referred to in the FM would be a minimum figure. South Lanarkshire Council operates a zoning system and this could result in the figure being in excess of £0.020m.

In terms of a public consultation on any proposed policy, this would be with those already involved in the assessment of private hire services. The £0.010m quoted in the FM seems reasonable for a consultation on its own, however if this was in conjunction with an assessment already undertaken then it would appear to be slightly overstated.
Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

5. The removal of the obligation to review a licence if the licence holder gains a conviction would result in minimal savings based on the number of reviews held to date and not at the 40% of related costs quoted.

If the Council were to go down the lines of requiring an assessment of private hire services, it is suggested that the costs referred to in the FM would be a minimum figure. South Lanarkshire Council operates a zoning system and this could result in the figure being in excess of £0.020m.

In terms of a public consultation on any proposed policy, this would be with those already involved in the assessment of private hire services. The £0.010m quoted in the FM seems reasonable for a consultation on its own, however if this was in conjunction with an assessment already undertaken then it would appear to be slightly overstated.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

6. A review of fees would have to take place in the near future particularly with regard to occasional licences or extended hours applications as currently the fees for these applications do not cover the costs for administering the same.

If the Council were to go down the lines of requiring an assessment of private hire services it is suggested that the costs referred to in the FM would be a minimum figure. South Lanarkshire Council operates a zoning system and this could result in the figure being in excess of £0.020m.

With regard to the ability to recover appeal costs, there could be some delay in recouping the costs due to the time taken for appeal and administrative procedures.

In all cases of potential future costs, the Council does not currently have the funding in place to meet these. As suggested throughout the FM, the Council will consider fee levels to recover any additional costs from license holders that may materialise.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

7. Yes.

Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. None, other than those mentioned above.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. Not possible to quantify costs at this stage.
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. Yes, the GTA did take part in the original Consultation and, further, we had considerable input on the Risk Assessment.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. The GTA's submission to the Scottish Government on the question of finance and the impact on the Trade, has been reproduced in the Financial Memorandum.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details. Please see the response to question 2.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. In the GTA's response to the Scottish Government on the provisions of the Bill, there are a number of unanswered questions concerning the definition of ‘fit person’, ‘good reason’, ‘conditions’ and further legislative queries and, until these are answered, the GTA feels that the estimated costs and savings set out in the Financial Memorandum are unable to be verified.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. The question is applicable as the GTA has already agreed at the Scottish Firearms Consultative Panel (SFCP), that they will be involved in helping promote with publicity on the detail of the Act and any handins and this will represent considerable cost both to the Scottish Government and the Shooting Organisations, including the GTA. We understand that provisions will be made by the Scottish Government to meet much of this cost.
Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

7. See response to question 5

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. See response to question 5 and comment in question 6 on publicity and information need/required. There will also be costs associated with revocations, appeals, and court cases.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. 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.
FINANCE COMMITTEE CALL FOR EVIDENCE

AIR WEAPONS AND LICENSING (SCOTLAND) BILL:

FINANCIAL MEMORANDUM SUBMISSION FROM

WEST DUNBARTONSHIRE COUNCIL

Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

1. West Dunbartonshire Council (WDC) responded to a specific consultation on changes to taxi and private hire car licensing in March 2013. The consultation did not contain any financial assumptions.

WDC also responded to a consultation on licensing sexual entertainment venues. WDC considers the likely costs and income to be negligible.

We are unaware of any other consultation on other aspects of the bill, including alcohol licensing and non-taxi civic licensing.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. Not applicable.

Did you have sufficient time to contribute to the consultation exercise?

3. Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

4. No, the financial implications have not been accurately reflected in the FM.

With respect to alcohol licensing, the financial memorandum (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." (para 123). It also states: "It is for local Licensing Boards to determine the level of appropriate fees, subject to any prescribed level, and to ensure that the licensing regime is self-funding." (para 128).

However WDC's calculations show that it is in fact 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.¹

¹ Please note that WDC has confirmed that this sentence relates to alcohol licensing.
The comment in para 143 of the FM is to be welcomed if it leads to an increase in the fee that licensing boards can charge i.e. “The annual financial reports will inform the Scottish Government on appropriate maximum fee levels”.

The Scottish Government (SG) proposes to require Licensing Boards to publish an annual statement of income and expenditure to ensure transparency. This may be helpful to WDC by publicising the deficit incurred.

There are of course different ways to calculate expenditure, and some councils may report a smaller deficit if they do not include managerial costs or overheads for example. 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.

Para 143 of the FM states: “While in theory publishing these calculations should not require significant additional resource, it is recognised that some changes may need to be made to some Boards’ financial and accounting practices to enable this. It is anticipated that any additional costs arising from this should be minimal”. There is however some concern that it is unreasonably burdensome to require production of this statement within three months of the end of the financial year.

The FM states “Reducing the frequency of reviewing the Licensing Policy Statement from every three years [to five years] to better align with local government electoral terms will potentially result in a 40% saving from existing costs in relation to reviewing their Licensing Policy Statement for Licensing Boards. ” (para 135). However it should be noted that the saving will be on paper only and is not a cashable sum that can be saved or spent on other work.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. Yes, subject to the other comments in this response.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. There is no statutory cap on the fees that councils can charge for licences under the Civic Government (Scotland) Act 1982. Therefore any extra costs can in principle be covered by increasing fees.² Please note that WDC has confirmed that this paragraph relates to licences for taxis and private hire cars.

As noted in para 156 of the FM, the cost of defending an appeal against refusal to grant a licence can be recovered from fees. However such costs can vary significantly, as can the frequency of appeals, and it may be necessary to adjust fees only some time after any increase in appeal costs.

² Please note that WDC has confirmed that this paragraph relates to licences for taxis and private hire cars.
Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
7. No comment

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. Yes

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
9. No comment
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

5th Meeting, 2015 (Session 4)

Wednesday 4 February 2015

Present:

Richard Baker         Malcolm Chisholm
Kenneth Gibson (Convener)  John Mason (Deputy Convener)
Mark McDonald         Jean Urquhart

Apologies were received from Gavin Brown.

Air Weapons and Licensing (Scotland) Bill: The Committee took evidence on the Financial Memorandum from—

Quentin Fisher, Bill Team Leader, Ewan Bruce, Finance Business Partner, Keith Main, Policy Manager, Walter Drummond- Murray, Policy Manager, and Peter Reid, Policy Manager, Scottish Government.
On resuming—

Air Weapons and Licensing (Scotland) Bill: Financial Memorandum

The Convener: Our next item of business is evidence from the Scottish Government’s bill team on the financial memorandum to the Air Weapons and Licensing (Scotland) Bill. I welcome Quentin Fisher, Ewan Bruce, Keith Main, Walter Drummond-Murray and Peter Reid. Good morning to you all. Members have copies of the financial memorandum and all written evidence received. Before we move to questions from me and from the committee, I invite one of our witnesses to make an opening statement. Who has drawn the short straw?

Quentin Fisher (Scottish Government): I have. Thank you for inviting us to offer evidence to the committee today. I will make a couple of brief and broad observations.

The bill makes provision in respect of a number of new and existing licensing regimes. 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.

The bill has a number of purposes. It aims to protect public safety by creating a new licensing regime for air weapons. It aims to improve aspects of locally led alcohol and civic government licensing, such as the licensing of scrap metal dealers, taxis and private hire cars, in order to preserve public order and safety, to reduce crime and to advance public health. It also gives local authorities the power to regulate sexual entertainment venues in their areas, so that performers and customers benefit from a safe and regulated environment.

The breadth of the licensing regimes that are covered means that there is not insignificant variation in the specific legislative detail and therefore in the financial impact in respect of each regime. That variation is, I hope, reflected accurately in the financial memorandum. In keeping with current licensing practice, the bulk of the costs associated with licensing regimes is ultimately borne by the individuals and organisations who seek to carry out the licensed activity.

It is worth noting that many of the costs that are identified, particularly in respect of part 3, “Civic Licensing”, depend on future decisions that will be taken at local authority level. Local authority discretion is an important principle in all of this. In such instances we have sought, where possible, to offer some indication of what the costs might be.

We will do our best to ensure that the answers that we provide today are helpful to the committee in informing your consideration of the bill.

The Convener: Thank you for your brief opening statement. When a question is asked, the witnesses can decide among themselves who is the most appropriate person to respond to it and to any follow-up question.

It is logical to go through the bill part by part, so let us start with part 1, “Air Weapons”. The bill will make it illegal to possess air weapons without good reason, but I note that people who hand in unlicensed air weapons will not be entitled to compensation. Surely the absence of compensation will make it less likely that weapons will be handed in. A lot of folk will just think, “Well, it’s at the back of the garage and I’m not going to the bother of digging it out and taking it to the local police station.” What is the thinking behind not compensating people who hand in weapons, even with a token £20 or so?

Keith Main (Scottish Government): That issue has been discussed quite a lot over the three or four years in which we have been working with stakeholders and considering provisions. I understand that it is of concern to some people.

There have been occasions in the past when changes in firearms law led to the outright prohibition or banning of certain types of gun. For example, in 1997 handguns were in effect prohibited and the Government of the day offered compensation. In the bill, the Government does not intend to ban airguns as such. We are seeking to ensure that the people who have airguns are appropriate and can have them safely and so on, but we are not banning the guns.

Our view is that there are an awful lot of airguns at the back of people’s garages, as you said. In the course of the past few years, lots of people have said to me, “We had one of those when I was a kid. It’s in the loft or somewhere and I haven’t seen it for years.” We think that there will be a lot of low-value, old air weapons that have never been used or are perhaps broken or no longer fit for use, and it will be open to people to hand them in to the police—we will put in place arrangements for that—sell them through private sales or registered firearms dealers or make other arrangements. For example, owners might pass them on to other users.

Ministers’ policy has always been that, because there will be no ban and we are talking about quite a high number of low-value weapons, compensation will not be part of the arrangements.
The Convener: I thought that compensation might be an incentive for people who no longer have an interest in or use for airguns to get them out of circulation. We might get more guns out of circulation than we otherwise would.

Quentin Fisher said that the new system will not be unduly burdensome, but that is hotly contested. The financial memorandum suggests that the cost of processing applications for air weapons under the new arrangements will be about £85.55. That is a remarkably precise figure, and it has been contested by people who submitted evidence to the committee. For example, the British Association for Shooting and Conservation—I will try not to use acronyms—said:

"the cost that will be associated with the introduction of an air weapon licensing scheme will be very high",

and

"hugely disruptive to the already overstretched Firearms Licensing administrations in Scotland".

You have said that 98 per cent of people will be dealt with without the need for further inquiry, but the Scottish Air Rifle and Pistol Association says that that is incredibly misleading, because half the folk who use these weapons use them for informal target shooting in their own gardens; we do not want to see that, because of the safety impact. The association completely refutes the financial assumptions that have been made about the bill and suggests that the average cost will be significantly higher; it mentions a figure of almost £120.

Can you talk us through how you came to the 98 per cent figure for the proportion of applications that would not require visits, and how you reached the figure of £85.55?

10:45

Keith Main: We arrived at the 98 per cent figure in discussion with Police Scotland, which will be the licensing authority. The air weapons provisions and the whole process of applying for licences for air weapons are based around the existing firearms regime for high-powered rifles, shotguns and so on. The aim has been to provide a fairly light-touch approach to licensing air weapons, recognising that they are not generally as dangerous as more high-powered guns.

In talking to Police Scotland, we discussed how that would be done. We accept the police’s view, which we share, that there are some 60,000 to 65,000 existing certificate holders for other types of firearms, and that many of them will also have air weapons and will be brought into the new regime. Many of the security issues have been looked at in licensing those holders and providing them with certificates, so a large number of people would already be taken out of the system. For those who are new applicants, it is a relatively light touch, and Police Scotland has told us that a disclosure-style arrangement, under which they will check an applicant’s basic criminal history, should suffice for the majority of applicants.

That has been the view of Police Scotland throughout. The police therefore believe that 2 per cent is the right level for a full home visit and security check. Obviously, as the new system comes in that may vary a little, but that is the view that we have taken over the piece, and we worked up the figures on that basis.

In the past couple of weeks, I have looked again at the £85.55 figure. The figure is very accurate. We used figures that have been used by colleagues down south in the Home Office and the Association of Chief Police Officers; they have done a lot of work over the past couple of years in looking at the costs of processing existing firearms applications. With their agreement, we have adopted a lot of the figures for work that has been done by our working group in that context. The figure takes account of processing times and the type of staff who are doing different bits of work, and the calculations behind the £85.55 pretty much reflect the work that is done.

That has led the Home Office to consult recently on an increase in firearms fees more generally, so we have continued to adopt that figure. BASC and SARPA are aware of that work. In fact, BASC was part of the working group down south that agreed those figures. There are always differences in how we treat the figures, and I understand BASC’s concerns about the impact on its members, but we think that there is a generally accepted basis for the background workings behind the figures, which we will review later in the year as we start to look at fee levels.

The Convener: I imagine that more than 2 per cent of the population will have a criminal record, so it seems a bit odd that the figure is so low. It is quite burdensome, even if the cost is £85. Okay, a law-abiding citizen will grudgingly apply for that, but the folk whom you are most worried about will just not bother paying £85 to get a gun licensed, will they? Surely all that you will do is impact adversely on shooting clubs and their members.

Keith Main: There will be an impact on shooting clubs and members—absolutely. That is part and parcel of the licensing system, but, then again, existing firearms and shotgun owners pay for a certificate, which currently costs £50 for five years. We have not set a fee level yet for air weapons. The fee reflects the work that has to be done by Police Scotland to ensure that the right people have air weapons and that the police can therefore help to protect public safety. If the figure is £50, £60 or £70 over five years, that is a relatively small
price compared with the cost of membership of a club or with the amount that somebody pays for some other interest.

I accept that there will be a core of people who will just say, “We’ll hide our guns. We’re not going to get involved in this licensing system.” As part and parcel of the implementation, we have to ensure that we are getting the message out. There is provision in the financial memorandum for a media campaign. We have had the verbal agreement of the shooting organisations to help us get that message out. We need to get it out to the wider community to make sure that people know that there will be a requirement to license their guns. If people choose not to license those weapons, they will be committing an offence and the police will deal with that appropriately. Over time, it will help the police to identify air weapons that are in circulation with people who should not have them. There are provisions elsewhere in the bill that will allow for the courts to order the forfeiture of those weapons or deal with them appropriately.

The Convener: If there are half a million weapons in circulation and you are talking about between 10,000 and 30,000 applications, to me, that means that between 94 and 98 per cent of people will not bother getting their weapons licensed. SARPA has said:

“a more realistic total licence number would be between 100,000 and 150,000”.

Even then that would be a maximum of 30 per cent of people applying—most people would still blank the legislation.

The cost of this measure will be millions of pounds. How will the bill deliver on what it proposes in terms of enhanced and improved safety, when we are talking about only small minorities of people—according to your own figures—getting these guns licensed?

Keith Main: I cannot remember the paragraph numbers in the memorandum, but the estimate of 500,000 air weapons is generally accepted around the working group table as the potential number of air weapons out there in Scotland. In fact, we expect that a lot of them will simply be handed in because they are old, broken or unwanted. A lot of them will be sold on. Many people who own guns of any sort—air weapons included—will have a number of different guns, possibly because they have upgraded over the years and possibly because they do different types of shooting. Working down through those assumptions, we get to the figure in the financial memorandum of potentially 40,000 existing firearm certificate holders also having air weapon certificates in future. The 20,000 estimate is brand-new applicants to the system, who do not have more powerful firearms but who will come in and seek a certificate for the air weapon or multiple air weapons that they hold. It will be one certificate. A person can hold one, two or any number of air weapons on that certificate.

The Convener: I will just ask one more question on this area, because colleagues want to ask about other parts of the bill.

The financial memorandum states that the estimated maximum additional enforcement, testing and reporting costs to be incurred by Police Scotland would amount to £90,000 per annum, based on an estimated 500 cases per year at £180 a case. The BASC questioned whether that figure implied that the police expected to seize 500 weapons as a result of non-compliance and asked how the figure compared with the estimate of 50 to 100 summary prosecutions that the FM quotes. That appears to be a wee bit of an anomaly.

Keith Main: We are looking at the line between the existing regime and the new regime. The 500 tests that sit against Police Scotland’s costs are an estimate that is based on the number of actual weapons that might have to be tested—they would be brand-new tests.

In the course of investigating other crimes or complaints, Police Scotland may find air weapons in a property and, under the current regime, the police cannot take those weapons. However, one of the benefits of the provisions in the bill is that, from the point at which they come into force, the police will be able to seize weapons and test them as part and parcel of another investigation. For example, if the police go into a property because of a complaint about domestic abuse or antisocial behaviour, a prosecution will already be going on because of that complaint, alongside which there will be tests if air weapons are seized.

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.

The existing firearms legislation already contains offences relating to air weapons. For example, it is already an offence for somebody to fire an air weapon beyond the boundaries of their own premises or carry an air weapon in the street. Under the bill, there will be a number of new licensing-related offences that will sit alongside existing offences that can be investigated and prosecuted.

The Convener: I said that that was my last question, but I want to ask about one other thing. How many appeals do you expect from people who have been refused licences, and what would be the cost of those appeals?
Keith Main: I looked at the written evidence on appeals. We do not have a specific provision for appeals in the financial memorandum at the moment.

The Convener: Indeed. I know that.

Keith Main: I apologise for that. I will look at it again. On the basis of criminal prosecutions, we expect a relatively small number of brand-new appeals. The thinking was that the bill would lead to a very low number of potential criminal appeals.

I understand that the British Association for Shooting and Conservation is saying that there is potential for a number of appeals against refusal or revocation of a certificate. However, the people who apply under the existing firearms regime are generally known in the system—they are known to the police and are existing firearms owners—so the number of refusals is very small. Each year, around 1 per cent of applications are refused, according to the most recent statistics that we have. As our system rolls out, we will look to the police to provide advice on that.

It is difficult to estimate the number of appeals, but we will have to be aware of the issue and, perhaps, revisit it. I am also conscious that there is a new sheriff appeal court system coming into play under the Courts Reform (Scotland) Act 2014, so we will have to consider how appeals will work through that system. Ministers and officials hope that there will not be a lot of appeals; because it will be a light-touch system, we do not expect there to be a lot.

The Convener: We will move on to alcohol licensing. I will spend less time on the next two sections, not least because I have taken 20 minutes and I want committee colleagues to come in.

On the alcohol licensing provisions, West Dunbartonshire Council says:

“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”.

Glasgow City Council says:

“it should be noted that it is difficult, if not impossible, for the bodies to preemptively raise fees … to take into account the Scottish Government’s proposals”.

South Lanarkshire Council says:

“the Council does not currently have the funding in place to meet”

potential future costs. Surely the regime will add significant burdens to local authorities.

Peter Reid (Scottish Government): The proposals in the bill are a broad mix. They were derived from suggestions that were floating about among stakeholders and from the consultation exercise. 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.

We would be sympathetic to the idea of amending the existing limits on the licensing fees, but we carried out detailed work in reviewing them and got scant response from the local authorities. Therefore, we felt that we did not have enough information on which to base an increase in the fee levels.

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. One of the main findings of the fees review was that the current occasional licence fee of £10 is felt to be insufficient. We feel that we can increase the occasional licence fee without extensive further work, and fairly soon.

11:00

The Convener: Thank you. The written submission from the Convention of Scottish Local Authorities states:

“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 transparency and would provide evidence for any future fee increases.”

Nevertheless, COSLA adds that South Ayrshire Council “expressed ‘particular concerns’ that the fee for occasional licences had not been reviewed, stating that the current fee was insufficient to cover the cost of work involved in processing a licence application.”

Peter Reid: Yes. The current £10 fee is set in secondary legislation, so we could increase it outwith the bill.

The Convener: Okay. I have one final question on civic licensing—I am skimming through the submissions because I want to allow colleagues to ask questions.

The financial memorandum states that the bill “will give local authorities the power to refuse to grant private hire car licences on grounds of overprovision.”

However, the Scottish Taxi Federation states that the financial memorandum has “got things badly wrong”, and it questions how the financial memorandum’s estimate was reached, stating that no suitable methodology or measuring tool exists at present. Indeed, it goes on to say that it would
be “difficult if not impossible” to devise such a tool. How did you reach your estimates?

Peter Reid: At the moment, there is no equivalent test for private hire cars. There is a similar test for taxis that relates to unmet demand, but that is a different test. We took the figure from Napier University, which quoted £15,000 to £20,000—the figure is in the financial memorandum—as the indicative level for the unmet demand test. That figure was given as an example; in practice, it is a completely new test and we have not yet devised a procedure to determine what the appropriate amount would be.

The point that the Scottish Taxi Federation and others raise—that £15,000 might be on the low side—is possibly true for a large authority such as the City of Edinburgh Council or Glasgow City Council, but those are exceptional cases. A lot of local licensing authorities have very small numbers of private hires and, were they to carry out an unmet demand test, the amount would probably be a lot lower. We would be happy to work with local licensing authorities and relevant stakeholders to develop an appropriate methodology for testing that.

The Convener: Thank you. I said that I was going to open up the evidence session, but none of my colleagues has yet indicated that they want to ask any questions. I hope that they will. I will ask another question while they all get themselves psyched up for that.

The financial memorandum notes that some local authorities might receive no fee income from sexual entertainment venues—that is, where none exists 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. What is your comment on that?

Walter Drummond-Murray (Scottish Government): We recognise that risk in the financial memorandum, but the precise amount that such a challenge could cost is very hard to pin down. Glasgow City Council estimated that a low-level challenge in relation to a civic licence—for example, a private hire car driver licence going before the sheriff court—could cost between £2,500 and £3,000. However, if a case went all the way to the inner house of the Court of Session, the cost would be very substantial—there is no getting away from that—although it is hard to be precise.

The Civic Government (Scotland) Act 1982 confers a responsibility on local authorities to ensure that the total cost of licensing is covered by the licensing fees. Ultimately, however, when a case is likely to be very expensive, it is for the local authority to judge whether it is worth pursuing and whether the public benefit that it is trying to achieve would warrant pursuit of the case all the way through the courts and the incurring of that expenditure.

The Convener: My colleagues now wish to ask questions. The first one will be from Mark McDonald.

Mark McDonald: In relation to several areas that are dealt with in the financial memorandum, various organisations have highlighted concerns about the cost of appeals. The British Association of Shooting and Conservation has concerns in relation to air rifles; the Scottish Taxi Federation has concerns in relation to taxis; and various licensing boards are concerned about some of the new changes, particularly the fit-and-proper-person test. There are concerns that the cost of appeals in those areas has not been properly factored in. Would you like to respond to those concerns?

Quentin Fisher: That question covers all the licensing regimes, so I will deal with it in a broad fashion if I may.

I take it that you are talking about appeals in respect of decisions that have been made by the local authorities or the police to grant or revoke licences. The way to eliminate the possibility of an appeal would be to have no appeals system, but I do not think that anyone is suggesting that. At the moment, we have an appeals system and the possibility of appeal arises. The likelihood of an appeal being successful depends on, among other things, the quality of the decision that has been taken. It also depends on the mindset and the positioning of the potential appellant.

The moment that we have an appeals system in place—we have one for all licensing decisions—the possibility of an appeal exists. However, the likelihood of an appeal being successful is a different matter and can be ascertained only on a case-by-case basis, as can the costs of the appeal.

I do not know whether any of my colleagues wants to say anything about the specific regimes.

Walter Drummond-Murray: I would just add to the point that the convener made. There are only about 17 to 20 sexual entertainment venues in Scotland, which of itself limits the scope for appeals being taken through the courts.

Mark McDonald: You say that in relation to sexual entertainment venues, but the submissions that we have received raise the issue that there may be appeals against refusals to grant licences. Although there are only a small number of such venues in existence, there may be applications that, prior to the implementation of the legislation, would have gone through the alcohol licensing
system or another route. The bill will create a new licensing regime, which will, potentially, lead to refusals under that new regime and thus to appeals against those refusals. Basing your projection on the small number of venues that exist does not reflect what may happen, and that is the point that the licensing boards are attempting to get across.

I realise that it is difficult to put an exact figure on it, but a financial memorandum is supposed to deal in best estimates. Did you consider the scenario of licence applications being refused rather than simply the number of licences that have already been granted?

**Walter Drummond-Murray:** You are correct in saying that there would be applications on top of that figure. However, the point remains that lap-dancing clubs have been in existence in Scotland for perhaps 15 years and, even after that time, there are still only about 20. It is therefore reasonable to infer that the demand for licences is limited. There will be applications, but there will not be an enormous number of them.

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.

**Mark McDonald:** On the introduction of the fit-and-proper-person test for the granting of personal licences, there is a feeling that the definition is vague and could lead to a number of challenges. The Glasgow City Council licensing board states:

> “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.”

Has that issue been raised with you directly, in connection with the fit-and-proper-person test, and does the Government intend to look at the matter as the bill moves forward?

**Peter Reid:** The fit-and-proper-person test has been carefully drafted. There are existing fit-and-proper-person tests in other pieces of legislation that the local authorities will be quite familiar with so it is not a completely new concept.

The test has also 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.

The Brightcrew decision that is frequently referenced related to a board making decisions that went beyond the scope of the bill. 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.

**Mark McDonald:** On public entertainment venues, the financial memorandum states that the abolition of theatre licences would represent

> “a decrease in regulatory burden overall”

but in evidence to the committee Dumfries and Galloway Council says 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 license theatres as places of public entertainment. 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.”

Glasgow City Council urges 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.”

On the one hand we are being told that there is a reduction in the burden, but on the other hand we are given evidence that suggests that there will be an increase in costs in some places. Could somebody reconcile that?

**Walter Drummond-Murray:** The point about a decreased regulatory burden was about the burden on theatres themselves. Some theatres might have to have a theatre licence and a public entertainment licence at the moment whereas the proposed system will be more streamlined and will allow a theatre, for example, to apply for just one licence. In the longer term, we also expect that operating a single regime rather than two will benefit local authorities.

On expediting the nine-month period between a local authority passing a resolution and it coming into force, it is reasonable for there to be some time between an authority announcing that something needs to be licensed and it coming into force so that people have time to apply for licences to get ready for it. The current period for that is nine months. We are not especially wedded to that period but it is hard to see how it could be less than several months. It should also be pointed out that a public entertainment licence is very wide and flexible so the local authority could decide to license billiard halls or snooker clubs, for example, and there needs to be some months between the
time that that decision is made and the licence coming into force.

The requirements of the 1982 act are that an authority should publish the resolution, invite comments, and then consider those representations. There is some work to be done to reach the point at which a draft resolution can be published, but the amount of work should be proportionate to what is being proposed.

In the case of theatres, we expect there to be a strong assumption that they should fall under public entertainment licensing. They are already licensed and they have largely the same characteristics as many of the other forms of entertainment that are licensed as public entertainment. In those circumstances, we would not expect a substantial and detailed process to be required.

On fees, we recognise that publishing the sort of classified advert that is required under the 1982 act to notify people of a change in resolution has a cost. Glasgow estimated that the cost of an advert ranges between £300 and £550, its previous two having been £340 and £522. It is therefore a cost of a few hundred pounds, but it is not an on-going cost and it would have to be incurred only twice during the process of changing a public entertainment resolution.

Mark McDonald: I was just going to ask about that. I am by no means an expert so this is going to be very much the daft laddie question. I presume that an advert does not need to be posted for each individual licence; adverts can be applied collectively. For example, if a number of venues are going through the licensing process, they could all be captured within the one advert, which would reduce the cost burden.

Walter Drummond-Murray: Yes. The cost that is being referred to relates to the fact that, when a local authority determines the change through a public entertainment resolution and says what it is going to license, it has to advertise that fact and invite comments. It has to put in another advert at the end of the process showing what the final resolution looks like. It is not about individual applications; it is about the totality of what is changing within a local authority area.

Richard Baker (North East Scotland) (Lab): I want to return to the submission from the Scottish Taxi Federation. It said that the bill will impact on its members because of the Government’s comments that additional costs should be charged to licence fees. Paragraph 170 of the financial memorandum gives an indicative value of the cost to drivers, vehicles and booking offices, with examples of fees in five licensing authorities. Do those examples include any additional costs for the implementation of the bill, or do the comments from the Scottish Taxi Federation reflect the fact that those costs are likely to increase in the future because of additional costs through appeals and other impacts of the legislation?

Peter Reid: The financial memorandum reports licence fees that were being charged at the time we asked. Those are existing costs.

Richard Baker: What assessment have you made of the impact that the legislation might have through additional or increased costs for licence fees for taxi drivers?

Peter Reid: It is difficult to gauge because overprovision in relation to private hire is a discretionary power. It is up to local authorities whether they wish to introduce it. When we consulted, there seemed to be broad support for it and the evidence that came in response to the call for evidence does not seem to indicate that local authorities are keen to use the additional power. If local authorities decide not to use it, no additional cost will be incurred.

Richard Baker: The Scottish Taxi Federation wishes to be clear whether, if a local authority applies for that power, the cost of the overprovision section and the possible court challenges will only be charged back to licensees for private hire care operators, or whether they will be charged back to the regime in general.

Peter Reid: I have had a look at the bill, but I am not a lawyer so I cannot really offer a legal view. It does not seem to me to be prescriptive about how the local authority would allocate that cost and whether it would be to just the private hire element or the whole taxi element. At the moment, there is an unmet demand test in relation to taxis. 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.

The Convener: There appear to be no further questions from the committee. Do you have any other points to make to the committee before we wind up the meeting?

Quentin Fisher: We thank you for asking us to give evidence today. If we can help with anything further, please let us know and we will happily provide further comment.

The Convener: Thank you very much for that. That being the end of the public part of today’s deliberations, we will move into private. Before we do, I would like the committee to agree that we will look at the report of the evidence in private at our next meeting.

Members indicated agreement.
The Convener: Thank you.
Background

1. The Committee reported on the delegated powers in the Air Weapons and Licensing (Scotland) Bill\(^1\) on 20 January 2015, in its 5th report of 2015.

2. The response from the Scottish Government to the report is reproduced at the Annex.

Scottish Government response

Section 37(1) – Power to make further provision

Provision

3. Section 37(1) enables Scottish Ministers to make further provision by regulation for the purposes of Part 1 of the Bill. Section 37(2) states that such regulations may make 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.

4. 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).

Committee consideration

5. The Committee noted the Government’s intention that the power at section 37 will be used to set out the ‘administrative minutiae’ of the air weapons regime in secondary legislation. However, the Committee was not convinced that it was necessary to take such a general, broad power in order to achieve this aim.

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\(^1\) 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)
6. In reaching this conclusion, the Committee noted that the powers at sections 4(1) to 18(4) (as noted above) set out various matters in Part 1 of the Bill which may be prescribed by regulations.

7. The Committee’s report therefore recommended that the Scottish Government bring forward an amendment at stage 2 to remove the broad power at section 37 to make further provision in relation to Part 1 of the Bill.

8. The report further recommended that if the Government considers that further types of provision need to be specified beyond those already set out across sections 4(1) to 37(2), this could be achieved by bringing forward appropriate amendments.

Scottish Government response

9. In response, the Government explains that the broad power at section 37 is considered to be required in order to effectively implement the new air weapons regime, and ensure that it can adapt to potential changing circumstances such as a move to an online application process.

10. The response further notes that most firearms legislation remains reserved to Westminster. The Government’s intention is that the power in section 37(1) can be used to respond to any changes made to firearms legislation relatively quickly, in order to ensure the regime can continue to function effectively.

11. The Government therefore does not consider it appropriate to remove or amend the power at section 37(2) and does not intend to act upon the Committee’s recommendations.

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

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

Provision

12. The power in the new section 45A(7)(b) of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) (as inserted by section 68(3)) enables 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.

Committee consideration

13. The Committee was concerned that these powers appear to be drawn more broadly than required as they allow for the exemption from the licensing regime of any other premises (apart from sex shops), or descriptions of performance or displays of nudity.
14. This contrasts with the Government's policy intention of only exempting a very limited range and number of premises, performance or display, which might include some types of theatrical or artistic performance which have inadvertently been included within the licensing regime.

15. In response to a question on this matter, the Government explained that it is difficult to define the exact circumstances in which it may be considered necessary to exempt a premises or performance. The precise types of premises and performances which may be exempted would not be identified until after the proposed new licensing scheme has become fully operational. The Government therefore did not consider it appropriate to draw the power more narrowly in order to specify in which limited circumstances exemptions may be applied.

16. Whilst the Committee remained concerned about the potential width of the powers, it noted that policy considerations underlie how they have been drawn. The Committee therefore agreed to draw the Government’s response on this matter to the Local Government and Regeneration Committee, as the lead committee for the Bill.

*Scottish Government response*

17. The Government’s response to the report comments on the power to exempt descriptions of performances or descriptions of displays of nudity, and does not specifically refer to the power to specify premises that are not sexual entertainment venues.

18. The Government reiterates its intention that the power to exempt will only be required in very limited circumstances. The power will be used to ensure that activities, such as art performances, which are not intended to be licensed, do not fall under the scheme in error. The response also states that other as yet unforeseen circumstances may arise once the regime is in place, requiring the Government to use the exempting power.

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

*Provision*

19. 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.

20. 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.
21. Section 45B(7) also provides that local authorities (in carrying out functions conferred by the section), must have regard to any guidance issued by the Ministers.

Committee consideration

22. The Committee was content with the powers in the newly inserted section 45B of the 1982 Act which confer power on local authorities to issue resolutions and determinations in relation to sexual entertainment venues.

23. However, the Committee considered that the Bill should be amended to require the Government to both publish and lay before Parliament any guidance issued under section 45B(7).

Scottish Government response

24. The Government’s response explained that whilst it intends to publish the guidance and draw it to the Parliament's attention as a matter of good practice, it is willing to consider making this a formal requirement by bringing forward an appropriate amendment at stage 2.

Section 76 – Ancillary provision

Provision

25. 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.

Committee consideration

26. The Committee considered the words ‘or any provision made under it’ to be unusual, in that recent Acts containing a comparable number of regulatory powers, or powers of potentially wider scope than contained in this bill, have not used these additional words.

27. In response to a question from the Committee on this matter, the Government explained that it considered that a wide power was required, in order to reflect the number of enabling powers required to set out the detail of the regulatory schemes provided for in the Bill. The Government also explained that it considered that the power, as worded, would allow the flexibility required to make necessary additional ancillary provisions which may be brought to light after the main regulations had been made.

28. The Committee did not consider the Government’s explanation to provide sufficient justification for the additional words and was therefore of the view that the scope of the power in section 76 was uncertain.

29. The Committee’s report therefore recommended that the Government remove the additional words in section 76 by bringing forward an appropriate amendment at stage 2.
Scottish Government response

30. The Government’s response reiterates its view that the additional words are required in order to ensure that the new regime operates effectively. The power may be used to integrate the processes provided for by regulations made under this Bill ‘with other parts of the statutory landscape that may not be as directly connected with the regime in question.’ The Government considers that this ‘fine-tuning’ would be best achieved once the regime is operational.
Correspondence from the Scottish Government, dated 27 February 2015

We are grateful for the detailed work undertaken by the Committee, and would in particular respond to the following points.

Section 37(1) – Power to make further provision

- 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.

We note that the Committee has invited the Scottish Government to remove the broad power and to detail any further types of provision to be made in (what is currently) section 37(2). It was not, however, the intention that section 37(2) should be an exhaustive list. Rather, it is there to help frame the power in section 37(1) by identifying some of the types of regulations, which will be required to establish the licensing system.

We consider that this broader power is needed to ensure that the Government can fully implement and fine-tune the new air weapons licensing regime and also to respond to changing circumstances. This will ensure that the Act will continue to have the intended effect in the face of future changes.

The application process may well, for example, at some stage in the future allow for online electronic applications and certification. Such a development would not in itself undermine or fundamentally change the licensing regime, but we would need to be able to set out appropriate processes, timescales, record-keeping arrangements, etc. That might be possible under the set specific powers, but the Government considers that a power such as that at section 37(1) ensures that appropriate provision can be made and therefore is a more suitable provision.

More generally, the vast majority of firearms legislation remains reserved to Westminster, including general provisions around the definition of firearms, including air weapons, and provisions around commercial transactions, requirements on dealers and issues arising out of European decisions. Notably, some changes have been made as recently as last year, through the Anti-social Behaviour, Crime and Policing Act 2014. In addition, the Law Commission is about to embark on a 12 month scoping exercise to examine the need for changes to the Firearms Act 1968 and other legislation.

The broader power set out in section 37(1) would allow the Government to respond to such future changes by way of secondary legislation, maintaining the integrity of the air weapons licensing regime, without recourse to primary legislation. This may
prove important where changes require to be made quickly to ensure that the regime can continue to operate effectively. Any changes brought forward by regulations under this power would be subject to the negative Parliamentary procedure.

For these reasons, the Scottish Government believes there continues to be a good case for retaining the provision at section 37(1) as set out in the Bill and does not propose to bring forward a Stage 2 amendment to remove this power and/or to seek to amend section 37(2).

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

- 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.

We note the Committee’s views and reiterate that the Scottish Government envisages limited circumstances when such a power might be needed. The intention is to allow for circumstances when activities inadvertently fall into licensing. Whilst the Government does not expect this to happen it will be advantageous to allow for this situation should it arise. An obvious example is theatrical performances which, while we do not expect them to be licensed, should that happen then we will be able to address that situation. Other circumstances may arise which are wholly unforeseen and will not become apparent until the licensing regime is established.

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

- 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.

The Scottish Government would regard it as good practice to draw Parliament’s attention to any guidance, and publish it on our website. We are happy to consider whether it should be an obligation in the Bill.

Section 76 – Ancillary provision

- 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).

- 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.

The Scottish Government believes that it is appropriate for the words in question ‘…or any provision made under it.’ to remain in the Bill to ensure that the purposes of the Bill can be given full effect.

We do not consider the inclusion of these words to be particularly unusual in legislation of this type. While we note the Acts mentioned did not include these words, they have appeared in a number of recent pieces of legislation including the Police and Fire Reform (Scotland) Act 2012, the Housing (Scotland) Act 2014, the Procurement Reform (Scotland) Act 2014 and the Bankruptcy and Debt Advice (Scotland) Act 2014.

In this Bill, among other things, the Government would envisage using the section 76 power to provide for transitional and transitory measures in respect of the introduction of the air weapons regime (and indeed bringing into force the changes to the other regimes covered by the Bill). This might include, for example, provisions to allow for the smoothing of the application processes for first time applicants for air weapon certificates in such a way as to promote the efficient administration of police resources within the wider firearms framework.

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

We therefore remain of the opinion that it is necessary and appropriate to retain the words in italics in the Bill to ensure that the aims of the legislation can be met.
Present:

Nigel Don (Convener)  John Mason (Deputy Convener)
John Scott                 Stewart Stevenson

Apologies were received from Margaret McCulloch.

Air Weapons and Licensing (Scotland) Bill: The Committee considered the Scottish Government's response to its Stage 1 report and agreed to draw the attention of the lead committee to the breadth and scope of certain delegated powers within the Bill.
11:39

The Convener: This item of business is consideration of the Scottish Government’s response to the committee’s stage 1 report on the bill. Members have seen the briefing paper and the response from the Scottish Government.

The committee may wish to highlight the following matters to the lead committee on the bill.

Section 37(1) enables the Scottish ministers to make further provision by regulation for the purposes of part 1 of the bill. However, the committee’s report noted that the powers at sections 4(1), 6(1), 7(2), 13(9), 14(2), 15(1), 17(6) and 18(2) and (4) set out various matters in part 1 of the bill that may be prescribed by regulations.

The committee did not consider the broad, general power in section 37(1) to be necessary, and it recommended that it be removed by amendment at stage 2. The report further recommended that, if the Government considers that further types of provision need to be specified beyond those already set out across sections 4(1) to 37(2), that could be achieved by bringing forward appropriate amendments.

The committee’s report also commented on section 76, which confers powers to make ancillary provisions in stand-alone regulations. Under it, the Scottish ministers may make

“incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision of this Act or any provision made under it.”

The committee considered the use of the words "or any provision made under it" to be unusual and that the Government had not provided sufficient justification for this use of additional wording. The committee considered that the scope of the power in section 76 is uncertain, and it recommended that it be removed by amendment at stage 2.

The Government’s response to the report indicates that it does not intend to accept the committee’s recommendations in relation to the two matters that I have just discussed. Do members have any comments, or are we comfortable to draw the response to the attention of the lead committee?

John Scott: I am content to draw it to the committee’s attention, but at the risk of putting my head in a noose I think that the Government’s response is quite reasonable. There will perhaps
be a need for broader powers on occasion in terms of the developing situation with airgun licensing.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): This is broadly an issue of policy, and it would be entirely proper to draw it to the attention of the appropriate policy committee for it to consider whether there is a policy need for the powers. I feel slightly uncomfortable with the drafting in its present form, but it may well be that the policy committee concludes otherwise when it looks at it.

The Convener: I think that the general argument is that we are looking at some slightly unusual words and there is no obvious explanation for why they should be there, but plainly that is a matter of policy and I therefore suggest that referring the issue to the lead committee is the appropriate thing to do. If colleagues are comfortable with that, that is what we will do.

Does the committee have any further comments, or shall we just look at what comes back at stage 2—assuming there are any amendments that come to us?

John Scott: I think that this is fundamentally a matter for the policy committee.

John Mason: I am not entirely clear how much this is an issue of policy, as the wording seems to be important and we have not really had an explanation. The approach that we might reconsider the bill after stage 2 is fine.

The Convener: Thank you, colleagues. That draws us to the end of the agenda, so I close the meeting.

Meeting closed at 11:43.
Dear Convener

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

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

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

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

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

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

PART 1: AIR WEAPONS

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

General comments

Ownership

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

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

Types of air weapon covered

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

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

The application process

Paragraph 83 - The Report states that Police Scotland will be administering two different
firearms certificate systems for the first time, and asks how those systems might interact. In
practice, the processes and considerations for licensing firearms under section 1 of the Firearms Act 1968, or shotguns under section 2 of that Act, already differ in a number of respects but are administered through the same system. Licensing of air weapons will largely follow the principles and processes of the current firearms regime so that it will be familiar to both the police and to those existing shooters who apply for an air weapon certificate. In line with this, air weapons licensing will be administered using same computer system (SHOGUN) as firearms and shotguns. Officials are continuing to work with Police Scotland and others to plan the implementation of the regime, and will aim to ensure that the new processes can be introduced as seamlessly as possible.

Fees

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

Age restrictions

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

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

Delegated powers

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

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

Such changes may, for example, allow for online electronic applications and certification and we would need to be able to set out appropriate processes, timescales, record-keeping arrangements, etc. That might be possible under the set specific powers, but the Government considers that a power such as that at section 37(1) ensures that appropriate provision can be made and therefore is a more suitable provision.
More generally, most firearms legislation remains reserved to Westminster and the powers set out in section 37(1) would allow the Scottish Government to respond to changes in the wider regime by way of secondary legislation. A number of changes were, for example, made as recently as last year, through the Anti-social Behaviour, Crime and Policing Act 2014. In addition, the Law Commission is now embarking on a 12 month scoping exercise to examine the need for changes to the Firearms Act 1968 and other legislation.

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

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

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

Recommendations

The application process

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

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

I accept these recommendations and the Scottish Government has always been clear that full implementation of the new licensing regime would be preceded by a well-publicised campaign and a “hand in period” for unwanted weapons. This commitment was made in the original public consultation document “Proposals for Licensing Air Weapons in Scotland”
published by the Scottish Government in December 2012. Paragraph 58 of that document stated:

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

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

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

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

The fee for the application process

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

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

Sale of air weapons to people who reside outside Scotland

139. The Scottish Government should ensure Part 1 of the Bill does not prevent remote sales outside Scotland to people who reside in all other parts of the UK.
I accept this recommendation. The Report highlights (at paragraph 117) an issue raised by the Gun Trade Association and others with regard to sales of an air weapon to a person outwith Scotland but within Great Britain. I have listened to the concerns expressed about this and propose to bring forward an amendment at Stage 2. This will enable a person to purchase an air weapon in Scotland and have it delivered to a Registered Firearms Dealer in England or Wales for collection. This ensures that such sales and transfers are conducted on a face to face basis in accordance with existing legislation.

**Unique weapons identification mark**

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

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

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

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

As set out at the beginning of this reply, the Bill proposes to make it an offence to use, possess, purchase or acquire an air weapon without holding a certificate (subject to certain exemptions), rather than regulate “ownership” as such. When an offence occurs the police will need to establish who was in possession of or using the air weapon at the time, but not necessarily who owns the air weapon. In terms of detecting crime it is also worth stressing that there is already legislation in place to deal with the criminal misuse of air weapons and the police are experienced in its application. In practice, police officers will investigate such crime as they do for any other offence, through a mix of evidence gathering and intelligence. This might include identifying a specific gun, perhaps through witness evidence or any available ballistic information. Accordingly, having a unique identifying mark is not critical to proving that a person unlawfully used, possessed, purchased or acquired an air weapon.
Any change to this fundamental principle of licensing the person, not the gun, would represent a significant shift in the Bill’s intent and effect and is likely to prove difficult to achieve. To be tamperproof, any unique identifier would have to be embedded or affixed under controlled circumstances, either on manufacture or at the point of sale. Each would then have to be recorded and, in order to be a meaningful control, tracked through subsequent transactions. In addition, any air weapon entering the country, with a visitor or on import for sale, would similarly have to be marked and tracked. This would represent an onerous additional burden on the police, dealers and air weapons users.

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

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

**PART 2: ALCOHOL LICENSING**

**Duration of policy statement**

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

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

**Fit and Proper Person Test**

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

I welcome the Committee’s support for the reintroduction of the fit and proper person test. I also note the Committee’s comments regarding connected persons, and will consider this matter further for Stage 2
263. We welcome the additional flexibility this provision will give Licensing Boards although we have concerns about the inflexibility of Licensing Boards based in large measure upon a fear of challenge. We recommend the guidance be revised as a matter of priority and the guidance make clear Boards have the maximum flexibility to make different policy decisions relating to individual localities, types of license and types of premises.

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

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

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

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

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

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

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

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

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

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

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

Licensing Objectives

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

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

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

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

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

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

Spent convictions and police intelligence

270. We accept the rationale for adding spent convictions as proposed.
I welcome the Committee’s comments.

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

I note the Committee’s suggestion.

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

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

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

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

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

Duty on Boards to prepare an annual financial report

273. We welcome this provision and also recommend Boards, in order to become more accountable to the public prepare annual reports. We draw to the attention of the Scottish Government the suggestions in this regard contained in the letter to us from Alcohol Focus dated 15 January 2015. As a minimum we expect to see the report containing information on how the board has delivered in relation to the licensing objectives and its policy statements including overprovision. We also expect a sufficient amount of data to be contained showing the number and type of each licensed premises within the Board area along with details of the number of...
occasional licenses granted during the period. We would expect the Bill to set out as a minimum the above along with a requirement to report within 6 months of the end of each reporting year.

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

Occasional Licenses

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

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

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

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

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

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

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

Members Clubs

277. The Scottish Government requires to satisfy us the existing legislation is adequate to prevent the abuses of club licences identified during our evidence
sessions. Failing which we recommend appropriate provision is made to incorporate the club’s constitution into the main operating plan.

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

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

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

Surrender of Licenses

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

Site Only Licenses

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

Combined answer to 279 and 280

I note and agree with the Committee’s comments.

Major v Minor variations

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

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

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

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

**Home Deliveries**

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

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

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

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

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

**Additional enforcement powers - gambling premises**

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

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

I do not therefore believe that it is within the powers of the Scottish Parliament to legislate to resolve this issue. I will continue to encourage the UK Department for Culture, Media & Sport to bring in appropriate legislation to address this issue, and to encourage the UK Government to fully devolve powers in relation to gambling to the Scottish Parliament.
PART 3: CIVIC LICENSING

PART 3: CIVIC LICENSING: TAXIS AND PRIVATE CAR HIRE

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

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

I welcome the views of the Committee. The Scottish Government undertook a detailed consultation on taxis and private hire car licensing from 28 November 2012 to 15 March 2013. The response to the consultation and a summary have since been published.

http://www.gov.scot/Publications/2013/09/2230

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

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

321. We have discrimination concerns around two aspects of the existing regime. With the advent of the smartphone technology the difference between taxis and private hire cars, at least in the minds of the user, has been significantly eroded. Provided the service is safe, responses to our video suggested users saw little difference between the two types. However, for those who do not own, or those who cannot operate a smartphone the benefit could be limited. Equally, for reasons of infirmity or disability, some people may be more restricted in their use of modern technology and some private hire cars may not be accessible for their needs. Secondly on price, in the event demand sees price rise, as has been the case in other
countries, there will be an adverse impact on the less well off. We therefore ask the Scottish Government to address both of these concerns at stage 2.

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

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

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

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

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

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

325. We recommend greater sharing of information between licensing authorities. This should cover the operation of firms within areas as well as information about licence holders and their vehicles. We expect the Scottish Government to encourage and facilitate through appropriate legislation, if necessary, the sharing of information between authorities.
I note the comments of the Committee. Under Schedule 1, para 4 of the Civic Government (Scotland) Act 1982 it is already possible for a Licensing Authority, when considering a new application or a renewal, to make such reasonable enquiries as they see fit and include the results of these inquiries in matters they take into account. I would therefore envisage that Licensing Authorities could already make inquiries to adjacent Authorities where they felt it was appropriate. In addition the police are a statutory consultee, and as a national police force would be in a position to provide relevant information from across Scotland and beyond to the Licensing Authority. We would be happy to further encourage such sharing of information when the best practice guidance is updated after the passage of the Bill.

PART 3: CIVIC LICENSING: METAL DEALERS

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

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

Compliance and enforcement

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

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

Banning cash payments for metal

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

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

Improved standards of record keeping and customer identification

408. We welcome the commitment from the Scottish Government to consider amending the Bill to remove the need for metal dealers to record the date on which metal was processed.
I note the Committee’s comments and will consider this matter further for Stage 2.

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

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

Removing the requirement to retain metal

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

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

Definition of a metal dealer

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

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

National register of metal dealers

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

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

Requirement to display a licence

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

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

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

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

PART 3: CIVIC LICENSING: PUBLIC ENTERTAINMENT

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

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

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

PART 3: CIVIC LICENSING: SEXUAL ENTERTAINMENT VENUES

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

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

Definitions

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

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

I am confident that plays will not require a licence even if they are ground-breaking and pushing at boundaries. Unless a performance is intended to sexually stimulate then a licence will not be required. In addition the Scottish Government is proposing secondary legislation making powers that would allow any instances of “inadvertent licensing “ to be dealt with via secondary legislation.
Exemption for venues holding no more than four performances a year

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

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

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

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

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

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

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

Appropriateness of a discretionary regime

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

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

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

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

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

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

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

PART 3: CIVIC LICENSING: CIVIC LICENSING GENERAL

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

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

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

43. In the short term we recommend the Scottish Government considers the submissions we received on the Bill which suggest changes to the Bill to improve the operation of the 1982 Act and bring forward appropriate amendments at Stage 2.
I note the comments of the Committee, the Scottish Government is carefully reviewing the views expressed by the Committee and witnesses and is considering appropriate amendments.

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

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

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

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

Effectiveness of the 1982 Act

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

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

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

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

531. From our earlier work on community empowerment, we are only too well aware local authorities can be risk averse, however they are also fearful without legislation notifying communities might lead to legal challenge; we therefore recommend a framework to enable neighbour notification with regard to licence applications, in a similar manner as the Licensing (Scotland) Act 2005, is added to the Bill to increase community participation in the licensing process.
I do not believe that there is anything to prevent a Licensing Authority attempting to notify neighbours of relevant applications. It would be logical extension of existing duties under the 1982 Act to publish details of applications.

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

It would also be our view that substantial consultation with local Licensing Authorities would be required before introducing such a mandatory requirement for neighbour notification.
EXTRACT FROM THE MINUTES OF PROCEEDINGS
Vol 4, No. 101 Session 4

Meeting of the Parliament

Thursday 23 April 2015

Note: (DT) signifies a decision taken at Decision Time.

Air Weapons and Licensing (Scotland) Bill: The Cabinet Secretary for Justice moved S4M-12994—That the Parliament agrees to the general principles of the Air Weapons and Licensing (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 60, Against 0, Abstentions 12).

Air Weapons and Licensing (Scotland) Bill: Financial Resolution: The Cabinet Secretary for Justice (Michael Matheson) moved S4M-12488—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Air Weapons and Licensing (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

The motion was agreed to (DT).
On resuming—

Air Weapons and Licensing (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Elaine Smith): Good afternoon. The first item of business this afternoon is a debate on motion S4M-12994, in the name of Michael Matheson, on the Air Weapons and Licensing (Scotland) Bill.

The Cabinet Secretary for Justice (Michael Matheson): I am happy to open this stage 1 debate on the Air Weapons and Licensing (Scotland) Bill.

I thank my colleague and predecessor Kenny MacAskill, who brought forward the bill last year. I also thank the Local Government and Regeneration Committee, the Finance Committee and the Delegated Powers and Law Reform Committee for their work in considering the bill.

I was pleased to note from the Local Government and Regeneration Committee's report that it supports the general principles of the bill, in particular the licensing of air weapons. I am grateful to that committee for the manner in which it took evidence at stage 1. It invited a wide range of stakeholders to give evidence in the spirit of drawing out changes that will, in line with the aims of the bill, best improve the relevant licensing regime in Scotland. The evidence and the committee's report have been extremely valuable in helping the Government to reflect on whether we can make further improvements in particular areas, and the committee will have seen my response to its report.

I am pleased to be able to update the wider Parliament by providing an overview of the bill, which is in four parts. Part 1, which covers air weapons, sets out a new licensing regime for air weapons to be administered by Police Scotland. Part 2, which covers alcohol licensing, amends the existing licensing regime for alcohol licensing that is included in the Licensing (Scotland) Act 2005. Part 3, which deals with civic licensing, amends the existing licensing regimes included in the Civic Government (Scotland) Act 1982. Finally, part 4 sets out general provisions.

I will look at air weapons first. The licensing of air weapons has been on our agenda for quite some time. Our 2007 manifesto set out plans to tackle that, and we reiterated that aim in our 2011 manifesto. Following the Calman commission's report in 2009, responsibility for the regulation of most air weapons was devolved in the Scotland Act 2012. Kenny MacAskill introduced the bill having chaired a firearms consultative panel of
experts and carried out a wider consultation on the principles of licensing.

The aim has been to set out a regime that parallels existing firearms legislation where appropriate and is therefore familiar to the police and to shooters, but which is relatively light touch in its practical application.

The Local Government and Regeneration Committee suggested a few amendments in its stage 1 report. I have already responded to those recommendations, but I would like to mention a couple of the most prominent issues.

The first relates to Police Scotland and the need to smooth the transition workload for the work that it will undertake for the introduction of the licensing. Officials are still discussing that with the police to ensure that the impact of the new regime is minimised as far as possible. We are considering whether that is best achieved by way of an amendment at stage 2 or through regulations under the bill.

The second issue is the proposal to add some form of identifier mark to air weapons to support the certificate system. The Scottish firearms consultative panel agreed at a very early stage that it would be appropriate to license a person rather than the gun itself, and continuing discussions with stakeholders, including Police Scotland and the Gun Trade Association, confirm that there is little or no support for a proposal to mark weapons individually. Such a move would place immense additional burdens on the police, the trade and shooters while doing little to help tackle criminal misuse of air weapons. As a result, I do not intend to lodge at stage 2 amendments to introduce an identifier mark.

On the bill’s alcohol licensing provisions, it was made clear in the consultation that people do not want a root-and-branch review of alcohol licensing legislation. However, certain areas are not working as effectively as they should be and, instead of proposing a radical overhaul of the regime, the bill examines those areas to find ways to improve the existing system. For example, the bill will take forward a commitment made in the 2011 Scottish National Party manifesto and create new offences of giving alcohol or making it available to a child or young person for consumption in a public place. That will allow Police Scotland to address the problem of the drinking dens where vulnerable young people can congregate to share alcohol.

The bill introduces a fit-and-proper test for both premises and personal licence applications, and licensing boards will also be able to consider spent offences. Those changes have been widely called for and will assist licensing boards in ensuring that only those who are fully appropriate can hold such a licence.

With regard to licensing board practice, we have clarified that an overprovision assessment can relate to an entire board area and can take account of licensing hours. We have also considered statements of licensing policy. Despite some very good practice at board level, such statements often fail to have the strategic impact that we had hoped, and as a result we are amending policy statements to ensure that they align better with local government elections. Such a move will encourage a new board to take stock, gather evidence and set a policy statement that reflects its own views and aspirations.

The bill contains a number of fairly technical amendments. For example, it amends the final licensing objective to include young people alongside children. The distinction between “children” and “young persons” can create difficulties for licensing boards in dealing with issues relating to young persons and can mean that issues involving 16 and 17-year-olds cannot be considered in relation to the protecting children objective. The amendment in the bill ensures that licensing boards have the power to consider such issues as part of the licensing objectives. There are also a number of provisions that should be welcomed by the trade, such as the removal of the five-year ban on reapplying for failure to render a personal licence refresher training certificate and the imposition of a duty on boards to report on their income and expenditure.

The bill improves the effectiveness of civic licensing regimes with a variety of reforms across a wide range of areas. For example, the bill will tighten up the licensing of metal dealers to ensure more effective regulation of the industry and to make it more difficult for metal thieves to dispose of stolen metal. It will deliver that objective by ensuring that all dealers are licensed, banning the use of cash as a payment for scrap, tightening record-keeping arrangements and requiring proper identification of customers.

The bill will allow communities to have a greater say over whether lap dancing takes place in their areas by giving local licensing authorities the power to control the number of licences for sexual entertainment venues in particular localities. Central to that proposal is the belief that local communities should be able to exercise appropriate control and regulate sexual entertainment venues that operate within their areas. Local licensing authorities are best placed to reflect the views of the communities that they serve and to determine whether sexual entertainment establishments should be authorised and under what conditions.

The bill simplifies the licensing of theatres by merging it with the public entertainment licensing regime, which will allow some theatres that
currently have two licences to operate with a single licence. In addition, the new licensing regime will be more flexible, in that it will replace mandatory licensing with a discretionary system that will allow local licensing authorities to exempt smaller theatres if they so choose.

The bill also aims to bring greater consistency between and within taxi licensing regimes and private hire car licensing regimes. Local authorities are responsible for the taxi and private hire car licensing regimes. They have discretion in applying a local regime that best meets the specific requirements of their local area and can take account of the views of customers and the trade. In general, that local process works well, but we are aware that there have been a number of concerns about the taxi and private hire car licensing regimes for some time. Those concerns were highlighted by stakeholders during informal discussions and were further reinforced during the public consultation exercise.

Specific provisions in the bill include the power to refuse to grant private hire car licences on grounds of overprovision; the extension of driver testing to allow testing of private hire car drivers; and the removal of the contract exemptions from the licensing and regulation of taxis and private hire cars, which will bring hire cars that are used on contracts into the regime.

In part, the provisions acknowledge that, in parts of the country, taxis, private hire cars and contract hire cars are essentially operating in a very similar market. Some of the distinctions that have been made between their modes of operation—for example, the distinction between pre-booked cars and vehicles that use ranks or can be hailed—have been blurred as a result of changes in technology.

In addition to the amendments to specific regimes that are covered by the Civic Government (Scotland) Act 1982, the bill includes provisions that will have effect across the licensing parts of the 1982 act, the aim of which is to create greater consistency and clarity in the licensing regime.

The bill includes a number of provisions that are aimed at improving the operation of all civic government licensing regimes and clarifying compliance with the European Union services directive. Specific provisions include giving the Scottish ministers the power to make provision for the procedure to be followed at or in connection with hearings.

The bill introduces a new role—that of civic licensing standards officer. Civic licensing standards officers will have broadly the same powers and duties that authorised officers have under the 1982 act, but they will have specific functions in relation to providing information and guidance, checking compliance, providing mediation and taking appropriate action on perceived breaches of conditions to a licence that has been provided under the 1982 act.

I have set out the Government’s thinking on some of the key areas of what is a wide-ranging bill. I look forward to hearing the views of colleagues and to working with the committee as we continue with the bill’s passage through Parliament.

I move,

That the Parliament agrees to the general principles of the Air Weapons and Licensing (Scotland) Bill.

14:44

Kevin Stewart (Aberdeen Central) (SNP): It is my pleasure to speak on behalf of the Local Government and Regeneration Committee. The Air Weapons and Licensing (Scotland) Bill is an important and necessary piece of proposed legislation.

Before I embark on discussing the core of our deliberations, I will take a moment to set out the key role that licensing plays in Scotland. Licensing assists in preserving public order and safety, reducing crime and advancing public health. I will return to those objectives later, as they were the backdrop to our scrutiny and are fundamental to the recommendations that we made in our report.

Although we recognise the importance of those objectives, few of us consider the relevance of licensing to our daily lives. For those we spoke to, licensing is about their livelihoods, the services that they use and the activities in which they take part. The bill is wide ranging and deals with the complexities of licensing various activities, such as owning or using an air weapon, selling and purchasing alcohol, operating taxis or private hire cars, dealing in scrap metal, holding public entertainment events and running sexual entertainment venues.

Some obvious headline stories emerged from the bill—for example, the creation of two new licensing regimes: one for air weapons and the other for sexual entertainment venues. Both those aims are praiseworthy, but they are not the only stories that we uncovered. I will focus members’ attention on the other, perhaps less immediately obvious, parts of the bill—on topics that I and my colleagues believe are equally worthy of prominence in the debate and which perhaps have a wider impact on those living and working in modern Scotland. Modernity is another key theme that I will explore.

I will talk about how the committee set about the task of scrutinising this diverse bill. The bill was introduced in May last year, which afforded us
time over the summer months to issue our call for evidence, which closed at the end of September and received 146 responses. The responses came from a wide section of stakeholder groups such as local authorities, drug and alcohol partnerships, equality organisations, energy and transport providers and the police, to name but a few. We also heard from a wide range of interested individuals.

Alex Fergusson (Galloway and West Dumfries) (Con): I understand that, when the committee undertook its scrutiny, Police Scotland was able to give statistics on airgun crime from April to July 2014, but that the figures for the year up to April 2014, unlike those for all previous years, had not been published and had been delayed until autumn this year. Did that give the committee any difficulties in having up-to-date information?

Kevin Stewart: We had information and data from a number of years about air weapons offences. We are all far too aware of the deaths and injuries that have taken place and the maiming of animals that has gone on across the country. That information gave us a good guide and is why I and the committee think that the air weapons licensing regime should be put in place.

As I said, we heard from a wide range of individuals and took a wide range of evidence. I thank all those who responded for the part that they played in helping us to examine the bill’s proposals.

Committee members had the opportunity to inform ourselves on the constituent subject areas. We held a number of informal meetings with academics, industry representatives and licensing experts to aid our understanding. I thank former committee members Mark McDonald, Stuart McMillan and Anne McTaggart for their work in exploring the various strands. They put in a huge amount of effort in doing so. While thanking members past, I will also mention the new committee members, as it was Clare Adamson, Cara Hilton and Willie Coffey who picked up the baton and carried it to the finishing line. We held nine themed evidence sessions and heard from the cabinet secretary, culminating in our stage 1 report being unanimously agreed to and published.

Before I move on to the specifics of our scrutiny and recommendations, I will say a little about the committee’s engagement activities. Engagement is a key priority for our committee. We have had close to 4,000 new engagements with ordinary people, over and above the well-kent faces. Many hold views on local government, and people need to be encouraged to share those views with us. Engagement is a long-term relationship in which trust is earned.

We published a promoted Facebook post on taxis and private hire cars in the Highland area because a gap had been identified in the information that we had and we needed to seek further views. That post was shared by 56 people. Our YouTube video on taxis and private hire cars was also a success; it amassed close to 1,000 views, which demonstrates the public’s level of interest in the topic. Comments that we received fed directly into our thinking on the bill proposals.

Responses to our video suggested that, in the minds of users, taxis and private hire cars are to all intents and purposes the same. One of our principal recommendations is that the Scottish Government should consider a full review of all aspects of taxi and hire car licensing because, if a licensing system was being designed now, it would—in our opinion—be implemented differently.

Our experience of engagement has shown us that, to be successful, engagement has to be well targeted, relevant and accessible. People have to feel that they are being listened to, and the value of their comments needs to be demonstrated. Only then will we encourage the quieter voices to enter the discussion.

I preface my comments on our findings by saying that we support moves to license air weapons and to have a separate licensing regime for sexual entertainment venues. We have made a few recommendations on how to improve those proposed regimes, although others may like to comment on those aspects.

I will concentrate on some of our key recommendations concerning the alcohol, taxi and private hire car, and metal dealer provisions. The alcohol provisions in part 2 of the bill contain a number of proposals, but I shall focus on two areas—determining overprovision of alcohol and alcohol licensing objectives. Our recommendations on those areas explicitly link to the overriding objectives of advancing public health and preserving public order and safety.

I will give a little background on overprovision. Licensing policy statements must contain a statement as to whether there is overprovision of licensed premises in any locality in a licensing board’s area. The bill would change the definition of overprovision to enable licensing boards to consider licensed hours as well as the number and capacity of licensed premises. It would also clarify that the whole of a board’s area can be classed as a locality for the purposes of carrying out the assessment. Trade bodies firmly opposed those changes and questioned their proportionality. On the other hand, the police, health boards and alcohol and drug partnerships strongly supported the changes. We support the latter group and
would go further in efforts to reduce the harm that alcohol can cause to some.

On licensing statements, we heard suggestions that professional organisers abuse the occasional licence system to evade the requirements for fully licensed premises and that such events add to the overprovision of alcohol in an area. A similar concern was raised about members clubs. Alcohol Focus Scotland observed that, in the Borders, “22% of all licensed premises are members’ clubs.”

We therefore recommend that club licences and occasional licences must be included when licensing boards assess provision.

Given the overwhelming evidence that we received of harm and links to disorder from overconsumption, we also recommend that an additional licensing objective be added to the Licensing (Scotland) Act 2005 to include the reduction of alcohol consumption.

We spoke to a number of organisations and individuals involved in the taxi and private hire car trade and to those who license it. Changes in the market from the advent of hire car booking apps must take place in a framework that recognises the fundamental principle that licensed drivers in licensed vehicles are the ones who folk can safely use. We want to ensure that the public know that when they call, hail or use an app to get a car, they are entering a licensed vehicle with a licensed driver. Further reasons for licensing include the delivery of an accessible, reliable and affordable service to customers while preventing opportunities for criminal activity. Police Scotland told us that regulation “ensures that legitimate business thrives and provides opportunity to prevent organised crime groups from gaining a foothold in this industry.”

Licensing of metal dealers is extremely important. Metal theft is not a victimless crime and we have heard that it not only costs people a great deal of money but has created dangers. We must ensure that the maximum penalty for breaching licensing conditions is uprated from the current sum of £5,000.

I hope that my speech provided a flavour of the range of issues that the committee encountered in scrutinising the bill and that it set out some of the areas of the bill that we wish to be strengthened. Licensing is important to the lives of us all: it keeps us safe, cares for our health and reduces the opportunity for crime in our communities. I commend the committee’s stage 1 report to the Parliament.

14:55

Alex Rowley (Cowdenbeath) (Lab): Labour supports the principles that are set out in the policy memorandum to the bill. We will support the bill at stage 1 today, and we are keen to work with the Government to agree any stage 2 amendments that we think can improve the bill as it progresses to stage 3.

I put on record our thanks to the Local Government and Regeneration Committee for its work in scrutinising what is a lengthy and complex bill with many different parts, all of which are important in their own right. I wonder whether lumping together all those areas of licensing and trying to come up with improvements—often by adding to previous legislation that is outdated—is the best way to make legislation.

The policy memorandum states:

“The principal policy objectives of this Bill are to strengthen and 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. This is being achieved through reforms to the existing systems to alcohol licensing, taxi and private hire car licensing, metal dealer licensing and; giving local communities a new power to regulate sexual entertainment venues in their areas.”

In the time that I have available this afternoon, I cannot possibly cover everything that has been packed into the bill, but it is worth drawing to members’ attention some of the views that arose in the evidence that the committee received.

The committee’s report states:

“The Bill is what could be described as a ‘pick and mix’.

I am not sure that that is the best way to deal with all the matters that the Government wants to address, and I believe that a future Government will have to return to some aspects of the bill sooner rather than later.

The minister told the committee that he had no plans to review the 1982 act fundamentally, as it was reviewed only about 10 years ago and found to be fit for purpose. However, the practitioners, who are out there on the front line dealing with the legislation daily, had something different to say.

The Society of Local Authority Lawyers and Administrators in Scotland licensing group said:

“We would re-iterate that the Act is now 30 years old and it is becoming increasingly difficult to address modern business activity within the structure of the Act.”

The City of Edinburgh Council said that “continued amendment of the Act is not helpful”, and one of the council’s officers told the committee that “the 1982 act has probably passed its sell-by date.”

Glasgow City Council agreed, and one of its officials told the committee that
“Any change would have to be substantial. I am teetering on the brink of saying that I do not think that enough amendments could be made to the bill to address the issues. The fundamental issue is that the 1982 act has been in place for more than 30 years. It has served its purpose; it has had its time. It needs to be rebuilt from the ground up, in line with the 2005 act, and to set out an entirely different framework for how we approach licensing.”

I suggest to the minister that he should look again at the evidence that was given on those provisions of the bill. The Glasgow City Council official suggested that

“Parliament would have to go right back to the beginning and start again with the 1982 act, so that it could pass legislation that is fit for purpose in a modern Scotland.”—[Official Report, Local Government and Regeneration Committee, 18 February 2015; c 2, 6.]

I know that the SNP has a majority and can pass what it wants, but it is important that we get it right. Too many voices are suggesting that we cannot keep amending 30-year-old legislation if we are to do what is best for Scotland, and I would want to take up that issue with the minister.

I move on to the proposals for air weapons. As the committee’s report said, there are two camps on the proposals: those for and those against. Labour will support the proposals and the principle of the policy memorandum, which we believe the bill achieves, to recognise the need to protect and reassure the public in a way that is proportionate and practical. I am pleased to note that the Government supports many of the points that the committee made and will make sure that there is plenty of publicity in the lead-up to the legislation coming into effect and that those who no longer need an airgun are encouraged to hand in those weapons. As I said, we have heard the arguments from both sides of the debate, but for me the evidence shows clearly that the legislation is the right thing to do.

We believe that the introduction of a licence for sexual entertainment venues is necessary, as no adequate regulation is in place. The bill will empower local authorities to determine whether such venues can operate in their areas, which is a step in the right direction. Representations have been made and the committee has made specific recommendations that I hope will be implemented at stage 2.

We will want to explore with the Government other concerns and possible amendments for stage 2 that have been raised by groups such as Zero Tolerance, which include the issue of not allowing under-18s to work in such venues. The committee looked at that and I know that the minister did not think that the bill could address it, but we would like further discussion with him about that. The fact that the bill does not provide for a fit-and-proper-person test for a licensee of a sexual entertainment venue has been raised as an issue, and we would welcome further discussion of that.

There is no provision in the bill to restrict the signage and advertising of sexual entertainment venues. Again, we would like further discussion of that. There is no provision for community consultation on the granting of sexual entertainment venue licences. In line with the Community Empowerment (Scotland) Bill, which the committee looked at, we should explore that area further.

There is no provision in the bill on licensing fees. There is a view that they should be much higher than those for running a venue that is open to all sections of society, such as a cafe or a pub. Many English and Welsh local authorities have imposed high fees since their new sexual entertainment venue regime came into force. For example, Birmingham City Council charges more than £6,200 for a sexual entertainment venue licence, whereas a skin-piercing licence costs £87, and Manchester City Council charges £4,425 for a sexual entertainment venue licence, whereas a cafe licence starts from around £100. The argument has been made that we should look again at the cost of licences and at whether sexual entertainment venues should pay a higher licensing fee.

The bill does not require a licensing policy statement; that is discretionary. We would prefer it to be mandatory, so that a licensing committee could make a public statement about its intentions for the licensing of sexual entertainment venues and its understanding of the wider policy environment in which they operate. Again, we would like to discuss that with the minister. I hope that we can have a dialogue with him on all those matters over the coming weeks.

On the changes to the licensing of taxis, we heard evidence from taxi operators, the Scottish Taxi Federation and licensing boards, all of which were fairly positive about the proposals. I have written to operators in my constituency and will meet them soon to get their take on where we are at.

The bill’s scrap metal proposals will bring us into line with the rest of the United Kingdom, which is important, as there are no borders when it comes to the theft of such materials. Metal thefts threaten public safety and cause a huge amount of disruption to the energy supply, transport, communication and other industries that people rely on. Labour supports the bill’s proposals on that issue.

I have highlighted certain issues and I hope that we can all work together to strengthen aspects of the bill at stages 2 and 3. I hope that the minister
will consider the fairly overwhelming evidence from practitioners on the 1982 act.

15:05

**Cameron Buchanan (Lothian) (Con):** The Air Weapons and Licensing (Scotland) Bill covers a wide range of matters. As such, consideration of a broad range of principles is required, and I will touch on some of them.

Before I venture into the specific details, I will first set out two overarching principles that underpin our position. The first is that legislation should be passed only when it is considered to be good government, not just when it is thought by some to be good politics. Secondly, legislation should be targeted. Law-abiding people should not find themselves caught under a legislative net just because it is politically expedient for the Government to impose obligations.

The area of the bill concerning airguns—or “air weapons”, as the Government wants to call them—raises concerns both in principle and in practice. The bill seems partly to be about looking tough, rather than sensibly tackling pressing issues. Indeed, crimes involving airguns fell by 75 per cent between 2006 and 2013—a figure that surely indicates that the problem of misuse is receding rather than growing. No doubt some people will want to intervene at this point to say that criminal misuse of airguns should be tackled whether or not those levels are falling. I absolutely agree on that point, but making a big show of requiring the licensing of all airguns is not a sensible way of going about it. It may gather less attention, but better enforcement of existing legislation would be a targeted and better act of government.

**Kevin Stewart:** Does Mr Buchanan recognise that we are talking not about the licensing of individual weapons but about the licensing of individuals, and that, in the course of the committee’s deliberations, we heard about cases of maimings? We heard about a serious incident in Durham, and there have of course been deaths in the past. Does he not think that individuals who have those weapons should have to be licensed before they can get them?

**Cameron Buchanan:** Is there any evidence that licensing will reduce those instances? I am not sure about that. Some people will want to intervene but, at any rate, criminal misuse of airguns should be tackled whether or not the levels of misuse are falling. As I said, I agree with the point, but making a show of licensing all airguns is not a sensible way of going about it. It may gather less attention, but better enforcement of existing legislation would be a targeted and better act of government.

**Kevin Stewart:** The member has again fallen into the same trap about the licensing of individual weapons. We are not talking about the licensing of each individual weapon; we are talking about the licensing of people who own those weapons. We have to get that right.

**Cameron Buchanan:** Yes, I know that—thank you very much.

Making everyone who wants to own or use an airgun apply for a licence is certainly not targeted. Why should innocent users who want to shoot for sport be forced to go through a cumbersome licensing process that charges for the privilege? I for one consider that, when there is a problem, a Government should seek to address it without imposing itself unnecessarily. Lazily casting the legislative net over every current and potential airgun user certainly breaches that principle, which is particularly worrying when the problem in question is confined to a tiny minority of users.

Furthermore, a vast new airgun licensing regime would bring practical difficulties. We estimate that, at the moment, there are around 500,000 airguns in Scotland, which are untraceable to all intents and purposes. For Police Scotland to license and track them would be very difficult—although I know that that is not proposed—and the people who are using those airguns will go under cover.

This question is crucial: is it in the public’s best interests to invest police time and resources on licensing airguns—or licensing people to use airguns—when Police Scotland increasingly faces budgetary constraints and pressures on its staffing infrastructure? Most people would think not.

I move on to the alcohol licensing provisions. First, I agree that overconsumption of alcohol is a very serious problem, which must be addressed. I also think that it is useful to clarify the licensing boards’ powers so as to avoid confusion or uncertainty in future. However, it is important that aspiring small business owners do not face unnecessary barriers to entry that their competitors do not have to face.

On a similar note, I remain concerned about licensing authorities’ potential power to refuse to grant a licence for a private hire vehicle on the grounds of overprovision. That is anti-competitive and simply not in the best interests of the people whom we should be helping: the consumers. Greater provision of private hire vehicles would allow more people to access that form of transport than ever before. However, this Government proposes to erect barriers to entry that would block consumer benefits, as well as prevent the creation of jobs in an expanding industry.

The mechanism to allow licensing authorities to require knowledge tests for drivers of private hire vehicles has a similar effect. I do not think that...
knowledge tests are necessary with the advent of TomTom, Garmin and satellite navigation. Furthermore, regulatory barriers to entry will restrict the industry's growth, which will cost jobs and act against consumers' interests. I will always maintain that Government should support innovation and refuse to protect vested interests from fair competition that they find inconvenient.

Having said all that, I am in agreement with some areas of the bill. The removal of the requirement for metal dealerships to hold metal for 48 hours before processing it is a welcome example of Government stepping back and removing costly regulation. On a visit to William Waugh scrap metal recyclers in Granton, I saw the large amount of space—and therefore expense—required to comply with that law. The provisions prohibiting payment in cash will also help to increase transparency, which will be beneficial provided that the definitions are clear.

As for the provisions on theatres, they may bring increased flexibility and consistency across the licensing of public entertainment venues, which would be welcome.

In a bill of so many parts, of which some are sensible, it would have been beneficial if the bill had been divided into two, as Alex Rowley stated.

It is clear that the bill will need to be amended substantially at the next legislative stage. As a result, I will lodge amendments at stage 2 that will seek to apply the principle of sensible, targeted government throughout the bill. Accordingly, I hope that the debate will draw out into the open the key areas of the bill in which work is still needed. I have touched on some aspects; my colleagues may come on to others.

On some aspects, such as the licensing of airguns, a considerable change in policy is required. However, I reiterate my view that some of the bill's provisions appear to be sensible. From that position, I will seek to amend the bill to make its overall impact targeted, beneficial and fair.

The Scottish Conservatives will abstain when voting at decision time.

15:12

Clare Adamson (Central Scotland) (SNP): As the committee convener mentioned, I came somewhat late to the bill, having joined the committee in November last year. However, I pay tribute to the many witnesses who contributed to the stage 1 proceedings whether by appearing before the committee or providing written evidence. I also thank the many organisations and stakeholders that submitted briefings for today's proceedings.

It has been mentioned that the bill is broad and diverse, and that many topics fall within its remit. I suspect that I will not be able to cover all the areas in the bill, although I hope to link them because my main concern is about safety. Every committee member and everyone in the chamber wants to see safer and healthier communities. I am sure that we all agree that that is the outcome that we would want from the intended changes.

I thought that there was more consensus on the committee. I am surprised that the Conservatives have chosen to abstain in the vote, because all committee members agreed the stage 1 report. Indeed, there did not seem to be much contention about it at the time.

Cameron Buchanan: Unfortunately, due to my relatively limited parliamentary experience, I did not realise the full implications of my acquiescence at stage 1, which was why I agreed to the bill.

Clare Adamson: Thank you for that explanation, Mr Buchanan.

Alex Rowley talked about the bill's complexity and said that bringing together so many items was a mistake. His point reminded me of an old joke about a traveller who, when seeking directions from a local, was met with the response, “Well, I wouldn't start from here.” We are here. We do not have a blank sheet of paper. We must work within the constraints, the capacities and the existing law in this place and at the local government level. How the Government has presented the bill is possibly the only way forward to address the serious issues in it.

Despite some of the comments that have been made this afternoon, I think that the bill proposes a proportionate and reasonable approach to airgun licensing. We cannot forget where it has come from. Few of us will forget the two-year-old boy, Andrew Morton, who was killed in Glasgow, or his parents' campaign to have the issue of airgun licensing addressed in Scotland. I believe that that campaign was a nominee for, if not the winner of, one of the press awards in the year following Andrew’s death. Individual tragic cases such as that, which show that the system is completely inadequate to protect our communities, have driven us to where we are at the moment.

We now have the right balance between protecting communities and allowing the legitimate use of shooting in a safe environment to continue. We have taken evidence from scouting organisations, from people who work with airguns in their day-to-day lives, and from apprentices, and the bill strikes the right balance for what is in the best interests of our communities.

Alex Fergusson: I totally agree that the type of crime to which Clare Adamson referred is utterly unacceptable in any society, but can she tell me...
what evidence she heard at the committee that suggests that a regime to license the people who own airguns would prevent that sort of crime? I simply cannot find that sort of evidence.

Clare Adamson: I was at the committee when the police gave evidence and spoke of their frustration at their inability to address airguns in premises where they suspected that other crimes had been committed. Whether that is domestic abuse, drug crime or any other kind of crime in our community, the inability to do anything about airguns being present in those areas is a concern, so I found the police evidence compelling.

The Scottish firearms consultative panel estimates that there are 500,000 air weapons currently in circulation in Scotland. One of them is in my loft and has been for the past 20 years, and I believe that that is the case with most such weapons. They have been bought for recreational use at some point. My husband and his father were both scout leaders and used the gun to train scouts, but nonetheless the weapon remains in circulation. The amnesty period, and the opportunity for people to hand in weapons that are no longer in use, will make our communities safer.

I am running out of time, but I want to turn to metal dealers, metal theft and what that means to our communities. I represent the Auchengeich area of Moodiesburn and was appalled that, after all the fundraising that had been done by the local community and miners there to make a memorial to the Auchengeich disaster of 1959, the memorial was stolen within a matter of weeks. That was a real emotional blow to the community and one that was felt by everyone from an industrial background in the Lanarkshire area. The memorial was replaced, thanks to a generous donation from a local businessman, but when things affect our built heritage, our memorials, the fabric of our communities and our historic buildings, it has a detrimental effect that cannot be measured—whether it is the theft of lead from a church roof, the destruction of an historic building or indeed the theft of memorials, which is happening more and more.

We must look at the often disproportionate impact on the economy of an area where the value of the metal theft is as nothing to the disruption to infrastructure such as telecommunications or rail and road infrastructure. I am glad that that is being addressed in the bill.

I am not sure whether I have much time left, Presiding Officer.

The Deputy Presiding Officer: Just a little bit.

Clare Adamson: I shall just mention the taxi app situation. There was a lot of talk about the changes in technology and, as a technologist, I was interested in that. Only last week, there was a case of alleged crime in Edinburgh, in which a young woman got into what she thought was a private hire car and was taken away and sexually assaulted. When we put safety at the very heart of what we are doing, we should look to the opportunities of apps, some of which provide a picture of the driver and the licence of the car that is picking someone up, as well as tracking the journey. Although such apps are seen as a threat in some areas, I think that there is a great opportunity to improve safety, which will be driven by the market.

15:19

Cara Hilton (Dunfermline) (Lab): I add my thanks to everyone who has contributed to getting the bill to this stage and who has provided us with excellent evidence and briefings. Like Clare Adamson, I am new to the committee—I joined in January—so I missed some of the evidence that was received.

As Alex Rowley said, Scottish Labour will support the bill at stage 1 but, as he also pointed out, the bill is so wide ranging that it might have been more effective to have several smaller bills rather than tagging everything together.

I intend to focus on section 68 of the bill, which I believe needs to be strengthened considerably. In his briefing for today’s debate, Scotland’s Commissioner for Children and Young People, Tam Baille, has drawn our attention to the fact that the bill as drafted would allow children under the age of 18 to work in sexual entertainment venues, as long as there is no actual entertainment taking place at the time. Zero Tolerance has expressed serious concerns about the provision and has warned that it could create a groomsers charter, allowing venues to employ teenage girls to work as cleaners, for example, and to then persuade them to become dancers when they reach 18. It also highlights the fact that many of those venues screen pornography in the background, which gives rise to concerns about child protection.

During stage 1 evidence, the Cabinet Secretary for Justice advised that those issues could not be addressed within the scope of the bill, but Zero Tolerance and the Commissioner for Children and Young People disagree. I share the view that no child under the age of 18 should be allowed to work in or attend a sexual entertainment venue in any capacity. I hope that the Scottish Government will look again at this area to see how we can protect young people more.

In respect of the proposed regime, although there is no doubt that sticking to the status quo simply is not an option, and Scottish Labour supports change in principle, we need to consider...
carefully whether the bill could have unintended consequences. There is a real risk that, in licensing these venues, the Scottish Government could end up normalising a harmful form of sexual exploitation. As Zero Tolerance pointed out in its briefing note for today’s debate, “if we are to move beyond women’s value and worth being located in their bodies and their perceived sexual attractiveness, we need to move beyond seeing sexual entertainment venues as normal and harmless.”

That view is echoed by the Commissioner for Children and Young People, who has said that the idea that children could be working in these venues and exposed to degrading images of women simply does not sit well with the Scottish Government’s strategy, equally safe, to end violence against women and girls. The strategy rightly places at its heart recognition of the links between discrimination, objectification and violence against women. It aspires to “create a strong and flourishing Scotland where all individuals are equally safe and respected”.

However, normalising such venues risks sending out the wrong message to young people and especially to young girls. We only need to look at the customer reviews of the venues to get a real flavour of the lack of respect that the clientele have for the women who work there.

There is a risk that, by regulating the sector, we could end up expanding an industry that is harmful to women and is especially harmful to our children, undermining all the work that has been done to address unequal power relationships, tackle gender stereotypes and achieve true gender equality. I hope, therefore, that the Government will be favourable to the section being amended at stage 2.

Sticking to the theme of protecting children and young people from harmful sexual images, another area in which I believe that the bill could go much further is in the restriction of the display of harmful sexualised content in areas where children could see it, such as on supermarket shelves. I would like to highlight the fantastic girl guides campaign, girls matter, which is aimed at ensuring that the issues that matter to girls are addressed in the 2015 general election campaign. Although in recent months we have spent many an hour arguing about full fiscal autonomy and about which of us is the most anti austerlity, the girls matter campaign calls for politicians to take action on the issues that really matter to children and young girls. One of the key issues on which it asks politicians of all parties to take action is children’s exposure to harmful sexualised content in the media.

Kevin Stewart: Will the member give way?

Cara Hilton: I have no time, sorry.

The issue is absolutely vital, because the campaign’s research has found that 75 per cent of girls and young women aged 11 to 21 and 48 per cent of seven to 10-year-olds believe that there are too many images of naked or nearly naked women in the media; that the majority of young girls—almost 60 per cent—have experienced sexual harassment at school, college or work in the past year; and that a staggering 40 per cent of them say that they sometimes feel ashamed of how they look and that they do not take part in fun activities like sport because they are self-conscious. Given the images that girls are exposed to on a daily basis, on YouTube, in music videos and in magazines and newspapers, is it any wonder that so many of them feel pressure to conform to ideals that are often unachievable?

That does not just undermine girls’ self-esteem; the harsh reality is that the way that women are portrayed in the media and at such venues entrenches gender inequality and the unequal power relationships that are at the root of abuse and violence against women and girls. I do not want my six-year-old daughter to grow up in a Scotland where women are viewed as sexualised objects or where women are judged on how they look. I want my daughter to grow up in a society in which gender is no barrier to success and where every child is treated as equal. It is time that we started to take responsibility for making sure that the images of women and young girls that are portrayed in the media are realistic, and we have the opportunity to do that here and now, in the bill.

We could make it an offence to knowingly display harmful sexualised content on the front pages of magazines and newspapers that are within children’s sight. I intend to submit amendments on such a measure at stage 2. The bill also gives us scope to put in place restrictions on signage advertising sexual entertainment venues. The cabinet secretary referred to that in his letter to the committee, and I hope that we can make progress on the issue.

We all aspire to a Scotland in which equality is not just an aspiration but a reality, and we should use the powers in the bill to make that happen. Let us show that girls really do matter and ensure that their voices are heard. We must do all that we can in the bill to tackle the exploitation of women and girls wherever and whenever it takes place.

The Deputy Presiding Officer: I have indicated that there is a little bit of time in hand for interventions. It is, of course, up to members whether they want to take interventions. However, I suggest that, if they do not, they should try to stick to their six minutes.
15:26

Gil Paterson (Clydebank and Milngavie) (SNP): I share all the views that Cara Hilton has expressed with regard to broadcasting explicit scenes or posting them on the internet. Unfortunately, the Parliament does not have any powers to do anything about that.

I am not a member of the Local Government and Regeneration Committee, but the bill appeared, from its title, to be straightforward enough. However, as organisations and constituents starting to contact me ahead of the debate, I realised that the bill is wide ranging in its aims. I applaud the Scottish Government for that and the Local Government and Regeneration Committee for the extensive work that it has carried out on the bill at stage 1.

I will focus primarily on two aspects of the bill. First, I will address alcohol licensing, which is part of the larger approach to dealing with our relationship with alcohol and the negative impact that it has on a number of our citizens and communities. Secondly, I will look at the provisions that aim to tackle the increasing problem of metal theft in our country.

As a former member of the Health and Sport Committee, I have been involved in a great deal of evidence taking, including round-table discussions, on the impact of alcohol on Scottish society. The Scottish Government and all parties represented in the chamber are committed to tackling the problem. The impact of alcohol on the health of adults is well documented, but alcohol has an even greater effect on the health of young people. That is why I am pleased that the Scottish Government has announced, in the bill, that it will close the legal loophole that allows adults to purchase alcohol for someone under the age of 18 if the alcohol is then consumed in public. That loophole has encouraged young people to engage in drinking in outdoor drinking dens, which is detrimental to their health and has led to concerns being expressed by people who are afraid of groups of young people, especially if they have been drinking. For the provision to work, however, I advise that the police use their discretion and avoid being overactive in their enforcement, as that would only lead to the drinking dens going underground, which may make them harder to police.

Although there must be a focus on those who purchase alcohol, it is also paramount that, when a licensing board is considering someone’s application to sell alcohol, the board is provided with wide-ranging information to ensure that the applicant passes a fit-and-proper-person test. The test exists in many licensing regimes, and I am pleased that the bill will incorporate it into ours. That will offer some comfort to families across Scotland that those who hold an alcohol licence have been through a vigorous process, that they can be trusted and that their character is “fit and proper” to sell alcohol. Those are positive steps in the campaign to change our relationship with alcohol and I very much welcome the proposals.

As I stated, the second aspect of the bill that I will focus on is the provisions that aim to reduce metal theft. I have been approached by a number of constituents, including those from a religious background, who have raised their concerns over the increasing problem of metal theft and whose establishments have been subject to that crime. Not only does metal theft have a negative effect on those affected but it has a dangerous impact on those who carry out the thefts.

I am pleased that the Scottish Government acknowledges that efforts to reduce metal theft require legislative action. The proposals in the bill offer that action. While it is important to take preventative action to ensure that metal theft does not happen in the first place, it must be made very uncomfortable for the thieves to try to dispose of the stolen metal. If we introduce effective regulation of the metal-dealing industry, it will become more difficult for thieves to dispose of their stolen material.

Genuine metal dealers, who provide a valuable service to the community, and manufacturers will be protected by the legislation because it aims to target the unscrupulous dealers who offer a way for metal thieves to dispose of their stolen goods. It is hoped that, by cutting off that route, metal thieves will be discouraged from stealing in the first place, ensuring that our churches and railways are not despoiled and damaged.

I did not focus too long on other aspects of the bill as I am sure that colleagues will do so in greater detail. However, I welcome the Government’s commitment to licensing air weapons. It is one of the most significant parts of the bill. If it protects one child or one animal, I am for it. In the wrong hands, air weapons are a danger to our communities and wild, pet and farm animals. The system proposed in the bill offers measures that are proportionate and practical.

I commend the bill to Parliament.

15:33

Elaine Murray (Dumfriesshire) (Lab): I am not a member of any of the committees that have considered the bill and will focus my contribution on three areas.

The first is air weapons. I have no wish to prevent people with a legitimate reason for owning an airgun from being able to do so—I do not think that anyone in Parliament wants airguns to be
banned altogether—but it should be recognised that airguns are weapons. They use pneumatic technology. In fact, air weapons were used in hunting and in war in previous centuries, until firearms technology overtook them.

We know that air weapons can kill—Clare Adamson referred to the horrific case of the murder of two-year-old Andrew Morton—but the extent of the misuse of air weapons was revealed by Assistant Chief Constable Wayne Mawson in evidence to the Local Government and Regeneration Committee when he advised that, between April and July 2014, Police Scotland recorded 84 offences specifically involving air weapons. Of those, “six involved injuries to animals” and “nine involved injuries to humans—one of which was an attempted murder.”—[Official Report, Local Government and Regeneration Committee, 3 December 2014; c 20-21.]

Air weapons are often implicated in criminal activity. Almost half of firearms-related offences involve air weapons. They are frequently used in attacks on domestic and wild animals. Last year in Dumfries and Galloway, there were reports of a 13-year-old pet cat having to be destroyed after an airgun pellet injured its legs. Air weapons are often used against rabbits, rodents and other animals that are considered to be pests, but they are not always used by people who are trained how to use them properly, so there are cruelty and animal welfare considerations that militate against the continuation of unregulated ownership of air weapons.

I am not sure that I really followed Cameron Buchanan’s argument, but it seems to me that the logical extension of that would be to ban the licensing of firearms. We could apply the same argument to that licensing regime, but I do not imagine anybody particularly wants to reverse the situation.

We need to take air weapons seriously. There are an estimated 500,000 of them in Scotland, which presents a challenge. I understand the argument that the law-abiding, responsible airgun owners who use their guns for legitimate purposes will probably be the first to comply, but law-abiding people are the first to comply with most legislation.

I also appreciate that there are resourcing issues for Police Scotland and that ministers are seeking ways of ameliorating those pressures. The committee made a number of recommendations in that regard.

The committee is right to strongly recommend that there needs to be a comprehensive public information campaign that begins well in advance of the commencement of the licensing regime. That should be about informing owners but it is also an opportunity to change attitudes towards air weapons and make the public realise how dangerous they are and the sort of damage that they can do in the wrong hands.

When I was a child, my father had an air rifle and enjoyed what I understand from the report is known as plinking. He even allowed my sister and me to do it on occasion—probably at some danger to our neighbours, I imagine, in my case. In those days, that sort of ownership and use of airguns was totally acceptable, and he kept the airgun safely locked away. However, that was 40-odd years ago and attitudes need to move on. The dangers of the misuse of air weapons to humans and animals outweigh the argument that anyone who wants to enjoy informal target practice at home should have the right to do so.

I also welcome the long-awaited proposals on measures to deter metal theft, although I agree with the committee that they could be further strengthened.

Back in 2014, Ivor Williamson, the owner of Rosefield Salvage in Dumfries, visited one of my advice surgeries to argue for a ban on all cash payments for metal. He believed that that was the only way to combat illicit trade in metals. Genuine metal dealers such as his company have nothing to fear from a national register for metal dealers in Scotland, for example, or the modernisation of the definition of a metal dealer.

Metal theft inconveniences at the very least, and often endangers lives. I live near the A75 and have noticed that a stretch of the fence there is routinely taken away from a field where children play, where dogs are walked and where there could be a danger from people running on to the road.

My final comments on the bill relate to the proposals for licensing the sexual entertainment industry, prompted by the Court of Session’s opinion in Brightcrew Ltd v City of Glasgow Licensing Board.

I agree with the Scottish Government’s violence against women strategy that commercial sexual exploitation constitutes violence against women and that it is harmful not just to the women who are exploited but to all women because of the attitudes towards women and their bodies that it promotes. I would prefer that no such establishments existed.

I cannot accept the argument that the commercial provision of entertainment providing sexual stimulation is necessary to attract business conventions to a city, as one witness appears to have suggested. In my view, establishments that encourage men to objectify and depersonalise women have no place in a modern and
progressive country. I have sympathy with the arguments for an outright ban and that regulation might imply acceptance of the attitudes towards women that such establishments promote. However, I also agree with Zero Tolerance that regulation is better than the current situation.

Local authorities in Scotland have taken different views on the sexual entertainment industry—as they have done on prostitution—so it is perhaps appropriate that such decisions be taken at a local authority level. However, I hope that it will be possible for a local authority that does not wish to allow any such activity to set “the appropriate number” of venues in its area at zero. I hope that many authorities will do so.

I will mention a suggestion that is related to the appropriate number of venues but which is not in the bill. Various members of local authorities have told me that they feel powerless to prevent the proliferation of betting shops and gambling establishments in some communities. That is not part of the bill, but I hope that, at some stage, we will give some consideration to whether local authorities need to have more powers to set appropriate limits for the number of gaming and betting establishments in particular communities.

15:39

Colin Keir (Edinburgh Western) (SNP): I am not a member of the Local Government and Regeneration Committee but I thank it for producing the report, which is welcome.

I will restrict my comments to the sections in part 3 of the bill that relate to taxi and private hire car licensing. In my previous life as an Edinburgh councillor, I was the convener of the regulatory committee. In effect, that made me the spokesman for the then administration on taxi and private hire car licensing.

As the Local Government and Regeneration Committee report points out, the main reason for licensing taxis and private hire cars is that the general public must have confidence in the knowledge that it is safe to get into a vehicle and that there is a fit-and-proper-person behind the wheel. There is also the issue of ensuring that any operating company is not a front for organised crime.

My first television interview on licensing as a local politician some years ago was in relation to an incident where a young lady got into a vehicle thinking that it was a taxi. She was taken by the driver to a secluded spot where she was subjected to a serious sexual assault. That is why I feel so strongly that we must have a robust licensing system. For the most part, the taxi and private hire trade is of a similar mind. If we have such a system, those who have been subjected to such attacks in the past will feel that we as legislators are listening to them and that everyone is safe using taxis and private hire cars at any time.

The Civic Government (Scotland) Act 1982 was written at a time when the technology that we know did not exist. No one had thought of mobile phones as we use them today—they were massive in the early days—and certainly nobody had heard of such things as apps.

On booking offices, I absolutely disagree with the comment attributed in paragraph 311 of the report to Audrey Watson of West Lothian licensing board. Although Police Scotland could investigate nationally, in my opinion it is vital that booking offices are local to the licensing authority area or a short distance from the area in which they are licensed to operate. That allows the police or the licensing authority to easily check on driver and vehicle movements. To say, as Audrey Watson suggests, that a booking office did not have to be in Scotland would demand an almost unlimited amount of trust to be placed on a taxi or PHC operator.

Although most operations are professionally run, there have been the odd exceptions over the years. I believe that local licensing authorities should have not only the right to suspend a driver or vehicle or an operator’s licence but, in extreme circumstances, the right to be able to revoke a licence—a right that they do not have just now. I say that because there are examples of unscrupulous operators changing the day-to-day named operating manager or the ownership of an incorporated company while they fight a licence suspension in order to give the impression that there has been a substantive change to the business.

I know that the current convener of the regulatory committee at the City of Edinburgh Council, Councillor Barrie, would be supportive of such a change as he has informed me of his frustrations in combating unprofessional and unsafe practices within a small minority of the taxi and PHC trades in Edinburgh.

In local licensing systems, booking offices are key to public safety and to the ability to access records. That has to be the case for traditionally run taxi and PHC companies but also for those that use apps as a method of communicating with their customers. Indeed, any company—apps based or traditional—should be allowed to operate only if they do so taking cognisance of local conditions set down by the local licensing authority.

I turn to the issue of limiting numbers of vehicles and unmet demand. In my experience, that has been one of the most contentious subjects over many years, particularly here in the city of
Edinburgh, and I suspect that it will be again if we decide to extend the right of licensing authorities to limit private hire car numbers.

I have absolutely no objection to the limiting of numbers, having seen the mess that some cities get themselves into with vast numbers of unregulated PHCs or taxis. Oddly enough, the comments made by Mr Buchanan in the debate echo those made in a debate that we had in the city council back in 2007—I have to say that the Conservatives have not changed their view in that time.

I was a supporter of the policy to limit taxi numbers when I was in charge of licensing here in the capital. However, in order to help licensing authorities, an accepted method of calculating unmet demand, which has always been a problem, should be made available and agreed. It has been too easy for those who have had licence applications refused to run off to the sheriff court and make an appeal that is based on there being no real, accepted methodology in place. In a licensing system in which litigation has been frequently used by many, it would make sense to make a more prescriptive change to the Civic Government (Scotland) Act 1982 for certain circumstances, in order to make things easier for local authorities as well as to keep the cost of licence applications or amendments manageable for applicants.

I welcome the report and say well done to the committee for it. I have no problem in principle with limiting taxi numbers or with the ability to ensure that private hire drivers can be tested if that is done locally in a correct manner. I would also like to see currently exempt drivers and vehicles, such as stretch limousines, brought into the regulated system for safety purposes.

I once again commend the committee not just for its scrutiny of the bill but for opening up the discussion in the report, which has been very useful.

I support the general principles of the bill.

15:46

Tavish Scott (Shetland Islands) (LD): I apologise for being a minute late at the start of proceedings. I have no good reason at all for that; my legs just did not get me here quickly enough.

I have some sympathy with the cabinet secretary in respect of his responsibilities for licensing. I had responsibility for a licensing bill back in 2005, and I recall that the best advice that I received on how to understand the extent of the problem of overprovision as part of the issues that the Government was dealing with was very simple. It came from the most senior civil servant in the department and it was to spend as much time as I could in the bars of Glasgow and Edinburgh at 1 o’clock on a Saturday night. That was not exactly the advice that I expected to get from a senior civil servant, but I nevertheless considered it very carefully.

I also spent a lot of time with a Strathclyde Police division looking at what happened at 3 am on a Sunday morning and how it dealt with that. I still recall in some detail the night that I was out with that division. The incidents were few and far between. When we went back to the police headquarters for the briefing after the evening to look at how the division had handled various incidents, to review what had happened and to discuss where it knew there were and were not flashpoints, it was interesting to reflect on the number of incidents that had taken place. In some ways, nothing changes in Scotland. We are still dealing with such things.

I heard the cabinet secretary’s opening remarks about making an overprovision assessment across an entire board area. In passing, it strikes me that that will create significant issues. I am sure that the committee will reflect on that at stage 2. I recall some of the debate from some years back, and the trade certainly will reflect on that.

I have sympathy with the argument that Alex Rowley made on the bill being, in effect, a consolidated one. I seem to recall Westminster always being criticised for producing consolidated bills for Scotland. We seem to do quite a lot of that in Edinburgh nowadays.

There is some merit in the argument that a number of members across the chamber have put forward that something as clear-cut as air weapons deserves a piece of legislation in its own right. The licensing aspects that the cabinet secretary has introduced clearly have a common theme and there is a common area of responsibility. There could have been tidier legislation by dealing with matters in that way, not least for the reasons that Mr Rowley gave. There are arguments about the lengths of some of the regimes that have been in place and how they should be assessed.

I want to make some remarks on the air weapons licensing proposals, particularly from a rural perspective. I do not think that anyone disputes that there are problems with the ownership and inappropriate use of airguns. I believe—and the evidence supports this—that there are a greater number of such incidents in urban Scotland than there are in rural and island areas. However, in justifying the bill’s proposals, the current Cabinet Secretary for Justice and, indeed, the previous Cabinet Secretary for Justice have quite rightly mentioned well-publicised incidents in which young children have been hurt.
by the completely wrong use of an airgun. Those cases are appalling and have rightly been condemned, but they have also been prosecuted through the laws of Scotland that we already have. That point has to be borne in mind.

The question, therefore, is whether the proposed introduction of blanket restrictions will have a significant impact on individuals and practices that currently present absolutely no risk to public safety. That fact should be taken into account in any careful consideration of this matter. Moreover, as I understand it, these measures will not be much of a deterrent—if any deterrent at all—to those who are intent on acting irresponsibly. The cabinet secretary might say that the same argument could apply to many things, and he would be right; however, I think that when we bandy about terms such as “proportionality”—as we always do in these kinds of debates—there is a requirement on us all to make a judgment on these matters instead of jumping to the highest or lowest common denominator, depending on how you view a particular argument.

There is a greater risk for Government with regard to the licensing regime. I understand from experts that low-powered airguns would be subject to a higher level of restriction than double-barrelled 12-bore shotguns and even smooth-bore cannon. I am not arguing that there will be a sudden upsurge in the use of smooth-bore cannon but, as the evidence to the committee during its consideration of the bill and indeed to members in recent days suggests, it could be argued that, as a result of the bill, individuals might be allowed to trade up to more powerful weapons. That would be a perverse and bad outcome that neither I nor the Government would want.

I appreciate that the Government is under pressure to act. Ministers are always under pressure to do something in response to an incident, particularly the kind of tragic incident that has happened in the past, but Government is also about making a hard assessment of alternatives. I therefore urge the cabinet secretary to consider two things. First—and I am not sure whether the cabinet secretary mentioned this, but it was certainly mentioned by other members—it is thought that there are 500,000 airguns in Scotland, and an amnesty would take an awful lot of them out of circulation. Indeed, Claire Adamson, who is no longer in the chamber, told us that there is still a gun in the loft of her family home. I am sure that there are many such cases across Scotland, and an amnesty would, as in other circumstances, be a positive way of reducing the sheer number of guns in Scotland.

Secondly, I strongly advocate educating young people about firearms. The PlayStation and online games that my boys play invariably involve guns, and our national news is dominated at the moment not just by politics but by reports of people drowning in the Mediterranean while trying to escape from Libya, where there is no rule of law, only the rule of the gun. There is no doubt that young people are influenced by what they see on television, by the reporting of such events and by what they read online, and I believe that parents and schools absolutely have a responsibility to talk about guns and the reality of what they can mean.

The Government is rightly concerned about public safety, but the crime statistics suggest that the number of incidents involving air weapons is small and falling. Indeed, the evidence to the committee was very clear about that. I could contrast that situation, as others have, with knife crime, which is running at significantly higher levels. No one is suggesting that we should license the possession of kitchen knives—that would plainly be ludicrous—but the fact is that it is easier to buy any kind of blade. As a crofter in Shetland put it to me the other day, more murders happen as a result of knife crime than will ever happen as a result of airguns, and I ask the Government to bear that proportionality argument in mind in introducing this licensing legislation.

15:53

Sandra White (Glasgow Kelvin) (SNP): I thank the Local Government and Regeneration Committee for its scrutiny of the bill and the attention that it has paid to all the submissions, including mine, in what has been an arduous and at times emotional task. The committee has taken evidence on air weapons, the supply of alcohol, taxi licences, metal theft and sexual entertainment venues, and I thank the clerks for the work that they have carried out for the committee and for me as part of the process.

I am not a member of the Local Government and Regeneration Committee but, for many years now, I have taken an interest in the effects of the sexual entertainment industry on women and girls and the wider public’s perception of the matter, particularly men’s perception of women as a result of exploitation, and I welcome the fact that the regulation of venues such as lap-dancing clubs that offer sexual entertainment has been included in the bill. In 2005, the Government of the time—in which, as Tavish Scott has just pointed out, he was a minister—set up a working group on adult entertainment following concerns that were expressed about the lack of controls on adult entertainment activity.

The working group recommended that sexual entertainment should be regulated, but no such regulation was introduced. In 2010, I sought to amend the Criminal Justice and Licensing (Scotland) Bill to that effect. Although my
amendment was supported by the Scottish Government at stage 3 of that bill’s consideration, the Parliament did not agree to it. To say that I was disappointed is an understatement.

Undeterred, I have continued to pursue the issue, and I thank the Scottish Government for incorporating that amendment, which has been worked on since 2010, into this bill. I welcome the Local Government and Regeneration Committee’s comments on that and other issues. I am very pleased that such so-called entertainment is to be regulated and licensed. Mairi Millar of Glasgow City Council said:

“It strikes me that we have licensing legislation and regulations to cover everything from window cleaning to selling burgers from a van or selling chewing gum at 3 o’clock in the morning under late hours catering regulations, but adult entertainment activity is currently not regulated.”—[Official Report, Local Government and Regeneration Committee, 14 January 2015; c 17.]

I could not put it better myself. I think that it is high time that such activity was regulated.

I was struck by some of the examples that other members have given in relation to the licensing of adult entertainment, and I want to give a couple of examples of my own. Not far from here, a lady who works in an adult entertainment venue was attacked while she was walking along the street with her child. The person by whom she was accosted and attacked was someone who had been a customer in that venue. It was disgraceful that she was attacked in that way while she was going about her local business. What does that say about such venues?

I have also been contacted by women who work for corporate businesses who have been denied promotion because they refused to take to sexual entertainment premises corporate clients who had flown in or come up from other areas. Sexual entertainment venues must be regulated, not only because of the effect that they have on how women are perceived, which other members have commented on, but because, as Elaine Murray said, it is not the case that they are good for attracting businesses. It is disgraceful that women in corporate companies are being discriminated against because they will not take clients to such premises.

I turn to some of the recommendations that the committee made in its report, particularly on the issue of having an appropriate number of sexual entertainment venues and of whether to have a discretionary or a mandatory regime. I welcome the Scottish Government’s commitment to provide guidance to licensing authorities on what constitutes an appropriate number of venues, as the committee recommended. I note the committee’s recommendation that the licensing of sexual entertainment venues should be mandatory, but my original proposal, which the Scottish Government has incorporated in the bill, was for an opt-in system. It is a fact that only four or five local authorities operate such entertainment licences. The Scottish Government has indicated that it thinks that an opt-in system that gives local authorities a choice is sufficient. I agree with Elaine Murray’s view that local authorities are best placed to decide just how many licences they should have in their area.

A number of other issues have been raised, such as that of under-18s working in such clubs. I do not know what kind of work they would be doing, or whether it would be against EU regulations to prevent people between the ages of 16 and 18 from being able to work as cleaners or whatever in such premises. I would like that to be looked at, because it is important to consider the people who hang about in such clubs, whether within or outwith working hours. I also want to raise the issue of a fit and proper person. Both those issues should be looked at.

On the recommendation that there be a single body to deal with SEVs, as I will refer to them, alcohol and advertising, I am worried that if we went down that road, it might take longer to set up a new regulatory body and to legislate for that. I think that we have waited long enough for legislation to tackle sexual entertainment, which objectifies women. I am concerned that, if we went down that road, everything might have to be thrown out and we might need to start again. Perhaps the cabinet secretary could pick up on that or it could be looked at at stage 2.

Certainly, the bill is a step forward. Everybody has said that they will support the bill and I hope that it makes it through stages 2 and 3. We must ensure that women are no longer objectified by this form of so-called sexual entertainment.

16:00

Jayne Baxter (Mid Scotland and Fife) (Lab):
The bill is wide ranging and far reaching, and it is important that it is subject to scrupulous scrutiny in the Parliament. The scale of the bill’s ambition, however, leads me to believe that it would have been far better if it had been divided into smaller parts, so that each area could have been scrutinised as closely as possible. The provisions in the bill could easily have formed the larger part of several bills. When the Scottish Government considers issues of this significance in future, it should deal with them in discrete bills, to ensure that the Parliament’s legislation is as robust and effective as possible.

The licensing of the ownership of air weapons is a hugely important topic. I am sure each of us can recall the tragic cases that have been in the news
over the years of air weapons leading to deaths and serious injuries. The approach adopted in the bill is therefore to be broadly supported. It is important that we keep in mind that there are some, albeit very limited, reasons for people to own and use air weapons. Shooting sports are as legitimate as any other and we should avoid stigmatising people who choose to participate in them. We must, however, remember that air weapons are weapons. We cannot allow further tragedies to take place across Scotland involving air weapons. I am pleased that there is cross-party agreement on this topic—or at least there was until today’s debate. I hope that we can get that cross-party agreement back.

As the committee noted, it is important that there is a well-funded and well-implemented publicity campaign across the country to ensure that all those affected by the changes that are contained in this long and fairly technical bill are aware of the implications of the new regime. Many people own an air weapon and no other form of firearm and might therefore be unaware of the conditions for applying for and holding a firearms certificate.

We would all agree that the current regime for the regulation of adult entertainment venues is inadequate. The question that is central to the bill is whether it goes far enough. I agree entirely with the principle of leaving to local authorities the last word on whether an adult entertainment venue receives a licence. As a former councillor, I believe that it is important that democratic accountability on a ward level combined with councillors’ experience in making various quasi-judicial decisions is utilised in relation to such venues. Local authorities currently can decide only whether an adult entertainment venue is permitted a licence for the provision of alcohol. It is only proper that local authorities are empowered to evaluate whether such venues should be allowed in the first place. I endorse Elaine Murray’s comments about extending that power to cover other sorts of venues such as betting shops and perhaps payday loan shops.

There are those who would like the bill to go much further, and those voices should be heard in the bill’s future stages. The bill deals with an important moral question and we should strive to ensure that those with strong feelings on the topic are able to put forward their case. We should also examine the apparent loophole regarding holding fewer than four events of an adult nature a year. If the legislation can be circumvented with such ease, it is hardly worth implementing in the first place.

I turn to the bill’s proposed changes to alcohol licensing. The abuse of alcohol is an enormous problem right across the country. Scottish Government-funded research has estimated that the costs of alcohol misuse in Scotland are somewhere between £2,883 million and £5,396 million per year. It is imperative, therefore, that our licensing scheme is appropriate, robust and effective. The bill seeks to amend fairly old legislation. It would have been preferable for the Scottish Government to introduce a less piecemeal and more fundamental set of reforms for alcohol licensing in Scotland. We should look more broadly at how effective the current regime is across the country. Future Governments will have to examine the issue in a more fundamental way, sooner or later.

The remainder of the bill deals with a series of highly specific forms of licensing. I return to my previous point that the bill is far too broad for us to properly scrutinise all its provisions, but I will briefly mention two key elements of the remainder of the bill.

The taxi licensing scheme has always been predicated on the idea that taxis have a significant business advantage, as they are able to accept bookings on the spot. However, that benefit has been reduced by the near-universal use of mobile phones. It is widely accepted that most journeys of this nature are now pre-booked. It appears that that trend is set to continue with the advent of taxi-booking mobile phone apps.

Those technological advances call into question the entire approach that has been adopted for the licensing of taxis in Scotland. Recognising that, however, we can still say that the specific provisions that are contained in the bill are acceptable and should be approved by the Parliament.

The proposed changes to the regulation of scrap metal dealing also seem sensible. They are very similar to the approach that has been adopted in England, which seems to work well. With that in mind, I see no reason to oppose the changes that the bill proposes.

All in all, the bill seems acceptable in principle. As it is technical and applies to many specialist groups, it is important that the Scottish Government listens closely to the concerns and advice of experts in the relevant fields, campaigners and businesses affected by the proposed changes. The Law Society of Scotland in particular has raised several concerns regarding various aspects of the legislation. The Scottish Government should pay close attention to those concerns and amend the legislation accordingly.

The bill deals with several key topics. It is important that we get the level of regulation on them right. Additionally, it is important that we ensure that when such questions are considered in the future, we are able to consider them in
greater detail and, where appropriate, in separate legislation.

16:06

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I add to those of our Local Government and Regeneration Committee convener, and other members who have spoken so far, my thanks to the many people and organisations who took the time to offer their views and give evidence. I also thank our committee clerking team, who have done a great job in putting together the committee’s report.

The purpose of any licensing system is, of course, to regulate legal activities that have the potential to cause harm to individuals who engage in them and to the wider public who may be affected by them. In this case, we are looking at use of air weapons and at licensing as it relates to taxis, metal dealers and various public entertainment activities. The bill will, rather than regulating ownership, make it an offence to use, possess, purchase or acquire an air weapon without holding a certificate. When an offence is committed, it will be more about who committed the offence than about who owns the weapon that is used.

On air weapons, I am pleased that the Government has accepted the committee’s first recommendation, which is to support a public information campaign that will give the public the information that they need in advance of a certification system’s being put in place. A website and other social media tools will give people information about how to hand in unwanted weapons and about the certification process itself, right through to how they might wish to dispose of a weapon under the new scheme, along with all the appropriate information on fees and timescales. That will be a very important part of engaging with owners and clubs and it will also serve the wider public interest.

The committee also wanted to ensure that the bill will not prevent remote sales to people who live outside Scotland; that recommendation has also been accepted by the Government and I understand that an amendment at stage 2 will facilitate that. It will simply mean that an air weapon can be bought in Scotland and delivered to a registered firearms dealer in England or Wales for collection.

The issue of whether to introduce an air weapon marking and identification system was discussed at some length by the committee, but I see from the Government’s response to that idea that it, Police Scotland and the Gun Trade Association do not think that it is really necessary. Other legislation is in place to deal with criminality involving weapons, so a marking system would not be critical in helping to prove any case that might be brought to court. There is quite a detailed explanation from the Government on that, which I hope clarifies the issue.

One of the key alcohol licensing proposals is the creation of a new offence of supplying alcohol to young people for consumption in a public place. Members will know that although it is currently illegal to buy alcohol on behalf of a child, it is not illegal to buy alcohol to share with a child. The bill will close that loophole by making it an offence for a person aged 18 or over to share alcohol with a person under 18 in a public place. That includes private property, where drinkers may have accessed it illegally. The purpose is to help us to tackle outdoor drinking by children and young people. The proposal has widespread support.

I note the Government’s intention to consider the reintroduction at stage 2 of a fit-and-proper-person test for a person who wishes to hold an alcohol licence. Although there was agreement on that from some of those who gave evidence to the committee, there were also some reservations expressed, mainly with regard to linking the test to the broader licensing objectives and the possibility that that would give rise to further litigation. I hope that consideration of that issue at stage 2 will help us to resolve it one way or the other.

There are a few recommendations that will strengthen the desire for local licensing boards to consult the public, health boards and alcohol and drug partnerships on a variety of issues relating to alcohol. It is hoped that the more informed our boards are, the better will be the decisions that they make. The relevant parts of the committee report, which are supported by the Government, are more about reminding everyone that there is some good experience out there and that there are data to be shared before decisions are ultimately taken.

I have two points to make on the taxi licensing provisions in the bill. One relates to a situation in which a taxi driver who may be the subject of numerous complaints in one authority seeks to obtain a licence in another authority—forgetting, of course, to reveal that he has been the subject of such complaints. The response from the Government says that authorities can already make inquiries on such matters, and that Police Scotland, as a single entity now, should be able to assist. However, Police Scotland may not have such data recorded. I feel that in order to enhance the protection of the public who use taxis—in particular, vulnerable young women—there must be more than an expectation that authorities should try to find out from a neighbouring authority about any complaints that may have been made about an applicant. A Scotland-wide response to
the issue is needed: authorities should record all such complaints and other authorities should be able to access that information easily. Anything less than that will do nothing to reduce the risk.

On the less controversial issue of knowledge, I support the committee’s view that the knowledge test should apply to all drivers, regardless of whether the service is a taxi or a private hire car. Members of the public expect, when they get into a car, to be taken somewhere by a driver who actually knows where he is going. I had an unfortunate experience a few years ago when a private hire taxi driver in Edinburgh did not have a clue where Hibernian’s Easter Road football stadium was. I hope that any guidance notes on the bill that are issued by the Government will strongly encourage adoption across the board of the knowledge test.

The Air Weapons and Licensing (Scotland) Bill will, through its many provisions, strengthen public safety in Scotland and provide opportunities for the public and civic Scotland to engage with their local licensing boards on these very important issues. I am happy to support the general principles of the bill at stage 1.

16:12

Rhoda Grant (Highlands and Islands) (Lab): I will speak specifically about section 68 of the bill, which will introduce a licensing regime for sexual entertainment venues such as lap-dancing clubs. I pay tribute to Sandra White for the work that she has done on the issue over the years; I am sure that she is very pleased that the bill has been introduced.

The licensing of such venues became an issue in Inverness, where the licensing committee said that it was powerless to prevent a licence from being granted to a lap-dancing club in the city, despite the violence against women partnership’s warning about the impact that such a venue would have on the area. I therefore welcome the move to empower local authorities to prevent such clubs from opening in our towns and cities.

The Scottish Government’s document, “Equally Safe: Scotland’s strategy for preventing and eradicating violence against women and girls”, recognises commercial sexual exploitation, including stripping, lap-dancing and pole dancing, as violence against women. It tells us that “these activities have been shown to be harmful for the individual women involved and have a negative impact on the position of all women through the objectification of women’s bodies”.

It therefore seems to be a little perverse that we are licensing venues that perpetrate violence against women.

My preferred option would be that we ban all such venues from our country and seek to create an equal society in which women are valued and not sold as commodities. However, the proposed licensing regime is better than the current situation, in which licensing committees feel powerless to prevent such venues from opening. Zero Tolerance tells us that there is “no place for a highly gendered form of sexual entertainment in Scotland.”

In its briefing, it states that these venues are places where men often seek to buy sex, which means that women are often moved from sexualised entertainment into prostitution.

Such venues also encourage gender inequality, which impacts on all women and, indeed, on our whole society. If we are to live in an equal society, we have to stop such venues operating, because they treat women as commodities to be sold for the sexual pleasure of men. They are not normal entertainment venues, and other countries have none—for example, Iceland. The countries that will not tolerate such forms of entertainment tend to give gender equality a much higher priority than those that do.

The licensing regime must be mandatory. Every venue, regardless of how often it provides adult entertainment, should be subject to the licensing regime. Local authorities must carry out equalities impact assessments on the venues before issuing licenses, taking into account the venues’ impact on the wider society in their local area. I also wish to see violence against women partnerships being statutory consultees when licences are applied for. Local communities must have a say on whether licenses should be granted, and local authorities must be allowed to have a policy of having no venues at all in their area.

Other members have talked about the bill allowing young people under the age of 18 to work in venues at times when sexual entertainment is not taking place. However, there are often in such premises pornographic images that children working there would have access to. Again, Zero Tolerance warns us of the implications of allowing young people to work in such environments and tells us that, in essence, it creates a groomers charter.

Allowing that would also normalise such entertainment and exploitation in the eyes of very young and vulnerable people working there. Young girls would also be vulnerable to being enticed to become sexual entertainers when they turn 18. Any young person working there would be at risk of developing unhealthy attitudes to sexual relationships. I believe that the bill must be amended to protect young people from the exploitative nature of those premises.
The committee received a submission from Child’s Eye Line UK regarding public display of sexualised images to children. I believe that that organisation has a point and that Cara Hilton’s point on that was well made: such images should not be on display publicly. We have the power to ban the display of cigarettes—and are proposing to do so—because they are dangerous and harmful, but so are sexualised images because they impact on gender violence and inequality. The bill provides an opportunity to ban the public display of such images, so I hope that the Government will give that due consideration.

The bill does not have a fit-and-proper-person test for licensees of sexual entertainment venues, although people who apply for liquor licences are subjected to a fit-and-proper-person test. That is surely an oversight, so I hope that the bill will be amended to change that anomaly.

Licensing must also ensure that employment law is adhered to. Women who work in sexual entertainment venues are often charged appearance fees and can be fined, meaning that they can end up earning little or nothing at all. We all agree that we should be implementing the living wage and not promoting zero-hours contracts, and that we should be protecting workers. If we allow those venues to operate, we need to make sure that they are working within the law and that the people who work in them are treated and paid properly. Again, that can be addressed through the licensing regime.

I firmly believe that sexual entertainment venues have no place in a modern equal society, and that we should be banning them rather than licensing them. However, the bill’s provisions are a step in the right direction, and I hope that all local authorities will take the opportunity to refuse all licenses for such venues in their areas.

The Deputy Presiding Officer (John Scott): I call Stewart Stevenson, to be followed by John Wilson. You have a generous six minutes.

16:18

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I think that it is appropriate for me to report, before I start my speech, that I am a member of the Banff Town and County Club, which is a licensed premises such as are referred to in the bill. I do not intend to speak on that part of the bill.

This is an interesting debate. One of the things that we perhaps ought to think about is that the problem of alcohol abuse and licensing and controlling alcohol is hardly new. Christopher Smout, the renowned historian who wrote the book “Century of the Scottish People: 1830-1950”—he is essentially a social historian—spoke of a village in East Lothian that had one public house for every 14 occupants. There were special circumstances: it was a village to which many people came seasonally to work in agriculture. The problem is not exactly a new one.

The problem also existed when the Immature Spirits (Restriction) Act 1915 was passed. I have a personal interest in that act, because my father’s cousin was responsible for it. Lloyd George had wanted to ban the sale of alcohol altogether, because of the effect that alcohol had on the munitions factories and the military towns around the UK during the first world war. James Stevenson persuaded the Government that it might be more effective simply to prohibit the sale of immature spirits. That is why whisky is kept in bond for three years. The aim was not to improve the quality of the whisky—although it had that secondary effect—but to restrict its supply, because there was seen to be an issue at that time. The improvement of the brand that is Scotch whisky that flowed from the 1915 act was an incidental benefit for whisky, because it meant that there was no longer poor-quality stuff on the market and whisky could be trusted as a quality product.

We can move forward to the reforms of the 1960s. Before then, there were one or two things to do with licensing in Scotland that we have totally forgotten about. For example, there was the veto poll. Teddy Taylor, the Tory MP for Cathcart for many years, was a very strong exponent of that. I think—subject to confirmation—that Cathcart was the last area in Glasgow where there was a total veto. The population had requisitioned a poll under the appropriate legislation and voted to have no licensed premises in their area. That was the provision that applied after the war, up to the reform in the early 1960s.

A licence granted for sale of alcohol on a Sunday had to be for a hotel. The definition of “hotel” meant that, if someone was going to sell drink on a Sunday, somebody had to be resident in the hotel. Therefore, across Scotland were hotels that advertised seven-day licences that had one room where somebody lived permanently at a discounted rate so that the licence was not discontinued. I happened to know one poor unfortunate, now deceased, called John Dalrymple, who got thrown out of the home that he had lived in for 30 years when the legislation was reformed in the 1960s. We should not imagine that any generation of politicians has been able to identify all the perfect solutions to what is quite a substantial problem.

I admit that I first entered a pub and consumed drink on 21 March 1959. It was in the Register Tap in Edinburgh, following a 3-3 draw in the Calcutta cup at Murrayfield, and there was a need for...
console. Members are probably able to work out that I may not have been fully of age. Indeed, the barman asked me to sit behind the door in case a policeman popped his head round—things were a lot more lax in the old days. The provisions that are before us now are much better. Of course, my grandfather would not have approved at all, because he was a member of the society of Rechabites, who went around trying to get people to sign the pledge. He was against drinking in all its forms.

I used to have an airgun when I was a kid. It was not the kind of airgun that people can get now. It struggled to propel its .177mm lead pellet more than about 30 feet—the guns that we have now are more significant. If I wanted to carry it in a public place, I needed a licence, but that was simply a question of going to the post office, handing over 10 bob and getting one. It was really just a way of recording who had the licences, and it seemed to be utterly pointless.

I commend the policy position that Cara Hilton has taken. I have enormous sympathy for what she expressed regarding sexualisation of the female image. I absolutely agree on that. I caution her, however: she appeared to suggest that she would lodge at stage 2 amendments to do with the media and the internet. They would not, of course, fall within the powers that we have in this Parliament. I thought that it would be useful to spell out why that would be a risky thing to do. When bills are introduced, the Presiding Officer’s office has to say that they are intra vires—in other words, that they are within the powers of the Parliament. As amendments are lodged at stage 2, it is up to the lead committee convener to come to a view. At stage 3, it is up to the Presiding Officer to select—or not to select—amendments.

Of course, we can pass legislation that is ultra vires. However, when it goes for royal assent, if it is judged by the palace’s legal advisers to be ultra vires, royal assent will not be given. It is not simply a matter of the little bit of the bill that is ultra vires being struck out—although it could be at a later date if there is a dispute—because that would cause the whole bill to fall.

Although I utterly sympathise and agree with what has been said, including what was said by Rhoda Grant and others, I simply advise that because there is no policy difference among us, we must be very careful to take good advice. If that advice is that we can do what is proposed, I would be utterly content and I would be behind any such amendments, but we must be very careful on such matters.

It is appropriate that I record our gratitude to Sandra White for her work over a significant period on sexual entertainment venues. She has not been the only person articulating the argument, but she has been the one who has utterly stuck with it. It is to her eternal credit that we see in the bill her not inconsiderably small hand writ large.

I wish the bill every success as it passes through its subsequent stages in Parliament.

16:26

John Wilson (Central Scotland) (Ind): I come to the debate as the Local Government and Regeneration Committee’s deputy convener. I sat through many committee evidence sessions, and pay tribute to our witnesses as well as to the many individuals who made submissions during our stage 1 consideration of the bill.

Like other members, I will talk about the sections that I think are of importance, which is not to say that every section is not important.

On air weapons, which, in part, lend their name to the bill, this Parliament has only been able to legislate in the area following the transfer of powers under section 10 of the Scotland Act 2012. It took too long to give Parliament that legal competence.

When the bill talks about air weapons, it is not talking about all air weapons, as we do not have the competence to license all air weapons. The power to license certain air weapons will continue to be held by the UK Government. Those weapons are defined as handguns that can fire above six foot pounds and rifles that can discharge at 12 foot pounds. We must ensure that, when we roll out the legislation, individuals are aware of the distinction that exists between air weapons, that those that are seen to be “specially dangerous” will still come under Westminster’s jurisdiction, and that we will have the right to regulate and legislate on and to license only air weapons that are below those limits.

We must also bear in mind the committee’s discussions on the cost of licensing—the individual, not the weapon; the committee convener quite rightly said that we are not licensing weapons. Firearms and shotguns are registered because they have registration marks, but air weapons do not have such marks. Firearms and shotguns must be registered by the licence holder against a certificate. Under the licensing regime in the bill, it is the individual who will be licensed, not the air weapon that they hold.

On the suggested fees, there has been discussion about what someone would be charged to become a licence holder. Westminster is considering the fee for a firearm or shotgun licence, which currently sits at £50, and I am sure that it will return to the issue after 7 May. However, the figure that is being quoted for a firearm licence is £88, and for a shotgun licence it is £79.50.
We must bear that in mind when we talk about potential full cost recovery in relation to a licensing regime for air weapons. As Tavish Scott said, we must not encourage individuals to look at the cost of licensing an air weapon at £80 and think that they could instead apply for a shotgun licence at £79.50, or a firearm licence at £88. The trading-up debate is there. Individuals who may have a licence, and who may be appropriate people to hold one, could trade up to hold a firearm or a shotgun rather than holding an air weapon.

A number of members have commented on the estimated 500,000 air weapons that are currently located in Scotland, which is something that we really need to address. We need to find a way of reducing that number. If we cannot reduce it, we need to find a way of introducing a licensing regime that does not clash with the peaks and troughs of the shotgun and firearms licensing that is currently taking place. We would hate to see the introduction of air weapons licensing coming at the peak of the licensing period for shotguns and firearms. The Police Scotland evidence indicated that there were peaks and troughs in relation to such licensing.

Those are the issues that we need to address, and I welcome the fact that the cabinet secretary has taken on board a number of the issues that the committee raised about air weapons.

The licensing of adult entertainment venues has been adequately covered by a number of members. I welcome the opportunity to consider the amendments that will be lodged and I will consider them with interest when they come before the committee.

I will talk about scrap metal dealers, because there is an issue there. Other members have mentioned the risks to life and health that are posed by people who steal scrap metal to sell on. We looked at fines, and the convener mentioned the £5,000 fine that can be imposed on somebody who is caught stealing scrap metal. The difficulty is that the overall cost of the damage that is done by some of the thefts that take place is far greater than that. We heard evidence from one of the power companies, which estimated that the damage could cost in the region of £40 million over a period of time—not including the costs to individual households and communities. The maximum fine at the moment is only £5,000, and it would be appropriate to make fines or penalties commensurate with the overall damage that is caused by those thefts.

Clare Adamson mentioned the Auchengeich miners’ memorial, which was stolen. I was at the unveiling with the First Minister and other MSPs, and fortunately for that community, the sculptor had not destroyed the mould from which he had produced the sculpture, so he was able to replace the sculpture and we had a second unveiling. The difficulty is that many communities throughout Scotland do not have such an opportunity when thefts take place, because they do not have the original moulds and cannot reproduce sculptures or other items that have been stolen.

We have started the process. I hope that, when the committee considers the stage 2 amendments, we can get to a piece of legislation that will be not only meaningful but future proofed against developments in relation to issues concerning taxis, private hire cars, apps and various other things that will need to be considered.

The Deputy Presiding Officer: We now move to the closing speeches. I call Alex Fergusson.

16:34

Alex Fergusson (Galloway and West Dumfries) (Con): I am happy to be concluding the debate for the Scottish Conservatives, although, like other members, I am not a member of any of the committees that have been involved with the bill.

I have to say that I find myself somewhat perplexed by the bill and by the general principles that we have been debating this afternoon. As Cameron Buchanan noted in opening the debate for the Conservatives, there is a great deal in the bill that we welcome, even if we believe that some provisions might require modest amendment at later stages. I particularly welcome part 2, on alcohol licensing, for instance—I know that the issue is close to your heart, Presiding Officer—and I also welcome the sections that deal with scrap metal licensing.

However, we have a real sticking point when it comes to the Government’s proposals on air weapon licensing, and it is on that aspect of the bill that I will concentrate, given that it is the single reason why we are unable to support the general principles at decision time. I dearly wish that, as Alex Rowley and Tavish Scott have said, part 1 had been in a separate bill. However, we are where we are on that front.

I want to make one thing clear at the outset: whatever our views are on part 1, gun crime—any gun crime—is utterly abhorrent, whether it be carried out against human, pet, wild animal or bird. That is something on which everyone in the chamber can agree. We on the Conservative benches will always support robust enforcement of existing or additional legislation where there is an unequivocal evidence base that it will be effective in achieving its aims. However, I cannot find evidence that that will be the case in this instance.

Let us not forget that, as has been said, between 2006-07, when there were 683 offences
involving air weapons, and 2012-13, when there were 171, there has been a drop of 75 per cent in reported incidents involving air weapons. Colin Keir mentioned a debate on the subject that took place in 2007 and said that the Conservatives’ position had not moved since then. That is not true. On the basis of those figures, our position has actually hardened, because it seems to me that a drop of 75 per cent is quite significant. In fact, it is a significant reduction in anyone’s language and it is, presumably, the result of the successful implementation of existing legislation and also of increased education initiatives by the Scottish Government and shooting organisations, for which they are to be commended. That is proof, if proof were needed, that the carrot often works better than the stick. Of course, on occasions such as this, they can also work well together.

On the subject of annual figures, I am concerned, as I said in an earlier intervention, that the most recent air weapon offence statistics—those for 2013-14—are not available. They should have been published in November 2014 but, apparently due to difficulties in collecting the data, they will not now be published until October this year, which is almost a year late and is certainly too late for them to inform this debate. A cynic—not me, but a cynic—might wonder why they cannot be produced by Police Scotland this year, while the bill is under consideration, when they have been produced regularly in previous years, and especially as Police Scotland was apparently able to quote figures from April to July 2014 in evidence. It seems to me that something is not quite right there, and it does not do this debate any favours.

Kevin Stewart: As Alex Fergusson has pointed out, we have moved to a new policing regime, with Police Scotland instead of the previous eight forces.

As the start of his speech, Mr Fergusson said that he would support a separate bill, but would not support part 1 of this bill, which deals with the subject. What would be different in that separate bill from the proposed legislation on air weapons in this bill that would make him support that one but not this one?

Alex Fergusson: I think that I am being misquoted, because I did not say that I would support a separate bill; I said that there should be a separate bill. What I do not like about this aggregated bill is that, at the end of the day, if this sticking point remains in place, we will have to vote against the bill. That would be a great pity, because there is so much of it that we believe is good. If there had been a separate bill, we could have disassociated ourselves from it and supported the parts of this bill that we agree with.

Whatever the figures that are not available turn out to be, there is no evidence at all that I can find that a licensing system will reduce crime. Indeed, if the possession of an airgun without a licence becomes a crime, the bill can only increase the crime statistics, which is surely the very opposite of what the Government intends.

Stewart Stevenson: I suggest to the member that no one cares about the statistics, whether they are up or down. We care about what happens on the ground and improving public safety.

Alex Fergusson: The point that I am trying to make is that I cannot find anything in the proposed regime that will improve public safety. I will come back to that later. Mr Stevenson’s intervention has brilliantly made me lose my place. It was well timed.

I now come to the practicalities of introducing the licence. The British Association of Shooting and Conservation—and, indeed, other shooting organisations on whose behalf it was speaking—has pointed out that, at the moment, it can take up to nine months to process a shotgun or firearms licence. Police Scotland is in the process of reducing the number of civilian licensing officers from 34 to 14, so it will have to train up police officers who, I presume, will be taken off the beat in order to fill the gap. Their task will then be to cope with the demand created by owners of some 500,000 air weapons wanting to obtain a licence. All those weapons, less the ones that will be surrendered during any amnesty period, are untraceable anyway, as airguns do not have unique identification numbers—and the cabinet secretary is right not to try to introduce such a system. The Law Society helpfully pointed out the difficulties of the situation, and I can only wish the police good luck with it when the bill is passed. It can only create a mountain of extra work and bureaucracy for an already overstretched police force, with no measurable impact on airgun crime. I therefore find myself asking what all this is for.

I do not think that the bill is about public benefit, despite Alex Rowley’s arguments, to which I listened very carefully. They were convincing in many ways, although I am afraid that they did not convince me. Tens of thousands of people will be caught up in a licensing scheme that will involve an incalculable number of inquiry officer visits to applicants’ homes for the purposes of verification and which has an indicative cost of at least £85 per application. That huge public expense is going to be incurred for no calculable public benefit or reduction in crime, and a new regulatory infrastructure will be required to oversee the system.

The Deputy Presiding Officer: You must conclude, please.
Alex Fergusson: I think that part 1 targets the wrong people, as future offenders will not be those who have obtained a licence. It will do nothing to preserve public safety, as the Law Society points out in its submission, in which it highlights the real possibility that many untraceable air weapons will simply disappear into the wrong hands as and when a licensing scheme is introduced. In addition, Police Scotland’s infrastructure is ill equipped and underresourced to do what it will be asked to do.

The cabinet secretary strikes me as a sensible man—I told him that I would be nice about him. He has seen sense on corroboration; I hold on to the hope that he will see sense on this as well.

16:42

Alex Rowley: There has been a lot of consensus in the debate, as there was in the committee. On all sides of the chamber, there is a willingness to see the bill go forward and be passed. I hope that we can work together over the coming weeks and that the minister will give an indication in his summing up that he is willing to work with the various groups that have put forward different arguments today so that we can find a way to continue that consensus.

The consensus broke down because of the Conservative Party’s view on air weapons, which I do not agree with. Elaine Murray pointed out that the committee was advised that 84 offences had been committed over a period. Representations were also received from animal welfare organisations and other organisations that highlighted the issues that can arise around air weapons. As Elaine Murray said, at the end of the day they are weapons. I am therefore supportive of that part of the bill and the Labour Party will support it.

John Wilson talked about fees, and the committee picked up on the point about full cost recovery for the licensing of air weapons. I know that the matter seems still to sit with the UK Government, but the committee picked it up and talked about being able to recover all the costs. It is important that we pick up those points from the report.

In his response to the report, the minister indicated that he is fairly positive about some areas of the report and will pick up some of its recommendations. The committee produced a number of recommendations, so I hope that we can discuss those with the minister in the coming weeks.

Kevin Stewart talked about all the people who gave up their time to give evidence to the committee. It would be good to demonstrate that it is worth while taking the time and trouble to give evidence to Parliament and that the issues in that evidence are being taken on board. I hope that we can pick up some of those issues.

A number of members talked about the proposals for licensing clubs. The Brightcrew decision meant in effect that there was no regulation of sexual entertainment venues. Even those who have said that they would rather that those clubs did not exist welcome some kind of regulation. Some members made the point that local authorities are well placed to make decisions about whether venues in their area should be licensed. At the end of the day, local authorities are held to account by the electorate. Those of us who support the devolution of decision making to the lowest possible level believe that it is right, on an issue as important as this, that local authorities should have the final say. Nevertheless, Cara Hilton and others pointed out that there are still a number of issues that we would like to discuss with the minister. I congratulate Sandra White, who I know has pushed that issue for some time.

On whether young people aged 16 to 18 should be able to work in those venues, I know that there has been an argument about employment law but, again, if the minister is open to it, we can discuss the issues and, hopefully, pick them up and take them forward.

Willie Coffey talked about licensing authorities sharing information about taxi operators. He asked a lot of questions about that in the committee. There is a recommendation on page 55 of the report that there should be more discussion in that regard. I am not sure whether that could be included in an amendment at stage 2 or whether the minister is open to having that dialogue. I would hope that he is and that we could pick that up and move that forward.

Clare Adamson talked about taxi apps and the importance of safety in relation to taxis. She gave the example of a woman who was sexually assaulted after getting into a vehicle that she thought was a private hire car. The committee heard evidence from an academic from the University of Edinburgh who is an expert on taxis, not just in Scotland but throughout the world. His view was that, as soon as the legislation is passed, it could be out of date because of new technologies. I know that Willie Coffey has more expertise in the field of technology, but that part of the bill may have to be considered again in future.

Kevin Stewart: One of the key things that the bill should achieve is that folk know that they are getting into a licensed vehicle with a licensed driver. That is the essential element in all of this. Whatever we do, technology-wise and so on—in terms of hailing or apping or whatever—the key thing to keep folk secure is to keep that licensed driver and licensed vehicle element in place. We
should do everything possible to ensure that that continues.

**Alex Rowley:** I agree entirely with Kevin Stewart.

In his opening speech, Cameron Buchanan wondered whether we were being too heavy handed in treating taxis and private hire cars in a similar way in licensing. However, the evidence does not suggest that. Those who gave evidence to the committee—the taxi operators who operate private hire as well as the Scottish Taxi Federation—all seemed to be fairly positive about, and in favour of, the proposed legislation. I was struck by the pride that the taxi operators took in the quality of training, skills and expertise that they expect their drivers to have, so the proposals were broadly welcomed.

A number of members have said that they would like to consider amendments to a number of areas of the bill, particularly the regulation of sexual entertainment venues, and I ask the minister to indicate that he is willing to meet members who have concerns and want to lodge amendments to see whether we can maintain the consensus that we have had in the debate as we go forward to stages 2 and 3 and pass the bill.

**Michael Matheson:** I am grateful to all the members who have contributed to the debate. I have listened carefully to many of their comments and the issues that they raised.

I understand some of the frustrations that members have about the bill being presented with several different component parts to it. That is not unfamiliar and unusual in the Parliament. There are parts of the bill that would be difficult to have as bills on their own because they are limited in nature. However, I acknowledge that the bill acts as a vehicle to make changes that were needed to a number of aspects of legislation, such as the Licensing (Scotland) Act 2005.

I am also conscious of the point that Tavish Scott made. He has been in the Parliament as long as I have and I do not think that we have gone through a parliamentary session in which some form of licensing legislation was not necessary. Because of circumstances that develop and from which we learn, we have to go back and consider amending the legislation and introducing new regulations to respond to challenges that come up.

However, the Licensing (Scotland) Act 2005, to which Tavish Scott referred, made a significant improvement in the way in which we license premises that sell alcohol. For example, one of the common issues that the police used to raise with me concerned off-licences that were found to be selling alcohol to people who were under 18; they were at risk of losing their licence and they would simply transfer the licence to another family member and continue. Having a premises licence as well as an individual licence closes down the potential for that, so the 2005 act made a significant improvement in how we go about alcohol licensing.

I said to the committee that I understand the calls for a review of the Civic Government (Scotland) Act 1982. I also said that we should not underestimate the scale of such a review and the work that could be involved in it. My estimation is that it would take several years for that work to be undertaken. Therefore, although I recognise and understand the calls for the review, I caution members on the potential implications of it and the nature of the work that would be involved in it. As I said to the committee, I would be more than happy to come back to it in the autumn having considered the issue in greater detail.

**John Wilson:** One of the issues that was raised at the committee was how the 1982 act was being applied throughout Scotland and what appeared to be inconsistencies in its application by certain local authorities. It would be useful if the cabinet secretary were to indicate whether he will consider some of the inconsistencies that were identified when we took evidence.

**Michael Matheson:** I am always prepared to look at areas where things can be improved. However, the very nature of licensing means that there will always be a level of variation, given the way that individual local authorities take particular matters forward.

Alex Rowley asked about having a discussion about some of the areas in which he and his colleagues believe that the bill could be improved. I am not in favour of deleting any section of the bill—that will disappoint the Conservatives—but I am always open to looking at how we can improve legislation, no matter which side of the chamber the suggestions come from. I am more than happy to engage with Alex Rowley and his colleagues and any other member in the chamber to look at how we can improve this bill.

I turn to the licensing of air weapons. I note the position that the Conservatives have now taken on this matter. Over recent years the number of crimes that have involved a firearm has decreased significantly, and that is positive. Having said that, almost half of all the incidents that involve a firearm involve an air weapon. So, although the number has been dropping, air weapons account for almost half of all the incidents that involve a weapon of a firearm nature.
We have sought to act proportionately in this area. The way in which the licensing regime will operate for air weapons is not the same as the way in which it will operate for firearms and shotguns. It is a much lighter-touch approach, but it will allow the police, as they have said, to prevent an individual from having an air weapon if the police do not believe that they are a suitable individual to have one, or if they do not think that it would be used in an appropriate way. It has been a frustration to the police for some time that individuals who they do not believe should have an air weapon have been able to have one and the police have been powerless to do anything about it. That point was raised by Sandra White.

Alex Fergusson: Would the cabinet secretary be open to—

The Presiding Officer (Tricia Marwick): Can we have Mr Fergusson’s microphone on, please?

Alex Fergusson: It might help if Mr Fergusson had put his card in.

The Presiding Officer: I would have thought that you would have known better, Mr Fergusson.

Alex Fergusson: So would I, Presiding Officer. You are absolutely right. I apologise.

Is the cabinet secretary open to the suggestion—perhaps this is for a later stage of the bill—that if somebody already holds a shotgun or firearms certificate they would automatically have the right to possess an airgun?

Michael Matheson: Part of the provision that we have put in the bill is that those who hold a shotgun or firearms licence and who also have an air weapon will not have to apply for an air weapons licence until they are applying for a new shotgun or firearms licence when their licence expires. That is the only point at which they would have to apply for it during that process. That is to take away some of the potential burden from them.

I turn to the issue that Mr Fergusson raised around the potential burden on the police in having to deal with all the licences that will be required for air weapons. As the member might be aware, there are significant peaks and troughs in the way in which the police deal with firearms licensing. That point was made by John Wilson in his speech. We are trying to ensure that we introduce the provision on air weapons in that trough when the police are not dealing with a significant amount of firearm or shotgun licences. We are working on that with the police. As I indicated, we are looking at how we can manage that issue through secondary legislation.

The fee for certificates for both shotguns and firearms has increased from £50 as of 6 April. For a firearms certificate, the fee is now £88 and for a shotgun certificate it is £79.50. We have sought to achieve a balance on the issue of the licensing of air weapons. I believe that the bill reflects that.

I turn to the issue of sexual entertainment venues, about which a number of comments have been made. I understand the comments and concerns that have been raised by some members on this issue and the need to make licensing provision on this matter. To her credit, Sandra White has pursued this matter through the Parliament for almost a decade, and we are now making significant progress in this bill to address the concerns that she has raised.

I am very conscious that often, when the Government takes action, there is the accusation that we are taking powers to the centre and making decisions that we should have allowed to be taken locally. In the bill, we are allowing local licensing boards to make the decision, based on local policy. I refer to the point that Rhoda Grant raised. If local licensing boards wish to set a zero figure for sexual entertainment venues, they can do so. There is a process that they will have to go through in justifying that, but the bill allows them to do that should they wish to do so. It gives them the power and allows them to engage with their local community and to reflect on that in their local decision making. I believe that that is the right balance to strike. That gives them the power and the scope to take matters forward.

On under-18s being able to work in sexual entertainment venues when the venues are not operating, I am more than open to looking at where measures can be taken. I am very conscious that there are issues around employment law that we must be careful of, but I am more than happy to look at that issue further. On the working conditions for those in the venues, I am more than happy to look at where provisions could be put—probably in secondary legislation—for licensing boards to take into account those matters, as well.

The Presiding Officer: You should bring your remarks to a close.

Michael Matheson: That would help to improve the legislation. I am open to looking at how we can take those matters forward.

The debate has been very useful. We will consider all the points that have been raised, and I will respond to members as positively as I can in order to build on the bill, improve it, make it as suitable as possible, and ensure that we continue to have a range of licensing regimes in Scotland that are fit for purpose.
Air Weapons and Licensing (Scotland) Bill: Financial Resolution

17:01

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-12488, in the name of John Swinney, on the financial resolution to the Air Weapons and Licensing (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Air Weapons and Licensing (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[Michael Matheson.]

The Presiding Officer: The question on the motion will be put at decision time.

Decision Time

17:01

The Presiding Officer (Tricia Marwick): There are two questions to be put as a result of today’s business.

The first question is, that motion S4M-12994, in the name of Michael Matheson, on the Air Weapons and Licensing (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Ferguson, Patrice (Glasgow Maryhill and Springburn) (Lab)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKie, Mike (Highlands and Islands) (SNP)
McKee, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joanne (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Murray, Elaine (Dumfries and Galloway) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
The Presiding Officer: The next question is, that motion S4M-12488, in the name of John Swinney, on the financial resolution to the Air Weapons and Licensing (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Air Weapons and Licensing (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

Meeting closed at 17:03.
Air Weapons and Licensing (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 and 2 Schedule 1
Sections 3 to 77 Schedule 2
Sections 78 and 79 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Cameron Buchanan

1 In section 1, page 1, line 9, leave out subsection (2)

Michael Matheson

2 In section 1, page 1, line 16, at end insert—

<(za) an air weapon which is not a firearm (within the meaning of section 57(1) of the 1968 Act),>

Michael Matheson

3 In section 1, page 1, line 21, after <paragraph> insert <(za) or>

Section 2

Cameron Buchanan

4 In section 2, page 2, line 4, at end insert—

<( ) Subsection (1) does not apply to a person who holds a firearm or shotgun certificate.>

Schedule 1

Cameron Buchanan

5 In schedule 1, page 55, line 10, at end insert—

<( ) in airsoft at the club, another approved air weapon club, an event or competition, or>

Cameron Buchanan

6 In schedule 1, page 55, line 11, after <shooting> insert <or airsoft>

Michael Matheson

7 In schedule 1, page 59, line 9, after <Britain> insert <, or to a registered firearms dealer in England or Wales,>
Michael Matheson
8 In schedule 1, page 59, line 13, leave out <loan> and insert <lend or to let on hire>

Michael Matheson
9 In schedule 1, page 60, line 8, leave out <Lord Treasurer and Remembrancer> and insert <and Lord Treasurer’s Remembrancer (or a person authorised to act on the Remembrancer’s behalf).>

Section 5

Cameron Buchanan
10 In section 5, page 3, leave out line 9

Cameron Buchanan
11 In section 5, page 3, line 12, leave out from beginning to <weapon,>

Cameron Buchanan
12 In section 5, page 3, line 16, leave out subsection (2)

Cameron Buchanan
13 In section 5, page 3, line 16, leave out <may> and insert <must>

Cameron Buchanan
14 In section 5, page 3, line 17, leave out <paragraphs (a) and (b) of>

Section 7

Michael Matheson
15 In section 7, page 4, line 5, at end insert <and>

Michael Matheson
16 In section 7, page 4, line 7, leave out <or otherwise own> and insert <, hire, accept a gift of or own,>

Michael Matheson
17 In section 7, page 4, line 8, at end insert—

<(za) the holder may use and possess an air weapon only for sporting purposes (including shooting live quarry) on private land,>

Cameron Buchanan
18 In section 7, page 4, line 12, after <competitions> insert <and any connected activities>

Cameron Buchanan
19 In section 7, page 4, line 17, leave out from <while> to end of line 18 and insert <for the purposes of pest control>
Cameron Buchanan

20 In section 7, page 4, line 19, leave out subsection (6)

Section 8

Cameron Buchanan

21 In section 8, page 4, line 25, leave out from beginning to <case,> in line 27

Cameron Buchanan

22 In section 8, page 4, line 33, leave out <(1)(b)> and insert <(1)>

Section 11

Michael Matheson

23 In section 11, page 5, line 33, leave out <cannot> and insert <can no longer>

Michael Matheson

24 In section 11, page 5, line 39, leave out <not> and insert <no longer>

Michael Matheson

25 In section 11, page 6, line 1, leave out <does not have> and insert <no longer has>

Section 14

Michael Matheson

26 In section 14, page 8, line 19, leave out from <either> to <and> and insert <one or more of the conditions described in paragraphs (za) to>

Michael Matheson

27 In section 14, page 8, line 23, leave out subsection (6)

Section 24

Cameron Buchanan

28 In section 24, page 13, line 5, leave out <sell, transfer, repair or test> and insert <sell or transfer>

Cameron Buchanan

29 In section 24, page 13, line 7, leave out <sale, transfer, repair or testing> and insert <sale or transfer>

Cameron Buchanan

30 In section 24, page 13, line 7, at end insert—

<( ) It is an offence for a person other than a registered firearms dealer or instructor at an approved air weapon club, by way of trade or business, to—

(a) repair or test an air weapon, or

(b) possess an air weapon for the purposes of its repair or testing.>
Cameron Buchanan
31 In section 24, page 13, line 15, leave out <Great Britain> and insert <Scotland>.

Michael Matheson
32 In section 24, page 13, line 15, after <Britain> insert <, or to a registered firearms dealer in England or Wales.>

Section 26

Michael Matheson
33 Leave out section 26

Section 31

Michael Matheson
34 In section 31, page 17, line 19, leave out <immediately> and insert <as soon as reasonably practicable>.

After section 37

Michael Matheson
35 After section 37, insert—

<Crown application>

(1) No contravention of any provision made by or under this Part makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), any provision made by or under this Part applies to a person in the public service of the Crown as it applies to other persons.

Section 40

Cameron Buchanan
36 In section 40, page 21, line 28, leave out <a purpose> and insert <one of its purposes>.

Cameron Buchanan
37 In section 40, page 21, line 29, after <weapons> insert <or the activity of airsoft>.

Section 43

Michael Matheson
38 In section 43, page 24, line 2, at end insert—

<The 2005 Act is amended as follows.>

( ) In section 22 (objections and representations)—
(a) after subsection (1) insert—

“(1A) A person giving a notice under subsection (1) may include in the notice any information that the person considers may be relevant to consideration by the Board of any ground for refusal including, in particular, information in relation to—

(a) the applicant,

(b) where the applicant is neither an individual nor a council, a connected person in relation to the applicant, or

(c) any person who would be an interested party in relation to the subject premises if the application were to be granted.”,

(b) in subsection (3)(b), after “representation” insert “(including any information included under subsection (1A))”.>

Michael Matheson

39 In section 43, page 24, line 3, leave out subsection (1) and insert—

< ( ) In section 23 (determination of premises licence application) —>

Michael Matheson

40 In section 43, page 24, line 10, at end insert—

< ( ) in subsection (6), for the words “the granting of the application would be inconsistent with one or more of the licensing objectives,” substitute “either of the grounds of refusal specified in subsection (5)(ba) and (c) applies,”;>

Section 44

Michael Matheson

41 In section 44, page 24, line 18, leave out <or>

Michael Matheson

42 In section 44, page 24, line 20, at end insert <, or

( ) any person who would be an interested party in relation to the licensed premises if the application for the transfer of the licence to the transferee were to be granted,>

Michael Matheson

43 In section 44, page 24, line 37, leave out subsection (3)

Section 45

Michael Matheson

44 In section 45, page 25, line 10, at end insert—

< ( ) after subsection (5) insert —
“(5A) A person making a premises licence review application may include in the application any information that the applicant considers may be relevant to consideration by the Licensing Board of the alleged ground for review including, in particular, information in relation to—

(a) the licence holder,
(b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
(c) any person who is an interested party in relation to the licensed premises.”.

Michael Matheson

45 In section 45, page 25, line 11, after <initiative)> insert —

( )

Michael Matheson

46 In section 45, page 25, line 15, at end insert—

<( )> after subsection (4) insert—

“(5) A Licensing Board making a premises licence review proposal may include in the proposal any information that the Board considers may be relevant to their consideration of the alleged ground for review including, in particular, information in relation to—

(a) the licence holder,
(b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
(c) any person who is an interested party in relation to the licensed premises.”.

Michael Matheson

47 In section 45, page 25, line 22, at end insert—

<(2B) Subject to section 39B, a revocation under subsection (2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision.”.

Michael Matheson

48 In section 45, page 25, line 26, at end insert—

<( )> After section 39A insert—

“39B Recall of revocation of licence under section 39(2A)

(1) This section applies where a Licensing Board decides to revoke a premises licence under section 39(2A).

(2) The Board must recall the revocation if—

(a) a relevant application is made before the end of the period referred to in section 39(2B) (“the 28 day period”), and
(b) the Board grants the application.
(3) The Board may extend the 28 day period pending determination of a relevant application.

(4) In this section, “relevant application” means—

(a) an application under section 33(1) for the transfer of the premises licence, or

(b) a premises licence variation application seeking a variation of the licence that the Board considers would remove the ground on which the licence was revoked under section 39(2A).

(5) This section does not affect the right to appeal against the decision to revoke the licence under section 39(2A).

After section 48

Michael Matheson

49 After section 48, insert—

<Transfer of premises licences>

Transfer of premises licences

(1) The 2005 Act is amended as follows.

(2) In section 33 (transfer of premises licence on application of licence holder)—

(a) for subsections (1) to (3) substitute—

“(1) Any person, other than an individual under the age of 18, may apply to the appropriate Licensing Board for the transfer of a premises licence to the person (such person being referred to in this section and section 33A as the “transferee”).

(1A) An application under subsection (1) must—

(a) specify the date on which the transfer is to take effect, and

(b) be accompanied by—

(i) the premises licence to which the application relates or, if that is not practicable, a statement of the reasons for failure to produce the licence, and

(ii) a written statement signed by the holder of the premises licence consenting to its transfer to the transferee (a “consent statement”) or, if that is not practicable, a statement of the reasons for failure to obtain the licence holder’s written consent.”,

(b) in subsection (4), after “constable” insert “, unless the Board must refuse the application under subsection (8A)”,

(c) in subsection (8), before paragraph (a) insert—

“(za) the application is accompanied by a consent statement referred to in subsection (1A)(b)(ii),”,

(d) after subsection (8) insert—

“(8A) If the application is not accompanied by a consent statement referred to in subsection (1A)(b)(ii), the Board must refuse the application, unless the Board dispenses with the requirement for a consent statement under section 33A(4).”.
The title of section 33 becomes “Application for transfer of premises licence”.

After section 33 insert—

“33A Application for transfer: further provision

(1) This section applies where a Licensing Board receives an application under section 33(1) for the transfer of a premises licence.

(2) The Board must take all reasonable steps to give notice of the application to the premises licence holder.

(3) Subsection (4) applies where the application is not accompanied by a consent statement referred to in section 33(1A)(b)(ii).

(4) The Board may dispense with the requirement for a consent statement if satisfied that the transferee has taken all reasonable steps to contact the premises licence holder in order to obtain consent but has received no response.

(5) Where the Board decides under subsection (4) not to dispense with the requirement for a consent statement, the Board must give notice of the decision, and of the reasons for it, to the transferee.

(6) Where the Board decides under subsection (4) to dispense with the requirement for a consent statement the Board must hold a hearing under section 33(9) for the purpose of considering and determining the application.

(7) Where the Board grants the application, the transfer of the licence takes effect—

(a) on the date specified in the application in accordance with section 33(1A)(a), or

(b) where the Board grants the application after that date, on such date as the Board may determine.”.

Section 34 (transfer on application of person other than licence holder) is repealed.

In Part 1 of schedule 5 (appeals to the sheriff principal)—

(a) in column 1 of the entry relating to a decision to refuse an application under section 33(1) or 34(1) for transfer of a premises licence, the words “or 34(1)” are repealed,

(b) in column 2 of that entry, after “applicant” insert “or the premises licence holder”,

(c) after that entry insert—

| “A decision to grant an application under section 33(1) for transfer of a premises licence” | The person from whom the premises licence is to be transferred |
|——|——|
| A decision under section 33A(4), in relation to an application under section 33(1) for transfer of a premises licence, not to dispense with the requirement for a consent statement | The applicant” |
Section 54

Michael Matheson

50 In section 54, page 30, leave out lines 8 to 10 and insert—

   ( ) at the beginning of paragraph (a) insert “must”,
   ( ) the word “and” immediately following that paragraph is repealed,
   ( ) after that paragraph insert—

   “(aa) may have regard to such other matters as the Board thinks fit including,
   in particular, the licensed hours of licensed premises in the locality,
   and”;

Michael Matheson

51 In section 54, page 30, line 12, leave out from “and” to end of line 13 and insert <the words from “that,” where first occurring to “situated,” substitute “that”.

Michael Matheson

52 In section 54, page 30, line 15, leave out from “and” to the end of the line and insert <the words from “that,” where first occurring to “situated,” substitute “that”.

After section 55

Michael Matheson

53 After section 55, insert—

   <Licensing Standards Officers: general function in relation to personal licences

   In section 14(1) of the 2005 Act (general functions of Licensing Standards Officers), after paragraph (b) insert—

   “(ba) providing information to Licensing Boards about any conduct of holders
   of, or persons applying for, personal licences in the area, which is
   inconsistent with the licensing objectives,”.

Michael Matheson

54 After section 55, insert—

   <Powers of Licensing Standards Officers

   (1) The 2005 Act is amended as follows.
   (2) After section 84A insert—

   “84B Power of Licensing Standards Officers to report conduct inconsistent with
   the licensing objectives

   (1) If a Licensing Standards Officer considers that any personal licence holder who is
   or was working in licensed premises in the Officer’s area has acted in a manner
   which is inconsistent with any of the licensing objectives, the Officer may report
   the matter to the relevant Licensing Board.

   (2) Where a Licensing Board receives a report from a Licensing Standards Officer
   under subsection (1), the Board may hold a hearing.
(3) Subsections (6), (6A), (7), (7A) and (8) of section 84 and subsection (1)(b) of section 85 apply in relation to a hearing under subsection (2) of this section as they apply in relation to a hearing under subsection (3)(a) or (5) of section 84.

(4) In subsection (1), “relevant Licensing Board” has the meaning given in section 83(11).”.

Section 57

Michael Matheson

55 In section 57, page 32, line 15 after <licence> insert —

(a)>

Michael Matheson

56 In section 57, page 32, line 17, at end insert—

<(b) in subsection (5), after “74” insert “(other than subsection (3)(ba))”>.

Section 58

Michael Matheson

57 In section 58, page 33, line 15, leave out <or 34(1)>

Before section 63

Michael Matheson

58 Before section 63, insert—

<Penalties for failure to have appropriate licence or comply with conditions>

In section 7 of the 1982 Act (offences etc.)—

(a) in subsection (1)(a), after “is” insert “a metal dealer’s licence, an itinerant metal dealer’s licence or”;

(b) in subsection (2)—

(i) the word “and” immediately following paragraph (aa) is repealed,

(ii) after paragraph (aa) insert—

“(ab) in a case where the licence is a metal dealer’s licence or an itinerant metal dealer’s licence, to such fine or imprisonment as is mentioned in subsection (1)(a) (or to both), and”.

Section 65

Michael Matheson

59 In section 65, page 36, line 21, leave out <an> and insert <a bank or building society>

Michael Matheson

60 In section 65, page 37, line 6, after <section> insert <33AA or>
Michael Matheson

61 In section 65, page 37, line 10, at end insert—

<33AA Acceptable forms of payment: meaning of “bank or building society account”

(1) In section 33A(2)(b), “bank or building society account” means an account held with a bank or a building society.

(2) For the purposes of subsections (1) and (4)—

(a) “bank” means an authorised deposit-taker that has its head office or a branch in the United Kingdom, and

(b) “building society” has the same meaning as in the Building Societies Act 1986.

(3) In subsection (2)(a), “authorised deposit-taker” means—

(a) a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 (but see subsection (4) for exclusions),

(b) an EEA firm of the kind mention in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule).

(4) The reference in subsection (3)(a) to a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 does not include—

(a) a building society,

(b) a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)),

(c) a friendly society within the meaning given by section 116 of the Friendly Societies Act 1992, or

(d) an insurance company within the meaning of section 275 of the Finance Act 2004.”>

Section 66

Michael Matheson

62 In section 66, page 38, leave out line 5

Michael Matheson

63 In section 66, page 38, line 25, after <regulations> insert<—

( ) specify the means by which a person’s name and address may be verified for the purposes of this section,

( )>
After section 66

Michael Matheson

64 After section 66, insert—

<Register of dealers in metal

After section 35 of the 1982 Act, insert—

“35A Register of metal dealers and itinerant metal dealers

(1) The Scottish Ministers may by regulations make provision for and about the establishment, keeping and maintaining of a register of metal dealers and itinerant metal dealers.

(2) Regulations under subsection (1) may, in particular, make provision—

(a) about who is to keep and maintain the register,

(b) requiring the provision of information to the person who keeps the register,

(c) specifying the information to be included in the register in relation to each person who holds a licence as a metal dealer or itinerant metal dealer,

(d) about the form and publication of the register,

(e) for the charging of fees in such circumstances as may be specified in the regulations.

(3) Regulations under subsection (1) may—

(a) make incidental, supplementary, consequential, transitional, transitory or saving provision,

(b) modify this or any other enactment.

(4) Regulations under subsection (1) which contain provision which adds to, replaces, or omits any part of an Act are subject to the affirmative procedure.

(5) Otherwise, regulations under subsection (1) are subject to the negative procedure.”.>

Michael Matheson

65 After section 66, insert—

<Interpretation of provisions relating to metal dealers etc.

(1) Section 37 of the 1982 Act (interpretation of sections 28 to 36) is amended as follows.

(2) In subsection (1), for the definition of “itinerant metal dealer” substitute—

“itinerant metal dealer” means a person who—

(a) carries on a business which consists wholly or substantially of buying or selling for scrap—

(i) metal articles that are old, broken, worn out or defaced, or

(ii) partly manufactured articles that are made wholly or partly from metal,
(b) collects articles of the kind described in paragraph (a)(i) and (ii) by means of visits from place to place, and
(c) disposes of such articles without causing them to be kept in a metal store or other premises (including by disposing or giving custody of the articles to a person who keeps a metal store).”.

(3) For subsection (2) substitute—

“(2) For the purposes of sections 28 to 36, a person carries on business as a metal dealer if the person—

(a) carries on a business which consists wholly or substantially of buying or selling for scrap—

(i) metal articles that are old, broken, worn out or defaced, or
(ii) partly manufactured articles that are made wholly or partly from metal, or

(b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).

(3) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists wholly or substantially of—

(a) recovering salvageable parts from motor vehicles for re-use or sale and selling or disposing of the rest of the vehicle for scrap,
(b) buying significantly damaged motor vehicles and subsequently repairing and reselling them, or
(c) buying or selling motor vehicles which are to be the subject (whether immediately or upon a subsequent resale) of any of the activities mentioned in paragraphs (a) and (b).”.

Michael Matheson

66 After section 66, insert—

<Exemptions from requirements of sections 28 to 37 of 1982 Act

After section 37 of the 1982 Act insert—

“37A Exemptions

(1) The Scottish Ministers may by regulations make provision specifying circumstances in which the provisions of sections 28 to 37 are not to apply.

(2) Regulations under subsection (1)—

(a) may make transitional, transitory or saving provision,
(b) are subject to the negative procedure.”.>
After section 67

Michael Matheson

67 After section 67, insert—

<Restriction of exemption from requirement for public entertainment licence

In section 41(2) of the 1982 Act (places not requiring public entertainment licences), in paragraph (f), for the words from “licensed” where first occurring to “(asp 16)” substitute “premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect”.

Richard Lyle

68 After section 67, insert—

<Public entertainment licenses: exemption for funfairs

In section 41 of the 1982 Act (public entertainment licenses), after subsection (2)(aa) insert—

“(ab) premises used for the purpose of a funfair;”.

Section 69

Michael Matheson

69 In section 69, page 44, line 39, after <suspension> insert <and revocation>

After section 69

Michael Matheson

70 After section 69, insert—

<Revocation of Part 2 licences

(1) The 1982 Act is amended as follows.
(2) In section 5 (rights of entry and inspection), in subsection (2)(a)(ii), after “suspended” insert “or revoked”.
(3) In Schedule 1 (licensing: further provisions as to the general system)—
(a) the italic heading preceding paragraph 10 becomes “Variation, suspension and revocation of licences”,
(b) in paragraph 11—
(i) in sub-paragraph (1), after “suspend” insert “or revoke”,
(ii) in sub-paragraph (2), after “suspension” insert “or revocation”,
(iii) in sub-paragraph (4), after “suspend” insert “or revoke”,
(iv) in sub-paragraph (6), after “order” insert “to suspend a licence”,
(v) in sub-paragraph (7), after “suspend” insert “or revoke”,
(vi) in sub-paragraph (8), after “suspension” insert “or revocation”,
(vii) in sub-paragraph (9)—
(A) after “suspension” where first occurring insert “or revocation”,
(B) after each subsequent occurrence of “suspension” insert “or, as the case may be, revocation”,

(viii) in sub-paragraph (10), after “suspension” where first occurring insert “or revocation”,

(c) in paragraph 12(5)(b), after “suspend” insert “or revoke”,

(d) in paragraph 13—

(i) in sub-paragraph (2)(a), after “suspend” insert “, revoke”,

(ii) in sub-paragraph (3), after “suspending” insert “or revoking”,

(ii) in sub-paragraph (4), after “suspension” where first occurring insert “or revocation”,

(e) in paragraph 14(2)(b), after “terms,” insert “revocation”,

(f) in paragraph 17, in sub-paragraph (1)(d), before paragraph (i) insert—

“(ai) to revoke a licence or to refuse to do so,”.

(g) in paragraph 18(10)—

(i) after “suspension” where first occurring insert “or revocation”,

(ii) the words “above that the suspension be immediate” are repealed.>

Section 71

Michael Matheson

71 In section 71, page 48, line 10, at beginning insert <in paragraph (a).>

After section 71

Michael Matheson

72 After section 71, insert—

<Conditions for Part 3 licences: displays or advertising

In paragraph 9(2) of Schedule 2 to the 1982 Act (examples of conditions which may be imposed in relation to Part 3 licences), in paragraph (b), after “on or in” insert “or otherwise connected with”.>

Schedule 2

Michael Matheson

73 In schedule 2, page 61, line 26, at end insert—

<( ) In Schedule 4 (particulars to be entered by firearms dealer in register of transactions)—

(a) in Part 1, in the note, after “2” insert “or 3”,

(b) in Part 2, for the note substitute—

“Notes:

This Part does not apply in relation to Scotland.

In this Part “air weapon” includes any component of, or accessory to, an air weapon.”,

(c) the heading of Part 2 becomes—
“PARTICULARS RELATING TO AIR WEAPONS: ENGLAND AND WALES”,

(d) after that Part insert—

“PART 3
PARTICULARS RELATING TO AIR WEAPONS: SCOTLAND

Notes:
This Part applies in relation to Scotland.
In this Part “air weapon” includes any component of, or accessory to, an air weapon.

1. The quantities and description of air weapons manufactured and the dates of manufacture.
2. The quantities and description of air weapons purchased or acquired with the names and addresses of the sellers or transferors and the date of each transaction.
3. The quantities and description of air weapons accepted for sale, repair, testing, cleaning, storage, destruction, or any other purposes, with the names and addresses of the transferors and the date of each transaction.
4. The quantities and description of air weapons sold or transferred with the names and addresses of the purchasers or transferees and the date of each transaction.
5. The quantities and description of air weapons in possession for sale or transfer at the date of the last stocktaking or such other date in each year as may be specified in the register.”.

Michael Matheson

74 In schedule 2, page 61, line 37, at end insert—

<\*Criminal Procedure (Scotland) Act 1995\*

In Schedule 9 to the Criminal Procedure (Scotland) Act 1995 (certificates as to proof of certain routine matters), at the end of the table insert—

| “The Air Weapons and Licensing (Scotland) Act 2015” | A constable or a person employed by the Scottish Police Authority, if the constable or person is authorised to do so by the chief constable of the Police Service of Scotland. | In relation to a person identified in the certificate, that on the date specified in the certificate the person held, or as the case may be, did not hold, an air weapon certificate (within the meaning of Part 1 of that Act).”.

Michael Matheson

75 In schedule 2, page 62, line 7, at end insert—

<\* In section 28(2) (period of effect of premises licence), for “34(1)” substitute “33(1)”\*>
Michael Matheson

76 In schedule 2, page 62, line 7, at end insert—

<( ) In section 29(4) (application to vary premises licence), for “and 22” substitute “, 22 and 24A”.>

Michael Matheson

77 In schedule 2, page 62, line 7, at end insert—

<( ) In section 35 (variation on transfer), in each of subsections (1) and (3)(b), the words “or 34(1)” are repealed.>

Michael Matheson

78 In schedule 2, page 62, line 12, at end insert—

<( ) In section 49(1)(c) (Licensing Board’s duty to update premises licence), the words “or 34(1)” are repealed.>

Michael Matheson

79 In schedule 2, page 62, line 12, at end insert—

<( ) In section 57 (notification of occasional licence application to chief constable and Licensing Standards officer), in subsection (5)—

(a) for “Subsections (2) and (3) have” substitute “Subsection (3) has”,
(b) for “references” where first occurring substitute “reference”,
(c) for “references” where second occurring substitute “a reference”.

Section 78

Michael Matheson

80 In section 78, page 54, line 19, at beginning insert <Section 57(1) and (2) and>

Michael Matheson

81 In section 78, page 54, line 19, leave out <comes> and insert <come>
Air Weapons and Licensing (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Definitions and interpretation
1, 2, 3, 5, 6, 36, 37

Requirements for grant or renewal or air weapon certificate
4, 10, 11, 12, 13, 14, 20

Notes on amendments in this group
Amendment 12 pre-empts amendments 13 and 14

Export of air weapons
7, 31, 32, 33

Exemptions
8, 9

Special requirements and conditions for young persons
15, 16, 17, 18, 19, 26, 27

Duration of air weapon certificate
21, 22

Revocation of air weapon certificate
23, 24, 25

Restrictions on transactions involving air weapons: repair or testing
28, 29, 30

Report of loss of air weapon to police
34

Crown application
35

SP Bill 49-G1
Session 4 (2015)
Alcohol licensing: fit and proper person test
38, 39, 40, 41, 42, 44, 45, 46, 47, 48

Transfer of premises licence
43, 49, 57, 75, 77, 78

Overprovision
50, 51, 52

Functions and powers of Licensing Standards Officers
53, 54

Personal licences
55, 56, 80, 81

Metal dealers: increase in penalties
58

Metal dealers: forms of payment
59, 60, 61

Metal dealers: records
62, 63

Register of metal dealers
64

Metal dealers: definitions
65

Metal dealers: exemptions
66

Restriction of exemption from requirement for public entertainment licences
67

Public entertainment licences: exemption for funfairs
68

Revocation of licences under the 1982 Act
69, 70

Minor and technical amendments
71, 76, 79

Sex shops and sexual entertainment venues: displays or advertising
72

Register of transactions
73
Certificates as to proof of routine matters
74
Air Weapons and Licensing (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 2, 3, 7, 8, 9, 15, 16, 17, 19, 23, 24, 25, 26, 27, 32, 33, 34 and 35.

The following amendments were disagreed to (by division)—
4 (For 1, Against 5, Abstentions 0)
36 (For 1, Against 5, Abstentions 0)
37 (For 1, Against 5, Abstentions 0).

The following amendments were moved and, no member having objected, withdrawn: 1, 21 and 28.

The following amendments were not moved: 5, 6, 10, 11, 12, 13, 14, 18, 20, 22, 29, 30 and 31.

The following provisions were agreed to without amendment: sections 2, 3, 4, 5, 6, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39 and 40.

The following provisions were agreed to as amended: section 1, schedule 1 and sections 7, 11, 14, 24 and 31.

The Committee ended consideration of the Bill for the day, section 40 having been agreed to.
Scottish Parliament
Local Government and
Regeneration Committee

Wednesday 13 May 2015

[The Convener opened the meeting at 10:00]

Air Weapons and Licensing (Scotland) Bill: Stage 2

The Convener (Kevin Stewart): Good morning and welcome to the 14th meeting in 2015 of the Local Government and Regeneration Committee.

If people wish to use tablet devices or mobile phones during the meeting, please switch them to flight mode, as they may otherwise affect the broadcasting system. Some committee members may consult tablet devices during the meeting; that is because we provide meeting papers in digital format.

We have apologies from Alex Rowley.

Agenda item 1 is the only item of business; it is our first day of stage 2 consideration of the Air Weapons and Licensing (Scotland) Bill. I welcome Michael Matheson MSP, Cabinet Secretary for Justice, who is joining us today as the member in charge of the bill.

Today we will consider sections 1 to 40 of the bill and all amendments to those sections. The sections form part 1 of the bill and establish an air weapon certificate system in Scotland. At our next meeting, which will be on Wednesday 20 May, we will consider sections 41 to 59, on alcohol licensing. Any member wishing to lodge amendments to those sections must do so by 12 noon this coming Friday, which is 15 May.

We will consider the remaining sections and schedules of the bill at our meeting on Wednesday 27 May. That will cover civil licensing provisions such as those on scrap metal dealers, sexual entertainment venues and taxi and private car hire licensing. I point out now that, owing to the late spring holiday, the deadline for lodging amendments to the civil licensing sections of the bill is 12 noon on Wednesday 20 May, which is Wednesday of next week. Members should lodge amendments with the legislation clerks in the usual way.

Before we move on to consideration of amendments, it would be helpful if I set out the procedure for stage 2 consideration. Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments, which was published on Monday, and the groupings of amendments, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in each group to speak to and move their amendment, and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate by catching my attention in the usual way.

If the cabinet secretary has not already spoken on the group, I will invite him to contribute to the debate just before I move to the winding-up speech. As with a debate in the chamber, the member who is winding up on a group may take interventions from other members if they wish. The debate on each group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press their amendment to a vote or to withdraw it. If they wish to press ahead, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee’s agreement to do so. If any committee member objects, the committee must immediately move to the vote on the amendment.

If any member does not want to move their amendment when I call it, they should say, “Not moved.” Please remember that any other MSP may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote at stage 2. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed each section of the bill, and so I will put a question on each section at the appropriate point.

Today, we will go no further than part 1. Let us move on to the list of amendments.

Section 1—Meaning of “air weapon”

The Convener: Amendment 1, in the name of Cameron Buchanan, is grouped with amendments 2, 3, 5, 6, 36 and 37.

Cameron Buchanan (Lothian) (Con): Amendment 1 is a probing amendment, because I think that “air weapon” is a loaded term and that airguns are intended to be used for harm and to kill. I am aware that in the Firearms Act 1968 the
term used was “air weapon”, but I think that “weapon” is a misleading term and that “gun” is better. I just wanted to see what the committee and Government thought about that.

I move amendment 1.

The Convener: I call the cabinet secretary to speak to amendment 2 and the other amendments in the group.

The Cabinet Secretary for Justice (Michael Matheson): I am grateful for the opportunity to bring forward a number of Government amendments to part 1 of the Air Weapons and Licensing (Scotland) Bill this morning.

Since the bill was introduced, we have continued to listen carefully to the views of stakeholders and we have taken into account the evidence at committee sessions and the recommendations that were set out in the committee’s stage 1 report. As a result, we are bringing forward a small number of amendments that, as I hope the committee will agree, help to clarify and fine tune the bill’s provisions.

I also welcome the opportunity to respond to the issues that have been raised in the amendments that have been lodged by Cameron Buchanan, and I am grateful to him for his work.

I begin with what is probably the most complex group of amendments. Mr Buchanan’s amendment 1 would remove a key component of the definition of “air weapon” for the purposes of part 1 of the bill, without putting anything in its place. As such, the resulting position appears unworkable and confused.

In practical terms, the removal of section 1(2) without providing any alternative definition of the meaning of “air weapon” would introduce a risk that the bill might be read as attempting to capture air weapons that are either so high powered that they are controlled by the Firearms Act 1968, or so low powered that they are not considered lethal. In short, amendment 1, if agreed to, could significantly change the nature of the licensing regime that is set out in part 1 and remove the certainty over exactly what is covered, which is so important to a licensing regime.

Mr Buchanan’s amendments 5, 6 and 37 may be thought of together, as they address an issue around airsoft guns for approved clubs. In practice, the amendments attempt to exempt those using airsoft guns from the need to hold an air weapon certificate. I believe that the bill as drafted already provides a definition of air weapons that meets our principles of developing a proportionate, familiar and practicable licensing regime. We have consulted widely on the definition, and I believe that it is generally well understood.

However, I also believe that we can make the position even clearer for all users of the legislation, and achieve Mr Buchanan’s aims.

John Wilson (Central Scotland) (Ind): On the definition in the 1968 act, air weapons have changed dramatically with the use of, for example, airsoft and paintballing weapons. Those weapons are now powered up in the same way as many air rifles and guns are.

Is there not a need at some stage to tighten up the definition so that we are clear about the types of air weapon that are covered by the 1968 act and the types of weapon that the Scottish Government intends to cover in the bill? There have been major and significant advances in the use of weapons that could be termed air weapons but that may not be covered by the bill, such as paintballing and airsoft weapons.

Michael Matheson: If the member bears with me, I am coming to that very point in the explanation that I am providing.

Mr Buchanan wishes to clarify the position on the use of airsoft guns, and that will be achieved by amendments 2 and 3 in my name. We have been clear from the outset that it is not our intention to license very low-powered air weapons such as BB guns or those used for airsoft pursuits. In legal terms, such guns are not generally considered to be firearms within the meaning of the Firearms Act 1968. They are regulated elsewhere. For example, airsoft guns are regulated as realistic imitation firearms under existing Great Britain legislation: the Violent Crime Reduction Act 2006, which prohibits the manufacture, import and sale of realistic imitations, with a small number of exemptions. The exemptions include film and theatre production, historical re-enactments, and airsoft skirmishing in clubs that are affiliated with the United Kingdom Airsoft Retailers Association.

A number of stakeholders have written to ministers since the bill was introduced, seeking clarification over the types of guns that are to be included in the regime. Amendment 2 therefore aims to clarify the meaning of “air weapon” for the purposes of the licensing regime. It should help to put the position beyond doubt by excluding such guns if they are not firearms within the meaning of section 57(1) of the 1968 act. That excludes airguns such as airsoft and paintball guns.

Amendment 3 is simply a consequential change arising from amendment 2, to make it clear that the component parts of such guns would also fall outwith the licensing regime.

I believe that amendments 2 and 3 provide a clearer and simpler approach to addressing the matters that have been raised by Mr Buchanan’s amendments. I hope that the commentary that I
have offered also clarifies for Mr Wilson the present arrangements for the regulation of imitation firearms. Therefore, I ask Mr Buchanan not to press amendment 1 and not to move amendments 5, 6 and 37, and I invite members to support amendments 2 and 3 in my name.

The Convener: As no other member wishes to enter the debate, I call Cameron Buchanan to wind up and to say whether he wishes to press or withdraw amendment 1.

Cameron Buchanan: Does the cabinet secretary not think that we should specify paintball and softball, rather than just give a general definition of them? Paintball and softball probably did not exist at the time of the 1968 act—certainly paintball did not. I wonder whether we should specify that, which is the whole point of amendment 1. As long as paintball and softball activities take place in an approved club, they should be all right, but I think that we should be a bit more specific on the definition.

The Convener: I think that the cabinet secretary was pretty specific in what he said. Do you want to repeat what you said, cabinet secretary?

Michael Matheson: We have lodged amendments 2 and 3 to make the bill clearer concerning that matter. It is tied into the Firearms Act 1968, and that is why we are providing further clarification on that in relation to air weapons.

Cameron Buchanan: Fine, but will you not specify any more? You are not trying to ban those hobbies, are you? That is the point. I am concerned that the issue is not mentioned.

The Convener: This is an unusual way of dealing with the procedure, but the cabinet secretary can come back in if he wants to do so.

Michael Matheson: We are not trying to ban anything. We are trying to ensure that there is provision and to offer the clarification that some in the sector have asked for, so that the bill is clear about the regime that will operate and apply to the particular weapons that they use.

Cameron Buchanan: Thank you. I wish to withdraw my amendment.

Amendment 1, by agreement, withdrawn.

Amendments 2 and 3 moved—[Michael Matheson]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Requirement for air weapon certificate

The Convener: Amendment 4, in the name of Cameron Buchanan, is grouped with amendments 10 to 14 and 20. I point out that, if amendment 12 is agreed to, I cannot call amendments 13 or 14 respectively.

Cameron Buchanan: Amendment 4 would exempt holders of firearm or shotgun certificates from the requirement for an air weapon certificate. The point is that the possessor of a firearm or shotgun certificate can confidently be assumed to be fit to possess an air weapon, having already obtained a certificate. I think that forcing them and the police to go through administrative obstacles to obtain an air weapon licence is unnecessary and a bureaucratic burden on the applicants and the police, as we heard from the police.

I move amendment 4.

The Convener: Is that you finished with amendment 4 and all the amendments in the group?

Cameron Buchanan: Yes, I think so. The other amendments are consequential.

The Convener: As no other member wishes to speak, I call the cabinet secretary.

Michael Matheson: Can I just clarify that we are dealing with amendments 4 to 20?

The Convener: We are dealing with amendments 4, 10 to 14 and 20.

10:15

Michael Matheson: Mr Buchanan’s amendments in the group would fundamentally change the way in which we and the police approach the licensing of air weapons under the new legislation. They reflect many of the objections that we have heard to the principle of air weapons licensing. Those objections were expressed by some of the shooting representatives on our expert consultative panel and by other organisations and individuals who responded to our public consultation in early 2013. The committee heard similar views during the first evidence session on the bill in November last year. However, we believe that part 1 achieves our aim of setting out a familiar, proportionate and practicable licensing regime for air weapons. The committee and the Parliament have approved the principle underpinning the bill at stage 1 of the process.

Amendment 4 and consequential amendment 12 would provide an automatic exemption from the need for an air weapon certificate for anyone who holds a firearm certificate or shotgun certificate that is issued by the police under the Firearms Act 1968. I have heard what Mr Buchanan has said on the issue and I appreciate that providing such a blanket exemption could appear to ease the burden on the police and on those who shoot. In fact, we considered including that as a potential
exemption from the licensing requirement in the early stages of the development of the bill.

However, we rejected the idea for a number of reasons. Among other things, the granting of firearm and shotgun certificates is subject to different tests under the 1968 act. For instance, the test for granting shotgun certificates is less stringent. There is no fit and proper person test, and the onus is on the police to demonstrate the absence of a good reason. We have been clear throughout the development of the bill that we do not think that that is the right approach to the licensing of firearms in a modern Scotland. In addition, firearms, shotguns and air weapons are used for different purposes in different environments and circumstances, depending on their technical specifications and power levels. It does not necessarily follow that someone who has a legitimate reason for requiring a more powerful firearm will also have a good reason for requiring an air weapon.

For air weapons, we believe that it is right and proper that applicants should be able to demonstrate that they have a reasonable use for the guns and that they can be permitted to use, possess and otherwise interact with them in a reasonable, responsible and safe manner. However, in section 5(2), we make provision to allow the chief constable to take as satisfied the tests that a person is fit to be entrusted with an air weapon, and that they are not prohibited from possessing firearms under the 1968 act if they already hold a firearms or shotgun certificate. I believe that that goes a significant way towards Mr Buchanan’s aims but maintains our overall intent in relation to the tests for granting or renewing an air weapon certificate. On that basis, I urge members to reject amendments 4 and 12.

The remaining amendments in the group seek to modify the requirements for the granting or renewal of an air weapon certificate in two ways. Amendments 13 and 14 appear to offer an alternative to amendments 4 and 12. They would require the chief constable to consider any applicant who holds a firearm or shotgun certificate to automatically meet the requirements to be granted an air weapon certificate without further inquiry.

Amendments 10, 11 and 20 seek to reduce the number of requirements for granting an air weapon certificate, to make the procedure more consistent with the less stringent test that applies to shotgun certificates. If agreed to, amendments 10 and 11 would remove the need for the chief constable to be satisfied of the fit person and good reason requirements.

Amendment 20 would consequentially amend section 7 to remove reference to the good reason test in relation to the granting of young persons certificates. However, Mr Buchanan has not followed that through to visitor permits or revocation, and would leave a potentially complicated set of different tests for different circumstances, which I suspect is not his intention. As I have already said, we do not believe that that is the correct approach to firearms licensing, and I urge members to reject the amendments.

John Wilson: The cabinet secretary has referred to firearms. The bill is about air weapons, and firearms come under different UK legislation—the 1968 act. When he talks about firearms, does he mean air weapons or does he mean firearms? We need to be clear that firearms come under the 1968 act and air weapons are under the jurisdiction of the Scottish Government under the terms of the bill that is going through the Parliament. The use of language about firearms versus air weapons requires clarification, as we are dealing with air weapons, not firearms.

Michael Matheson: I am not entirely clear what John Wilson’s point is.

John Wilson: Firearms are defined under the 1968 act, but the bill refers to air weapons, not firearms. Confusion may be caused among the general public if we talk about firearms and air weapons. As I said, firearms are defined under the 1968 act, and we are trying to define air weapons under the bill. I am trying to get that clear for everybody, so that if people apply for a licence for a firearm they know that they are applying for a licence under the 1968 act and that, in future, once the bill is passed, they will know that they are applying for an air weapon licence, not a firearms licence.

Michael Matheson: In short, that is correct. When I refer to an air weapon, it is to do with the licensing regime proposed in the bill. When I refer to firearms, I am referring to the licensing regime under the 1968 act.

The Convener: I call Cameron Buchanan to wind up and to say whether he wishes to press or withdraw amendment 4.

Cameron Buchanan: Cabinet secretary, I am not quite clear whether you meant—

The Convener: Mr Buchanan, you must press or withdraw and wind up now. This is no longer the time to question the cabinet secretary. If you wanted to question him, you should have done that by intervention while he was speaking.

Cameron Buchanan: I shall press my amendment.

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.
For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 4 disagreed to.

Section 2 agreed to.

Schedule 1—Exemptions

Amendments 5 and 6 not moved.

The Convener: Amendment 7, in the name of the cabinet secretary, is grouped with amendments 31 to 33.

Michael Matheson: Section 24, which governs commercial transactions involving air weapons, broadly matches existing arrangements for firearms in the Violent Crime Reduction Act 2006. The provision in section 24(2)(c) allows a registered firearms dealer to sell or transfer an air weapon to a person who does not have an air weapon certificate if the gun is not handed to them but is sent for delivery to a place outwith Great Britain. That has caused stakeholders concerns that the bill will prevent sales of firearms to people from England and Wales. The committee reflected those concerns in paragraph 139 of its stage 1 report and recommended that we take steps to ensure that remote sales to other parts of Great Britain are not prevented in that way. I was happy to accept that recommendation in my reply to the stage 1 report, and my amendments in the group will ensure that we achieve that.

Amendment 32 extends the existing provision for sales for delivery outwith Great Britain to ensure that it also applies to sales for delivery to England and Wales. They will be permitted where the gun is sent directly to a registered firearms dealer in England or Wales, where the buyer can collect it.

Amendment 7, which is consequential to amendment 32, amends the exemption at paragraph 15 of schedule 1 to allow a person to purchase an air weapon in those circumstances without holding an air weapon certificate. Again, the amendment extends the provision as drafted, which applies to people who wish to purchase an air weapon for delivery to a place outwith Great Britain.

It is important that we maintain the principle that a person must have an air weapon certificate or hold a permit or be otherwise exempt from the general requirement to hold an air weapon certificate if they are to purchase an air weapon in Scotland. It is also an important principle of existing firearms legislation that commercial sales and transfers of firearms, including air weapons, should be completed face to face where the buyer is not also a registered firearms dealer. I believe that amendments 32 and 7 uphold those principles while ensuring that we do not prevent legitimate trade in air weapons to people in England and Wales. I therefore invite members to support my amendments.

I believe that Mr Buchanan’s amendment 31 is intended to address the very concern that I have just spoken about. However, I do not believe that the approach that it takes is the right one. The wording that it proposes was considered when the bill was drafted but it was decided against for the following reasons. Section 32 of the Violent Crime Reduction Act 2006 requires commercial sales of air weapons to individuals in Great Britain to be concluded face to face. That prevents potentially lethal firearms from being delivered directly to people’s homes. Instead, people must collect items from a registered firearms dealer. The bill repeals section 32 of the VCRA in Scotland but recreates it at section 25 to preserve the policy aim.

If Mr Buchanan’s amendment 31 was agreed to, there would be a risk that companies could set themselves up as registered firearms dealers in Scotland for the purpose of selling air weapons by mail order to the rest of Great Britain. That would undermine the policy that underpins section 32 of the VCRA and section 25 of the bill and enable such dealers to bypass the face-to-face requirement. We have therefore agreed the wording that is proposed in amendment 32 with the Gun Trade Association and the Home Office. It achieves the same aim, but preserves the face-to-face policy of the VCRA and section 25 of the bill.

Given that amendments 7 and 32 meet the aims that I have outlined and fully address the committee’s concerns in its stage 1 report, I ask Mr Buchanan not to move amendment 31.

Amendment 33 is slightly different. Section 26 of the bill was intended to replicate section 18 of the Firearms (Amendment) Act 1988. That provision allows the Government to notify fellow European Union countries when high-powered firearms or shotguns are sold for export to any such country. However, because air weapons are not covered by EU firearms law, there is no requirement to share such information. Police Scotland has therefore questioned what it would be expected to do with the information that was gathered under the provisions of section 26 notification.

We have examined the position again and concluded that such a notification requirement would place an unnecessary burden on both
registered firearms dealers and the police for no practical purpose. To be clear for members, details of any sales of air weapons will still have to be recorded in the dealer's register of transactions and could therefore be checked by the police if necessary.

I lodged amendment 33 to remove section 26 in its entirety, and I invite members to support it.

I move amendment 7.

10:30

Cameron Buchanan: I thought that registered firearms dealers in Scotland would be allowed to deliver air weapons to another place. In view of what the cabinet secretary has said, there would have to be face-to-face completion with a registered dealer. I accept that.

Amendment 7 agreed to.

The Convener: Amendment 8, in the name of the cabinet secretary, is grouped with amendment 9.

Michael Matheson: Schedule 1 to the bill sets out a range of exemptions from the general requirement for an air weapon certificate under section 2. It details the circumstances in which a person may use, possess, purchase or acquire an air weapon without the need for holding an air weapon certificate. Those circumstances cover a wide range of situations, including use at an approved club, use at a funfair or other authorised event, and possession by registered firearms dealers or auctioneers. Schedule 1 also sets out certain exemptions from the restrictions on transactions involving air weapons under section 24.

Amendments 8 and 9 are minor, technical amendments to the exemptions that are listed in schedule 1.

Amendment 8 will make it explicit in paragraph 16 of schedule 1 that it will not be an offence under section 24 for a person to lend or to let on hire an air weapon to non-certificate holders provided that it is for a purpose exempted elsewhere in the schedule. That might include, for example, people who hire air weapons at a miniature rifle range at a funfair or an actor who borrows an air weapon for use in a film production.

Amendment 8 is a technical amendment that brings the wording of the provision more closely into line with the language that is used in other firearms legislation and is therefore more familiar to the police, shooters and other stakeholders. It also makes it explicit that the exemption allows the commercial hiring out of air weapons for exempted purposes without the need to be a registered firearms dealer.

On that basis, I invite members to agree to amendment 8.

A range of duties are undertaken by public servants that may require them to use, possess or otherwise deal with air weapons. Such activities are listed in paragraph 17(2) of schedule 1. Paragraph 17(3) lists public servants who may not require to hold an air weapon certificate for such purposes. It includes police officers, members of the armed forces and others, such as those who are involved in forensic examinations.

For those who are unfamiliar with the role, the Queen's and Lord Treasurer's Remembrancer, who is often referred to as the QLTR, is the Crown's representative in Scotland who deals with ownerless property—for example the assets of dissolved companies or the estates of individuals who have died with no will or traceable heir. Those may potentially include air weapons, so the exemption allows the QLTR to take possession without requiring a certificate.

Amendment 9 extends the exemption as originally drafted to ensure that others, properly authorised by the QLTR, may take possession of air weapons on the QLTR's behalf without requiring a certificate. That essentially provides the necessary legal cover for the QLTR's staff or other agents who act on their behalf. This approach has been discussed and agreed with the QLTR's office.

I move amendment 8.

Amendment 8 agreed to.

Amendment 9 moved—[Michael Matheson]—and agreed to.

Schedule 1, as amended, agreed to.

Sections 3 and 4 agreed to.

Section 5—Grant or renewal of air weapon certificate

Amendments 10 to 14 not moved.

Sections 5 and 6 agreed to.

Section 7—Special requirements and conditions for young persons

The Convener: Amendment 15, in the name of the cabinet secretary, is grouped with amendments 16 to 19, 26 and 27.

Michael Matheson: The Scottish Government is committed to ensuring that the use of air weapons by young people is properly and closely regulated. According to the most recently published statistics, more than 45 per cent of recorded crimes and offences involving air weapons are committed by persons aged 20 and under. Similarly, more than 50 per cent of the
victims injured in offences in which a firearm was allegedly used were aged 20 and under.

The bill therefore sets out particular requirements and conditions around—

**John Wilson:** Will the cabinet secretary take an intervention?

**Michael Matheson:** Yes.

**John Wilson:** Can you clarify that those injuries were caused by air weapons and not firearms?

**Michael Matheson:** They were caused by air weapons. [Michael Matheson has corrected this contribution. See end of report.]

**John Wilson:** You have again fallen into the trap of using the term “firearm” when it should be “air weapon”. Incidents involving a firearm are more serious than incidents involving an air weapon—although any such incident is serious. I am sorry to be pernickety, but I am trying to get the language right for the official record. The statistics that you are using refer to air weapons, not firearms.

**Michael Matheson:** An air weapon is a firearm. Under the 1968 act, it is classed as a firearm.

**John Wilson:** That is right, but we are dealing with air weapons. The incidents that you have reported to the committee involved firearms. It is just the definition—

**Michael Matheson:** They are recorded as firearm incidents.

**John Wilson:** So they are recorded as firearm incidents.

**Michael Matheson:** Yes. They are firearms, and the incidents are recorded under the legislation as firearm incidents. An air weapon is a firearm under the 1968 act.

**The Convener:** That is the confusing issue for some members. Let us face facts: it would be much easier if we had control over all firearms. There is a bit of confusion about the fact that we are allowed to deal with air weapons here, yet previously they were dealt with under the Firearms Act 1968.

**Michael Matheson:** The terminology is correct in relation to the current legislation, although I appreciate that some members find the distinction challenging.

**John Wilson:** The reason I ask is not for the benefit of members around the table. Members of the public who are listening to the debate should be clear what we are referring to when we talk about air weapons and firearms.

**Michael Matheson:** For the record, and to be clear for the public, an air weapon is legally defined as a firearm under the 1968 act. That is the challenge. It would be a matter for the UK Government to reflect any changes by amending the 1968 act. It is important that the public are aware that that is the factual basis on which we operate.

**The Convener:** Thank you.

**Michael Matheson:** The bill sets out particular requirements and conditions around the purchase, acquisition, ownership and possession of air weapons by young people and the types of shooting that may be undertaken by certificate holders aged 14 to 17.

Amendment 15 is a minor drafting change that simply highlights the fact that any certificate granted to a young person must include a condition prohibiting the purchase and ownership of an air weapon, as well as one or more conditions restricting the possession and use of an air weapon to certain defined purposes.

On amendment 16, while we fully accept that there are a number of legitimate reasons—as described in section 7(5)—why a young person might possess and use an air weapon, we do not believe that it is appropriate for a young person to own such a gun in their own right. Section 7(4) therefore states that, while someone who is aged 14 to 17 may apply for a young person’s certificate to use and possess an air weapon, they will not be allowed to purchase or own such a weapon until they are 18.

Amendment 16 extends the conditions in section 7(4) to make it clear that 14 to 17-year-olds will not be permitted to hire an air weapon or accept one as a gift. They will, however, be allowed to borrow an air weapon, for example from an air weapon certificate holder or at an approved club. The amendment ensures that the conditions for young persons are brought more closely into line with the provisions of the Firearms Act 1968, which make it an offence for a person under 18 to purchase or hire an air weapon, or for anyone to sell, let on hire or make a gift of an air weapon to a person under 18. It will therefore provide greater consistency for shooters.

Following representations that have been made to us by a number of the main shooting organisations and the evidence that was given to the committee in November, we have looked again at the list of purposes for which a 14 to 17-year-old may be granted a young person’s air weapon certificate.

On amendment 17, I am very conscious of the fact that, in their evidence to the committee, some organisations—including the League Against Cruel Sports—stated that they oppose all shooting of live quarry. I fully understand that view. The abuse and harm caused to domestic animals and wildlife...
by the inappropriate and illegal use of air weapons is completely unacceptable. The committee heard from the Scottish SPCA and others about the problems and upset that that can create. The police will investigate any such crimes that are reported to them. It is one of the issues that the licensing regime is intended to address.

However, we have considered carefully all the representations that have been made and have come to the conclusion that the initial drafting of the bill was too restrictive and does not reflect the reality of shooting for many young people, especially those who live in rural areas or those who are engaged in sport shooting. Such shooting can be appropriate in properly controlled circumstances.

10:45

I have therefore lodged amendment 17 to allow 14 to 17-year-olds to take part in shooting for sporting purposes, including shooting live quarry, on private land. Suitable quarry might include, for example, pigeons and rabbits. That change will bring the licensing of air weapons in Scotland into line with the restrictions on use that apply to young persons under UK and EU firearms legislation in relation to more powerful firearms. It should therefore ensure that there is a more consistent approach for shooters.

It is worth emphasising that it remains the responsibility of the chief constable to consider each application on its merits. If the chief constable decides that such shooting is not appropriate for a particular applicant, the certificate would not allow for sports shooting. I reassure committee members that extensive guidance is already widely available from shooting organisations and others about the types of live quarry that might properly be shot with air weapons. We will work closely with those organisations and the police to ensure that Scottish guidance reflects such advice. Any shooting of animals must take into account the power of the gun involved.

On Mr Buchanan’s amendment 19, we accept that restricting shooting for pest control to a young person who is a commercial pest controller or is employed by a pest controller is too restrictive and does not reflect the reality of shooting in many parts of Scotland. Such concerns were raised in evidence that was given to the committee by Police Scotland in particular, and I accept that the bill as introduced goes too far in that regard. The amendment will allow young people to volunteer to shoot rats at a church hall or rabbits at archaeological sites, for example. I am therefore happy to accept amendment 19. Given what I have said on these issues, I invite members to support the amendments in my name, as well as amendment 19 in Mr Buchanan’s name.

However, I am not so convinced by amendment 18, which is Mr Buchanan’s other amendment in the group. Although shooting at competitions and events is already one of the potential purposes for which a young person may use and possess an air weapon, amendment 18 broadens the condition to add “any connected activities”. That term is not defined in the amendment and, although I am interested to hear what Mr Buchanan says on the issue, I believe that “connected activities” is too broad a concept to stand on its own in this context. It might, for example, lead to a position in which a person believes that they can shoot in circumstances or at a location that would otherwise be deemed inappropriate.

The condition in section 7(5)(b) is already sufficiently broad to cover activities such as travelling to and from an event or competition. That would be considered possession for the purposes of participating in the event. Furthermore, the conditions in the menu of conditions at section 7(5) are not mutually exclusive and the police can attach any and all that they consider appropriate. For example, if a young person wanted to practise between events, and had a suitable place to do so, the target shooting condition in section 7(5)(a) could be added to their certificate. I therefore ask members to reject Mr Buchanan’s amendment 18.

Amendments 26 and 27 in my name are consequential on amendment 17. They will allow young people visiting Scotland on a group permit to shoot for sporting purposes or at targets on private land, or to shoot in competitions or at other events, and to do so under the same terms as young people in Scotland with their own certificate. As with amendments 15 to 17, I invite members to support amendments 26 and 27.

I move amendment 15.

Cameron Buchanan: Amendment 18 seeks to clarify the activities that are connected to competitions, which I do not think has been done. Such activities include training. It is only sensible that young people should be clear that they can practise or train for events, as well as compete in them. That is what is meant by the amendment's suggested insertion of the phrase “and any connected activities” after “competitions” in section 7, at line 12 of page 4 of the bill. I thought that the word “competitions” was a bit narrow, and that it should be clear that practice should be allowed.

Michael Matheson: In response to Mr Buchanan’s point, and as I outlined earlier, there is sufficient scope for the chief constable to make provision for a young person who may wish to practise at an identifiable location to have that
included on their certificate when required, if the chief constable deems it appropriate.

Amendment 15 agreed to.

Amendments 16 and 17 moved—[Michael Matheson]—and agreed to.

Amendment 18 not moved.

The Convener: I call amendment 19, in the name of Cameron Buchanan. Mr Buchanan to move or not move.

Cameron Buchanan: Not moved.

The Convener: Just to clarify, Mr Buchanan has said that he does not want to move amendment 19. Is that correct?

Cameron Buchanan: Sorry. I want to move it.

Amendment 19 moved—[Cameron Buchanan]—and agreed to.

Amendment 20 not moved.

Section 7, as amended, agreed to.

Section 8—Duration of air weapon certificate

The Convener: Amendment 21, in the name of Cameron Buchanan, is grouped with amendment 22.

Cameron Buchanan: We should not restrict the length of time for which young people’s certificates last. If someone is 15, 16 or 17, they should not have to apply for another certificate when they are 18. We want a certificate to last for five years, irrespective of the applicant’s age.

It is only fair to allow the same length of time so that young people do not pay more than others for their certificates and are not therefore discouraged from applying. If someone is 16 or 17, they would be discouraged from applying because of the cost. Could we not make a young person’s certificate last for five years no matter whether they had turned 18?

I move amendment 21.

Michael Matheson: It may be helpful if I set out the way in which the licensing regime will operate for young people. That should address the concern that was raised by Mr Buchanan.

We have developed the provisions in part 1 to allow a responsible 14 to 17-year-old to hold a certificate in their own right, allowing them to shoot for specific purposes, as set out in section 7. Once those shooters become 18, it is right that they should be able to apply for and, it is hoped, obtain a full air weapon certificate. In addition, they should be able to purchase, acquire and own an air weapon in their own right.

For that reason, we introduced section 8(1)(a) to make it clear that a young person’s certificate expires on their 18th birthday. That provision does not prevent the young person from applying in advance for a full certificate to come into effect from that birthday, and that will be made clear in the guidance that we will publish in due course.

In practice, we also envisage that the scale of fees that we will bring forward in secondary legislation will include a sliding scale for young people. That will mean that a smaller fee than normal will be charged in such cases, to reflect the shorter duration of the certificate.

Cameron Buchanan: You are saying that, realistically, from the age of 14 to 18, there will be a sliding scale. Will it reflect the fact that the certificate will last for only two or three years?

Michael Matheson: That is the intention of the sliding scale. For example, a 16-year-old would effectively pay for the two years’ equivalent of their certificate at the time of application.

Section 36 relates to fees, and section 36(2) in particular allows different fees to be specified for different circumstances.

The bill achieves the objective that is sought by Mr Buchanan’s amendments, so I ask members to reject the amendments in the group.

Cameron Buchanan: I understand what the minister has said, so I will withdraw amendment 21.

Amendment 21, by agreement, withdrawn.

Amendment 22 not moved.

Section 8 agreed to.

Sections 9 and 10 agreed to.

Section 11—Revocation of air weapon certificate

The Convener: Amendment 23, in the name of the cabinet secretary, is grouped with amendments 24 and 25.

Michael Matheson: Any decision to revoke an air weapon certificate is serious. The initial grant, or subsequent renewal, is a matter for the chief constable and the decision to award it must be taken in light of the evidence that is available at the time.

The matters to be taken into account by the chief constable when granting or renewing a certificate are clearly set out in section 5 and, in the majority of cases, we would not expect the position to change radically for most certificate holders during the five-year period of the certificate. However, a person’s situation or circumstances might change, or new evidence might come to light that casts doubt on the person’s suitability to hold a certificate. In such
circumstances, the chief constable may reconsider the position and decide to revoke a certificate if the person no longer meets the requirements for holding one.

Amendments 23, 24 and 25 make it clearer that any such revocation of an air weapon certificate should be as a result of new or further evidence coming to light about the suitability of a person to hold a certificate since it was granted or renewed. The amendments were suggested by the Law Society and I invite the committee to agree to all the amendments in my name.

I move amendment 23.

Amendment 23 agreed to.

Amendments 24 and 25 moved—[Michael Matheson]—and agreed to.

Section 11, as amended, agreed to.

Sections 12 and 13 agreed to.

Section 14—Visitor permits: young persons

Amendments 26 and 27 moved—[Michael Matheson]—and agreed to.

Section 14, as amended, agreed to.

Sections 15 to 23 agreed to.

Section 24—Restrictions on transactions involving air weapons

The Convener: Amendment 28, in the name of Cameron Buchanan, is grouped with amendments 29 and 30.

Cameron Buchanan: Amendment 28 seeks to clarify that instructors at an approved club can repair or test the weapons. They should be able to do so because it would be highly impractical to expect participants to go to a registered firearms dealer every time that they had to repair or test a gun, even if there was just a minor fault. I seek to clarify whether that is permitted, and if it is not, to ask whether we need amendments to correct the situation.

I move amendment 28.

11:00

Michael Matheson: I understand the intention behind Cameron Buchanan’s amendments. We are clear that the sale and transfer of air weapons for trade or business purposes should be undertaken only—as it is at present—by firearms dealers who are registered under the provisions of the Firearms Act 1968. Mr Buchanan’s amendments do not alter that principle.

However, the amendments recognise that repair and testing, particularly in clubs, may be carried out on an informal basis in many cases. I am aware that a number of stakeholders have asked questions about how section 24 will come into effect. In principle, it appears to be sensible to allow club officials to undertake such repairs or tests, and that may be part of the service for which members pay an annual subscription fee or other fee. We have always been clear that we view air weapons clubs as the ideal environment for shooters to participate in their sport, and Mr Buchanan’s amendments are consistent with that approach.

However, the way in which Mr Buchanan approaches the issue leaves some questions on the detail, with particular doubt remaining around who could undertake such work and under what circumstances. For example, it would not be appropriate for the amendments inadvertently to undermine the existing RFD structures and the protection that they provide.

As such, I ask Mr Buchanan not to press amendment 28 at this stage. In doing so, I am happy to assure him and the committee that we will examine the issue in more detail, alongside stakeholders, and that we will consider lodging an appropriate amendment at stage 3 to address the issue.

Camer ich Buchanan: I listened to what the cabinet secretary said; I just wonder why—I suppose that I cannot ask the question at this point—he cannot amend the legislation as we have suggested at stage 2, rather than adding it in later.

The Convener: It would be impossible for the cabinet secretary to amend the bill on the hoof. He has just given you an assurance that he is willing to look at the issue at stage 3, Mr Buchanan.

Cameron Buchanan: Okay.

The Convener: Do you wish to press or withdraw amendment 28?

Cameron Buchanan: In this case, I will withdraw the amendment.

Amendment 28, by agreement, withdrawn.

Amendments 29 to 31 not moved.

Amendment 32 moved—[Michael Matheson]—and agreed to.

Section 24, as amended, agreed to.

Section 25 agreed to.

Section 26—Requirement to notify chief constable of certain sales

Amendment 33 moved—[Michael Matheson]—and agreed to.

Sections 27 to 30 agreed to.
Section 31—Failure to keep air weapons secure or to report loss to police

The Convener: Amendment 34, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: One of the aims of the licensing regime that we are introducing is to identify who holds air weapons and where in Scotland they are. A person will need to make proper arrangements for keeping their air weapons securely, and we will work with Police Scotland and shooting interests to develop guidance on safekeeping and other arrangements.

We will not require people with air weapons to purchase and install full-scale gun cabinets in every case, but there are already secure systems available for keeping air weapons safe. Section 31 makes it an offence for a person to fail to take such security precautions. In addition, it will be an offence to fail to notify the police if an air weapon is lost or stolen. The loss or theft of a firearm could leave it open to unauthorised or criminal use and is therefore a serious matter.

However, following evidence to the committee by the Scottish Police Federation, and the further discussions that we have had with Police Scotland, we agreed that the original drafting of the provision was overly strict in stating that someone must inform the police “immediately” of any theft or loss. Amendment 34 changes that timeframe to allow for individuals to report such a loss “as soon as reasonably practicable”.

That means that a person would not be penalised, for example, for not being able to report those details due to circumstances outwith their control, such as being on holiday or being unwell.

Ultimately, any judgment as to the reasonableness of any delay will be a case-by-case matter for the police, prosecutors and courts. I believe that that is a practical approach to address the need to ensure that proper care is taken over the security and handling of air weapons.

I move amendment 34.

The Convener: No one wishes to enter the debate, and I take it that the cabinet secretary does not wish to wind up.

Amendment 34 agreed to.

Section 31, as amended, agreed to.

Sections 32 to 37 agreed to.

After section 37

The Convener: Amendment 35, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: Amendment 35 inserts a new section to the bill on Crown application. Under the arrangements at Westminster, the existing firearms legislation does not automatically apply to the Crown, and the Firearms Act 1968 contains complicated provisions dealing with Crown servants and their use and possession of air weapons.

Members will be aware, however, that in Scotland legislation automatically applies to the Crown unless it expressly provides otherwise. It has been the Scottish Government’s policy that legislation should apply to the Crown as it applies to everyone else, unless specific exemption is made, and members of the Scottish Parliament have endorsed that view.

In line with that general policy, the air weapon licensing requirements will apply to the Crown, subject to the limited exemption that is set out in paragraph 17 of schedule 1 regarding public servants carrying out official duties. However, it is general policy to regulate the way in which the provisions will relate to the Crown in the text of the bill where there are potential questions over criminal responsibility.

The new provision will therefore exempt the Crown, excluding persons in the public service of the Crown, from being criminally liable for any contravention of a provision made by or under part 1. However, by way of enforcement, it will provide for

“the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing the provision”

to apply to the Court of Session for a declarator of unlawfulness in relation to

“any act or omission of the Crown which constitutes such a contravention.”

That is the standard approach to this type of situation.

I invite the committee to agree to the insertion of the new provision by way of amendment 35.

I move amendment 35.

The Convener: No one wishes to enter the debate, and I assume that the cabinet secretary forgoes his right to wind up.

Amendment 35 agreed to.

Sections 38 and 39 agreed to.

Section 40—Interpretation of Part 1

Amendment 36 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.
The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 36 disagreed to.

Amendment 37 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 37 disagreed to.

Section 40 agreed to.

The Convener: That ends consideration of amendments for today; I thank members for their participation. Our next meeting is on Wednesday 20 May, when we will consider part 2 of the bill, which is on alcohol licensing. I remind members that the deadline for lodging amendments to part 2 is this coming Friday, 15 March, at 12 noon.

Meeting closed at 11:11.

Correction
Michael Matheson has identified an error in his contribution and provided the following correction.

The Cabinet Secretary for Justice (Michael Matheson):

At col 13, paragraph 5—
Original text—
They were caused by air weapons.
Corrected text—
The quoted statistic referred to injuries caused by all categories of firearm, including but not limited to air weapons.
Air Weapons and Licensing (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 and 2  Schedule 1
- Sections 3 to 77  Schedule 2
- Sections 78 and 79  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 42

Dr Richard Simpson

After section 42, insert—

<Community involvement in licensing decisions

Applications for, or to vary, premises licence: consultation and publicity

1. The Licensing Procedure (Scotland) Regulations 2007 (SSI 2007/453) are amended as follows.

2. In regulation 4 (meaning of “neighbouring land”)—
   (a) the existing provision becomes paragraph (1),
   (b) after that paragraph insert—

   “(2) Where—
   (a) there is no community council within whose area the premises are situated, or
   (b) the Board reasonably believes that any community council within whose area the premises are situated is inactive,

   paragraph (1) has effect with the substitution for the words “4 metres” of the words “50 metres”.

3. In regulation 6 (publicity as to applications), in each of paragraphs (3) and (6), for “21 days” substitute “42 days”.

4. In regulation 7 (display of notice)—
   (a) in paragraph (3), for “21 days” substitute “42 days”,
   (b) in paragraph (4), for “a further 21-day period” substitute “such further period as the Board considers necessary to ensure that the notice is displayed (or, as the case may be, displayed undamaged) for a total period of 42 days”,
   (c) in paragraph (8), for “21-day period under paragraph (3) or (4)” substitute “42-day period under paragraph (3) or any further period under paragraph (4)”.

5. In Schedule 3 (confirmation of site notice)—
   (a) for “21 days” in the first place where those words occur substitute “42 days”,

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(b) for “21 days” in the second and third places where those words occur substitute “period”,
(c) for “of not less than 21 days” in the second place where those words occur substitute “(or, where the Licensing Board has ordered the display of the notice for a further period, a total period) of not less than 42 days”.

Section 43

Michael Matheson

38 In section 43, page 24, line 2, at end insert—

<( ) The 2005 Act is amended as follows.

( ) In section 22 (objections and representations)—

(a) after subsection (1) insert—

“(1A) A person giving a notice under subsection (1) may include in the notice any information that the person considers may be relevant to consideration by the Board of any ground for refusal including, in particular, information in relation to—

(a) the applicant,

(b) where the applicant is neither an individual nor a council, a connected person in relation to the applicant, or

(c) any person who would be an interested party in relation to the subject premises if the application were to be granted.”,

(b) in subsection (3)(b), after “representation” insert “(including any information included under subsection (1A))”.

Michael Matheson

39 In section 43, page 24, line 3, leave out subsection (1) and insert—

<( ) In section 23 (determination of premises licence application)——>

Michael Matheson

40 In section 43, page 24, line 10, at end insert—

<( ) in subsection (6), for the words “the granting of the application would be inconsistent with one or more of the licensing objectives,” substitute “either of the grounds of refusal specified in subsection (5)(ba) and (c) applies,”,>

Section 44

Michael Matheson

41 In section 44, page 24, line 18, leave out <or>

Michael Matheson

42 In section 44, page 24, line 20, at end insert <, or

( ) any person who would be an interested party in relation to the licensed premises if the application for the transfer of the licence to the transferee were to be granted,>
Michael Matheson

43 In section 44, page 24, line 37, leave out subsection (3)

Section 45

Michael Matheson

44 In section 45, page 25, line 10, at end insert—

<(  ) after subsection (5) insert—

“(5A) A person making a premises licence review application may include in the application any information that the applicant considers may be relevant to consideration by the Licensing Board of the alleged ground for review including, in particular, information in relation to—

(a) the licence holder,

(b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or

(c) any person who is an interested party in relation to the licensed premises.”.>

Michael Matheson

45 In section 45, page 25, line 11, after <initiative)> insert <—

(  )>

Michael Matheson

46 In section 45, page 25, line 15, at end insert—

<(  ) after subsection (4) insert—

“(5) A Licensing Board making a premises licence review proposal may include in the proposal any information that the Board considers may be relevant to their consideration of the alleged ground for review including, in particular, information in relation to—

(a) the licence holder,

(b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or

(c) any person who is an interested party in relation to the licensed premises.”.>

Michael Matheson

47 In section 45, page 25, line 22, at end insert—

<(2B) Subject to section 39B, a revocation under subsection (2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision.”.>
Michael Matheson

48 In section 45, page 25, line 26, at end insert—

<( ) After section 39A insert—

“39B Recall of revocation of licence under section 39(2A)

(1) This section applies where a Licensing Board decides to revoke a premises licence under section 39(2A).

(2) The Board must recall the revocation if—

(a) a relevant application is made before the end of the period referred to in section 39(2B) (“the 28 day period”), and

(b) the Board grants the application.

(3) The Board may extend the 28 day period pending determination of a relevant application.

(4) In this section, “relevant application” means—

(a) an application under section 33(1) for the transfer of the premises licence, or

(b) a premises licence variation application seeking a variation of the licence that the Board considers would remove the ground on which the licence was revoked under section 39(2A).

(5) This section does not affect the right to appeal against the decision to revoke the licence under section 39(2A).”.

After section 48

Michael Matheson

49 After section 48, insert—

<Transfer of premises licences

Transfer of premises licences

(1) The 2005 Act is amended as follows.

(2) In section 33 (transfer of premises licence on application of licence holder)—

(a) for subsections (1) to (3) substitute—

“(1) Any person, other than an individual under the age of 18, may apply to the appropriate Licensing Board for the transfer of a premises licence to the person (such person being referred to in this section and section 33A as the “transferee”).

(1A) An application under subsection (1) must—

(a) specify the date on which the transfer is to take effect, and

(b) be accompanied by—

(i) the premises licence to which the application relates or, if that is not practicable, a statement of the reasons for failure to produce the licence, and
(ii) a written statement signed by the holder of the premises licence consenting to its transfer to the transferee (a “consent statement”) or, if that is not practicable, a statement of the reasons for failure to obtain the licence holder’s written consent.”.,

(b) in subsection (4), after “constable” insert “, unless the Board must refuse the application under subsection (8A)”,

(c) in subsection (8), before paragraph (a) insert—

“(za) the application is accompanied by a consent statement referred to in subsection (1A)(b)(ii),”,

(d) after subsection (8) insert—

“(8A) If the application is not accompanied by a consent statement referred to in subsection (1A)(b)(ii), the Board must refuse the application, unless the Board dispenses with the requirement for a consent statement under section 33A(4).”.

(3) The title of section 33 becomes “Application for transfer of premises licence”.

(4) After section 33 insert—

“33A Application for transfer: further provision

(1) This section applies where a Licensing Board receives an application under section 33(1) for the transfer of a premises licence.

(2) The Board must take all reasonable steps to give notice of the application to the premises licence holder.

(3) Subsection (4) applies where the application is not accompanied by a consent statement referred to in section 33A(1A)(b)(ii).

(4) The Board may dispense with the requirement for a consent statement if satisfied that the transferee has taken all reasonable steps to contact the premises licence holder in order to obtain consent but has received no response.

(5) Where the Board decides under subsection (4) not to dispense with the requirement for a consent statement, the Board must give notice of the decision, and of the reasons for it, to the transferee.

(6) Where the Board decides under subsection (4) to dispense with the requirement for a consent statement the Board must hold a hearing under section 33(9) for the purpose of considering and determining the application.

(7) Where the Board grants the application, the transfer of the licence takes effect—

(a) on the date specified in the application in accordance with section 33A(1A)(a), or

(b) where the Board grants the application after that date, on such date as the Board may determine.”.

(5) Section 34 (transfer on application of person other than licence holder) is repealed.

(6) In Part 1 of schedule 5 (appeals to the sheriff principal)—

(a) in column 1 of the entry relating to a decision to refuse an application under section 33(1) or 34(1) for transfer of a premises licence, the words “or 34(1)” are repealed,
(b) in column 2 of that entry, after “applicant” insert “or the premises licence holder”,
(c) after that entry insert—

| “A decision to grant an application under section 33(1) for transfer of a premises licence” | The person from whom the premises licence is to be transferred |
| A decision under section 33A(4), in relation to an application under section 33(1) for transfer of a premises licence, not to dispense with the requirement for a consent statement | The applicant |

> After section 52

Dr Richard Simpson

86 After section 52, insert—

<Restrictions on advertising of alcohol

Restrictions of advertising of alcohol

(1) The 2005 Act is amended as follows.

(2) After section 122 insert—

“PART 8A

RESTRICTIONS ON ADVERTISING OF ALCOHOL

Advertising near premises used by children

122A Ban on alcohol advertising near schools etc.

(1) It is an offence knowingly to cause or permit the display of an alcohol advertisement in a prohibited place within a restricted area.

(2) A restricted area is the area within 200 metres in any direction of any boundary of—

(a) the premises of a school (“premises” and “school” having the meanings given in section 135(1) of the Education (Scotland) Act 1980),

(b) premises used principally as a nursery or crèche,

(c) outdoor premises designed or adapted for use by members of the public as a children’s play area.

(3) In this section—

“advertisement” means any word, letter, image, mark, light, model, placard, board, notice, screen, awning, blind, flag, device, representation, container or package in the nature of, and employed wholly or partly for the purpose of, advertisement or promotion,

“alcohol advertisement” means an advertisement promoting alcohol,

“the display of an advertisement” includes emitting, screening or exhibiting an advertisement,
“prohibited place” means any fixed place from which the advertisement may be seen by a person in a public place (other than a public place in any premises within which the prohibited place is situated).

122B Exceptions
(1) An advertisement is not an alcohol advertisement for the purposes of section 6 if it is an advertisement displayed on licensed premises that refers wholly to all or any of the following—
   (a) a general description of the business carried on,
   (b) a general description of the goods or services provided,
   (c) the name of the business,
   (d) the name or qualifications of the person carrying out the business or supplying the goods or services on those premises.
(2) An alcohol advertisement displayed on licensed premises and visible principally from within those premises is not displayed in a prohibited place for the purposes of section 122A merely because the advertisement is also visible from outside the premises.

Advertising within licensed premises

122C Advertising within licensed premises
(1) This section applies where off-sales premises form part of larger retail premises.
(2) It is an offence for a responsible person knowingly to cause or permit the display of an alcohol advertisement in any part of the larger premises other than the off-sales premises.
(3) In this section—
   “advertisement”, “alcohol advertisement” and “the display of an advertisement” have the meanings given in section 122A(3),
   “off-sales premises” means premises licensed to sell alcohol only for consumption off the premises,
   “responsible person” means—
   (a) the holder of the licence of the off-sales premises, and
   (b) any other person having management or control of the off-sales premises.

Advertising at sporting and cultural events

122D Advertising at sporting and cultural events
(1) It is an offence for a responsible person knowingly to cause or permit the display of an alcohol advertisement at any premises where a sporting event or a cultural event is being held if—
   (a) the majority of the participants in the event are under the age of 18, or
(b) the intended audience for the event consists principally of persons under that age.

(2) If the premises mentioned in subsection (1) form part of larger premises, that subsection does not apply to any other part of those larger premises.

(3) In this section—

“advertisement” has the meaning given in section 122A(3) and also includes an advertisement displayed on clothing,

“alcohol advertisement” and “the display of an advertisement” have the meanings given in section 122A(3),

“cultural event” includes any form of public exhibition or performance other than a film exhibition within the meaning of section 21(1) of the Cinemas Act 1985,

“participants” means—

(a) in relation to a cultural event, the performers (if any), and
(b) in relation to a sporting event, those engaging in the sport,

“responsible person” means any person having management or control of the event,

“sporting event” means any contest, exhibition or display of any sport to which the public are invited as spectators (whether or not on payment).

Penalties and enforcement

122E Penalties

A person guilty of an offence under this Part is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

122F Offences by bodies corporate, etc.

(1) Where—

(a) an offence under this Part has been committed by—

(i) a body corporate,
(ii) a Scottish partnership, or
(iii) an unincorporated association other than a Scottish partnership, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or
(ii) an individual purporting to act in the capacity of a relevant individual,

that individual as well as the body, partnership or association is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—
(a) in relation to a body corporate other than a local authority—
   (i) a director, manager, secretary or other similar officer of the body,
   (ii) where the affairs of the body are managed by its members, the
        members,
(b) in relation to a local authority, an officer or member of the local
    authority,
(c) in relation to a Scottish partnership, a partner, and
(d) in relation to an unincorporated association other than a Scottish
    partnership, a person who is concerned in the management or control of
    the association.

(3) Any penalty imposed on a body corporate, Scottish partnership or
    unincorporated association on conviction of an offence under this Part is to
    be recovered by civil diligence in accordance with section 221 of the Criminal

122G Fixed penalties

(1) Schedule 4A (which makes provision as to fixed penalties for offences under
    this Part) has effect.

(2) Schedule 4A does not have effect in relation to an offence committed by a
    local authority.

(3) After Schedule 4 insert—

"SCHEDULE 4A
(introduced by section 122G)

FIXED PENALTY FOR ALCOHOL ADVERTISING OFFENCES"

Power to give fixed penalty notices

1 (1) An authorised officer of a local authority may, if having reason to believe that
    a person is committing or has committed an offence under Part 8A within the
    area of the local authority, give that person a fixed penalty notice in relation to
    that offence.

(2) A constable may, if having reason to believe that a person is committing or has
    committed an offence under Part 8A, give that person a fixed penalty notice in
    relation to that offence.

(3) In this schedule, “fixed penalty notice” means a notice offering a person the
    opportunity of discharging any liability to conviction for the offence in
    question by payment of a fixed penalty.

Contents of fixed penalty notice

2 (1) A fixed penalty notice must identify the offence to which it relates and give
    reasonable particulars of the circumstances alleged to constitute that offence.

(2) A fixed penalty notice must also state—

(a) the amount of the penalty and the period within which it may be paid,
(b) the discounted amount and the period within which it may be paid,
(c) the person to whom and the address at which payment may be made,
(d) the method by which payment may be made,
(e) the person to whom and the address at which any representations relating
to the notice may be made,
(f) the consequences of not making a payment within the period for
payment.

3 (3) The person specified under sub-paragraph (2)(c) must be the local authority in
the area of which the offence is alleged to have been committed or a person
acting on its behalf.

4 (4) The person specified under sub-paragraph (2)(e) must be—
(a) where the notice is issued by an authorised officer of a local authority, a
person at such office of the local authority as is specified in the notice,
(b) where the notice is issued by a constable, a person at such office of the
Police Service of Scotland as is specified in the notice.

Amount of penalty and period for payment

3 (1) The fixed penalty for an offence under Part 8A is £200.
(2) The period for payment of the fixed penalty is the period of 29 days beginning
with the day on which the notice is given.

The discounted amount

4 (1) A discounted amount is payable instead of the amount of the fixed penalty if
payment is made before the end of the period of 15 days beginning with the
day on which the notice is given.
(2) The discounted amount is 75% of the amount of the fixed penalty.
(3) If the last day of the period specified in sub-paragraph (1) does not fall on a
working day, the period for payment of the discounted amount is extended
until the end of the next working day.
(4) In this paragraph, “working day” means any day other than a Saturday, a
Sunday, Christmas Day or a day which, under the Banking and Financial
Dealings Act 1971, is a bank holiday in Scotland.

Effect of notice and payment of penalty

5 (1) This paragraph applies where a person is given a fixed penalty notice under
paragraph 1(1) or (2) in respect of an offence.
(2) No proceedings for the offence may be commenced—
(a) if the penalty is paid before the end of the period for payment of the
penalty, or
(b) if the penalty is tendered after the end of that period and payment is
accepted by the local authority.
(3) Payment of the discounted amount counts for the purposes of sub-paragraph
(2)(a) only if it is made before the end of the period for payment of the
discounted amount.
(4) The local authority must not accept any payment tendered in respect of the fixed penalty after proceedings have been commenced.

(5) In proceedings for the offence, a certificate which—
   
   (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority, and
   
   (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,

is sufficient evidence of the facts so stated.

**Withdrawal of notices**

6 (1) If the local authority considers (whether in light of representations made under paragraph 2(2)(e) or for any other reason) that a fixed penalty notice given by an authorised officer of the local authority ought not to have been given, it may give to the person to whom it was given a notice withdrawing the fixed penalty notice.

(2) If a constable considers (whether in light of representations made under paragraph 2(2)(e) or for any other reason) that a fixed penalty notice given by a constable ought not to have been given, the constable may give to the person to whom it was given a notice withdrawing the fixed penalty notice.

(3) The constable must give a copy of the notice under sub-paragraph (2) to the local authority specified in the fixed penalty notice under paragraph 2(2)(c).

(4) A notice under sub-paragraph (1) or (2) may be given only at a time when proceedings have not been commenced.

(5) Where a notice of withdrawal is given to a person under sub-paragraph (1) or (2) no proceedings are to be commenced against that person for the offence in question.

**Repayment of fixed penalty**

7 Where—
   
   (a) a notice of withdrawal is given under paragraph 6(1) or (2), or
   
   (b) proceedings for an offence in respect of which a fixed penalty notice has been given are commenced,

any amount which has been paid by way of penalty in pursuance of the fixed penalty notice is to be repaid.

**Duty to review fixed penalty**

8 (1) The Scottish Ministers must annually review the fixed penalty for the time being specified in paragraph 3(1) to determine whether it should be modified to take account of changes in the value of money.

(2) The first review is to be no later than 12 months after the date on which the Bill for this Act receives Royal Assent.

(3) Each subsequent review is to be no later than the next subsequent anniversary of Royal Assent.
If, on a review, the Scottish Ministers determine that the fixed penalty should be modified, they must by regulations modify the fixed penalty.

Regulations

9 (1) The Scottish Ministers may make regulations about the method by which a fixed penalty may be paid.

(2) The Scottish Ministers may by regulations modify the periods for the time being specified in paragraphs 3(2) and 4(1) if they consider it desirable to do so having regard to other enactments making provision about fixed penalty notices.

Section 54

Cameron Buchanan

82 In section 54, page 30, leave out lines 4 and 5

Michael Matheson

50 In section 54, page 30, leave out lines 8 to 10 and insert—

<( ) at the beginning of paragraph (a) insert “must”,

( ) the word “and” immediately following that paragraph is repealed,

( ) after that paragraph insert—

“(aa) may have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality, and”;

Michael Matheson

51 In section 54, page 30, line 12, leave out from <“and”> to end of line 13 and insert <the words from “that,” where first occurring to “situated,” substitute “that”.

Michael Matheson

52 In section 54, page 30, line 15, leave out from <“and”> to the end of the line and insert <the words from “that,” where first occurring to “situated,” substitute “that”.

Section 55

John Wilson

87 In section 55, page 31, line 25, at end insert—

<9B Annual report on exercise of functions

(1) Each Licensing Board must prepare and publish a report on the exercise of their functions not later than 3 months after the end of each financial year.

(2) The Scottish Ministers may by regulations vary the period of time for the time being specified in subsection (1) within which each Licensing Board must prepare and publish their annual report under this section.

(3) A report under this section must include—
(a) a summary of the decisions taken by the Licensing Board in the exercise of their functions under this Act, including any decisions taken by any person to whom functions have been delegated by the Board under paragraph 10 of Schedule 1, during the financial year,

(b) a summary of the provision of licensed premises and the number of occasional licences granted in the Board’s area, including in particular localities within their area,

(c) a statement setting out how, in exercising their functions under this Act during the financial year, the Licensing Board—

   (i) have sought to give effect to their licensing policy statement and any supplementary licensing policy statement published under section 6,

   (ii) have taken account of any assessment they have made under section 7 of overprovision in any locality within their area,

   (iii) consider how the exercise of their functions has contributed to the licensing objectives.

(4) A report under this section may also include such other information about the exercise of the Licensing Board’s functions as the Board consider appropriate.

(5) The Scottish Ministers may by regulations make further provision about reports under this section including provision—

   (a) about the form and content of reports including, in particular—

      (i) the information on decisions that is to be included in a summary under subsection (3)(a),

      (ii) how a summary is to be reported for the purposes of subsection (3)(b), and

      (iii) the information to be kept for the purposes of providing a statement required under subsection (3)(c) and how such a statement is to be set out, and

   (b) the publication of reports.

(6) Regulations under subsection (5)(a) may modify subsection (3).

(7) In this section, “financial year” means a yearly period ending on 31 March.”.

John Wilson

88 In section 55, page 31, line 27, after <9A(6)> insert <or 9B(5)>

John Wilson

89 In section 55, page 31, line 29, after <9A(6)> insert <or 9B(5)>

John Wilson

90 In section 55, page 31, line 30, leave out <that> and insert <the relevant>
After section 55

Michael Matheson

53 After section 55, insert—

<Licenseing Standards Officers: general function in relation to personal licences>

In section 14(1) of the 2005 Act (general functions of Licensing Standards Officers), after paragraph (b) insert—

“(ba) providing information to Licensing Boards about any conduct of holders of, or persons applying for, personal licences in the area, which is inconsistent with the licensing objectives,”.>

Michael Matheson

54 After section 55, insert—

<Powers of Licensing Standards Officers>

(1) The 2005 Act is amended as follows.

(2) After section 84A insert—

“84B Power of Licensing Standards Officers to report conduct inconsistent with the licensing objectives

(1) If a Licensing Standards Officer considers that any personal licence holder who is or was working in licensed premises in the Officer’s area has acted in a manner which is inconsistent with any of the licensing objectives, the Officer may report the matter to the relevant Licensing Board.

(2) Where a Licensing Board receives a report from a Licensing Standards Officer under subsection (1), the Board may hold a hearing.

(3) Subsections (6), (6A), (7), (7A) and (8) of section 84 and subsection (1)(b) of section 85 apply in relation to a hearing under subsection (2) of this section as they apply in relation to a hearing under subsection (3)(a) or (5) of section 84.

(4) In subsection (1), “relevant Licensing Board” has the meaning given in section 83(11).”.

Section 57

Cameron Buchanan

83 In section 57, page 32, line 11, leave out <(3)(c),> and insert <(3)(c)—

( )>

Cameron Buchanan

84 In section 57, page 32, line 12, at end insert—

<( ) for “5” substitute “3”.

Michael Matheson

55 In section 57, page 32, line 15 after <licence)> insert <—

(a)>
Michael Matheson

56 In section 57, page 32, line 17, at end insert—

<b>(b) in subsection (5), after “74” insert “(other than subsection (3)(ba))”.</b>

Section 58

Michael Matheson

57 In section 58, page 33, line 15, leave out <or 34(1)>

Before section 63

Michael Matheson

58 Before section 63, insert—

<Penalties for failure to have appropriate licence or comply with conditions>

In section 7 of the 1982 Act (offences etc.)—

(a) in subsection (1)(a), after “is” insert “a metal dealer’s licence, an itinerant metal dealer’s licence or”;

(b) in subsection (2)—

(i) the word “and” immediately following paragraph (aa) is repealed,

(ii) after paragraph (aa) insert—

“(ab) in a case where the licence is a metal dealer’s licence or an itinerant metal dealer’s licence, to such fine or imprisonment as is mentioned in subsection (1)(a) (or to both), and”.

Section 65

Michael Matheson

59 In section 65, page 36, line 21, leave out <an> and insert <a bank or building society>

Michael Matheson

60 In section 65, page 37, line 6, after <section> insert <33AA or>

Michael Matheson

61 In section 65, page 37, line 10, at end insert—

<33AA Acceptable forms of payment: meaning of “bank or building society account”>

(1) In section 33A(2)(b), “bank or building society account” means an account held with a bank or a building society.

(2) For the purposes of subsections (1) and (4)—

(a) “bank” means an authorised deposit-taker that has its head office or a branch in the United Kingdom, and

(b) “building society” has the same meaning as in the Building Societies Act 1986.

(3) In subsection (2)(a), “authorised deposit-taker” means—
(a) a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 (but see subsection (4) for exclusions),

(b) an EEA firm of the kind mention in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule).

(4) The reference in subsection (3)(a) to a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 does not include—

(a) a building society,

(b) a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)),

(c) a friendly society within the meaning given by section 116 of the Friendly Societies Act 1992, or

(d) an insurance company within the meaning of section 275 of the Finance Act 2004.”.

Section 66

Michael Matheson

62 In section 66, page 38, leave out line 5

Michael Matheson

63 In section 66, page 38, line 25, after <regulations> insert<—

( ) specify the means by which a person’s name and address may be verified for the purposes of this section,

( )>

After section 66

Michael Matheson

64 After section 66, insert—

<Register of dealers in metal>

After section 35 of the 1982 Act, insert—

“35A Register of metal dealers and itinerant metal dealers

(1) The Scottish Ministers may by regulations make provision for and about the establishment, keeping and maintaining of a register of metal dealers and itinerant metal dealers.

(2) Regulations under subsection (1) may, in particular, make provision—

(a) about who is to keep and maintain the register,

(b) requiring the provision of information to the person who keeps the register,
(c) specifying the information to be included in the register in relation to each person who holds a licence as a metal dealer or itinerant metal dealer,

(d) about the form and publication of the register,

(e) for the charging of fees in such circumstances as may be specified in the regulations.

(3) Regulations under subsection (1) may—

(a) make incidental, supplementary, consequential, transitional, transitory or saving provision,

(b) modify this or any other enactment.

(4) Regulations under subsection (1) which contain provision which adds to, replaces, or omits any part of an Act are subject to the affirmative procedure.

(5) Otherwise, regulations under subsection (1) are subject to the negative procedure.”.

Michael Matheson

65 After section 66, insert—

<Interpretation of provisions relating to metal dealers etc.

(1) Section 37 of the 1982 Act (interpretation of sections 28 to 36) is amended as follows.

(2) In subsection (1), for the definition of “itinerant metal dealer” substitute—

“‘itinerant metal dealer’ means a person who—

(a) carries on a business which consists wholly or substantially of buying or selling for scrap—

(i) metal articles that are old, broken, worn out or defaced, or

(ii) partly manufactured articles that are made wholly or partly from metal,

(b) collects articles of the kind described in paragraph (a)(i) and (ii) by means of visits from place to place, and

(c) disposes of such articles without causing them to be kept in a metal store or other premises (including by disposing or giving custody of the articles to a person who keeps a metal store),”.

(3) For subsection (2) substitute—

“(2) For the purposes of sections 28 to 36, a person carries on business as a metal dealer if the person—

(a) carries on a business which consists wholly or substantially of buying or selling for scrap—

(i) metal articles that are old, broken, worn out or defaced, or

(ii) partly manufactured articles that are made wholly or partly from metal, or

(b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).
(3) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists wholly or substantially of—

(a) recovering salvageable parts from motor vehicles for re-use or sale and selling or disposing of the rest of the vehicle for scrap,

(b) buying significantly damaged motor vehicles and subsequently repairing and reselling them, or

(c) buying or selling motor vehicles which are to be the subject (whether immediately or upon a subsequent resale) of any of the activities mentioned in paragraphs (a) and (b).”.

Michael Matheson

66 After section 66, insert—

<Exemptions from requirements of sections 28 to 37 of 1982 Act

After section 37 of the 1982 Act insert—

“37A Exemptions

(1) The Scottish Ministers may by regulations make provision specifying circumstances in which the provisions of sections 28 to 37 are not to apply.

(2) Regulations under subsection (1)—

(a) may make transitional, transitory or saving provision,

(b) are subject to the negative procedure.”.

After section 67

Michael Matheson

67 After section 67, insert—

<Restriction of exemption from requirement for public entertainment licence

In section 41(2) of the 1982 Act (places not requiring public entertainment licences), in paragraph (f), for the words from “licensed” where first occurring to “(asp 16)” substitute “premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect”.

Richard Lyle
Supported by: David Torrance

68 After section 67, insert—

<Public entertainment licenses: exemption for funfairs

In section 41 of the 1982 Act (public entertainment licenses), after subsection (2)(aa) insert—

“(ab) premises used for the purpose of a funfair;”.

Section 69

Michael Matheson

69 In section 69, page 44, line 39, after <suspension> insert <and revocation>
After section 69

Michael Matheson

After section 69, insert—

<Revocation of Part 2 licences>

(1) The 1982 Act is amended as follows.

(2) In section 5 (rights of entry and inspection), in subsection (2)(a)(ii), after “suspended” insert “or revoked”.

(3) In Schedule 1 (licensing: further provisions as to the general system)—

(a) the italic heading preceding paragraph 10 becomes “Variation, suspension and revocation of licences”,

(b) in paragraph 11—

(i) in sub-paragraph (1), after “suspend” insert “or revoke”,

(ii) in sub-paragraph (2), after “suspending” insert “or revoking”,

(iii) in sub-paragraph (4), after “suspend” insert “or revoke”,

(iv) in sub-paragraph (6), after “order” insert “to suspend a licence”,

(v) in sub-paragraph (7), after “suspension” insert “or revocation”,

(vi) in sub-paragraph (8), after “suspension” insert “or revocation”,

(vii) in sub-paragraph (9)—

(A) after “suspension” where first occurring insert “or revocation”,

(B) after each subsequent occurrence of “suspension” insert “or, as the case may be, revocation”,

(viii) in sub-paragraph (10), after “suspension” where first occurring insert “or revocation”,

(c) in paragraph 12(5)(b), after “suspend” insert “or revoke”,

(d) in paragraph 13—

(i) in sub-paragraph (2)(a), after “suspend” insert “, revoke”,

(ii) in sub-paragraph (3), after “suspending” insert “or revoking”,

(ii) in sub-paragraph (4), after “suspension” where first occurring insert “or revocation”,

(e) in paragraph 14(2)(b), after “terms,” insert “revocation”,

(f) in paragraph 17, in sub-paragraph (1)(d), before paragraph (i) insert—

“(ai) to revoke a licence or to refuse to do so,”.

(g) in paragraph 18(10)—

(i) after “suspension” where first occurring insert “or revocation”,

(ii) the words “above that the suspension be immediate” are repealed.>
Section 71

Michael Matheson

71 In section 71, page 48, line 10, at beginning insert <in paragraph (a),>

After section 71

Michael Matheson

72 After section 71, insert—

<Conditions for Part 3 licences: displays or advertising

In paragraph 9(2) of Schedule 2 to the 1982 Act (examples of conditions which may be imposed in relation to Part 3 licences), in paragraph (b), after “on or in” insert “or otherwise connected with”.

Schedule 2

Michael Matheson

73 In schedule 2, page 61, line 26, at end insert—

<( ) In Schedule 4 (particulars to be entered by firearms dealer in register of transactions)—

(a) in Part 1, in the note, after “2” insert “or 3”,

(b) in Part 2, for the note substitute—

“Notes:
This Part does not apply in relation to Scotland.
In this Part “air weapon” includes any component of, or accessory to, an air weapon.”,

(c) the heading of Part 2 becomes—

“PARTICULARS RELATING TO AIR WEAPONS: ENGLAND AND WALES”,

(d) after that Part insert—

“PART 3
PARTICULARS RELATING TO AIR WEAPONS: SCOTLAND

Notes:
This Part applies in relation to Scotland.
In this Part “air weapon” includes any component of, or accessory to, an air weapon.

1 The quantities and description of air weapons manufactured and the dates of manufacture.

2 The quantities and description of air weapons purchased or acquired with the names and addresses of the sellers or transferors and the date of each transaction.

3 The quantities and description of air weapons accepted for sale, repair, testing, cleaning, storage, destruction, or any other purposes, with the names and addresses of the transferors and the date of each transaction.
4 The quantities and description of air weapons sold or transferred with the names and addresses of the purchasers or transferees and the date of each transaction.

5 The quantities and description of air weapons in possession for sale or transfer at the date of the last stocktaking or such other date in each year as may be specified in the register.”.

Michael Matheson
74 In schedule 2, page 61, line 37, at end insert—

\(<\text{Criminal Procedure (Scotland) Act 1995}\)

In Schedule 9 to the Criminal Procedure (Scotland) Act 1995 (certificates as to proof of certain routine matters), at the end of the table insert—

| “The Air Weapons and Licensing (Scotland) Act 2015” | A constable or a person employed by the Scottish Police Authority, if the constable or person is authorised to do so by the chief constable of the Police Service of Scotland. | In relation to a person identified in the certificate, that on the date specified in the certificate the person held, or as the case may be, did not hold, an air weapon certificate (within the meaning of Part 1 of that Act).” |

Michael Matheson
75 In schedule 2, page 62, line 7, at end insert—

\(<\text{ ) In section 28(2) (period of effect of premises licence), for “34(1)” substitute “33(1)”}\>.

Michael Matheson
76 In schedule 2, page 62, line 7, at end insert—

\(<\text{ ) In section 29(4) (application to vary premises licence), for “and 22” substitute “, 22 and 24A”}\>.

Michael Matheson
77 In schedule 2, page 62, line 7, at end insert—

\(<\text{ ) In section 35 (variation on transfer), in each of subsections (1) and (3)(b), the words “or 34(1)” are repealed}\>.

Michael Matheson
78 In schedule 2, page 62, line 12, at end insert—

\(<\text{ ) In section 49(1)(c) (Licensing Board’s duty to update premises licence), the words “or 34(1)” are repealed}\>.

Michael Matheson
79 In schedule 2, page 62, line 12, at end insert—
In section 57 (notification of occasional licence application to chief constable and Licensing Standards officer), in subsection (5)—

(a) for “Subsections (2) and (3) have” substitute “Subsection (3) has”,
(b) for “references” where first occurring substitute “reference”,
(c) for “references” where second occurring substitute “a reference”.

Section 78

Michael Matheson

80 In section 78, page 54, line 19, at beginning insert <Section 57(1) and (2) and>

Michael Matheson

81 In section 78, page 54, line 19, leave out <comes> and insert <come>
Air Weapons and Licensing (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

*Alcohol licensing: community involvement in licensing decisions*
85

*Alcohol licensing: fit and proper person test*
38, 39, 40, 41, 42, 44, 45, 46, 47, 48

*Transfer of premises licence*
43, 49, 57, 75, 77, 78

*Restrictions on advertising of alcohol*
86

*Overprovision*
82, 50, 51, 52

*Annual report on exercise of functions*
87, 88, 89, 90

*Functions and powers of Licensing Standards Officers*
53, 54

*Personal licences*
83, 84, 55, 56, 80, 81

*Metal dealers: increase in penalties*
58

*Metal dealers: forms of payment*
59, 60, 61

*Metal dealers: records*
62, 63

SP Bill 49-G2

Session 4 (2015)
Register of metal dealers
64

Metal dealers: definitions
65

Metal dealers: exemptions
66

Restriction of exemption from requirement for public entertainment licences
67

Public entertainment licences: exemption for funfairs
68

Revocation of licences under the 1982 Act
69, 70

Minor and technical amendments
71, 76, 79

Sex shops and sexual entertainment venues: displays or advertising
72

Register of transactions
73

Certificates as to proof of routine matters
74
Present:
Clare Adamson                  Cameron Buchanan
Willie Coffey                  Alex Rowley
Kevin Stewart (Convener)       John Wilson (Deputy Convener)

Also present: Michael Matheson, Cabinet Secretary for Justice and Dr Richard Simpson.

Apologies were received from Cara Hilton.

**Air Weapons and Licensing (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57.

Amendment 82 was disagreed to (by division) (For 1, Against 5, Abstentions 0).

The following amendments were moved and, no member having objected, withdrawn: 85, 86, 87 and 83.

The following amendments were not moved: 88, 89, 90 and 84.

The following provisions were agreed to without amendment: sections 41, 42, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56 and 59

The following provisions were agreed to as amended: sections 43, 44, 45, 54, 57 and 58.

The Committee ended consideration of the Bill for the day, section 59 having been agreed to.
Scottish Parliament
Local Government and Regeneration Committee

Wednesday 20 May 2015

[The Convener opened the meeting at 10:01]

Air Weapons and Licensing (Scotland) Bill: Stage 2

The Convener (Kevin Stewart): Good morning and welcome to the 15th meeting in 2015 of the Local Government and Regeneration Committee. If you wish to use tablet devices or mobile phones during the meeting, please switch them to flight mode as they may otherwise affect the broadcasting system. Some committee members may consult tablet devices during the meeting because we provide meeting papers in digital format.

Apologies have been received from Cara Hilton.

Our only item of business today is our second day of stage 2 consideration of the Air Weapons and Licensing (Scotland) Bill. I welcome back Michael Matheson MSP, the Cabinet Secretary for Justice. I also welcome Dr Richard Simpson MSP, who is attending to speak to amendments in his name. Today we will consider sections 41 to 59 and all amendments to those sections; the sections form part 2 of the bill and amend the alcohol licensing system in Scotland.

I remind members that, as the office of the clerk is closed on Friday 22 and Monday 25 May, the deadline for lodging amendments to parts 3 and 4 is 12 noon today.

Before we move on to consideration of amendments, it would be helpful if I set out the stage 2 procedure. Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments that was published on Monday, and the groupings of amendments, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in each group to speak to and move their amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate by catching my attention in the usual way.

If he has not already spoken on the group, I will invite the cabinet secretary to contribute to the debate before I move to the winding-up speech.

As with a debate in the chamber, the member who is winding up on a group may take interventions from other members if they wish. The debate on each group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press their amendment to a vote or withdraw it. If they wish to press ahead, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee’s agreement to do so. If any committee member objects, the committee must immediately move to the vote on the amendment.

If any member does not want to move their amendment when I call it, they should say, “Not moved.” Please remember that any other MSP may move such an amendment. If no member moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote at stage 2. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed each section of the bill, and so I will put the question on each section at the appropriate point.

Today we will go no further than the end of part 2 of the bill.

Sections 41 and 42 agreed to.

After section 42

The Convener: Amendment 85, in the name of Dr Richard Simpson, is in a group on its own.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I apologise to you, convener, to the committee and to the cabinet secretary and his team for the fact that amendment 85 was lodged too late to allow evidence to be taken at stage 1 or to allow for a prolonged period of consideration. The committee will be aware that I have introduced a fairly comprehensive member’s bill on alcohol issues and it has been allocated to the Health and Sport Committee. The issues that my member’s bill deals with were arrived at after the usual consultation process. However, after a helpful meeting with the Cabinet Secretary for Health, Wellbeing and Sport and, at her suggestion, I have lodged a number of the sections of my bill as amendments to the Air Weapons and Licensing (Scotland) Bill.

Amendment 85, which is the first of those amendments, aims to enhance local people’s
The industry does not favour the increases in consultation, as it believes that alcohol licensing forums and the existing law provide for sufficient consultation. However, alcohol licensing forums have limited representation and might not have representation from the area that is under consideration.

I reiterate that we need to empower communities who feel that they are disempowered by the current arrangements. Amendment 85 is a proportionate approach and is backed by the British Medical Association and Alcohol Focus Scotland.

I move amendment 85.

The Convener: Obviously, the committee has not taken evidence on any part of the amendment.

The Cabinet Secretary for Justice (Michael Matheson): I am grateful to Richard Simpson for lodging amendment 85, which relates to expanding the notification requirement in relation to premises and major variation applications by amendment to the Licensing (Procedure) (Scotland) Regulations 2007, which is a piece of secondary legislation.

The procedure regulations have not been updated since they first came into effect back in 2008. During that time, there has been considerable change to society and practices. It is therefore appropriate to look at the current regulations to ensure that the procedures and deadlines that they set out achieve what they are intended to achieve. We intend to review and, if necessary, update the licensing forms that are provided for in the procedure regulations. We also intend to update the regulations with the addition of a process of tacit authorisation within the alcohol licensing regime.

I am aware of recent work on community engagement that was commissioned by the Glasgow Centre for Population Health, and I would like it to be taken into account when we review the procedure regulations. Some of the amendments will require consultation to ensure that they will work effectively. Other amendments are required to support the operation of the bill when it comes into force. We are therefore already committed to acting quickly to consult on and update the procedure regulations.

I appreciate that Richard Simpson wants to ensure that the procedure regulations work as effectively as possible. However, I am concerned that amending the primary legislation and then updating the secondary legislation for the other issues that I have raised would create confusion and possibly introduce delays that could be avoided by dealing with everything at the same time as a comprehensive package.
I do not want any amendments to the procedure regulations to generate unduly large additional burdens on licensing boards, nor do I want to increase bureaucracy to needlessly delay the processing of licence applications. In order to achieve that balance, it is preferable to deal with all the changes in the round so that appropriate consideration can be given to the impact on businesses and communities.

On that basis, I encourage Richard Simpson to withdraw amendment 85, with the assurance that the Scottish Government will consult on updating the procedure regulations following royal assent, and I will be happy to keep members informed about the progress that we make on the matter.

The Convener: I invite Dr Simpson to wind up and to press or withdraw his amendment.

Dr Simpson: I thank the cabinet secretary for his considered and helpful reply. It is timely that we should review the regulations governing the whole process. Availability clearly needs to be addressed, and engaging communities effectively with that process is a paramount consideration. However, having listened to the cabinet secretary, I am happy to withdraw my amendment.

Amendment 85, by agreement, withdrawn.

Section 43—Premises licence application: ground for refusal

The Convener: Amendment 38, in the name of the cabinet secretary, is grouped with amendments 39 to 42 and 44 to 48.

Michael Matheson: The amendments in this group relate to the fit-and-proper-person test. Many stakeholders have criticised the Licensing (Scotland) Act 2005 for not including a fit-and-proper-person test. The bill addresses that by introducing such a test to the 2005 act.

Introducing a new test to an established licensing regime is not straightforward. The bill already includes six sections relating to the fit-and-proper-person test. We have engaged with stakeholders and carefully studied the large volume of useful material that was submitted in response to the committee’s call for evidence, as well as following the discussions that took place in the committee and reading the committee’s stage 1 report. That material has raised a small number of concerns about the fit-and-proper-person test that could mean that it would not work as well as we had intended. I have therefore lodged amendments to address those concerns.

There were three areas of concern. The first was about the board’s ability to consider unsuitable associations as part of the fit-and-proper-person test. Secondly, there were concerns that requiring the automatic revocation of a premises licence in relation to the fit-and-proper-person test might discourage boards from taking action. Thirdly, concerns were raised about the ability of boards to consider conviction notices and reports by the chief constable as part of the fit-and-proper-person test for a new premises licence.

10:15

Amendment 38 seeks to amend the 2005 act on objections to and representations on premises licence applications. It is already open to any person to object to or make representations on a premises licence application. Amendment 38 clarifies that an objection to or representation concerning a premises licence application may include any information that the person who is making the objection or representation considers to be relevant to any of the grounds for refusal, including information about the applicant when they are neither an individual nor a council, a connected person in relation to the applicant, or any person who would be an interested party in relation to the premises if the application were to be granted. That will allow information to be provided that might be relevant to the board’s consideration of the fit-and-proper-person test. In particular, it will allow information to be provided about those who are associated with the applicant, not just the applicant.

Amendment 39 is a technical drafting amendment. Amendment 40 seeks to amend the 2005 act on the determination of premises licence applications by clarifying that, in its consideration of the fit-and-proper-person test, the board can take into account any conviction notice and antisocial behaviour report supplied to the board by the chief constable.

Amendment 41 is a technical drafting amendment supporting amendment 42, which seeks to amend the 2005 act on the transfer of a premises licence. The bill provides that, when considering a transfer application, the chief constable can provide the board with any information about the transferee and, when the transferee is neither an individual nor a council, about a connected person. Amendment 42 provides that the chief constable may also provide any information about anyone who would be an interested party to the transferee if the application for the transfer were to be granted. That would cover those who are already an interested party and who would continue to be an interested party if the transfer application were to be granted.

Amendment 44 seeks to amend the 2005 act on the application for a review of a premises licence, to provide that any person who makes a premises licence review application may include any information that they consider to be relevant,
including information about the licence holder, connected persons to the licence holder or interested parties to the licensed premises.

Amendment 45 is a technical drafting amendment. Amendment 46 seeks to insert a new subsection into the 2005 act on a review of a premises licence on a licensing board’s initiative. The 2005 act enables licensing boards to initiate a review of a premises licence, and amendment 46 clarifies that the review proposal may include information about the licence holder, connected persons to the licence holder or interested parties to the licensed premises.

Amendment 47 seeks to amend the 2005 act on a licensing board’s powers to review a premises licence. The bill provides for immediate revocation of a premises licence on the grounds that, having regard to the licensing objectives, the licence holder is not a fit-and-proper person to be the holder of a premises licence. However, concerns have been raised that without alternative disposals available to it, the board might be reluctant to find that a person is not fit and proper to hold a premises licence. I remain of the view that revocation is the correct option when a person is deemed not to be fit and proper to hold a premises licence. However, amendments 47 and 48 seek to address the concerns.

Amendment 47 provides that a revocation under the licensing board’s powers to review takes effect at the end of a period of 28 days beginning on the day on which the board makes the decision. That provides a short period of grace in which the licence holder may take action to address the problems that led to the board making the findings.

Amendment 48 inserts a new section into the 2005 act, which provides that when a licensing board has taken steps to revoke a premises licence on the ground that the licence holder is not a fit-and-proper person, the board must recall the revocation if the relevant application is made within that 28-day period and the board ultimately grants the relevant application.

Amendments 47 and 48 provide that when the licence has been revoked on the ground that the licence holder is not a fit-and-proper person, the licence holder has 28 days in which to arrange a transfer of the licence to another person or to propose a variation that would address the board’s concerns.

The amendments ensure that boards can take robust action when a licence holder is found not to be a fit-and-proper person and they offer reasonable traders the opportunity to take prompt action to address the board’s concerns and retain their licence. The changes will encourage boards to take appropriate action against those who are not fit and proper to hold a premises licence. I invite members to support the amendments.

I move amendment 38.

Amendment 38 agreed to.

Amendments 39 and 40 moved—[Michael Matheson] and agreed to.

Section 43, as amended, agreed to.

Section 44—Application to transfer premises licence: ground for refusal

Amendments 41 and 42 moved—[Michael Matheson] and agreed to.

The Convener: Amendment 43, in the name of the cabinet secretary, is grouped with amendments 49, 57, 75, 77 and 78.

Michael Matheson: These amendments amend the arrangements for the transfer of a premises licence in the alcohol licensing regime.

Stakeholders have criticised the current procedure for the transfer of a premises licence, in which it is the original holder of the premises licence who must apply for the transfer. Often the original holder of the premises licence may have moved on or may be unwilling to engage with the process, but there is someone keen to take on the business. In contrast, under the Gambling Act 2005, it is the person who wishes to take on the business who must apply for the transfer.

The Scottish Government is keen to improve procedure where it can, to reduce needless red tape and cumbersome procedures. As such, I have lodged these amendments to change the procedure for the transfer of a premises licence.

Amendment 49 is the main amendment, which sets out the proposed changes to the transfer procedures in the Licensing (Scotland) Act 2005. The changes provide that it is the person seeking to take on the premises licence who must apply for the transfer of the licence. When they do that, they should specify a date on which the transfer should take effect, provide the original premises licence, or a statement of reason as to why that is not practical, and a written statement signed by the holder of the premises licence consenting to the transfer, or a statement as to why that is not practical.

In addition, the board must take all reasonable steps to give notice of the transfer application to the original premises licence holder. That is a necessary protection against applicants submitting fraudulent consent letters or seeking to make a transfer without engaging with the original licence holder.

The board may decide to dispense with the requirement for the written consent of the original
premises licence holder if it is satisfied that the applicant has taken all reasonable steps to contact the original premises licence holder in order to obtain consent but has received no response. Where the board decides to dispense with the requirement for consent, it must hold a hearing to determine the application.

Amendments 43, 57, 75, 77 and 78 are consequential; they remove references to section 34 of the Licensing (Scotland) Act 2005 that are no longer needed as a result of the changes in amendment 49.

The amendments offer a transfer procedure that is more suited to the reality of business today but which has appropriate checks and balances to protect the interests of existing trade without imposing undue burdens on boards and clerking services.

I move amendment 43.
Amendment 43 agreed to.
Section 44, as amended, agreed to.

Section 45—Ground for review of premises licence

Amendments 44 to 48 moved—[Michael Matheson]—and agreed to.
Section 45, as amended, agreed to.
Sections 46 to 48 agreed to.

After section 48
Amendment 49 moved—[Michael Matheson]—and agreed to.
Sections 49 to 52 agreed to.

After section 52

The Convener: Amendment 86, in the name of Dr Richard Simpson, is in a group on its own.

Dr Simpson: Amendment 86 deals in essence with the question of advertising of alcohol. It does so mainly through inserting new sections 122A, 122C and 122D, which deal with, respectively, a ban on advertising near schools and matters affecting children; advertising within licensed premises; and advertising at sporting and cultural events.

The Nicholson review on licensing was established when I was justice minister, and it led to the Licensing (Scotland) Act 2005. It may be coincidence only, but the consumption of alcohol has been on a largely downward path since 2005. That may be due partly to the restriction on the display of alcohol to those areas that are licensed. Some members may remember when managers' special offers were stacked high at the entrance to stores and in the aisles.

Around the same time, Nicola Sturgeon, who was then a member of the Health and Community Care Committee, was endeavouring to curtail the advertising of tobacco. As she found, our powers in Scotland are limited in that respect, but I believe that we should seek to reduce the normalisation of alcohol in a similar manner to the way in which we did so for tobacco. Recent surveys have shown how successful that approach has been, with teenagers often unable to name tobacco brands that are familiar to all of us—even taking into account the various age groups of members, I think that we would all be aware of the brands.

This lengthy section seeks the further denormalisation of alcohol. It is underpinned by the World Health Organization strategy on alcohol, which they have termed as being no ordinary product. The WHO believes that children and teenagers

"who choose not to drink alcohol beverages have the right to be supported in their non-drinking behaviour and protected from pressures to drink."

The WHO strategy says that one of the 10 target areas for action should be the “marketing of alcoholic beverages”. The report recognises the need to reduce the impact of what are

“sophisticated advertising and promotion techniques”,
at least in respect of young people.

I appreciate that advertising restrictions in the United Kingdom aim to avoid direct impact on young people, but alcohol advertising is so prevalent that brand identity is established at a very early age. The restrictions that the amendment proposes are aimed at reducing young people’s exposure. It would ban alcohol advertising in the vicinity of schools, nurseries, crèches and play areas; within retail premises other than in areas that are licensed; and at sporting and cultural events that mainly involve, or are principally aimed at, under-18s.

10:30

The so-called loi Evin in France sets out clear definitions for alcoholic drinks and clear guidance on how the law is to be applied. It bans any advertising that is aimed at children and any advertising on television, in cinemas or at any sporting or cultural event, and it applies across the board. It is interesting that the predicted demise of sports that have been deprived of alcohol advertising in France has simply not occurred. It is also interesting that France, which had a severe alcohol problem in the 1980s and 1990s, as severe as ours was in 2005, has now moved back to the European Union average for alcohol
problems. That is an extremely significant improvement.

The restrictions that I propose will complement the voluntary arrangements of self-policing by the industry-funded Portman Group. The Portman Group has a code, but that does not apply to wholesalers or to retail-led promotional activities. The advertising standards are tested, I believe, on an almost daily basis by radical new promotion methods.

Specifically, amendment 186 would ban advertising within 200m of certain premises that are used by children—schools, nurseries, crèches and children’s play areas. The restrictions will apply to billboards, hoardings, bus shelters and advertisements in or on licensed premises, excepting displays that are primarily to be seen from inside the premises. Displays on A-boards, displays of cans and bottles in shop windows and offers outside shops, pubs and restaurants would all be banned. There would be an exemption for factual information displayed at pubs.

Premises that are used for other purposes, such as community halls where a nursery or crèche may be hosted on an occasional basis and open spaces that are not specifically intended for children but which may be used by children and families, would be exempt.

Currently, although the display of alcoholic products in licensed premises is limited, advertising is not. The amendment would restrict advertising to the licensed area.

As I have said, the loi Evin is a blanket ban on alcohol advertising at sporting and cultural events. Although that might be desirable from a public health standpoint, much of our sport is very reliant on alcohol advertising. A blanket ban may happen in time—and, putting on my hat as the psychiatrist in addictions that I was before becoming a politician, I hope that it will—but for now I have attempted the more modest but difficult task of restricting bans to venues where under-18s are the primary group to be involved in, or the audience to, sporting and cultural events. The restrictions will not apply to open-air or on-street activities. Cultural events were also difficult to define, but I believe that the balance is correct in the amendment.

The responses to my consultation ranged—as you might expect—from support for the full loi Evin approach to a preference for the status quo. The only response that surprised me was the one from the Advertising Standards Authority; it felt that there was no need for additional restrictions. The proposals in my bill were supported by 81 per cent of respondents. The BMA and Alcohol Focus Scotland are backing the amendment and the Law Society of Scotland was very positive in its consultation response.

I move amendment 86.

The Convener: No other members wish to enter the debate. I say once again that we took no evidence on this issue at stage 1. I call the cabinet secretary.

Michael Matheson: I am grateful to Dr Simpson for taking us through amendment 86 which, among other things, seeks to restrict the advertising of alcohol near premises that are used by children, to restrict advertising within licensed premises and to restrict alcohol licensing at certain sporting and cultural events.

I know that my colleague the Cabinet Secretary for Health and Wellbeing recently met Dr Simpson to discuss this matter, among other things. She agrees with me that there is a requirement to understand the evidence base and consult properly in relation to such important changes.

We know that young people are particularly vulnerable to the effects of alcohol, whether they are drinking themselves or are being affected by the drinking of other people in their lives. Over the past few years, the Scottish Government has taken action to make it harder for underage drinkers to gain access to alcohol. As the committee is aware, the bill also takes forward our commitment to make it an offence to supply alcohol to under-18s in a public place, which will give the police more powers to deal with the problem of underage drinking dens.

The provisions in amendment 86 are already a significant part of Dr Simpson’s recently introduced member’s bill, the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill. I understand that the Health and Sport Committee launched the call for evidence on that bill just last week.

The proposed restrictions on alcohol advertising would include making it an offence to display an alcohol advertisement

“within 200 metres … of a school, … premises used principally as a nursery or crèche, … outdoor premises designed or adapted … as a children’s play area”;

in retail premises containing an area that is licensed to sell alcohol for consumption off the premises, except inside that area; and within premises being used as the venue for a cultural event—other than a film—or sporting event where

“the majority of participants … are under 18, or … the intended audience for the event consists principally of persons under that age.”

Although I recognise the sentiment behind Richard Simpson’s amendment, I am concerned at the inclusion of these matters in the bill at stage 2.
These are important issues and the proposals are very significant changes to undertake at this stage. It is essential that they receive detailed scrutiny and consideration—including from stakeholders—to ensure, for example, that there are no unintended consequences.

The best place to consider Richard Simpson’s proposals in the detail that they deserve is as part of his member’s bill, which is presently before the Health and Sport Committee. For example, scrutiny could ensure that the scope of the offences is appropriately drawn. We may risk criminalising those entirely out with the alcohol licensing regime for an advertisement or piece of branding that they might have been barely aware of. It may be challenging for individuals and businesses to ensure that they do not commit the offences and it may be challenging for enforcement bodies to prosecute them. A one-off event would require the owner of premises to remove or cover up any branding and advertising or find themselves potentially liable for a criminal offence with a fine of up to £5,000.

Although I, too, would like to see further restrictions on the advertising of alcohol, I believe that such provisions should be subject to fuller and more detailed scrutiny than their consideration as part of this bill would allow. The proposed offences are already contained in Richard Simpson’s member’s bill. I strongly believe that it is only right that they should benefit from the full scrutiny of the bill process, which will be the case for the member’s bill, which is presently before the Health and Sport Committee. I therefore ask the committee to reject amendment 86.

Dr Simpson: I again thank the cabinet secretary for what must be his initial views, as the amendment was submitted only very recently. I concur with him that the proposals require fuller consultation. There are clearly concerns about criminalising individuals who may not be fully aware of the situation.

It is appropriate that we should reach a point at which alcohol advertising is covered up when children are present. It will not be easy, but no one ever said that this area of law would be easy.

It is essential that Parliament moves on the issue as soon as possible. There is now a call for evidence on my bill. I hope that, as this committee has considered licensing issues, it may wish to further consider my amendment and make representations to the Health and Sport Committee.

On that basis, and on the basis of the advice of the cabinet secretary, I would like to withdraw the amendment.

Amendment 86, by agreement, withdrawn.

Section 53 agreed to.

Section 54—Overprovision

The Convener: Amendment 82, in the name of Cameron Buchanan, is grouped with amendments 50 to 52.

Cameron Buchanan (Lothian) (Con): Amendment 82 seeks to remove section 54(2)(a), which would amend section 7(2) of the 2005 act to say that a licensing board “may determine that the whole of the Board’s area is a locality”.

That is far too restrictive, because it would allow one locality to be Edinburgh, for example, rather than Leith, where there is a problem.

Each licence application should be considered on its merits and should take into account, for example, social, economic and health-related factors. As it stands, section 54(2)(a) will allow licensing boards to operate a presumption against granting licences over a wide area, particularly in cities. That would be anti-competitive and unfair to new retailers. There is no evidence that, if there is another supermarket in a city, people drink more. Section 54(2)(a) would have a detrimental impact on economic investment.

I move amendment 82.

Michael Matheson: I am grateful for Mr Buchanan’s comments on his amendment. Overprovision is a valuable tool by which a licensing board can prevent new licensed premises from opening in areas where it considers that that would cause an overcapacity of licensed premises. That can be useful from a public order perspective, in that disorderly behaviour, noise and other nuisances can be linked to areas where there is a high density of outlets selling alcohol. One example of that is disturbances at pub closing time. The tool is also useful from a public health perspective, in that easy access to alcohol can be associated with increased levels of alcohol-related harm.

Amendment 82 would remove the provision that clarifies that a licensing board is entitled to treat as a locality the board’s whole area when considering whether there is overprovision. That provision was supported by the committee in its stage 1 report.

It is important that the overprovision assessment is an effective and robust tool for licensing boards. Public health data may well be available only on a whole board basis, so it is important that boards can determine that there is overprovision across the board area. If we accepted amendment 82 and removed the provision that clarifies that licensing boards can class their entire board area as a single locality, we would risk undermining the work of licensing boards in assessing overprovision.
They might be unable to rely on important population health data that is not available for small areas. I therefore ask the committee not to agree to amendment 82.

On Government amendments 50 to 52, the bill as introduced clarified that, in assessing overprovision, increased capacity may be considered separately from an increase in the number of licensed premises, and opening hours can also be considered. The rationale for that was that, even if there were no increase in the total number of alcohol outlets, the overprovision assessment would be relevant if existing premises attempted to increase their capacity and/or opening hours.

However, following the bill’s publication, various stakeholders, including licensing board clerks and Alcohol Focus Scotland, expressed concerns about the drafting. Stakeholders were particularly concerned about the substitution of what was formerly a “must” consider with a “may” consider. Stakeholders have emphasised that the level of alcohol availability in terms of the number and capacity of licensed premises in a given locality is such important evidence for a licensing board when it considers overprovision that it needs to be retained as a mandatory consideration for a board.

After consideration of the feedback received, we agree that it is more appropriate to retain the 2005 act’s original wording, to the effect that a licensing board “must ... have regard to the number and capacity of licensed premises in the locality” and, as amendment 50 states, that a licensing board “may have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality”.

Amendment 50 will therefore reinstate the mandatory consideration by licensing boards, when they consider overprovision, of the number and capacity of licensed premises in a locality, while making optional the consideration of such matters as the board considers appropriate, including the licensed hours of licensed premises in the locality.

Amendments 51 and 52 will remove references in the 2005 act to what should be considered regarding overprovision as a ground of refusal when a licensing board is determining a premises licence application or an application for variation. The removal of those references will mean that licensing boards could refuse an application if they regarded that there would be overprovision were the application to be granted. I emphasise to the committee that we are not suggesting that numbers, capacity and licensed hours—among other things—are no longer relevant; rather, we merely suggest taking a slightly different approach to ensure consistency across the legislation.

I hope that the committee will support my amendments, which will ensure consistency in the definition of overprovision. I ask the committee to reject amendment 82 and invite members to support amendments 50 to 52.

Cameron Buchanan: I am disappointed that the cabinet secretary does not think that the restriction is too much. It will have a detrimental effect on economic development. It is important that we do not treat big cities as one area but that we treat them as areas made up of small localities. That would also give wider consumer choice. If expansion of the overprovision definition is allowed to restrict competition in detail, consumers will face less choice when shopping for goods and, therefore, higher prices.

I press amendment 82.

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 82 disagreed to.

Amendments 50 to 52 moved—[Michael Matheson]—and agreed to.

Section 54, as amended, agreed to.

Amendment 87, in the name of John Wilson, is grouped with amendments 88 to 90.

John Wilson (Central Scotland) (Ind): I put on record my appreciation to Alcohol Focus Scotland for its suggestions on amendment 87. The amendment would insert a proposed new section 9B in the 2005 act, on licensing boards’ annual reporting on the exercise of functions.

If we want increased accountability of and transparency from boards, some form of annual reporting mechanism should be put in place, so
that not only the licensed trade and elected members of health boards and the Scottish Government but the public are aware of licensing boards’ actions in the preceding year from seeing in annual reports what work licensing boards have undertaken. Amendment 87 suggests a number of issues that should be in the annual report, but they are not exclusive. The amendment would leave it open for the Scottish Government to state what further information it might deem relevant for boards to include in the reports.

The amendments in the group would ensure that we got the mix right in terms of the public’s look at what is happening in licensing. We have heard in the debates that have taken place in the committee that the public often feel excluded, that boards’ decisions are made in mysterious rooms and that the public are not fully consulted on, or aware of, the changes that are taking place or the decisions that are made.

Including in the bill a provision on an annual report would provide an opportunity to ensure that the public have more confidence in boards’ decision-making processes and that licensing boards’ data is placed in one document. It is suggested that that document or report be produced three months after the end of the financial year. However, amendment 87 also says that the Scottish Government could amend that timeframe so that boards could report later if they had particular issues.

What is crucial is getting an annual report prepared, produced and placed in the public domain that the public can understand and relate to. The other amendments in the group are consequential to amendment 87.

I move amendment 87.

Michael Matheson: I am grateful to Mr Wilson for lodging the amendments and I am certainly sympathetic to the views that he expressed on an annual report; I am also mindful of the views that the committee expressed in its stage 1 report. However, I am sure that committee members recognise that licensing boards are already under a substantial requirement to report on a range of areas, which places a significant burden on them. For example, they are obliged to prepare a licensing policy statement, an overprovision assessment and an annual report on key statistics to the Scottish Government, and to maintain a public register of key information. The public register must contain information in relation to premises, personal and occasional licences, and the decisions that have been taken about applications.

I believe that there is merit in moving towards licensing boards producing an annual report, and the Government intends to oversee the introduction of such an annual report. Before we do that, I wish to engage with stakeholders—particularly local authorities and those responsible for licensing boards—on the existing reporting requirements in order to consider what areas of reporting can be reduced or included in the annual report.

I therefore ask Mr Wilson to withdraw amendment 87 with a view to—

The Convener: Will you take an intervention, please? Will you indicate the timescale for the consultation and reporting back? The committee has a great interest in this area.

Michael Matheson: As I was just about to say, I ask Mr Wilson to withdraw his amendment with a view to a suitable stage 3 amendment being drafted that will be informed by engagement with stakeholders.

Alex Rowley (Cowdenbeath) (Lab): Does the minister accept that there needs to be more openness and transparency in engaging with the public in the licensing process so that they get a better understanding and perhaps more involvement in that process?

Michael Matheson: There is great merit in that. We need to manage that against the burden that is placed on licensing boards in undertaking reporting. That is why I want to consider with them the appropriate measures to put in place as part of annual reporting so that there is greater transparency and local licensing boards can manage that in a reasonable way.

I would be happy to work with Mr Wilson with a view to drafting a suitable stage 3 amendment that is informed by the discussion that we have with stakeholders before the stage 3 process.

John Wilson: I am grateful for the cabinet secretary’s comments on the issues that amendment 87 has raised, and I look forward to working with him and his officials to lodge a suitable stage 3 amendment. If the Scottish Government does not lodge a suitable amendment at stage 3, I reserve the right to press similar amendments. I will withdraw amendment 87 on the proviso that suitable amendments will be lodged at stage 3.

Amendment 87, by agreement, withdrawn.

Amendments 88 to 90 not moved.

Section 55 agreed to.

After section 55

The Convener: Amendment 53, in the name of the cabinet secretary, is grouped with amendment 54.
Amendments 53 and 54 provide licensing standards officers with the power to report the conduct of both applicants and personal licence holders to a licensing board.

Licensing standards officers are considered to be one of the successes of the 2005 act. Amendment 53 creates a new general function for licensing standards officers of being able to provide information to licensing boards about any conduct of personal licence holders or applicants for a personal licence that they consider to be inconsistent with the licensing objectives.

Section 46 already requires a board to provide a copy of a new personal licence application to the licensing standards officer and enables him or her to provide information that he or she considers to be appropriate for the board. Amendment 53 strengthens that by making it clear that such information may include details of inconsistent conduct. In our opinion, the creation of that new general function can only improve the effectiveness of licensing standards officers.

Amendment 54 provides licensing standards officers with a new power to report to a licensing board conduct of any personal licence holder that they consider to be inconsistent with the licensing objectives. Currently, if a licensing standards officer finds a holder of a personal licence to be acting or to have acted in a manner that is inconsistent with the licensing objectives, the only route to make the appropriate licensing board aware is through a premises licence review application under the Licensing (Scotland) Act 2005. The feedback that we have received from stakeholders is that that requirement to seek a premises licence review is overly cumbersome. Therefore, providing licensing standards officers with the power to report conduct directly to the licensing board will ease the process and improve the effectiveness of the system.

I invite members to support amendments 53 and 54.

Amendment 53 agreed to.

Amendment 54 moved—[Michael Matheson]—and agreed to.

Section 56 agreed to.

Section 57—Personal licences: grant, duration and renewal

The Convener: Amendment 83, in the name of Cameron Buchanan, is grouped with amendments 84, 55, 56, 80 and 81.

Cameron Buchanan: Amendment 83 is technical, and relates to amendment 84, which seeks to reduce the time for which someone who has had their licence revoked for any reason has to wait to reapply, from five years to three years. The amendment relates in many ways to amendments 53 and 54. I welcome the provision that will exclude revocations under section 87(3) of the 2005 act from the five-year rule, which is a sensible recognition of how disproportionate the rule is when directed at licence holders who have not met all the training requirements.

I believe that the amendment of the 2005 act in that respect should go further. Five years is a very long time to be automatically considered unfit to be licensed without the opportunity to demonstrate otherwise. Whether people who have had their licence revoked remain unfit to hold a new licence should be for the licensing board to determine, rather than for the Scottish Government.

I move amendment 83.

Michael Matheson: I am grateful for amendments 83 and 84, which were lodged by Cameron Buchanan. They relate to the personal licence, which is a key feature of the alcohol licensing regime. A personal licence is required to supervise or authorise the sale of alcohol. It is therefore important that only appropriate people hold a personal licence.

Currently, in cases where a personal licence is revoked, the person is barred for five years from applying for a new personal licence. We have already agreed that that five-year ban is not appropriate where a personal licence is revoked simply for failure to render a certificate of refresher training. However, the remaining grounds for revocation are serious, and boards do not lightly undertake the revocation of a personal licence. Accordingly, I do not believe that it would be appropriate to reduce the ban to three years, and I therefore ask Mr Buchanan not to press amendments 83 and 84.

I turn to Government amendments 55, 56, 80 and 81. Amendments 55 and 56 will remove an apparent anomaly in the Licensing (Scotland) Act 2005 that would have rendered the process for the renewal of a personal licence after 10 years problematic. The matter was highlighted recently by licensing stakeholders, who raised concerns about the current procedures for the renewal of a personal licence prior to its expiry 10 years after being issued. The renewal process allows the licensing board to ensure that the holder of a personal licence is an appropriate person to hold that licence, and it applies the same requirements in relation to notification and determination as for the original personal licence application.
One requirement in relation to the granting of an initial personal licence application is that the applicant must not already hold a personal licence. That serves a useful purpose: it stops people from holding a back-up licence just in case one is revoked. However, that requirement is clearly not appropriate when it comes to the renewal of a personal licence, when someone will, quite rightly, already hold a personal licence. Amendment 56 removes the requirement that an applicant for the renewal of a personal licence must not already hold a personal licence. That will ensure that the renewal process starting in 2019 operates smoothly. Amendment 55 simply allows for the renumbering of subsections of the bill to accommodate amendment 56.

Amendments 80 and 81 will bring into force on the day following royal assent the provisions of the bill that remove the current five-year restriction on reapplying for a personal licence that has been revoked due to the failure of the applicant to supply the appropriate evidence of having undergone refresher training. As committee members know, the 2005 act requires that personal licence holders should undertake refresher training every five years. That is why updated personal licence refresher training courses were made available from the middle of 2013, to ensure that licence holders had sufficient time to sit the refresher course and submit proof to the relevant licensing board. Nearly 30,000 personal licence holders undertook the training.

However, it is also known that, unfortunately, a number of personal licence holders failed to complete training or to submit the relevant certificates by the deadline when they were due. As I mentioned when I discussed Mr Buchanan’s amendments 83 and 84, the 2005 act is clear that, in such circumstances, the personal licence should be revoked. Under current legislation such a revocation would mean that an individual could not reapply for another personal licence for five years. We share the concerns that revoking a personal licence for five years for what might be an oversight or an administrative failing may be considered excessive. That is why the bill already looks to amend the relevant provisions.

I am sure that we will all agree that it is important that the new provisions are commenced as quickly as possible once the bill has completed its process through Parliament. Amendments 80 and 81 will do exactly that. I envisage that, once the provisions are commenced, anyone who has had their licence revoked for failure to timeously submit evidence of their refresher training would be eligible immediately to apply for a new personal licence, provided that they meet the other requirements.

This change has been much called for, and I trust that the committee will support the amendments. I therefore ask Mr Buchanan not to press amendment 83, not to move amendment 84 and to support amendments 55, 56, 80 and 81.

**Cameron Buchanan:** In view of what Mr Matheson has said, which I believe is very opportune, I seek to withdraw amendment 83.

Amendment 83, by agreement, withdrawn.

Amendment 84 not moved.

Amendments 55 and 56 moved—[Michael Matheson]—and agreed to.

Section 57, as amended, agreed to.

**Section 58—Processing and deemed grant of applications**

Amendment 57 moved—[Michael Matheson]—and agreed to.

Section 58, as amended, agreed to.

Section 59 agreed to.

**The Convener:** That ends consideration of amendments for today. Members still have 52 minutes to lodge amendments for consideration next week.

I thank everyone for their participation. Our next meeting is on Wednesday 27 May, when we will consider part 3 of the bill on civic licensing provisions and possibly the general provisions in part 4.

*Meeting closed at 11:08.*
Air Weapons and Licensing (Scotland) Bill

3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 and 2 Schedule 1
Sections 3 to 77 Schedule 2
Sections 78 and 79 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Before section 60

Colin Keir

Before section 60, insert—

<License of booking systems

(1) Article 2 of the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 (SSI 2009/145) is amended as follows.

(2) In paragraph (2), the words from “premises” to the end of the paragraph become sub-paragraph (a).

(3) At the end of paragraph (2) insert—

“(b) any electronic application or other communication systems for the taking of bookings from members of the public for the hire of a relevant vehicle.”.

(4) The title of article 2 becomes “Licensing of booking premises and systems”.

Cara Hilton

Before section 60, insert—

<Licensing of premises deemed to be used as booking offices

(1) Article 2 of the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 (SSI 2009/145) is amended as follows.

(2) In paragraph (2), after “use” insert “or deemed use (under paragraph (2A))”.

(3) After paragraph (2) insert—

“(2A) For the purpose of paragraph (2), a business referred to in that paragraph—

(a) is deemed to use, for the activity referred to in that paragraph, premises in each local authority area in which the relevant vehicles operate, and

(b) must nominate premises in each such local authority area.”.
Section 60

Colin Keir

94 In section 60, page 35, line 21, at end insert—

<(3D) The Scottish Ministers must by regulations prescribe the methodology to be used by licensing authorities to assess the demand for private car hire services for the purposes of subsection (3C).>

<(3E) Regulations under subsection (3D) are subject to the negative procedure.”.>

Cameron Buchanan

91 Leave out section 60

Section 61

Cameron Buchanan

92 Leave out section 61

Before section 63

Michael Matheson

58 Before section 63, insert—

<Penalties for failure to have appropriate licence or comply with conditions>

In section 7 of the 1982 Act (offences etc.)—

(a) in subsection (1)(a), after “is” insert “a metal dealer’s licence, an itinerant metal dealer’s licence or”,

(b) in subsection (2)—

(i) the word “and” immediately following paragraph (aa) is repealed,

(ii) after paragraph (aa) insert—

“(ab) in a case where the licence is a metal dealer’s licence or an itinerant metal dealer’s licence, to such fine or imprisonment as is mentioned in subsection (1)(a) (or to both), and”.

Section 65

Michael Matheson

59 In section 65, page 36, line 21, leave out <an> and insert <a bank or building society>

Michael Matheson

60 In section 65, page 37, line 6, after <section> insert <33AA or>
Acceptable forms of payment: meaning of “bank or building society account”

(1) In section 33A(2)(b), “bank or building society account” means an account held with a bank or a building society.

(2) For the purposes of subsections (1) and (4)—

(a) “bank” means an authorised deposit-taker that has its head office or a branch in the United Kingdom, and

(b) “building society” has the same meaning as in the Building Societies Act 1986.

(3) In subsection (2)(a), “authorised deposit-taker” means—

(a) a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 (but see subsection (4) for exclusions),

(b) an EEA firm of the kind mention in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule).

(4) The reference in subsection (3)(a) to a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 does not include—

(a) a building society,

(b) a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)),

(c) a friendly society within the meaning given by section 116 of the Friendly Societies Act 1992, or

(d) an insurance company within the meaning of section 275 of the Finance Act 2004.”.

Section 66

In section 66, page 38, leave out line 5

In section 66, page 38, line 25, after <regulations> insert—

( ) specify the means by which a person’s name and address may be verified for the purposes of this section,

( )>
After section 66

Michael Matheson

64 After section 66, insert—

<Register of dealers in metal

After section 35 of the 1982 Act, insert—

“35A Register of metal dealers and itinerant metal dealers

(1) The Scottish Ministers may by regulations make provision for and about the establishment, keeping and maintaining of a register of metal dealers and itinerant metal dealers.

(2) Regulations under subsection (1) may, in particular, make provision—

(a) about who is to keep and maintain the register,
(b) requiring the provision of information to the person who keeps the register,
(c) specifying the information to be included in the register in relation to each person who holds a licence as a metal dealer or itinerant metal dealer,
(d) about the form and publication of the register,
(e) for the charging of fees in such circumstances as may be specified in the regulations.

(3) Regulations under subsection (1) may—

(a) make incidental, supplementary, consequential, transitional, transitory or saving provision,
(b) modify this or any other enactment.

(4) Regulations under subsection (1) which contain provision which adds to, replaces, or omits any part of an Act are subject to the affirmative procedure.

(5) Otherwise, regulations under subsection (1) are subject to the negative procedure.”>

Michael Matheson

65 After section 66, insert—

<Interpretation of provisions relating to metal dealers etc.

(1) Section 37 of the 1982 Act (interpretation of sections 28 to 36) is amended as follows.

(2) In subsection (1), for the definition of “itinerant metal dealer” substitute—

“itinerant metal dealer” means a person who—

(a) carries on a business which consists wholly or substantially of buying or selling for scrap—

(i) metal articles that are old, broken, worn out or defaced, or
(ii) partly manufactured articles that are made wholly or partly from metal,
(b) collects articles of the kind described in paragraph (a)(i) and (ii) by means of visits from place to place, and
(c) disposes of such articles without causing them to be kept in a metal store or other premises (including by disposing or giving custody of the articles to a person who keeps a metal store)."

(3) For subsection (2) substitute—

“(2) For the purposes of sections 28 to 36, a person carries on business as a metal dealer if the person—

(a) carries on a business which consists wholly or substantially of buying or selling for scrap—
   (i) metal articles that are old, broken, worn out or defaced, or
   (ii) partly manufactured articles that are made wholly or partly from metal, or
(b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).

(3) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists who lly or substantially of—

(a) recovering salvageable parts from motor vehicles for re-use or sale and selling or disposing of the rest of the vehicle for scrap,
(b) buying significantly damaged motor vehicles and subsequently repairing and reselling them, or
(c) buying or selling motor vehicles which are to be the subject (whether immediately or upon a subsequent resale) of any of the activities mentioned in paragraphs (a) and (b).”.

Michael Matheson

66 After section 66, insert—

<Exemptions from requirements of sections 28 to 37 of 1982 Act
After section 37 of the 1982 Act insert—

“37A Exemptions

(1) The Scottish Ministers may by regulations make provision specifying circumstances in which the provisions of sections 28 to 37 are not to apply.

(2) Regulations under subsection (1)—
   (a) may make transitional, transitory or saving provision,
   (b) are subject to the negative procedure.”.
After section 67

Michael Matheson

67 After section 67, insert—

<<Restriction of exemption from requirement for public entertainment licence
In section 41(2) of the 1982 Act (places not requiring public entertainment licences), in paragraph (f), for the words from “licensed” where first occurring to “(asp 16)” substitute “premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect” >>

Richard Lyle
Supported by: David Torrance

68 After section 67, insert—

<<Public entertainment licenses: exemption for funfairs
In section 41 of the 1982 Act (public entertainment licenses), after subsection (2)(aa) insert—

“(ab) premises used for the purpose of a funfair;” >>

Section 68

Cara Hilton

95 In section 68, page 42, line 28, at end insert—

<< ( ) A notice under subsection (4) must include a statement of their policy with respect to the exercise of their functions under this Act in relation to sexual entertainment venues, including in particular an assessment of how such exercise will contribute to their commitments to address violence against women. >>

Cara Hilton

96 In section 68, page 43, line 32, leave out from beginning to <provided.”>, in line 5 on page 44

Cara Hilton

97 In section 68, page 44, line 10, at end insert—

<< ( ) In paragraph 7 of Schedule 2 (notice to be given of application), after sub-paragraph (2) insert—

“(2A) The applicant shall in addition send notice to any organisation specified by the local authority, being—

(a) a local violence against women partnership operating in the authority’s area,

(b) such other body as appears to the authority to have a function similar to that of a local violence against women partnership.” >>
Section 69

Michael Matheson

69 In section 69, page 44, line 39, after <suspension> insert <and revocation>

After section 69

Michael Matheson

70 After section 69, insert—

<Revocation of Part 2 licences>

(1) The 1982 Act is amended as follows.
(2) In section 5 (rights of entry and inspection), in subsection (2)(a)(ii), after “suspended” insert “or revoked”.
(3) In Schedule 1 (licensing: further provisions as to the general system)—

(a) the italic heading preceding paragraph 10 becomes “Variation, suspension and revocation of licences”,
(b) in paragraph 11—

(i) in sub-paragraph (1), after “suspend” insert “or revoke”,
(ii) in sub-paragraph (2), after “suspension” insert “or revocation”,
(iii) in sub-paragraph (4), after “suspend” insert “or revoke”,
(iv) in sub-paragraph (6), after “order” insert “to suspend a licence”,
(v) in sub-paragraph (7), after “suspend” insert “or revoke”,
(vi) in sub-paragraph (8), after “suspension” insert “or revocation”,
(vii) in sub-paragraph (9)—

(A) after “suspension” where first occurring insert “or revocation”,
(B) after each subsequent occurrence of “suspension” insert “or, as the case may be, revocation”,
(viii) in sub-paragraph (10), after “suspension” where first occurring insert “or revocation”,
(c) in paragraph 12(5)(b), after “suspend” insert “or revoke”,
(d) in paragraph 13—

(i) in sub-paragraph (2)(a), after “suspend” insert “, revoke”,
(ii) in sub-paragraph (3), after “suspending” insert “or revoking”,
(iii) in sub-paragraph (4), after “suspension” where first occurring insert “or revocation”,
(e) in paragraph 14(2)(b), after “terms,” insert “revocation”,
(f) in paragraph 17, in sub-paragraph (1)(d), before paragraph (i) insert—

“(ai) to revoke a licence or to refuse to do so,”.
(g) in paragraph 18(10)—

(i) after “suspension” where first occurring insert “or revocation”,

7
(ii) the words “above that the suspension be immediate” are repealed.

Section 71

Michael Matheson

71 In section 71, page 48, line 10, at beginning insert <in paragraph (a),>

After section 71

Michael Matheson

72 After section 71, insert—

<Conditions for Part 3 licences: displays or advertising>

In paragraph 9(2) of Schedule 2 to the 1982 Act (examples of conditions which may be imposed in relation to Part 3 licences), in paragraph (b), after “on or in” insert “or otherwise connected with”.

Cara Hilton

98 After section 71, insert—

<Conditions for Part 3 licences: displays or advertising>

(1) Paragraph 9 of Schedule 2 to the 1982 Act (disposal of applications for licences) is amended as follows.

(2) In paragraph 9(1)—

(a) in sub-paragraph (1)(a), for “unconditionally” substitute “subject to conditions under sub-paragraph (1A) relating to displays or advertising”,

(b) in sub-paragraph (1)(b), for “conditions” substitute “such other conditions as the authority think fit”.

(3) After paragraph 9(1) insert—

“(1A) The conditions referred to in sub-paragraph (1)(a) above shall be conditions regulating displays or advertising on or in or otherwise connected with such shops.”.

(4) In paragraph 9(2)—

(a) before “conditions” where it first occurs insert “other”,

(b) for “(1)” substitute “(1)(b)”,

(c) sub-paragraph (2)(b) is repealed.

Schedule 2

Michael Matheson

73 In schedule 2, page 61, line 26, at end insert—

<( ) In Schedule 4 (particulars to be entered by firearms dealer in register of transactions)—

(a) in Part 1, in the note, after “2” insert “or 3”,

(b) in Part 2, for the note substitute—
“Notes:
This Part does not apply in relation to Scotland.
In this Part “air weapon” includes any component of, or accessory to, an air weapon.”,
(c) the heading of Part 2 becomes—
“PARTICULARS RELATING TO AIR WEAPONS: ENGLAND AND WALES”,
(d) after that Part insert—
“PART 3
PARTICULARS RELATING TO AIR WEAPONS: SCOTLAND
Notes:
This Part applies in relation to Scotland.
In this Part “air weapon” includes any component of, or accessory to, an air weapon.

1 The quantities and description of air weapons manufactured and the dates of manufacture.
2 The quantities and description of air weapons purchased or acquired with the names and addresses of the sellers or transferors and the date of each transaction.
3 The quantities and description of air weapons accepted for sale, repair, testing, cleaning, storage, destruction, or any other purposes, with the names and addresses of the transferors and the date of each transaction.
4 The quantities and description of air weapons sold or transferred with the names and addresses of the purchasers or transferees and the date of each transaction.
5 The quantities and description of air weapons in possession for sale or transfer at the date of the last stocktaking or such other date in each year as may be specified in the register.”.

Michael Matheson

74 In schedule 2, page 61, line 37, at end insert—

<Criminal Procedure (Scotland) Act 1995

In Schedule 9 to the Criminal Procedure (Scotland) Act 1995 (certificates as to proof of certain routine matters), at the end of the table insert—

| “The Air Weapons and Licensing (Scotland) Act 2015 | A constable or a person employed by the Scottish Police Authority, if the constable or person is authorised to do so by the chief constable of the Police Service of Scotland. | In relation to a person identified in the certificate, that on the date specified in the certificate the person held, or as the case may be, did not hold, an air weapon certificate (within the meaning of Part 1 of that Act).” |

9
Michael Matheson

75 In schedule 2, page 62, line 7, at end insert—
   <( ) In section 28(2) (period of effect of premises licence), for “34(1)” substitute “33(1)”.
>

Michael Matheson

76 In schedule 2, page 62, line 7, at end insert—
   <( ) In section 29(4) (application to vary premises licence), for “and 22” substitute “, 22 and 24A”.
>

Michael Matheson

77 In schedule 2, page 62, line 7, at end insert—
   <( ) In section 35 (variation on transfer), in each of subsections (1) and (3)(b), the words “or 34(1)” are repealed.
>

Michael Matheson

78 In schedule 2, page 62, line 12, at end insert—
   <( ) In section 49(1)(c) (Licensing Board’s duty to update premises licence), the words “or 34(1)” are repealed.
>

Michael Matheson

79 In schedule 2, page 62, line 12, at end insert—
   <( ) In section 57 (notification of occasional licence application to chief constable and Licensing Standards officer), in subsection (5)—
      (a) for “Subsections (2) and (3) have” substitute “Subsection (3) has”,
      (b) for “references” where first occurring substitute “reference”,
      (c) for “references” where second occurring substitute “a reference”.
>

Section 78

Michael Matheson

80 In section 78, page 54, line 19, at beginning insert <Section 57(1) and (2) and>

Michael Matheson

81 In section 78, page 54, line 19, leave out <comes> and insert <come>
3rd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the third day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Licensing of booking systems**
93, 99

**Refusal to grant private hire car licences on grounds of overprovision**
94, 91

**Testing of private hire car drivers**
92

**Metal dealers: increase in penalties**
58

**Metal dealers: forms of payment**
59, 60, 61

**Metal dealers: records**
62, 63

**Register of metal dealers**
64

**Metal dealers: definitions**
65

**Metal dealers: exemptions**
66

**Restriction of exemption from requirement for public entertainment licences**
67
Public entertainment licences: exemption for funfairs
68

Exercise of local authority functions in relation to sexual entertainment venues:
policy statement
95

Employment of persons under 18 at sexual entertainment venues
96

Notice of application for sexual entertainment venue licence (or renewal)
97

Revocation of licences under the 1982 Act
69, 70

Minor and technical amendments
71, 76, 79

Sex shops and sexual entertainment venues: displays or advertising
72, 98

Register of transactions
73

Certificates as to proof of routine matters
74

Amendments already debated

Transfer of premises licence
With 43 – 75, 77, 78

Personal licences
With 83 – 80, 81
Local Government and Regeneration Committee

Extract from the Minutes

16th Meeting, 2015 (Session 4)

Wednesday 27 May 2015

Present:
Clare Adamson
Willie Coffey
Alex Rowley
John Wilson (Deputy Convener)

Also present: Michael Matheson, Cabinet Secretary for Justice, Colin Keir and Richard Lyle.

Air Weapons and Licensing (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 3).

The following amendments were agreed to (without division): 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81.

The following amendments were disagreed to (by division)—
91 (For 1, Against 6, Abstentions 0)
92 (For 1, Against 6, Abstentions 0)
96 (For 3, Against 3, Abstentions 1; amendment disagreed to on casting vote).

The following amendments were moved and, no member having objected, withdrawn: 93, 94, 68, 95 and 97.

The following amendments were not moved: 99 and 98.

The following provisions were agreed to without amendment: sections 60, 61, 62, 63, 64, 67, 68, 70, 72, 73, 74, 75, 76, 77 and 79, and the long title.

The following provisions were agreed to as amended: sections 65, 66, 69, and 71, schedule 2 and section 78.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament
Local Government and Regeneration Committee

Wednesday 27 May 2015

[The Convener opened the meeting at 10:00]
Air Weapons and Licensing (Scotland) Bill: Stage 2

10:01

The Convener: Agenda item 3, which is our main item of business, is our third and final day of stage 2 consideration of the Air Weapons and Licensing (Scotland) Bill. I welcome back Michael Matheson MSP, the Cabinet Secretary for Justice. I also welcome Colin Keir MSP, who is here to speak to amendments in his name. Later in the meeting, we will be joined by Richard Lyle MSP, who may speak in support of Richard Lyle's amendment.

Today, we will consider the remainder of the bill, from section 60 to section 79, and all amendments to those sections. That covers part 3 of the bill, on civil licensing provisions, and part 4, on general licensing.

Before we move on to consideration of amendments, it would be helpful if I set out the procedure for stage 2 consideration. Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments that was published on Monday and the groupings of amendments, which sets out the amendments in the order in which they will be debated. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in each group to speak to and move their amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate by catching my attention in the usual way.

If the cabinet secretary has not already spoken on the group, I will invite him to contribute to the debate just before I move to the winding-up speech. As with a debate in the chamber, the member who is winding up on a group may take interventions from other members if they wish. The debate on each group will be concluded by me inviting the member who moved the first amendment in the group to wind up. Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press their amendment to a vote or to withdraw it. If they wish to press ahead, I will put the question on that amendment.

If a member wishes to withdraw their amendment when I call it, they should say, "Not moved." Please remember that any other MSP may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote at stage 2. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote. The committee is required to indicate formally that it has considered and agreed each section of the bill, so I will put a question on each section at the appropriate point.

It is expected that the committee will conclude its stage 2 consideration of the bill at this meeting.

Before section 60

The Convener: Amendment 93, in the name of Colin Keir, is grouped with amendment 99.

Colin Keir (Edinburgh Western) (SNP): Thank you for your welcome, convener. Amendment 93 is a probing amendment that takes cognisance of modern technology. When the Civic Government (Scotland) Act 1982 was written, no one would have heard of apps on mobile phones with a direct link to customers that is totally computerised and not recorded locally. Although many locally licensed taxi and private hire car operators now use apps, the advent of multinational companies with no licensed local booking office could well make local conditions that are set by licensing authorities redundant or difficult to enforce. That worry is shared by the Scottish Taxi Federation. Local conditions are focused on the safety and comfort of passengers. Amendment 93 might help to ensure that multinationals realise that such local conditions, including booking office conditions, are a legal nicety that they have to observe.

Shall I speak to my second amendment?

The Convener: You should speak to both, please.

Colin Keir: It is another probing amendment, to section 60. It would bring clarification for local licensing authorities—

The Convener: I think that you have understood me wrongly. At the moment, you are speaking only to amendment 93 and amendment 99, if you wish.

Colin Keir: I see—I beg your pardon. I am speaking only to amendment 93. The other amendment in my name is amendment 94.

I move amendment 93.

The Convener: We will come to amendment 94 later.
Cara Hilton (Dunfermline) (Lab): Amendment 99 is designed to ensure that taxi operators are required to have an office in the local authority area in which they are licensed and in which they operate. During the committee’s evidence sessions, we heard a lot of concern from the Scottish Taxi Federation and taxi drivers about the impact of operators such as Uber, which can operate without a licensed premises and might be able to bypass local licensing regimes. Amendment 99 would tighten up the bill to ensure that it reflects the changing nature of the taxi and private hire car industry. It would ensure that companies cannot bypass local licensing regimes and undercut taxi drivers and private hire car companies. In essence, it is about creating a level playing field and ensuring a fairer deal for all in the sector.

The Cabinet Secretary for Justice (Michael Matheson): I am grateful for the amendments that have been lodged by Colin Keir and Cara Hilton. I share their concerns that the current booking office regime that is provided for in the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 should be examined again to ensure that it regulates the subject matter effectively.

The stage 1 evidence sessions discussed the need to reflect in legislation developments in modern technology. I have provided an undertaking that we will examine and review the existing legislation to ensure that it operates as effectively as possible. Scottish Government officials have already discussed the growing concerns on the issue in a meeting of stakeholders back in August 2014. A follow-up meeting that is scheduled for Wednesday 3 June will bring together representatives from the police, licensing authorities, academics and the trade, including Bill McIntosh of the Scottish Taxi Federation.

I realise that Colin Keir and Cara Hilton want to ensure that the 2009 order works as effectively as possible. However, I am concerned that, by making an amendment via primary legislation, and then updating the secondary legislation to deal with other issues that may arise in further meetings with stakeholders, we will create confusion and possibly introduce delays. Those delays can be avoided by dealing with everything at the same time as part of a comprehensive package that has had the benefit of full and considered stakeholder engagement.

I therefore ask Colin Keir to withdraw his amendment and Cara Hilton not to move hers, on the basis that the Scottish Government is already engaged with stakeholders on the issue and is committed to updating the relevant secondary legislation. We will keep the committee advised on progress that we make on the issue.

Colin Keir: Thank you, cabinet secretary—I found that incredibly interesting. I have a degree of sympathy with Cara Hilton’s amendment 99. However, having listened to the cabinet secretary, I seek to withdraw amendment 93.

Amendment 93, by agreement, withdrawn.
Amendment 99 not moved.

Section 60—Refusal to grant private hire car licences on grounds of overprovision

The Convener: Amendment 94, in the name of Colin Keir, is grouped with amendment 91.

Colin Keir: Amendment 94 is another probing amendment, which goes back to my days as regulator for taxis, among other things, here in Edinburgh. The proposals would bring clarification for local licensing authorities that wish to limit the number of hire vehicles operating in their areas. The issue is one of how to address unmet demand when having to justify the number of vehicles on the roads. With a policy of limiting numbers, an accepted methodology may lessen the chance of a legal appeal for those who have applied for a vehicle licence but who have subsequently been refused.

I have some sympathy for the other amendment in the group, amendment 91.

I move amendment 94.

The Convener: I call Cameron Buchanan to speak to amendment 91 and to the other amendment in the group.

Cameron Buchanan (Lothian) (Con): May I deal with amendment 92 at the same time?

The Convener: No. You may speak only to amendments 91 and 94 at the moment.

Cameron Buchanan: Amendment 91 would leave out section 60 totally, which would mean that a licensing authority would not be able to refuse a private hire car licence application on the grounds of overprovision. Allowing a licensing authority to refuse a private hire car licence application on the grounds of overprovision is severely anti-competitive, and it will hurt consumers, jobs and the local economy, as well as the wider public.

Allowing refusal due to overprovision would be against the public interests, for four reasons. First, restricting the supply of private hire vehicles would limit the ability of consumers to select their preferred option from the different services on offer. That ability to choose is crucial to increasing and maintaining service standards in the industry.
Secondly, preventing new entrants would reduce the amount of price competition in the industry. Therefore, prices would be prevented from going as low as possible in a freer market.

Thirdly, putting up barriers to entry would prevent increases in the supply of private hire vehicles, which, combined with price competition, would allow more people than before to make use of private transport.

Finally, it is apparent that allowing a licensing authority to determine that a locality is overprovided for would prevent economic growth and job creation. If someone wishes to start work as a private hire vehicle driver, a licensing authority should not stand in the way of that just because other drivers have already entered the market. Government should aim to facilitate job creation, rather than shielding incumbents from any competition.

Michael Matheson: I am grateful for amendments 94 and 91, which were lodged by Colin Keir and Cameron Buchanan.

Amendment 94 would require the Scottish Government to provide secondary legislation setting out the methodology to be used by licensing authorities to assess demand for private hire car services for the purposes of the overprovision test. Stakeholders have consistently argued that there needs to be guidance in order for the overprovision test to operate effectively, and we accept that. The Scottish Government is already fully committed to working with stakeholders to prepare guidance on the overprovision test. By providing guidance setting out the methodology, rather than secondary legislation, we can adopt a more user-friendly approach and can include material such as examples of best practice, which would not be appropriate within secondary legislation.

For those reasons I ask Colin Keir to withdraw amendment 94, with the assurance that we will prepare guidance on the overprovision test as part of its implementation and roll-out. In addition, I am happy to keep members informed of progress that we make on the matter.

I turn to amendment 91, which would remove section 60. Section 60 allows a licensing authority to refuse a private hire car licence when it is satisfied that granting it would result in there being an overprovision of private hire cars. I remain of the view that an optional overprovision test in relation to private hire cars is a useful addition to the taxi and private hire car licensing regime. Providing an ability to limit private hire car numbers where it is deemed necessary will enable licensing authorities to ensure that those who enter the private hire car trade can have an expectation of making a reasonable income. It will also reduce the temptation for private hire car drivers to attempt to operate in illegal competition with taxis.

I therefore ask Cameron Buchanan not to move amendment 91.

10:15

Colin Keir: Having heard the cabinet secretary, I seek leave to withdraw amendment 94. I look forward to seeing what comes forward from the Scottish Government.

Amendment 94, by agreement, withdrawn.

Amendment 91 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 91 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 91 disagreed to.

Section 60 agreed to.

Section 61—Testing of private hire car drivers

The Convener: Amendment 92, in the name of Cameron Buchanan, is in a group on its own.

Cameron Buchanan: Amendment 92 refers to section 61 but also to section 60. The amendment would prevent licensing authorities from being able to require testing of applicants for private hire vehicle licences.

Technology now allows drivers to efficiently navigate without extensive knowledge, and requiring a test would be a significant barrier to employment and growth in the industry. With Garmin and TomTom, nobody really needs the knowledge. If someone wishes to become a private hire car driver, the Government should not prevent them in any way from doing so.

Some people would prefer to be driven by someone with extensive local knowledge who does not need to use global positioning system navigation, but they can choose to use a black cab instead of a private hire vehicle. Passengers
should be free to choose for themselves which type of transport they want.

Requiring testing of all drivers would be another method of shielding incumbents from the competition, which relates the amendment to section 60. That behaviour would favour vested interests over aspiring entrants to the market. More important, it would not be in the interests of consumers.

I move amendment 92.

Michael Matheson: I am grateful to Cameron Buchanan for his explanation of amendment 92. I remain of the view that offering local licensing authorities the ability to test private hire car drivers is entirely appropriate. The training and testing of taxi drivers serve a useful purpose, and given the growing numbers of private hire car drivers, I believe that it is important that they too should receive training and testing.

The legislation has deliberately been drafted to provide licensing authorities with the discretion to determine whether a test should take place and what that test should be, in order to ensure that unduly burdensome training is not required where it is clearly not appropriate. Such training could cover issues such as customer care and disability awareness. That would allow for consistency between taxis and private hire cars and would make for a more professional and capable private hire car service that is better able to meet the needs and aspirations of the people who use the service.

I therefore ask Cameron Buchanan to withdraw amendment 92.

Cameron Buchanan: I was talking less about training and more about the knowledge test—that was the key. As I said, I think that requiring testing of all drivers would shield incumbents from the competition, and I am against that; I would like to keep the competition open. Therefore, I press amendment 92.

The Convener: The question is, that amendment 92 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 92 disagreed to.

Section 61 agreed to.

Section 62 agreed to.

Before section 63

The Convener: Amendment 58, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: Amendment 58 seeks to increase the penalties for those metal dealers who operate without a licence or who fail to comply with licence conditions. Amendment 58 will increase the relevant penalties to a maximum fine of £20,000 and/or up to six months in prison.

There is widespread agreement that the penalties in relation to metal-dealing offences are inadequate when they are set against the multimillion pound cost of metal theft. They are also inadequate when they are set against the possible rewards that can be obtained by a rogue dealer who seeks to circumvent the licensing regime by failing entirely to apply for a licence or by failing to comply with the conditions that are attached to a licence. The increased penalties are required to act as an effective deterrent to someone who operates outwith the licensing regime.

The committee recommended that the penalties be enhanced, and there is widespread support for that position from the police, the legitimate trade and those companies and organisations that are badly affected by metal theft. It is also worth highlighting that, regardless of the criminal penalties, the mere fact that they had a conviction would have very serious potential consequences for any scrap metal dealer. It would be open to a licensing authority to remove an individual’s licence, which might have implications for their livelihood. I therefore ask the committee to support the amendment.

I move amendment 58.

The Convener: In light of the evidence that we took, we welcome the Government’s amendment 58.

Amendment 58 agreed to.

Sections 63 and 64 agreed to.

Section 65—Acceptable forms of payment for metal

The Convener: Amendment 59, in the name of the cabinet secretary, is grouped with amendments 60 and 61.

Michael Matheson: Amendments 59, 60 and 61 seek to tighten the definitions that are used to define how payments for scrap can be made.
The policy intent, which enjoys widespread support, is to prevent a scrap metal dealer from paying in cash. As members will be aware, the rationale for that is to ensure that payments can be made only in a traceable fashion by cheque or bank transfer. The amendments seek to ensure that any loopholes are avoided by clarifying that an account that is used for a transfer of payment must be a bank or building society account.

Amendment 59 clarifies that an account must be a bank or building society account. Amendment 61 seeks to insert in the Civic Government (Scotland) Act 1982 new section 33AA, which provides a definition of what

"bank or building society account"

means. Amendment 60 allows for any consequential amendments that may be necessary. The ability to make amendments to the definition in new section 33AA is limited to a consequence of changes that add, amend or remove methods of payments to those that are provided for in new section 33A(2).

I ask the committee to support amendments 59, 60 and 61.

I move amendment 59.

Amendment 59 agreed to.

Amendments 60 and 61 moved—[Michael Matheson]—and agreed to.

Section 65, as amended, agreed to.

Section 66—Metal dealers and itinerant metal dealers: records

The Convener: Amendment 62, in the name of the cabinet secretary, is grouped with amendment 63.

Michael Matheson: Amendments 62 and 63 seek to amend the record-keeping requirements for scrap metal dealers that are set out in the bill. Amendment 62 has been lodged in response to an issue raised by the industry that the proposed requirement to record the date on which metal is processed would be impractical for many dealers, because of the business practices that most dealers follow. Once metal arrives in a yard, it is quickly sorted and stored collectively with a significant amount of other similar metal derived from other sources. Given those circumstances, it would be difficult to record the date on which a specific item was processed, by which I mean melted or crushed.

We have always made it clear that we are eager to work with and support the legitimate scrap metal industry. We believe that its concerns on this matter are well founded and that the change, taken in the context of the other enhanced licensing requirements in the bill, will not diminish the proposed scheme’s effectiveness.

Amendment 63 will allow Scottish ministers to specify through secondary legislation particular forms of identification, such as a passport, a driving licence or similar documents, that will be acceptable for the purposes of establishing a customer’s name and address. I ask the committee to support these amendments.

I move amendment 62.

Amendment 62 agreed to.

Amendment 63 moved—[Michael Matheson]—and agreed to.

Section 66, as amended, agreed to.

After section 66

The Convener: Amendment 64, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: Amendment 64 seeks to allow Scottish ministers to bring forward regulations to establish a register of metal dealers and itinerant metal dealers. We accept the committee’s view that a register of metal dealers would be of value, and a new register would build upon the existing requirements for licensing authorities to publish details of licences already contained within paragraph 14 of schedule 1 to the Civic Government (Scotland) Act 1982.

The secondary legislation powers that we are proposing in the bill will allow Scottish ministers to make regulations to establish, keep and maintain such a register. The regulations may also include other matters such as specifying who will maintain such a register, what details will be published and what duties will be imposed on individuals or bodies to provide information to be published. I ask the committee to support the amendment.

I move amendment 64.

Amendment 64 agreed to.

The Convener: Amendment 65, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: Amendment 65 makes provision for revised definitions of metal dealers and itinerant metal dealers. The legitimate trade has argued that it is essential to have a more comprehensive definition of the term “metal dealer” in the bill to capture those at the periphery of the industry who run businesses that involve the acquisition of large amounts of scrap metal. Such people might include a skip hirer on a building site, a door-to-door collector who does not pay for metal but takes it away for the householder’s convenience, a car breaker or a demolition contractor.
The committee picked up the concern in its stage 1 report, and amendment 65 addresses the problem by striking a balance to capture some of those wider activities without requiring someone who acquires and sells metal as an extremely peripheral activity—for example, a plumber or heating engineer who takes away domestic piping—to have a licence.

10:30
The amendment expands the definition to include those who buy or sell metal for scrap. That captures those who sell metal without making a payment for it in the first place—for example, the itinerant collector who goes door to door, collecting and taking away unwanted items. It departs from the previous definition, which required the person to buy and sell metal for scrap before they would need a licence. By defining the licensable activity as carrying on “a business which consists wholly or substantially of buying or selling for scrap”

we will ensure that people such as plumbers who, in the normal course of events, acquire or sell metal as a peripheral activity will not require a licence.

As with any licensing system, the decision as to whether an individual requires a licence will rely on the specific facts and circumstances of each case. It might be a question of the degree to which scrap metal forms a part of the business, which can be determined only on a case-by-case basis. I also point out that the new definition provides that a “motor salvage operator”, as defined in subsection (3) in the amendment, carries out the business of a metal dealer and therefore will require a licence.

We believe that amendment 65 strikes the right balance and I ask the committee to support it.

I move amendment 65.
Amendment 65 agreed to.

The Convener: Amendment 66, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: Amendment 66 makes provision for powers to make secondary legislation to allow Scottish ministers to set out the circumstances in which the metal dealer and itinerant metal dealer regime does not apply, thereby creating exemptions from metal dealer and itinerant metal dealer licensing requirements.

We are confident that the definition of “a metal dealer or an itinerant metal dealer” strikes the right balance. It provides clarity, capturing activities that should fall within licensing while avoiding the need to license peripheral activities in which the acquiring of metal is wholly incidental. It is also flexible enough to respond to the particular facts of individual cases.

Nevertheless, we believe that it is right to enhance the flexibility to deal with circumstances that might not emerge until after the new regime is up and running, and amendment 66 allows ministers to prescribe circumstances in which a licence is not required. Such circumstances might relate to particular premises or activities where it is concluded that a scrap metal dealer’s or itinerant metal dealer’s licence is not required. As it is right to build such flexibility into the system, I ask the committee to support the amendment.

I move amendment 66.
Amendment 66 agreed to.

Section 67 agreed to.

After section 67

The Convener: Amendment 67, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: Amendment 67 seeks to restrict the circumstances in which premises that are licensed under the Licensing (Scotland) Act 2005 are exempted from the requirement for a public entertainment licence. A number of boards have raised concerns that a large public entertainment event such as a music festival that is attended by tens of thousands of people could be licensed under a £10 occasional licence for alcohol issued under the 2005 act.

We are sympathetic to those concerns. The occasional licence is simply not intended to cover such events and is ill-suited for that purpose. Although we would not like to go so far as to entirely remove the exemption for those with an alcohol licence and thus require thousands of pubs to require an additional public entertainment licence, we nevertheless believe that the exemption should be restricted.

Amendment 67 therefore limits the exemption of premises that are licensed under the 2005 act to those that possess a premises licence within the meaning of section 17 of the 2005 act. That would include a premises licence and a temporary premises licence. However, an occasional licence issued under the 2005 act will no longer provide an exemption from the requirements of public entertainment licensing. I ask the committee to support the amendment.

I move amendment 67.
Amendment 67 agreed to.

The Convener: Amendment 68, in the name of Richard Lyle, is in a group on its own.

Richard Lyle (Central Scotland) (SNP): I am the convener of the cross-party group on the
Scottish Showmen’s Guild, and I will move amendment 68 on behalf of the guild in order to right a wrong that it has been unable to resolve for more than 30 years due to United Kingdom parliamentary procedure and time.

The Civic Government (Scotland) Act 1982, which deals with funfair licensing, creates hardship for showmen who operate their legitimate business and continue their way of life here in Scotland. The 1982 act, which now falls within the competence of the Scottish Parliament, is being used to prevent funfairs by way of the implementation of excessive licensing conditions that take so long to process that events cannot be applied for in time.

Many local gala committees simply cannot have funfairs because the licensing legislation is too expensive, lengthy and involved for them to handle. We have to ask whether funfairs in England, Ireland and Wales are required to hold a temporary public entertainment licence, and the answer is that they are not. Funfairs in the rest of the United Kingdom are not classed as regulated entertainment.

Why are only funfairs that travel through Scotland required to be licensed? It is because of a parliamentary mistake dating back to 1982 in a Scottish act that was introduced by the UK Parliament. At that time, the Showmen’s Guild of Great Britain employed a parliamentary agent to keep abreast of legislation that was likely to affect travelling showmen in both England and Scotland. In 1982, due to an oversight, the parliamentary agent missed the Civic Government (Scotland) Bill and its ramifications for Scotland’s showmen.

In the rest of the UK apart from Scotland, showmen only need to obtain permission to operate. The funfair organiser in England, Ireland or Wales obtains permission from the landowner or local authority and simply notifies the local police of the showmen’s presence in the area. In other parts of the UK, showmen only need to show their safety certificate to obtain permission to operate. The same conditions apply for funfairs in Scotland, which come under directive HSG175— “Fairgrounds and amusement parks: Guidance on safe practice”—and the Health and Safety at Work etc Act 1974.

The Scottish Showmen’s Guild works with the National Association For Leisure Industry Certification and the amusement device inspection procedures scheme in ensuring that all funfair equipment is registered and subject to annual inspection, which involves electrical, pneumatic and hydraulic structural testing of welds; design review; conformity of design; risk assessment and HS spot checks.

You may ask whether the 1982 act on licensing relates to safety. It does not. You may ask how, if amendment 68 was agreed to, local authorities would control funfairs without licensing. I contend that there are other provisions in law that cover funfairs, such as the Noise Act 1996, HSG175, the Health and Safety at Work etc Act 1974, the Alcohol etc (Scotland) Act 2010 and the Gambling Act 2005. When applications are made to local authorities, the same procedure would be followed with regard to the police, the fire service, local councillors, local communities and environmental health departments. Most funfairs let land from the local authority, and a simple set of conditions of let can be applied as required and enforced by all Scottish local authorities.

All that we ask for is that which exists in England: fairness. Why do funfairs that travel through Scotland need to be removed from the 1982 act? I suggest that the time that is involved in obtaining a temporary licence is too long to be practical in real life. Applicants need to have all knowledge relating to an application submitted from 28 days up to 90 days in advance of the funfair date, including the layout, the types of rides that will be attending and the specific people who will be presenting those rides. There is no provision in the 1982 act for short notice, emergency changes regarding changes of layout, the tenant of the fair, extra attractions, extensions to dates or new venues. If showmen arrive at a site that is waterlogged, they cannot work, because permission will have been granted only for the particular site.

The 1982 act also affects showmen who present funfairs in other ways. It creates a further financial burden; fees vary between local authorities; and interpretation and implementation of the 1982 act is subject to local policies even if people disregard the working of the act. If a licence is refused, no refund is made to the applicant, who has no alternative way of earning a living during that period. That is totally unfair and it might breach the Human Rights Act 1998.

The 1982 act requires each funfair to be licensed, and the licence must include every tenant of the fair and an equipment plan. Imagine a window cleaner being required to make a separate licence application for every house and to submit a separate plan of each window’s location, type and size. That is what showmen have to provide under the 1982 act.

We can exempt funfairs from the 1982 act by inserting the text that is suggested in amendment 68:

“After section 67, insert—

<Public entertainment licenses: exemption for funfairs
In section 41 of the 1982 Act (public entertainment licenses), after subsection (2)(aa) insert—

“(ab) premises used for the purpose of a funfair;”.

Removing funfairs from the 1982 act would remove a financial and insecurity burden from Scottish show people and their families and allow them more opportunity to operate their attractions. It would alleviate the fear and cost of a refusal, give them a greater sense of security and allow them to continue with their culture and traditions. It would also allow them to deal with circumstances that are outwith their control, such as bad weather, and let operators, in conjunction with the local council, seek an alternative site to operate.

If the rest of the UK and the European Union do not have licensing of funfairs, why do we? I understand that the showmen have also gained the support of other parties in Parliament, and I hope that the Government will take steps to support show people in Scotland by removing the anomaly.

I move amendment 68.

Clare Adamson (Central Scotland) (SNP): I declare an interest as a member of the cross-party group on the Scottish Showmen’s Guild. May I make a contribution, convener?

The Convener: Yes—please do.

Clare Adamson: I congratulate Richard Lyle on his presentation of a comprehensive and detailed argument about the problems that showmen face while operating under the current system. However, this is a big bill that covers lots of different areas and we have taken no evidence on the issue at stage 1, nor have we consulted the stakeholders, so although I have sympathy with the reasons behind amendment 68, I will not be able to support it.

Alex Rowley (Cowdenbeath) (Lab): Mr Lyle makes a strong argument. I will wait to hear what the minister says. Even though we have not taken evidence on the issue at this stage, I hope that there will be a commitment to take on board and look at the case that has been made. It seems to me that Mr Lyle makes a fair case that the showmen and the shows that go round different communities are struggling. They often depend on the Scottish weather, but I know that it makes the gala in my home village if the fair is there.

There is a case, so I will wait to hear what the minister has to say. If we do not support amendment 68 today, I hope that we will be sympathetic and take on board what has been said.

The Convener: Thank you, Mr Rowley. Before I bring in the cabinet secretary, it is only fair for me to put on the record that we have received a communication on the issue from the Convention of Scottish Local Authorities that expresses concern that we have not taken evidence or consulted on the issue.

Michael Matheson: I thank Richard Lyle for lodging amendment 68, which draws attention to funfair operators’ concerns about public entertainment licensing arrangements. I am well aware of those concerns and I agree that there is scope for local licensing authorities to consider their current practices in dealing with licence applications.

Licensing should be fair and proportionate. There is no reason to gold plate licence conditions so that funfairs become impossible to hold, and there is no excuse for the outright hostility to funfairs that some operators have reported that they face. It would be a great shame if funfairs, which add much enjoyment to public life in many towns and communities, were lost.

10:45

Nevertheless, I cannot support amendment 68, which removes funfairs from regulatory control through licensing entirely. I am concerned that the amendment does not seek to define funfairs, which might give rise to problems of enforcement, and similarly it does not clarify the extent to which a premises may be "used for the purposes of a funfair" before the exemption is applicable. As fairs come in a variety of forms and can have associated activities such as market stalls and gala day parades, it is important to be clear about what would be exempted. Although it might be possible to address those issues, it would take careful consideration and we would benefit from appropriate consultation to ensure that we got it right.

More fundamentally, it is hard to think of a better example of a public entertainment that needs to be licensed. Funfairs raise obvious considerations with regard to the impact on neighbours in terms of noise and minor nuisance. Some fairs have raised the possibility of low-level alcohol-fuelled antisocial behaviour, and there are also health and safety considerations. Although other enactments provide some protection in that regard, licensing ensures that those enactments are followed and provides a quick and effective means of dealing with any concerns.

As the committee is aware, the Convention of Scottish Local Authorities and the police oppose the amendment. It is clear, however, that there is work to be done to ensure that funfair operators are treated fairly. To that end, I am prepared to work with local authorities to ensure that the
issues that Richard Lyle has highlighted are addressed. I am also prepared to work towards the Scottish Government issuing guidance to licensing authorities to assist in their consideration of funfair applications. I hope that Richard Lyle will agree that those steps are welcome and provide an appropriate and proportionate response to the issue.

I ask the committee to reject amendment 68.

Richard Lyle: It was my intention to press the amendment because I feel that there is unfairness in Scotland compared with England. However, in discussions with the cabinet secretary, he has given me an undertaking that he will work towards addressing that unfairness. I ask that he meets me and the Scottish Showmen’s Guild as soon as possible to address the matter. In the light of the assurances that have been given, although I intended to press the amendment, I will not do so.

Amendment 68, by agreement, withdrawn.

Section 68—Licensing of sexual entertainment venues

The Convener: Amendment 95, in the name of Cara Hilton, is in a group on its own.

Cara Hilton: I put on record my thanks to the Zero Tolerance Trust for working with me on amendment 95, and I thank the other organisations, including Scottish Women’s Aid and Rape Crisis Scotland, that have offered their support.

Amendment 95 would oblige a local authority to produce a licensing policy statement outlining its intentions in respect of licensing sexual entertainment venues. The statement would set out clearly why the local authority chose to offer or not to offer licences for those venues and would put that in the wider context of public health, child protection, community safety, gender equality and other policy concerns, but with a special focus on tackling violence against women.

I share the view, which has been expressed by the Zero Tolerance Trust and others, that the licensing of these venues is incompatible with the Scottish Government’s priorities and with our ambitions to ensure genuine equality for women and girls. Allowing the venues to exist seems at odds with the equally safe strategy, which is Scotland’s strategy to eradicate violence against women and girls; the Human Trafficking and Exploitation (Scotland) Bill; our approach to domestic abuse, rape and sexual offences; and indeed, UK equality and human rights legislation.

The amendment would ensure that any local authority that was considering offering a licence to a sexual entertainment venue would be obliged to take the policy context into account in justifying any licensing decision. I think that such decisions should not operate in a vacuum but should reflect the wider policy agenda, locally and nationally.

The evidence suggests that local authorities have often not effectively policed sexual entertainment venues but have allowed multiple breaches of licensing conditions—which are apparently legally unenforceable—such as that there should be no private booths and that there should be no-touching policies.

There seems to be evidence, too, that some licensing authorities have taken their eye off the ball regarding the monitoring of venues. Furthermore, a recent court case involving City of Edinburgh Council officials showed that they had accepted lap dances in return for awarding building contracts.

There is absolutely no doubt that there must be a lot more public scrutiny before sexual entertainment venues are granted licences. A policy statement such as that which my amendment would require is one way of achieving that and increasing accountability.

I move amendment 95.

Alex Rowley: I support Cara Hilton’s amendment. I support the idea that it is for local authorities to make such decisions—it is correct to have that approach in the bill. When a local authority makes a decision on sexual entertainment venues, it is important to have a policy statement that is open and transparent and that the public can understand. Therefore, amendment 95 would enhance the bill. I hope that the minister will consider those points.

Michael Matheson: I have considerable sympathy for amendment 95.

The Scottish Government acknowledges that commercial sexual exploitation may be a form of violence against women. However, we have always argued that the local authorities that license the activities are best placed to reflect their community’s views on the issue. The proposed licensing scheme will allow proper local authority control, part of which is ensuring better working conditions and a more controlled environment for the women who work in sexual entertainment venues.

A local authority that seeks to license sexual entertainment in its area will have to undertake a proper exercise to reach a determination of how to approach the licensing function and what its policy objectives are. The Scottish Government will produce statutory guidance to assist local authorities in undertaking that exercise. That guidance will make it clear that a local authority will risk challenge unless it has sought relevant stakeholders’ views, gathered evidence and
addressed all the relevant considerations. In other words, a local authority will have to give violence against women groups and similar organisations the opportunity to raise issues and will have to show that it has considered those issues before reaching its final determination.

I am, however, concerned that amendment 95 would make it appear that any sexual entertainment venue licensing regime that was adopted by an authority had one consideration or objective only—that is, to address violence against women. Our intention is to give local authorities the power to license the venues and to reach the decisions that are right for their own areas on the basis of a range of considerations. For example, I envisage their considering the impact on neighbours, on those who make use of a locality and on any schools and churches that may be nearby. I also envisage their considering whether there is an associated risk of criminality or public disorder. I would not want to create the impression that the regime was driven by one consideration only—violence against women. That is a crucial matter, but it should not be the sole consideration, and the bill needs to reflect that.

I recognise the importance of the issue that has been raised by Cara Hilton and I offer to work with her to produce a fresh amendment at stage 3 that will make explicit in the bill that local authorities must consider violence against women as one of a number of issues. Therefore, I invite Cara Hilton to withdraw amendment 95.

Cara Hilton: I am grateful to the minister for his comments. It is important that we take action. I want to see the spirit of my amendment reflected in the bill, so I accept his offer to work on a fresh amendment at stage 3.

Amendment 95, by agreement, withdrawn.

The Convener: Amendment 96, in the name of Cara Hilton, is in a group on its own.

Cara Hilton: I thank the Zero Tolerance Trust for working with me on amendment 96, and I thank Scotland’s Commissioner for Children and Young People for offering his support.

The purpose of the amendment is to prevent under-18s from working in sexual entertainment venues. As the bill stands, under-18s would be able to work in such venues at times when sexual entertainment was not taking place. The Zero Tolerance Trust has argued that that would create a groomers charter, allowing venues to employ teenage girls to work as cleaners or in office administration roles before persuading or coercing them to become performers when they reached 18.

We all know how short of cash people are at that age. It is probably quite a tempting offer for many girls in that situation, and it is a particular concern for vulnerable young women such as care leavers or women living with poverty or disadvantage. Also, some men who attend such venues seek to buy sex there, and there is no guarantee that they will restrict their inquiries to performers.

Under-18s who work in sexual entertainment venues are at risk of sexual exploitation, of being propositioned for sex and of being exposed to an industry that damages women. Many such venues screen pornography in the background, and there is a real risk that under-18s could be exposed to that, which is a child protection issue.

I do not think that anyone under 18 should be allowed to work in or attend in any capacity a sexual entertainment venue; it is simply not a safe, healthy, working environment for children. Under-18s cannot work in sex shops, and that provision should apply to these venues, too.

This is a personal issue for me. I have a six-year-old daughter, and I do not want her to grow up in a Scotland where women are viewed and treated as sexualised objects. These venues normalise a really harmful form of sexual exploitation, and “a failure by the Scottish Government to send out this clear message is a failure to young people.”

Those are not my words but those of Scotland’s Commissioner for Children and Young People.

The Scottish Government’s violence against women strategy recognises the very real links between discrimination, objectification, violence against women and commercial exploitation. If we are serious about wanting an equal Scotland and tackling domestic abuse and violence, and if we really want to ensure that Scotland is the best place for girls to grow up in, the Scottish Government must be consistent.

Sexual entertainment venues are no place for any child to work. We need to put a stop to that and ensure that our young people get the protection that they need.

I move amendment 96.

Cameron Buchanan: I support Cara Hilton on this issue. It is an anomaly that under-18s can work in a sexual entertainment venue, even as cleaners, because they will be influenced by that environment. There is an inconsistency here and I support amendment 96.

Michael Matheson: I have sympathy for the objective of amendment 96, which is aimed at offering better protection for young people. It follows up issues that were highlighted by the children’s commissioner ahead of the stage 1 debate. However, I have a number of concerns.
I make it clear that the bill does not relax controls in any way—it does quite the reverse. Sexual entertainment premises are currently treated in more or less the same way as any other licensed premises. That means that, at the moment, under-18s could be collecting glasses or undertaking similar activities while the sexual entertainment venue is open. The bill makes it clear that, if young people are being employed in such roles, that must stop. Under-18s should not be on the premises while sexual entertainment is taking place. That is a reasonable and proportionate step forward.

I would not, however, be comfortable in saying that a 17-year-old cleaner could not be employed or a plumber’s apprentice could not enter to repair a leak when the premises were closed or when the venue was being used merely as a bar and sexual entertainment was not taking place. I am not sure that the proposal is proportionate, as it gives rise to concerns that the employment opportunities of young people may be unreasonably restricted.

I have seen no evidence that the type of grooming that concerned the children’s commissioner, whereby the cleaner progresses eventually to participating in sexual entertainment, actually takes place. The tighter control that is offered by the new licensing regime should, in any case, prevent that sort of thing from occurring.

That said, I acknowledge the importance of the issue that Cara Hilton has highlighted. Again, I offer to work with her to produce a stage 3 amendment to address her concerns, but in a way that would allow some flexibility in order to avoid consequences that may be viewed as unreasonable.

For those reasons, I invite Cara Hilton to withdraw amendment 96.

Cara Hilton: The cabinet secretary says that the bill does not relax the rules in any way, but I do not accept that. I am concerned about the provision and the potential loopholes. Sexual entertainment venues are not the kind of places that we should be encouraging children and young people to work in. We should be challenging the culture.

Alex Rowley: Do you agree that it is important that we establish the principle—I think that that is what you are trying to do—that no one under the age of 18 should be in such premises?

Cara Hilton: Yes. Thank you for that helpful comment, Mr Rowley. It is about sending a clear message about the type of Scotland that we want to see and about how we value our young people. That is very important, so I will press the amendment.

The Convener: The question is, that amendment 96 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

Abstentions
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 3, Against 3, Abstentions 1. I must therefore use my casting vote, which is against the amendment.

Amendment 96 disagreed to.

The Convener: Amendment 97, in the name of Cara Hilton, is in a group on its own.

Cara Hilton: Amendment 97 would require licensing committees to consult violence against women partnerships or other bodies with a similar function. Right now, public policy can be a wee bit disconnected. Local authorities all have strategies on preventing sexual abuse and violence against women, but there is not a lot of joined-up thinking around how

11:00

John Wilson (Central Scotland) (Ind): What does Ms Hilton think about the example that was given by the cabinet secretary of a 16 or 17-year-old apprentice plumber or electrician being called out to work in such premises? Should they be excluded from the premises because of their age? We are talking about employment opportunities for 16 and 17-year-olds, and if Ms Hilton is going to press the amendment we need to be clear about how it would impact on the wider society, particularly young people who undertake apprenticeships and who are called out to undertake emergency plumbing or electrical repairs.

Cara Hilton: Amendment 97 would require licensing committees to consult violence against women partnerships or other bodies with a similar function. Again, it is aimed at ensuring that licensing committees fully appreciate the wider policy environment in which they operate. Right now, public policy can be a wee bit disconnected. Local authorities all have strategies on preventing sexual abuse and violence against women, but there is not a lot of joined-up thinking around how
licensing decisions impact on women and little attention is paid to how having sexual entertainment venues in our towns and city centres impacts on women and girls. That does not make sense.

The Scottish Government’s violence against women and girls strategy, “Equally Safe”, which I referred to earlier in our proceedings, defines commercial sexual exploitation as a form of violence against women. The strategy aims to create “a strong and flourishing Scotland where all individuals are equally safe and respected”.

Amendment 97 would mean that local authorities would have to discuss their approach to sexual entertainment venues with local violence against women partnerships and think seriously about how their approach to licensing those venues fits with the strategy.

In his answer to one of my earlier amendments, the cabinet secretary referred to the strategy, so I hope that he will have something positive to say on this issue. It is about ensuring that there is proper joined-up policy making at local level and that our public policy aspirations are reflected in decisions that are made.

I move amendment 97.

Michael Matheson: I support the intent of amendment 97, but I have some practical concerns. Although the current process already allows for robust notification procedures, with requirements for newspaper advertising and for notices to be publicly displayed, I can see that there may be advantages in both practice and principle of requiring specific forms of notification. The practical advantage is that it would ensure that important stakeholders are notified of applications and have the ability to make timely representations and to influence the process. The advantage in principle is that it would send a very clear message that violence against women partnerships and similar bodies are important stakeholders in the licensing process.

I am concerned, however, that the amendment specifically identifies violence against women partnerships. Although it is currently obvious what we are talking about, they are non-statutory bodies and we need to guard against some future reorganisation or fresh approach that would make those bodies extinct.

My preference would be for an amendment that would allow each local authority to identify which organisations in their area should be notified of applications. The statutory guidance that will follow the bill will specify what types of bodies and organisations should be considered and that would certainly include bodies such as violence against women partnerships.

I therefore invite the committee to reject amendment 97, as I have asked my officials to lodge an amendment at stage 3 that will achieve a similar aim.

Cara Hilton: In light of the cabinet secretary’s comments, I withdraw the amendment and I look forward to an amendment being lodged at stage 3.

Amendment 97, by agreement, withdrawn.

Section 68 agreed to.

Section 69—Deemed grant of applications

The Convener: Amendment 69, in the name of the cabinet secretary, is grouped with amendment 70.

Michael Matheson: Amendments 69 and 70 will allow licensing authorities to revoke a licence under part 2 of the Civic Government (Scotland) Act 1982.

Part 2 licences include taxis and private hire cars, metal dealers and street traders, and can be granted for one to three years. At present, such a licence may be suspended for a specific period or for the remaining duration of the licence, but it cannot be revoked. However, it is possible to revoke a licence under part 3—for a sex shop—as indeed it is for an alcohol licence under the Licensing (Scotland) Act 2005. The ability to revoke a part 2 licence was called for in evidence sessions, and Colin Keir MSP made the same point during the stage 1 debate in Parliament.

I am therefore pleased to bring forward these amendments. As I have said, although it is already possible for a part 2 licence to be suspended for varying periods in certain circumstances, these amendments will allow for a proper response in those cases where the stronger sanction of revocation is more appropriate.

I move amendment 69.

Amendment 69 agreed to.

Section 69, as amended, agreed to.

After section 69

Amendment 70 moved—[Michael Matheson]—and agreed to.

Section 70 agreed to.

Section 71—Conditions for Part 3 licences

The Convener: Amendment 71, in the name of the cabinet secretary, is grouped with amendments 76 and 79.
Michael Matheson: Amendment 71 concerns civic licensing, while amendments 76 and 79 relate to alcohol licensing.

Amendment 71 is a technical amendment. The bill as introduced repealed the word “unconditionally” from paragraph 9 of schedule 2 to the Civic Government (Scotland) Act 1982 on the grounds that its inclusion is redundant when viewed alongside the new condition-setting power created by the bill in section 71. Amendment 71 improves the drafting by defining more precisely where the deleted word lies in the 1982 act.

Amendments 76 and 79 are on alcohol licensing. Amendment 76 will allow a licensing board, when determining an application for a major variation to a premises licence, to request that the chief constable provides it with a report on all cases, complaints or representations made regarding antisocial behaviour on or in the vicinity of the premises in question. Currently, the Licensing (Scotland) Act 2005 provides that a licensing board, when determining a premises licence application, may request that the chief constable provides it with an antisocial behaviour report to help it consider whether to grant the licence. However, the board can do that only when considering the original premises licence application and not any later application for a major variation to a licence. We are of the opinion that that power should be available to boards when they are considering applications for major variations.

Amendment 79 is a minor amendment to remove reference in section 57(2), which was repealed by the Criminal Justice and Licensing (Scotland) Act 2010.

I hope that the committee will support these amendments.

I move amendment 71.

Amendment 71 agreed to.

Section 71, as amended, agreed to.

After section 71

The Convener: Amendment 72, in the name of the cabinet secretary, is grouped with amendment 98.

Michael Matheson: Amendment 72 will enhance the ability of licensing authorities to deal with the way in which sexual entertainment venues and sex shops seek to market themselves. Currently, conditions that may be imposed by the licensing authority are limited to regulating displays and advertising “on or in” the premises. Amendment 72 will ensure that advertising activities “connected with” the premises may also be dealt with, irrespective of where they take place. As sexual entertainment venues sometimes conduct a range of activities in surrounding streets, such as handing out flyers and putting up signs and posters, it is sensible to ensure that the authority is able to deal with those matters.

Amendment 98, in the name of Cara Hilton, seeks to address the same issue so, obviously, I welcome and support its objective. However, in my view, amendment 98 would be a more complicated way of achieving a similar objective to that of amendment 72 and it would significantly cut across the new provisions in section 71 that will permit Scottish ministers to, by order, provide mandatory conditions and local authorities to set standard conditions in respect of sexual entertainment venue and sex shop licences.

In addition, although amendment 72 will allow a local authority to deal with advertising and displays, amendment 98 would require a local authority to set conditions on that matter. My view is that it is unnecessary to make such a condition a statutory requirement; the proper approach is to enable local authorities to deal with the matter, support them in doing so through guidance and then leave the authority to choose how to go about using the powers at its local discretion.

Additionally, were amendment 98 to be agreed to, further amendments would be required at stage 3 to find a means to integrate the principle behind amendment 98 into the new scheme for mandatory and standard conditions. That would seem unnecessary, given that section 71 provides for the ability to set mandatory and standard conditions for all part 3 licences and amendment 72 will expand the ability of local authorities to deal with the issue of displays and advertising at a local level. Furthermore, the Government intends to issue guidance to local authorities on their use of conditions for part 3 licences. The Government may also impose specific mandatory conditions on such licences if it is subsequently shown that that is necessary.

I ask the committee to support amendment 72 and reject amendment 98.

I move amendment 72.

Cara Hilton: I welcome the opportunity to speak in support of amendment 98, which is aimed at restricting displays and advertising for sexual entertainment venues. Often, such venues have prominent, sexually explicit signage that can be seen by anyone who passes them, including children who are going to school and women who are going about their ordinary business. It is not acceptable that our children are exposed to those images and that women are made to feel uncomfortable daily. Such venues are not a mainstream form of public entertainment and are certainly not aimed at a cross-section of the public.
It is only right that we should have restrictions on how such venues are allowed to advertise. Why should mums and dads have to plan their daily walking routes to avoid such images? Children should not be exposed to them on our high streets.

I ask the committee to support amendment 98.

11:15

Michael Matheson: As I outlined in my opening comments, what Cara Hilton is trying to achieve with amendment 98 is largely covered by our amendment 72, which provides powers for local authorities to take appropriate measures. As we have also set out, we will provide guidance to local authorities on how they should implement that aspect of the powers that they will have under the bill.

Amendment 72 agreed to.

Amendment 98 not moved.

Sections 72 to 77 agreed to.

Schedule 2—Minor and consequential amendments and repeals

The Convener: Amendment 73, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: Amendment 73 is a consequential amendment that inserts a new part into schedule 4 to the Firearms Act 1968. The Firearms Act 1968, as amended, currently restricts the commercial sale or transfer of air weapons to registered firearms dealers. Schedule 4 to that act sets out the details of such sales or transfers, which must be recorded in a dealer’s register of transactions and, therefore, available for police inspection on request.

Section 24 of the bill maintains the existing restrictions but also restricts the manufacture, repair or testing of air weapons by way of trade or business to registered firearms dealers, as is the case with other firearms. Therefore, the amendment is necessary to ensure that details of those transactions are also properly recorded in a dealer’s register. Registered firearms dealers will, in essence, be required to record the same transactional information in relation to air weapons as for other firearms and so will be familiar with the new requirements.

I move amendment 73.

Amendment 73 agreed to.

The Convener: Amendment 74, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: This amendment matches existing provision in the Criminal Procedure (Scotland) Act 1995 that applies to court proceedings relating to firearms or shotgun offences.

For the purposes of such proceedings, a constable or person employed by the Scottish Police Authority may sign a certificate that states that the accused did not hold the appropriate firearms or shotgun certificate on the date in question. That may be taken as sufficient proof of the matter, rather than requiring police witnesses to give such routine evidence in court.

Amendment 74 makes similar provision for the purposes of court proceedings that involve offences under part 1 of the bill. That amendment to the 1995 act is a sensible and proportionate measure for dealing with matters of routine evidence, which will save police and court time.

I move amendment 74.

Amendment 74 agreed to.

Amendments 75 to 79 moved—[Michael Matheson] and agreed to.

Schedule 2, as amended, agreed to.

Section 78—Commencement

Amendments 80 and 81 moved—[Michael Matheson] and agreed to.

Section 78, as amended, agreed to.

Section 79 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank members for their participation.
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[AS AMENDED AT STAGE 2]

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Part 1—Air weapons

Meaning of “air weapon”

(1) This section defines the expression “air weapon” for the purposes of this Part.

(2) The expression generally has the same meaning as that given in section 1(3)(b) of the Firearms Act 1968 (“the 1968 Act”).

(3) In addition, the expression includes—

(a) the component parts of an air weapon (within the meaning of section 1(3)(b) of the 1968 Act), and

(b) any accessory to such a weapon designed or adapted to diminish the noise caused by discharging the weapon.

(4) But the expression does not include—

(a) an air weapon which is not a firearm (within the meaning of section 57(1) of the 1968 Act),

(b) the component parts of an air weapon described in paragraph (za) or (a)(i) or (ii).

(5) Other words and expressions used in this Part are defined in section 40.
Air weapon certificates

2 Requirement for air weapon certificate

(1) It is an offence for a person to use, possess, purchase or acquire an air weapon without holding an air weapon certificate.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(3) Schedule 1 contains exemptions from—

(a) the offence under subsection (1), and

(b) certain other offences under this Part.

(4) The Scottish Ministers may by regulations amend schedule 1 so as to—

(a) add further exemptions,

(b) remove or modify exemptions.

3 Application for grant or renewal of air weapon certificate

(1) An individual aged 14 years or more may apply to the chief constable for—

(a) the grant of an air weapon certificate, or

(b) the renewal of an air weapon certificate.

(2) An application is valid only if it complies with the requirements of—

(a) section 4 (verification of applications),

(b) if applicable, section 7 (special requirements and conditions for young persons), and

(c) any regulations under section 37 which apply to the application.

(3) The chief constable must maintain a register containing the details of each application made under this section (whether or not the application results in an air weapon certificate being granted or renewed).

4 Verification of applications

(1) An application for the grant or renewal of an air weapon certificate must be verified in the prescribed form and manner by an individual who meets the requirements of subsection (2) (“a verifier”).

(2) The requirements are that a verifier must—

(a) have known the applicant for at least 2 years,

(b) in the opinion of the chief constable, be of good standing in the community,

(c) not be—

(i) a relative of the applicant,

(ii) a registered firearms dealer,
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Part I—Air weapons

(iii) a constable or a member of police staff,
(iv) a member of, or a member of staff of, the Scottish Police Authority, or
(v) ordinarily resident outwith the United Kingdom.

(3) In verifying the application, a verifier must confirm that, to the best of the verifier’s knowledge and belief, the information supplied in the application is correct.

5 Grant or renewal of air weapon certificate

(1) The chief constable may only grant or renew an air weapon certificate if satisfied that the applicant—

(a) is fit to be entrusted with an air weapon,
(b) is not prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act,
(c) has a good reason for using, possessing, purchasing or acquiring an air weapon, and
(d) in all the circumstances, can be permitted to possess an air weapon without danger to the public safety or to the peace.

(2) The chief constable may, when considering an application made under section 3 by an applicant who holds a firearm or shot gun certificate, treat paragraphs (a) and (b) of subsection (1) as being satisfied in relation to the applicant.

(3) The chief constable may, before determining an application made under section 3, require that the applicant permit a constable or member of police staff—

(a) to visit the applicant at the applicant’s usual place of residence,
(b) to inspect any place where the applicant intends to store or use an air weapon.

6 Air weapon certificate: conditions

(1) Every air weapon certificate is subject to any prescribed mandatory conditions.

(2) The chief constable may, when granting or renewing an air weapon certificate, attach conditions to the certificate (and, in the case of a renewal, may attach different conditions from those attached to the certificate prior to its renewal).

(3) The chief constable may not attach to an air weapon certificate a condition which is inconsistent with—

(a) a prescribed mandatory condition which applies to air weapon certificates, or
(b) a condition which must be attached to the certificate under this Part.

(4) It is an offence for a holder of an air weapon certificate to fail to comply with a condition attached to the holder’s certificate.

(5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

7 Special requirements and conditions for young persons

(1) This section applies where an applicant for an air weapon certificate is under the age of 18.
(2) A parent or guardian of the applicant must consent in the prescribed form and manner to the applicant making the application.

(3) Where the chief constable grants an air weapon certificate to an individual under the age of 18, the chief constable must attach to the certificate—

(a) the condition described in subsection (4), and

(b) one or more of the conditions described in subsection (5).

(4) The condition is that the holder may not purchase, hire, accept a gift of or own, an air weapon.

(5) The conditions are that—

(a) the holder may use and possess an air weapon only for sporting purposes (including shooting live quarry) on private land,

(b) the holder may use and possess an air weapon only for the purposes of target shooting on private land,

(c) the holder may use and possess an air weapon only for the purposes of participating in events or competitions,

(d) the holder may use and possess an air weapon only for the purposes of protecting livestock, crops or produce on land used for or in connection with agriculture,

(e) the holder may use and possess an air weapon only for the purposes of pest control.

(6) It is sufficient, for the purposes of section 5(1)(c), for the chief constable to be satisfied that the applicant has a good reason for using or possessing an air weapon.

(7) For the purposes of this section, “agriculture” is to be construed in accordance with section 85 of the Agricultural Holdings (Scotland) Act 1991.

8 Duration of air weapon certificate

(1) An air weapon certificate expires (unless earlier revoked or cancelled)—

(a) in the case of a certificate granted to an individual under the age of 18, when the individual attains the age of 18,

(b) in any other case, at the end of the period of 5 years beginning with the date on which the certificate is granted or renewed.

(2) Where an individual has applied for the renewal of an air weapon certificate before its expiry but the chief constable has not, as at the date of its expiry, determined whether or not to grant the renewal, the certificate is to continue to have effect until the application is determined.

(3) The Scottish Ministers may by regulations amend subsection (1)(b) to specify a different period.

9 Alignment of different types of certificate

(1) Subsection (2) applies where an individual—

(a) holds a firearm or shot gun certificate, and
(b) makes an application for the grant or renewal of an air weapon certificate under section 3.

(2) Where this subsection applies, the applicant may request that the chief constable grant or renew an air weapon certificate for such shorter period than is provided for in section 8 as is appropriate to secure that it expires on the same day as the applicant’s firearm or shot gun certificate (or, if the applicant holds both a firearm and shot gun certificate, either of them).

(3) Subsection (4) applies where an individual—
   (a) holds an air weapon certificate, and
   (b) makes an application for the grant or renewal of a firearm or shot gun certificate under the 1968 Act.

(4) Where this subsection applies, the applicant may make an application under section 3 of this Act for the air weapon certificate to be renewed as from the same day as that on which the firearm or shot gun certificate is granted or renewed.

10 Variation of air weapon certificate

(1) The chief constable may, by giving notice to the holder of an air weapon certificate—
   (a) vary the holder’s certificate,
   (b) attach conditions to the certificate, or
   (c) vary or revoke a condition attached to the certificate other than—
      (i) a prescribed mandatory condition which applies to air weapon certificates, or
      (ii) a condition which must be attached to the certificate under this Part.

(2) The chief constable may give a notice under subsection (1)—
   (a) on the application of the holder of an air weapon certificate, or
   (b) of the chief constable’s own accord (at any time).

(3) The chief constable may not attach to an air weapon certificate a condition which is inconsistent with—
   (a) a prescribed mandatory condition which applies to air weapon certificates, or
   (b) a condition which must be attached to the certificate under this Part.

(4) For the purposes of this section, the chief constable may by notice given to the holder of an air weapon certificate require the holder to produce the certificate within the period of 21 days beginning with the date on which the notice is given.

11 Revocation of air weapon certificate

(1) The chief constable must revoke an air weapon certificate if—
   (a) the chief constable is satisfied that the holder of the certificate can no longer be permitted to possess an air weapon without danger to the public safety or to the peace, or
   (b) the holder is prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.
(2) The chief constable may revoke an air weapon certificate if—
   (a) the chief constable has reason to believe that the holder—
       (i) is no longer a fit person to be entrusted with an air weapon, or
       (ii) no longer has a good reason to use, possess, purchase or acquire an air
            weapon,
   (b) the chief constable is satisfied that the holder of the certificate has failed to
       comply with a condition attached to the certificate, or
   (c) the holder fails to produce the certificate when required to do so under section
       10(4).

(3) An air weapon certificate is revoked by the chief constable giving notice to the holder of
     the certificate to that effect.

(4) A notice under subsection (3) must—
   (a) be given at least 7 days before the date on which the revocation is to take effect, and
   (b) require the holder to surrender the certificate and any air weapons that the holder
       possesses by such date as the chief constable may specify in the notice.

(5) It is an offence for a person, without reasonable excuse, to fail to comply with the
     requirements of a notice given under subsection (3).

(6) A person who commits an offence under subsection (5) is liable, on summary
     conviction, to a fine not exceeding level 3 on the standard scale.

(7) In the event that the holder of an air weapon certificate makes an appeal under section
     35 against a decision to revoke the holder’s certificate—
     (a) the revocation does not take effect, but
     (b) the holder must still surrender the certificate and any air weapons that the holder
         possesses in accordance with the requirements of the notice given under
         subsection (3), pending the determination or withdrawal of the appeal.

Permits

12 Police permits

(1) The chief constable may, on the application of an individual, grant a permit (“a police
     permit”) authorising the individual—
     (a) to possess or acquire an air weapon without holding an air weapon certificate, or
     (b) to sell (or expose for sale) an air weapon in the course of that individual’s
         business.

(2) A police permit must not be granted to an individual who is prohibited from possessing
     an air weapon or other firearm under section 21 of the 1968 Act.

(3) A police permit expires (unless earlier revoked or cancelled) on the expiry date specified
     in the permit.

(4) An application for a police permit is valid only if it complies with the requirements of
     any regulations under section 37 which apply to the application.
13 Visitor permits

(1) The chief constable may, on the application of a qualifying visitor, grant a permit (“a visitor permit”) authorising the visitor to use, possess, purchase or acquire an air weapon without holding an air weapon certificate for the period (or a part of it) that the qualifying visitor is in Scotland.

(2) A person may, on behalf of a group of 2 to 20 qualifying visitors, make an application to the chief constable for each member of the group to be granted a visitor permit.

(3) The chief constable may grant a visitor permit to some or all of the members of the group.

(4) The chief constable may grant a visitor permit only if satisfied—

(a) in the case of an individual application, that the qualifying visitor has a good reason for using, possessing, purchasing or acquiring an air weapon while visiting Scotland,

(b) in the case of a group application, that each qualifying visitor is to use and possess an air weapon while visiting Scotland only—

(i) for sporting purposes (including shooting live quarry) on private land,

(ii) for the purposes of target shooting on private land, or

(iii) for the purposes of participating in an event or competition,

(c) in every case—

(i) that the qualifying visitor can be permitted to possess an air weapon without danger to the public safety or to the peace, and

(ii) that the qualifying visitor is not prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.

(5) For the purposes of subsection (4)(b) the chief constable may require the applicant to produce evidence that the owner or occupier of the land consents to the visitors’ intended use or possession of air weapons on the land.

(6) Except where section 14 applies, the chief constable must, on granting a visitor permit in respect of a group application, attach to the permit as a condition that the holder of the permit may use and possess an air weapon only for such of the purposes described in subsection (4)(b) as the chief constable may specify in the condition.

(7) A visitor permit expires (unless earlier revoked or cancelled) on the expiry date specified in the permit.

(8) No visitor permit is to be granted for a period of longer than 12 months.

(9) An application for a visitor permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.

(10) For the purposes of this section and section 14—

“group application” means an application under subsection (2) for visitor permits made by a person on behalf of qualifying visitors in a group,

“individual application” means an application under subsection (1) for a visitor permit made by the qualifying visitor,

“qualifying visitor” means an individual who is—
(a) aged 14 years or more,
(b) not ordinarily resident in Scotland, and
(c) visiting (or intending to visit) Scotland.

14 Visitor permits: young persons

(1) This section applies—
   (a) where an individual applicant for a visitor permit is under the age of 18,
   (b) in respect of any individual who is—
      (i) under the age of 18, and
      (ii) on whose behalf a visitor permit is applied for as part of a group application.

(2) A parent or guardian of the applicant or individual under the age of 18 must consent in the prescribed form and manner to the making of the application.

(3) The chief constable must, on granting a visitor permit in respect of an individual application, attach to the permit—
   (a) the condition described in section 7(4), and
   (b) one or more of the conditions described in subsection (5) of that section.

(4) The chief constable must, on granting a visitor permit in respect of a group application, attach to the permit—
   (a) the condition described in section 7(4), and
   (b) one or more of the conditions described in paragraphs (za) to (b) of subsection (5) of that section.

(5) It is sufficient, for the purposes of section 13(4)(a), for the chief constable to be satisfied that the applicant has a good reason for using or possessing an air weapon.

15 Police and visitor permits: conditions

(1) Every police permit and visitor permit is subject to any prescribed mandatory conditions.

(2) The chief constable may, when granting a police permit or a visitor permit, attach conditions to the permit.

(3) The chief constable may not attach to a police permit or a visitor permit a condition which is inconsistent with—
   (a) a prescribed mandatory condition which applies to police permits or, as the case may be, visitor permits, or
   (b) a condition which must be attached to the permit under this Part.

(4) It is an offence for the holder of a police permit or a visitor permit to fail to comply with a condition attached to the permit.

(5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
16  **Police and visitor permits: variation and revocation**

(1) The chief constable may, by giving notice to the holder of a police permit or a visitor permit—

(a) vary the permit,

(b) attach conditions to the permit,

(c) vary or revoke a condition attached to the permit other than—

(i) a prescribed mandatory condition which applies to the permit, or

(ii) a condition which must be attached to a permit under this Part, or

(d) revoke the permit.

(2) The chief constable may give a notice under subsection (1)—

(a) on the application of the holder of a police permit or visitor permit, or

(b) of the chief constable’s own accord (at any time).

(3) The chief constable may not attach to a police permit or a visitor permit a condition which is inconsistent with—

(a) a prescribed mandatory condition which applies to police permits or, as the case may be, visitor permits, or

(b) a condition which must be attached to the permit under this Part.

(4) For the purposes of paragraphs (a) to (c) of subsection (1), the chief constable may by giving notice to the holder of a police permit or a visitor permit require the holder to produce the permit within the period of 21 days beginning with the date on which the notice is given.

(5) A notice given under subsection (1) which revokes a police permit or a visitor permit must—

(a) be given at least 7 days before the date on which the revocation is to take effect, and

(b) require the holder of the permit to surrender the permit and any air weapons that the holder possesses by such date as the chief constable may specify in the notice.

(6) It is an offence for the holder of a police permit or a visitor permit, without reasonable excuse, to fail to comply with a requirement contained in a notice under subsection (1).

(7) An individual who commits an offence under subsection (6) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(8) In the event that the holder of a police permit or a visitor permit makes an appeal under section 35 against a decision to revoke the holder’s permit—

(a) the revocation does not take effect, but

(b) the holder must still surrender the permit and any air weapons that the holder possesses in accordance with the requirements of the notice given under subsection (1), pending the determination or withdrawal of the appeal.
17 **Event permits**

(1) The chief constable may, on the application of a person (“the organiser”) who is organising or otherwise responsible for an event, grant a permit authorising individuals at the event to borrow, hire, use and possess air weapons while engaging in an event activity without holding an air weapon certificate (“an event permit”).

(2) The chief constable may, when granting an event permit, attach conditions to it.

(3) The organiser must ensure that the event permit (or a copy of it) is prominently displayed at the event so as to be capable of being read by any person attending the event.

(4) It is an offence for the organiser—

   (a) to fail to comply with a condition attached to the event permit, or

   (b) without reasonable excuse, to fail to comply with subsection (3).

(5) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(6) An application for an event permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.

(7) For the purposes of this section, an “event activity” is an activity—

   (a) involving the use and possession of air weapons by individuals, and

   (b) which has been planned by (or on behalf of) the organiser as part of the event.

18 **Approval of air weapon clubs**

(1) The chief constable may, on the application of an air weapon club, grant or renew an approval of the club.

(2) An application for the grant or renewal of an approval of an air weapon club is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.

(3) The chief constable may, at any time by giving notice to an approved air weapon club, withdraw the club’s approval.

(4) Every approval of an air weapon club is subject to any prescribed mandatory conditions.

(5) The chief constable may, when granting or renewing an approval, attach conditions to the approval (and in the case of a renewal, may attach different conditions from those attached to the approval prior to its renewal).

(6) The chief constable may not attach to an approval a condition which is inconsistent with a prescribed mandatory condition which applies to approvals.

19 **Variation of approval**

(1) The chief constable may, by giving notice in writing to an approved air weapon club—

   (a) vary the club’s approval,

   (b) attach conditions to the club’s approval, or
(c) vary or revoke a condition attached to the club’s approval other than a prescribed mandatory condition which applies to approvals.

(2) The chief constable may give a notice under subsection (1)—
(a) on the application of the approved air weapon club, or
(b) of the chief constable’s own accord (at any time).

(3) The chief constable may not attach to an approval a condition which is inconsistent with a prescribed mandatory condition which applies to approvals.

20 Duration of approval

(1) An approval of an air weapon club expires (unless earlier withdrawn) at the end of the period of 6 years beginning with the date on which the approval is granted or renewed.

(2) Where an approved air weapon club has applied for the renewal of its approval before its expiry but the chief constable has not, as at the date of its expiry, determined whether or not to grant the renewal, the approval is to continue to have effect until the application is determined.

(3) The Scottish Ministers may by regulations amend subsection (1) to specify a different period.

21 Alignment of club approvals

(1) Subsection (2) applies where an air weapon club—
(a) is approved as a rifle club under section 15 of the Firearms (Amendment) Act 1988 (“the 1988 Act”), and
(b) makes an application for the grant or renewal of an approval under section 18(1) of this Act.

(2) Where this subsection applies, the club may request that the chief constable grant or renew its approval under section 18(1) of this Act for such shorter period than is provided for in section 20(1) of this Act as is appropriate to secure that it expires on the same day as the club’s approval under section 15 of the 1988 Act.

(3) Subsection (4) applies where a club—
(a) is an approved air weapon club, and
(b) makes an application for the grant or renewal of an approval as a rifle club under section 15 of the 1988 Act.

(4) Where this subsection applies, the club may make an application under section 18(1) of this Act for the club’s approval to be renewed as from the same day as that on which the club’s application for approval under section 15 of the 1988 Act is granted or renewed.

22 Power to enter and inspect club premises

(1) The chief constable may, for the purposes of ascertaining whether the provisions of this Part or any conditions attached to an approved air weapon club’s approval are being complied with, authorise a constable or a member of police staff—
(a) to enter any club premises of an approved air weapon club, and
(b) to inspect those premises and anything on them which is relevant to the purposes for which the authorisation was granted.

(2) The power of a constable or a member of police staff under subsection (1)(b) to inspect anything on club premises includes power to require any information which is stored in electronic form and accessible from the premises to be produced in a form which is visible and legible.

(3) A constable or a member of police staff may exercise the powers of entry conferred by this section only at a reasonable time, unless it appears to the constable or member of police staff that the purposes of entering the club premises may be frustrated if the constable or member of police staff seeks to enter at a reasonable time.

(4) A constable or a member of police staff must, if asked, produce the authorisation before entering any premises under this section.

(5) The chief constable may delegate the power to grant an authorisation under subsection (1) only to a constable who holds the rank of inspector or above.

(6) It is an offence for a person to obstruct intentionally a constable or a member of police staff in the exercise of the constable’s or member of police staff’s powers under an authorisation granted under this section.

(7) A person who commits an offence under subsection (6) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(8) In this section, “club premises”, in relation to an approved air weapon club, means any premises, other than a dwelling, occupied or used by the club.

23 Requirements for recreational shooting facilities

(1) A person who operates a recreational shooting facility must—

(a) hold or (if not an individual) ensure that an individual responsible for the management and operation of the facility holds, an air weapon certificate, and

(b) at all times that the facility is in use, display the certificate (or a copy of it) prominently on the facility so as to be capable of being read by anyone considering whether to use the facility.

(2) It is an offence for a person who operates a recreational shooting facility—

(a) to fail to comply with subsection (1)(a), or

(b) without reasonable excuse, to fail to comply with subsection (1)(b).

(3) A person who commits an offence under subsection (2) is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

(4) In this section, “recreational shooting facility” means—

(a) a miniature rifle range or a shooting gallery at which air weapons are used, or

(b) a facility for combat games which involve using an air weapon, which is operated with a view to making a profit.

(5) This section does not apply to an approved air weapon club.
Restrictions on transactions involving air weapons

(1) It is an offence for a person other than a registered firearms dealer, by way of trade or business, to—
   (a) manufacture, sell, transfer, repair or test an air weapon,
   (b) expose an air weapon for sale or transfer, or
   (c) possess an air weapon for the purposes of its sale, transfer, repair or testing.

(2) It is an offence for a person (“A”) to sell or transfer an air weapon to another person (“B”) unless—
   (a) B is a registered firearms dealer,
   (b) B holds an air weapon certificate (without a condition attached to it preventing B from purchasing or acquiring an air weapon) and shows it to A,
   (c) A is a registered firearms dealer and is satisfied that—
      (i) in a case where B is an individual, B is aged 18 years or more, and
      (ii) the air weapon is to be delivered to a place outwith Great Britain, or to a registered firearms dealer in England or Wales, without first coming into B’s possession, or
   (d) B provides evidence to A that B is otherwise entitled to purchase or acquire an air weapon without holding an air weapon certificate by virtue of the provisions of this Part.

(3) It is an offence for a person (“A”) to manufacture, repair or test an air weapon for another person (“B”) unless—
   (a) B is a registered firearms dealer,
   (b) B holds an air weapon certificate and shows it to A, or
   (c) B provides evidence to A that B is otherwise entitled to possess an air weapon without holding an air weapon certificate by virtue of the provisions of this Part.

(4) A person who commits an offence under this section is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
   (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

Requirement for commercial sales of air weapons to be in person

(1) This section applies where a person (“the seller”) sells an air weapon by way of trade or business to an individual in Great Britain who is not a registered firearms dealer.

(2) It is an offence for the seller, for the purposes of the sale, to transfer possession of the weapon to the purchaser otherwise than at a time when both the purchaser and the seller (or a representative of the seller) are present in person.

(3) The reference in subsection (2) to a representative of the seller is a reference to—
   (a) a person who is employed by the seller in the seller’s business as a registered firearms dealer,
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(b) a registered firearms dealer ("A") who has been authorised by the seller to act on the seller’s behalf in relation to the sale, or

c) a person who is employed by A in A’s business as a registered firearms dealer.

(4) A person who commits an offence under this section is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

Enforcement

27 Power of search with warrant

(1) A sheriff may, on the application of a constable or a member of police staff, grant a warrant to the applicant under this section if satisfied, by evidence on oath, that there is a reasonable ground for suspecting—

(a) that an air weapon offence has been, is being, or is about to be committed, or

(b) that, in connection with an air weapon, there is a danger to the public safety or to the peace.

(2) A warrant under this section may authorise a constable or a member of police staff—

(a) to enter at any time any place named in the warrant, if necessary by force, and to search the place and every person found there,

(b) to seize and detain anything that the constable or member of police staff may find at the place, or on any such person, in respect of which or in connection with which the constable or member of police staff has a reasonable ground for suspecting—

(i) that an air weapon offence has been, is being or is about to be committed, or

(ii) that in connection with an air weapon there is a danger to the public safety or to the peace.

(3) The power of a constable or a member of police staff under subsection (2)(b) to seize and detain anything found at any place, or on any person found there, includes power to require any information which is stored in any electronic form and is accessible from the place or by the person to be produced in a form—

(a) which is visible and legible and can be taken away, or

(b) from which it can be readily produced in a visible and legible form and can be taken away.

(4) It is an offence for an individual to obstruct intentionally a constable or member of police staff in the exercise of the constable’s or member of police staff’s powers under a warrant granted under this section.

(5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

28 Production of air weapon certificate

(1) A constable may require a person whom the constable believes to be in possession of an air weapon to produce—
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(a) the person’s air weapon certificate, or
(b) evidence that the person is entitled to possess an air weapon without holding an air weapon certificate by virtue of the provisions of this Act.

(2) Where a person fails to produce the air weapon certificate or evidence required under subsection (1), the constable may—
(a) seize and detain the air weapon, and
(b) require the person to provide (immediately) the person’s name and address.

(3) It is an offence for a person—
(a) to fail to comply with a requirement under subsection (2)(b), or
(b) to provide a false name or address.

(4) A person who commits an offence under subsection (3) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

29 Cancellation of air weapon certificate

(1) Subsection (2) applies where an individual (“A”) holding an air weapon certificate—
(a) is convicted of—
(i) an air weapon offence,
(ii) an offence under the 1968 Act, or
(iii) an offence for which A is sentenced to imprisonment or to detention in a young offenders’ institution,
(b) has been ordered to keep the peace or to be of good behaviour and, as a condition of that, is not to possess, carry or use an air weapon or other firearm,
(c) is subject to a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 which contains a requirement not to possess, carry or use an air weapon or other firearm, or
(d) has been ordained to find caution and as a condition of that, is not to possess, carry or use an air weapon or other firearm.

(2) Where this subsection applies, the court by or before which A is convicted, or which imposes the condition or requirement, may cancel the air weapon certificate held by A.

(3) Where the court cancels an air weapon certificate under this section—
(a) the court must notify the chief constable of the cancellation, and
(b) the chief constable must, by notice given to A, require A to surrender A’s air weapon certificate within the period of 21 days beginning with the date the notice is given.

(4) It is an offence for an individual, without reasonable excuse, to fail to comply with the requirements of a notice under subsection (3)(b).

(5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

30 Forfeiture and disposal of air weapons

(1) Subsection (2) applies where a person (“A”) is convicted of an air weapon offence.
(2) Where this subsection applies, the court by or before which A is convicted may make
such order as to the forfeiture or disposal of any air weapon found in A’s possession as
the court thinks fit.

(3) A constable may seize and detain an air weapon which may be the subject of an order
for forfeiture under this section or which, but for subsection (5), could be the subject of
such an order.

(4) A sheriff may, on an application of the chief constable, order the disposal (by any means
the chief constable thinks fit) of any air weapon seized and detained by a constable
under this Part.

(5) No order is to be made under subsection (2) or (4) for the forfeiture or disposal of an air
weapon which is possessed for the purposes of a museum.

(6) Subsection (7) applies where—

(a) an air weapon is surrendered in pursuance of—

(i) a notice given under section 11(3) which revokes an individual’s air
weapon certificate, or

(ii) a notice given under section 16(1) which revokes an individual’s police
permit or visitor permit, and

(b) the individual appeals against the decision to revoke the individual’s air weapon
certificate, police permit or, as the case may be, visitor permit (and does not
withdraw that appeal prior to its determination).

(7) Where this subsection applies—

(a) if the appeal is successful, the air weapon must be returned,

(b) if the appeal is dismissed, the sheriff may make such order for the disposal of the
air weapon as the sheriff considers appropriate.

(8) Subsection (9) applies where—

(a) an air weapon is surrendered in pursuance of—

(i) a notice given under section 11(3) which revokes an individual’s air
weapon certificate, or

(ii) a notice given under section 16(1) which revokes an individual’s police
permit or visitor permit, and

(b) the individual—

(i) does not appeal against the decision to revoke the individual’s air weapon
certificate, police permit or, as the case may be, visitor permit, or

(ii) makes and subsequently withdraws an appeal against such a decision.

(9) Where this subsection applies, the air weapon is to be disposed of—

(a) in such manner as the chief constable and the owner of the weapon may agree, or

(b) in default of such agreement, in such manner as the chief constable may decide.

(10) Where the chief constable decides to dispose of an air weapon under subsection (9)(b),
the chief constable must give the owner notice of the decision.
Offences

31 Failure to keep air weapons secure or to report loss to police

(1) It is an offence for a person—
   (a) to fail to take reasonable precautions for the safe custody of an air weapon
       possessed by the person, or
   (b) to fail to report as soon as reasonably practicable to the chief constable the loss or
       theft of an air weapon possessed by the person.

(2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

32 False statements, certificates and permits

(1) It is an offence for an individual to knowingly or recklessly make any statement which is false in any material particular for the purposes of procuring (either personally or for another person)—
   (a) the grant, renewal or variation of an air weapon certificate,
   (b) the grant or variation of a police or visitor permit,
   (c) the grant of an event permit, or
   (d) the grant, renewal or variation of an approval of an air weapon club.

(2) It is an offence for an individual, with a view to purchasing, acquiring or procuring the repair or testing of an air weapon—
   (a) to produce a false air weapon certificate, police permit or visitor permit,
   (b) to produce an air weapon certificate, police permit or visitor permit which has been improperly altered, or
   (c) to knowingly or recklessly make a statement which is false in a material particular.

(3) An individual who commits an offence under this section is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

33 Time limit for offences

Section 136 of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences) applies to an air weapon offence which is triable only summarily as if the references in subsection (1) of that section to 6 months were to 36 months (and subsection (2) of that section were omitted).

34 Offences by bodies corporate etc.

(1) Subsection (2) applies where—
   (a) an offence under this Part has been committed by—
      (i) a body corporate,
      (ii) a Scottish partnership, or
      (iii) an unincorporated association other than a Scottish partnership, and
(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate (other than a limited liability partnership)—

(i) a director, manager, secretary or similar officer of the body,

(ii) where the affairs of the body are managed by its members, a member,

(b) in relation to a limited liability partnership, a member,

(c) in relation to a Scottish partnership, a partner,

(d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

General

35 Appeals

(1) A person aggrieved by a decision of the chief constable under a section listed in subsection (2) may appeal against the decision to the appropriate sheriff.

(2) The sections are—

(a) section 5(1) (grant or renewal of air weapon certificate),

(b) section 6(2) (air weapon certificates: conditions),

(c) section 7(3)(b) (special requirements and conditions for young person’s air weapon certificate),

(d) section 10(1) (variation of air weapon certificate),

(e) section 11(1)(a) or (2) (revocation of air weapon certificate),

(f) section 12(1) (police permits),

(g) section 13(1) or (6) (visitor permits),

(h) section 14(3)(b) or (4)(b) (visitor permits: young persons),

(i) section 15(2) (police and visitor permits: conditions),

(j) section 16(1) (police and visitor permits: variation and revocation),

(k) section 17(1) or (2) (event permits),

(l) section 18(1), (3) or (5) (approval of air weapon clubs),

(m) section 19(1) (variation of approval for air weapon club),

(n) section 30(9)(b) (forfeiture and disposal of air weapons).

(3) An appeal must be made within the period of 21 days beginning with the date on which the decision appealed against was made.
(4) An appeal under this section is to be determined on the merits (and not by way of review).

(5) The sheriff hearing the appeal may consider any evidence or other matter, whether or not it was available at the time the chief constable made the decision appealed against.

(6) On determining the appeal, the sheriff may—
   (a) dismiss the appeal,
   (b) give the chief constable such direction as the sheriff considers appropriate as respects the matter which is the subject of the appeal.

(7) The decision of the sheriff may be appealed against only on a point of law.

(8) In this section, “the appropriate sheriff” means—
   (a) in a case where the appellant resides in Scotland, a sheriff of the sheriffdom in which the appellant resides, or
   (b) in a case where the appellant resides outwith Scotland, a sheriff of the sheriffdom of Lothian and Borders, sitting at Edinburgh.

36 Fees

(1) The Scottish Ministers may by regulations make provision for the charging of fees by the chief constable—
   (a) in respect of applications under this Part, and
   (b) otherwise in respect of the performance of functions by the chief constable under this Part.

(2) Regulations under subsection (1) may—
   (a) specify different fees for different circumstances,
   (b) specify circumstances in which no fee is payable,
   (c) provide for fees to be determined by reference to such factors (including the value of money) as may be specified in the regulations.

(3) Where regulations under subsection (1) provide for a fee to be charged in respect of an application under this Part, the application is valid only when the fee is paid.

(4) Nothing in this section limits the generality of section 75.

37 Power to make further provision

(1) The Scottish Ministers may by regulations make further provision for the purposes of this Part.

(2) Without limiting that generality (or the generality of section 75), regulations under subsection (1) may—
   (a) make provision about the application processes under this Part (for example, prescribing the form and content of applications, any required supporting documentation or making further provision about the verification of applications),
   (b) make provision in relation to air weapon certificates, police permits, visitor permits, event permits and approvals of air weapon clubs (for example, prescribing their form and content or the conditions which may or must be attached to them).
**37A Crown application**

(1) No contravention of any provision made by or under this Part makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), any provision made by or under this Part applies to a person in the public service of the Crown as it applies to other persons.

**38 Transitional arrangements for existing certificate holders**

(1) This section applies where, on the day on which section 2(1) comes into force, a person aged 14 years or more holds a firearm certificate or a shotgun certificate (“the existing certificate”).

(2) It is not an offence under section 2(1) for the person to use and possess an air weapon without holding an air weapon certificate for the duration of the transitional period.

(3) The person must, in relation to such use or possession, comply with—

(a) any prescribed mandatory conditions which apply to the use and possession of air weapons, and

(b) if the person is under the age of 18, the conditions mentioned in section 7(5).

(4) A person who fails to comply with a condition mentioned in subsection (3) commits an offence.

(5) But it is not an offence under subsection (4) for a person to fail to comply with a condition mentioned in subsection (3) if—

(a) the person is entitled to use or possess an air weapon by virtue of an exemption under schedule 1, and

(b) the failure relates to the use or possession of an air weapon in accordance with the exemption.

(6) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(7) In this section, the “transitional period” means, in relation to an existing certificate, the period—

(a) beginning with the day on which section 2(1) comes into force, and

(b) ending with (the earlier of)—

(i) the day on which the existing certificate is, or falls to be, renewed, or

(ii) the day on which the existing certificate is surrendered, cancelled or revoked.

(8) For the purposes of subsection (7)(b)(i), where a person holds both a firearm certificate and a shotgun certificate, the existing certificate is the certificate which is, or which falls to be, renewed later.

(9) For the purposes of subsection (7)(b)(ii), where a person holds both a firearm certificate and a shotgun certificate—
(a) the surrender of one of the certificates does not end the transitional period, but
(b) the cancellation or revocation of either certificate ends the transitional period.

(10) For the purposes of paragraph 16 of schedule 1, this section is to be treated as if it were an exemption under that schedule.

39 Guidance

(1) The chief constable must, in exercising any function under this Part, have regard to any guidance issued by the Scottish Ministers.

(2) The Scottish Ministers must publish any guidance they issue for the purposes of this Part.

(3) The Scottish Ministers may revise and revoke such guidance.

40 Interpretation of Part 1

(1) In this Part, unless the context otherwise requires—

“the 1968 Act” means the Firearms Act 1968,

“acquire” means hire, accept as a gift or borrow and “acquisition” is to be construed accordingly,

“air weapon” is to be construed in accordance with section 1,

“air weapon certificate” means an air weapon certificate granted under section 5(1),

“air weapon club” means an association of individuals which has as a purpose the activity of target shooting with air weapons,

“air weapon offence” means any offence under this Part,

“approval”, in relation to an air weapon club, means an approval granted to the club under section 18(1),

“approved air weapon club” means an air weapon club which has been granted an approval by the chief constable under section 18(1),

“chief constable” means the chief constable of the Police Service of Scotland,

“condition” includes requirement and restriction,

“constable” has the meaning given in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“event permit” means a permit granted under section 17(1),

“firearm certificate” is to be construed in accordance with section 57(4) of the 1968 Act,

“guardian”, in relation to an individual, means a person appointed by deed or will or by a court of competent jurisdiction to be the guardian of the individual,

“member of police staff” means an individual appointed under section 26 of the Police and Fire Reform (Scotland) Act 2012,

“member of staff of the Scottish Police Authority” means an individual appointed under paragraph 6(1) of schedule 1 to the Police and Fire Reform (Scotland) Act 2012,
“miniature rifle range” is to be construed in accordance with section 11 of the 1968 Act,
“museum” means a museum or similar institution which has as its purpose, or one of its purposes, the preservation for the public benefit of a collection of historical, artistic or scientific interest which is maintained wholly or mainly out of money provided by Parliament, a Minister of the Crown, the Scottish Ministers or a local authority,
“police permit” means a permit granted under section 12(1),
“prescribed” means prescribed in regulations made under section 37,
“registered firearms dealer” means a person registered as a firearms dealer under section 33 of the 1968 Act,
“relative”, in relation to an individual, means—
(a) the spouse, civil partner, parent, stepparent, child, stepchild, grandparent or grandchild of the individual or of the individual’s spouse, former spouse, civil partner or former civil partner, or
(b) the sibling, uncle, aunt, nephew or niece (whether of the full blood or of the half blood or by affinity) of the individual or the individual’s spouse, former spouse, civil partner or former civil partner, and includes, in relation to an individual who is living or has lived with another individual as if they were spouses or civil partners, any individual who would fall within paragraph (a) or (b) if the parties were married or civilly partnered to each other,
“shot gun certificate” is to be construed in accordance with section 57(4) of the 1968 Act,
“transfer” includes let on hire, give, lend and part with possession,
“visitor permit” means a permit granted under section 13(1).

(2) In this Part, a reference to an individual holding an air weapon certificate, a police permit or a visitor permit is a reference to an individual holding an air weapon certificate, police permit or, as the case may be, visitor permit—
(a) granted to the individual under section 5, 12 or, as the case may be, 13 and
(b) which has not expired or been revoked or cancelled.

(3) In this Part, a reference to a condition attached to an air weapon certificate, police permit, visitor permit, event permit or approval of an air weapon club includes a reference to any condition to which the certificate, permit or as the case may be, approval is subject by virtue of this Act.

(4) Any expression used in this Part which is also used in an Act listed in subsection (5) is, unless the context otherwise requires, to be construed in accordance with any decisions or opinions of a court interpreting the expression for the purposes of the Act.

(5) The Acts are—
(a) the 1968 Act,
(b) the Firearms (Amendment) Act 1988, and
Part 2

Alcohol licensing

Licensing objectives

5 41 Licensing objectives: protecting young persons from harm

In section 4 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) (the licensing objectives), in subsection (1)(e), after “children” insert “and young persons”.

Statements of licensing policy

42 Statements of licensing policy: licensing policy periods

In section 6 of the 2005 Act (statements of licensing policy)—

(a) in subsection (1), for “3 year period” substitute “licensing policy period”,
(b) in subsection (2), for “3 year period” substitute “licensing policy period”,
(c) after subsection (3) insert—

“(3ZA) A Licensing Board may, in preparing a licensing policy statement, decide that the licensing policy period to which the statement relates is to begin on a date earlier than it otherwise would under subsection (7).

(3ZB) Where a Licensing Board make a decision under subsection (3ZA) they must, when publishing the licensing policy statement under subsection (6), publicise the date on which they have decided the licensing policy period is to begin.”,

(d) in subsection (4), for “3 year period” substitute “licensing policy period”,
(e) for subsection (7) substitute—

“(7) Subject to subsection (3ZA), in this section, “licensing policy period” means the period between each relevant date.

(8) For the purposes of subsection (7), “relevant date” means the date occurring 18 months after an ordinary election of councillors for local government areas takes place under section 5 of the Local Government etc. (Scotland) Act 1994.”.

Fit and proper person test

43 Premises licence application: ground for refusal

(A1) The 2005 Act is amended as follows.

(A2) In section 22 (objections and representations)—

(a) after subsection (1) insert—

“(1A) A person giving a notice under subsection (1) may include in the notice any information that the person considers may be relevant to consideration by the Board of any ground for refusal including, in particular, information in relation to—

(a) the applicant,
(b) where the applicant is neither an individual nor a council, a connected
person in relation to the applicant, or
(c) any person who would be an interested party in relation to the subject
premises if the application were to be granted.

(b) in subsection (3)(b), after “representation” insert “(including any information
included under subsection (1A))”.

(A3) In section 23 (determination of premises licence application)—

(a) in subsection (5)—

(i) after paragraph (b) insert—

“(ba) that the Licensing Board consider, having regard to the licensing
objectives, that the applicant is not a fit and proper person to be the
holder of a premises licence,”,

(ii) in paragraph (c), after “would” insert “otherwise”,

(b) in subsection (6), for the words “the granting of the application would be
inconsistent with one or more of the licensing objectives,” substitute “either of the
grounds of refusal specified in subsection (5)(ba) and (c) applies,”,

(c) in subsection (8)(b), for “(5)(c)” substitute “(5)(ba) or (c)”.

44 Application to transfer premises licence: ground for refusal

(1) The 2005 Act is amended as follows.

(2) In section 33 (transfer on application of licence holder)—

(a) after subsection (7) insert—

“(7A) On giving a notice under subsection (6)(a) or (b), the chief constable may also
provide to the Licensing Board any information in relation to—

(a) the transferee,

(b) where the transferee is neither an individual nor a council, a connected
person, or

(c) any person who would be an interested party in relation to the licensed
premises if the application for the transfer of the licence to the transferee
were to be granted,

that the chief constable considers may be relevant to consideration by the
Board of the application.”,

(b) in subsection (8)—

(i) the word “and” immediately following paragraph (a) is repealed,

(ii) after paragraph (b) insert “, and

(c) no information has been provided under subsection (7A),”,

(c) in subsection (10)—

(i) after “notice” insert “and any information provided under subsection (7A),”,

(ii) in paragraph (a), for the words from “it” to “objectives” substitute “a
ground for refusal applies”,

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(d) after subsection (10) insert—

“(11) The grounds for refusal are—

(a) that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence,

(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.”.

45  Ground for review of premises licence

(1) The 2005 Act is amended as follows.

(2) In section 36 (application for review of premises licence)—

(a) in subsection (3), before paragraph (a) insert—

“(za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence,”,

(b) in subsection (5), before paragraph (a) insert—

“(za) where the ground is that specified in subsection (3)(za), a summary of the information on which the applicant’s view that the alleged ground applies is based,”,

(c) after subsection (5) insert—

“(5A) A person making a premises licence review application may include in the application any information that the applicant considers may be relevant to consideration by the Licensing Board of the alleged ground for review including, in particular, information in relation to—

(a) the licence holder,

(b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or

(c) any person who is an interested party in relation to the licensed premises.”.

(3) In section 37 (review of premises licence on Licensing Board’s initiative)—

(a) in subsection (4), before paragraph (a) insert—

“(za) where the ground is that specified in section 36(3)(za), a summary of the information on which the Board’s view that the alleged ground applies is based,”,

(b) after subsection (4) insert—

“(5) A Licensing Board making a premises licence review proposal may include in the proposal any information that the Board considers may be relevant to their consideration of the alleged ground for review including, in particular, information in relation to—

(a) the licence holder,

(b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or

(c) any person who is an interested party in relation to the licensed premises.”.
(4) In section 39 (Licensing Board’s powers on review)—

(a) after subsection (1), insert—

“(1A) Subsection (1) is subject to subsection (2A).”.

(b) after subsection (2), insert—

“(2A) Where, at a review hearing in relation to any premises licence, the Licensing Board are satisfied that the ground for review specified in section 36(3)(za) is established, the Board must revoke the licence.

(2B) Subject to section 39B, a revocation under subsection (2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision.”.

(5) In section 39A (notification of determinations), in subsection (1)—

(a) the word “or” immediately following paragraph (a) is repealed,

(b) after paragraph (b), insert “, or

(c) decides to revoke a premises licence under section 39(2A),”.

(5A) After section 39A insert—

“39B Recall of revocation of licence under section 39(2A)

(1) This section applies where a Licensing Board decides to revoke a premises licence under section 39(2A).

(2) The Board must recall the revocation if—

(a) a relevant application is made before the end of the period referred to in section 39(2B) (“the 28 day period”), and

(b) the Board grants the application.

(3) The Board may extend the 28 day period pending determination of a relevant application.

(4) In this section, “relevant application” means—

(a) an application under section 33(1) for the transfer of the premises licence, or

(b) a premises licence variation application seeking a variation of the licence that the Board considers would remove the ground on which the licence was revoked under section 39(2A).

(5) This section does not affect the right to appeal against the decision to revoke the licence under section 39(2A).”.

(6) In Part 1 of schedule 5 (appeals to the sheriff principal), in the entry in the left-hand column relating to a decision under section 39(1), after “39(1)” insert “or (2A)”.

46 Personal licence applications and renewals: ground for refusal

(1) The 2005 Act is amended as follows.

(2) In section 73 (notification of application to the chief constable), after subsection (4) insert—
“(5) On giving a notice under subsection (3)(a) or (b), the chief constable may also provide to the Licensing Board any information in relation to the applicant that the chief constable considers may be relevant to consideration by the Board of the application.”.

(3) After section 73 of the 2005 Act insert—

“73A Notification of application to Licensing Standards Officer

(1) Where a Licensing Board receive a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board’s area.

(2) A Licensing Standards Officer may, within 21 days of the date of receipt of a notice under subsection (1), respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration by the Board of the application.”.

(4) In section 74 (determination of personal licence application)—

(a) in subsection (2), after paragraph (c) insert—

“(ca) no information has been provided under section 73(5) or 73A(2),”,

(b) after subsection (5A) insert—

“(5AA) If—

(a) all of those conditions are met in relation to the applicant,

(b) the notice received from the chief constable under subsection (3)(a) or (b) of section 73 does not include a recommendation under subsection (4) of that section, and

(c) information has been provided under subsection (5) of that section or under section 73A(2),

the Board may hold a hearing for the purpose of considering and determining the application.”,

(c) in subsection (5B), after “(5A)” insert “or (5AA)”,

(d) in subsection (6)—

(i) for “(5) or (5A)” substitute “(5), (5A) or (5AA)”,

(ii) after “notice” insert “and any information provided under section 73(5) or 73A(2)”,

(iii) in paragraph (a), for the words from “it” to “objectives” substitute “a ground for refusal applies”,

(e) after subsection (6) insert—

“(6A) The grounds for refusal are—

(a) that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence,

(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.”.

(5) In section 78 (renewal of personal licence), in subsection (5), for “73 and 74” substitute “73, 73A and 74”.
47 Personal licence holders: procedure on receipt of notice of conviction

(1) The 2005 Act is amended as follows.

(2) In section 83 (procedure where Licensing Board receive notice of conviction)—

   (a) after subsection (8), insert—

      “(8A) Subsection (8) is subject to subsection (9A).”,

   (b) after subsection (9), insert—

      “(9A) Where, at the hearing, the Licensing Board are satisfied that, having regard to
      the licensing objectives, the licence holder is not a fit and proper person to be
      the holder of a personal licence, the Board must make an order revoking the
      licence.”,

   (c) in subsection (10), after “(9)” insert “or (9A)”.

(3) In Part 2 of schedule 5 (appeals to the sheriff), in the entry in the left-hand column
relating to a decision to make an order under section 83(9), 84(7) or 86(3), for “83(9)” substitute “83(9) or (9A)”.

48 Personal licence holders: conduct inconsistent with the licensing objectives

(1) The 2005 Act is amended as follows.

(2) In section 84 (conduct inconsistent with the licensing objectives)—

   (a) after subsection (6), insert—

      “(6A) Subsection (6) is subject to subsection (7A).”,

   (b) after subsection (7), insert—

      “(7A) Where, at the hearing, the Licensing Board are satisfied that, having regard to
      the licensing objectives, the licence holder is not a fit and proper person to be
      the holder of a personal licence, the Board must make an order revoking the
      licence.”,

   (c) in subsection (8), after “(7)” insert “or (7A)”.

(3) In section 84A (power of chief constable to report conduct inconsistent with the
licensing objectives), in subsection (3), for “(6), (7)” substitute “(6), (6A), (7), (7A)”.

(4) In Part 2 of schedule 5 (appeals to the sheriff), in the entry in the left-hand column
relating to a decision to make an order under section 83(9), 84(7) or 86(3), for “84(7)” substitute “84(7) or (7A)”.

48A Transfer of premises licences

(1) The 2005 Act is amended as follows.

(2) In section 33 (transfer of premises licence on application of licence holder)—

   (a) for subsections (1) to (3) substitute—
“(1) Any person, other than an individual under the age of 18, may apply to the appropriate Licensing Board for the transfer of a premises licence to the person (such person being referred to in this section and section 33A as the “transferee”).

(1A) An application under subsection (1) must—

(a) specify the date on which the transfer is to take effect, and

(b) be accompanied by—

(i) the premises licence to which the application relates or, if that is not practicable, a statement of the reasons for failure to produce the licence, and

(ii) a written statement signed by the holder of the premises licence consenting to its transfer to the transferee (a “consent statement”) or, if that is not practicable, a statement of the reasons for failure to obtain the licence holder’s written consent.”,

(b) in subsection (4), after “constable” insert “, unless the Board must refuse the application under subsection (8A)”,

(c) in subsection (8), before paragraph (a) insert—

“(za) the application is accompanied by a consent statement referred to in subsection (1A)(b)(ii),”,

(d) after subsection (8) insert—

“(8A) If the application is not accompanied by a consent statement referred to in subsection (1A)(b)(ii), the Board must refuse the application, unless the Board dispenses with the requirement for a consent statement under section 33A(4).”.

(3) The title of section 33 becomes “Application for transfer of premises licence”.

(4) After section 33 insert—

“33A Application for transfer: further provision

(1) This section applies where a Licensing Board receives an application under section 33(1) for the transfer of a premises licence.

(2) The Board must take all reasonable steps to give notice of the application to the premises licence holder.

(3) Subsection (4) applies where the application is not accompanied by a consent statement referred to in section 33(1A)(b)(ii).

(4) The Board may dispense with the requirement for a consent statement if satisfied that the transferee has taken all reasonable steps to contact the premises licence holder in order to obtain consent but has received no response.

(5) Where the Board decides under subsection (4) not to dispense with the requirement for a consent statement, the Board must give notice of the decision, and of the reasons for it, to the transferee.

(6) Where the Board decides under subsection (4) to dispense with the requirement for a consent statement the Board must hold a hearing under section 33(9) for the purpose of considering and determining the application.”
(7) Where the Board grants the application, the transfer of the licence takes effect—

(a) on the date specified in the application in accordance with section 33(1A)(a), or

(b) where the Board grants the application after that date, on such date as the Board may determine.”.

(5) Section 34 (transfer on application of person other than licence holder) is repealed.

(6) In Part 1 of schedule 5 (appeals to the sheriff principal)—

(a) in column 1 of the entry relating to a decision to refuse an application under section 33(1) or 34(1) for transfer of a premises licence, the words “or 34(1)” are repealed,

(b) in column 2 of that entry, after “applicant” insert “or the premises licence holder”,

(c) after that entry insert—

“A decision to grant an application under section 33(1) for transfer of a premises licence

The person from whom the premises licence is to be transferred

A decision under section 33A(4), in relation to an application under section 33(1) for transfer of a premises licence, not to dispense with the requirement for a consent statement

The applicant”

Relevant offences and foreign offences

49 Premises licences: procedure in relation to relevant offences or foreign offences

In section 44 of the 2005 Act (procedure where Licensing Board receive notice of conviction in relation to a premises licence)—

(a) in subsection (7), after “subsection (4)(b)” insert “which includes a recommendation under subsection (5)”,

(b) after subsection (7) insert—

“(7A) If the Licensing Board receive from the chief constable a notice under subsection (4)(b) which does not include a recommendation under subsection (5), the Licensing Board must—

(a) make a premises licence review proposal in respect of the premises licence, or

(b) decide to take no further action in relation to the conviction.”.

50 Personal licences: procedure in relation to relevant offences or foreign offences

In section 83 of the 2005 Act (procedure where Licensing Board receive notice of a conviction in relation to a personal licence)—

(a) in subsection (7), after “subsection (4)(b)” insert “which includes a recommendation under subsection (5)”,

(b) after subsection (7) insert—
“(7A) If the Licensing Board receive from the chief constable a notice under subsection (4)(b) which does not include a recommendation under subsection (5), the Licensing Board must—

(a) hold a hearing, or

(b) decide to take no further action in relation to the conviction.”,

(c) in subsection (8), for “the hearing” substitute “a hearing under subsection (7) or (7A)(a)”.

51 Relevant offences and foreign offences: spent convictions
In section 129 of the 2005 Act (relevant offences and foreign offences), subsection (4) is repealed.

Supply of alcohol to a child or young person

52 Offences of supplying alcohol to a child or young person
(1) After section 104 of the 2005 Act insert—

“104A Supply of alcohol to a child

(1) A person, other than a child or young person, who—

(a) buys or attempts to buy alcohol—

(i) on behalf of a child, or

(ii) for a child, or

(b) gives alcohol (or otherwise makes it available) to a child,

commits an offence.

(2) Subsection (1)(a)(ii) and (b) does not apply to the buying of alcohol for, or (as the case may be) giving or making available of alcohol to, a child—

(a) for consumption other than in a public place, or

(b) for the purposes of religious worship.

(3) In subsection (2)(a), “public place” includes—

(a) relevant premises,

(b) any place to which the public have access for the time being (whether on payment of a fee or otherwise), and

(c) any place to which the public do not have access but to which the child unlawfully gains access.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to—

(a) a fine not exceeding level 5 on the standard scale,

(b) imprisonment for a term not exceeding 3 months, or

(c) both.
104B  Supply of alcohol to a young person

(1) A person, other than a child or young person, who knowingly—
   (a) buys or attempts to buy alcohol—
       (i) on behalf of a young person, or
       (ii) for a young person, or
   (b) gives alcohol (or otherwise makes it available) to a young person, commits an offence.

(2) Subsection (1)(a)(ii) and (b) does not apply to—
   (a) the buying of alcohol for, or (as the case may be) giving or making available of alcohol to, a young person—
       (i) for consumption other than in a public place, or
       (ii) for the purposes of religious worship, or
   (b) the buying, or (as the case may be) giving or making available, of beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises.

(3) In subsection (2)(a)(i), “public place” includes—
   (a) relevant premises,
   (b) any place to which the public have access for the time being (whether on payment of a fee or otherwise), and
   (c) any place to which the public do not have access but to which the young person unlawfully gains access.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to—
   (a) a fine not exceeding level 5 on the standard scale,
   (b) imprisonment for a term not exceeding 3 months, or
   (c) both.”.

(2) In section 105 of the 2005 Act (purchase of alcohol by or for a child or young person)—
   (a) subsections (4), (5) and (7) are repealed,
   (b) the section title becomes “Purchase of alcohol by a child or young person”.

Miscellaneous

53  Meaning of “alcohol”: inclusion of angostura bitters

In section 2 of the 2005 Act (meaning of “alcohol”), in subsection (1)(b), paragraph (iv) is repealed.

54  Overprovision

(1) The 2005 Act is amended as follows.

(2) In section 7 (duty to assess overprovision)—
(a) in subsection (2), after “Act” insert “and in doing so the Board may determine that the whole of the Board’s area is a locality”,

(b) in subsection (3)—

(i) the word “must” is repealed,

(ia) at the beginning of paragraph (a) insert “must”,

(ib) the word “and” immediately following that paragraph is repealed,

(ic) after that paragraph insert—

“(aa) may have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality, and”,

(iii) at the beginning of paragraph (b) insert “must”.

(3) In section 23(5)(e) (refusal of premises licence on grounds of overprovision), for the words from “that,” where first occurring to “situated,” substitute “that”.

(4) In section 30(5)(d) (refusal to vary premises licence on grounds of overprovision), for the words from “that,” where first occurring to “situated,” substitute “that”.

55 Duty of Licensing Boards to produce annual financial report

(1) The 2005 Act is amended as follows.

(2) After section 9 insert—

“9A Annual financial report

(1) Each Licensing Board must prepare and publish a report not later than 3 months after the end of each financial year.

(2) A report under this section must include—

(a) a statement of—

(i) the amount of relevant income received by the Licensing Board during the financial year, and

(ii) the amount of relevant expenditure incurred in respect of the Board’s area during the year, and

(b) an explanation of how the amounts in the statement were calculated.

(3) For the purposes of subsection (2)—

“relevant income”, in relation to a Licensing Board, means income received by the Board in connection with the exercise of the Board’s functions under or by virtue of—

(a) this Act, or

(b) section 14(1) of the Alcohol etc. (Scotland) Act 2010 (social responsibility levy) in so far as relating to holders of premises licences or occasional licences, and

“relevant expenditure”, in relation to a Licensing Board, means any expenditure—

(a) which is attributable to the exercise of the Board’s functions under or by virtue of—
(i) this Act, or
(ii) section 14(1) of the Alcohol etc. (Scotland) Act 2010 (social responsibility levy) in so far as relating to holders of premises licences or occasional licences, and

(b) which is incurred by—
(i) the Board,
(ii) the relevant council, or
(iii) the Licensing Standards Officer (or Officers) for the Board’s area.

(4) A report under this section may also include such other information about the exercise of the Licensing Board’s functions as they consider appropriate.

(5) At the request of a Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section.

(6) The Scottish Ministers may by regulations make further provision about reports under this section including provision—
(a) about the form and content of reports including, in particular—
(i) how a statement required under subsection (2) is to be set out, and
(ii) what constitutes relevant income and relevant expenditure for the purposes of subsection (2), and
(b) the publication of reports.

(7) Regulations under subsection (6)(a) may modify subsection (3).

(8) In this section, “financial year” means a yearly period ending on 31 March.”.

(3) In section 146 (orders and regulations: affirmative procedure),
(a) in subsection (4)(c), after “applies,” insert “regulations under section 9A(6) or”,
(b) in subsection (5), before paragraph (a) insert—
“(za) regulations under section 9A(6) containing provisions which add to, replace or omit any part of the text of subsection (3) of that section,”.

55A Licensing Standards Officers: general function in relation to personal licences

In section 14(1) of the 2005 Act (general functions of Licensing Standards Officers), after paragraph (b) insert—
“(ba) providing information to Licensing Boards about any conduct of holders of, or persons applying for, personal licences in the area, which is inconsistent with the licensing objectives,”.

55B Powers of Licensing Standards Officers

(1) The 2005 Act is amended as follows.
(2) After section 84A insert—
“84B Power of Licensing Standards Officers to report conduct inconsistent with the licensing objectives

(1) If a Licensing Standards Officer considers that any personal licence holder who is or was working in licensed premises in the Officer's area has acted in a manner which is inconsistent with any of the licensing objectives, the Officer may report the matter to the relevant Licensing Board.

(2) Where a Licensing Board receives a report from a Licensing Standards Officer under subsection (1), the Board may hold a hearing.

(3) Subsections (6), (6A), (7), (7A) and (8) of section 84 and subsection (1)(b) of section 85 apply in relation to a hearing under subsection (2) of this section as they apply in relation to a hearing under subsection (3)(a) or (5) of section 84.

(4) In subsection (1), “relevant Licensing Board” has the meaning given in section 83(11).”.

56 Interested parties

(1) The 2005 Act is amended as follows.

(2) In section 40A (connected persons and interested parties: licence holder’s duty to notify changes)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (a) is repealed,

(ii) paragraph (b) is repealed,

(b) in subsection (2), the words “or an interested party” are repealed,

(c) the section title becomes “Connected persons: licence holder’s duty to notify changes”.

(3) The italic cross heading preceding section 40A becomes “Connected persons”.

(4) In section 48(1)(c) (notification of change of name or address)—

(a) the word “or” immediately following sub-paragraph (i) is repealed,

(b) sub-paragraph (ii) is repealed.

(5) In section 147(5) (interpretation), in the opening words, the words “nor the premises manager” are repealed.

57 Personal licences: grant, duration and renewal

(1) The 2005 Act is amended as follows.

(2) In section 74 (determination of personal licence application), in subsection (3)(c), after “revoked” insert “under any provision of this Act other than section 87(3)”.

(3) In section 77 (period of effect of personal licence), in subsection (8), for “3” substitute “9”.

(4) In section 78 (renewal of personal licence)—

(a) in subsection (2)—

(i) for “2” substitute “9”,

(ii) for “3” substitute “12”,

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(b) in subsection (5), after “74” insert “(other than subsection (3)(ba))”.

(5) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives), in subsection (3), for “(8)(a)” substitute “(8)”.  

58 Processing and deemed grant of applications

5 (1) The 2005 Act is amended as follows.

(2) After section 134 insert—

“134ZA Duty to acknowledge applications

(1) This section applies where a Licensing Board receive a relevant application.

(2) In a case where the Licensing Board are satisfied that the application meets the prescribed requirements they must, unless subsection (3) applies, give an acknowledgement to the applicant—

(a) confirming that they are satisfied that the application meets the prescribed requirements,

(b) listing any documents received in support of the application and the date or dates on which the documents were received by them, and

(c) informing the applicant about the period for determining the application under section 134ZB.

(3) This subsection applies where the Licensing Board consider it appropriate to determine the application on its merits without first giving an acknowledgement to the applicant.

(4) In a case where the Licensing Board are not satisfied that the application meets the prescribed requirements, they must give a notice to the applicant—

(a) indicating that they are treating the application as incomplete and not having been made, and

(b) stating their reasons for treating the application in that way.

(5) Subsection (4) does not prevent an applicant from submitting further information in support of the application if that is otherwise competent.

(6) A Licensing Board must give an acknowledgement under subsection (2) or give a notice under subsection (4) as soon as is practicable.

(7) For the purposes of this section, “prescribed requirements”, in relation to a relevant application, means the requirements (as to form, content, etc.) which are imposed by or under this Act or any other enactment in respect of the type of relevant application in question.

(8) In this section, a “relevant application” is—

(a) a premises licence application,

(b) a premises licence variation application,

(c) an application under section 33(1) to transfer a premises licence,

(d) an application under section 35(1) for variation of a premises licence on transfer,

(e) a provisional premises licence application,
(f) an application under section 46 for confirmation of a provisional premises licence,

(g) an application under section 47(2) for a temporary premises licence,

(h) an occasional licence application,

(i) an extended hours application,

(j) a personal licence application,

(k) a personal licence renewal application.

134ZB Period for determination of applications

(1) A Licensing Board must determine every relevant application which meets the prescribed requirements (including an application mentioned in subsection (2)) before the end of the period of 9 months beginning with (the later of)—

(a) the date on which the Licensing Board received the application, or

(b) where the application did not initially meet the prescribed requirements, the date on which the application met the prescribed requirements.

(2) Where a Licensing Board consider it appropriate to determine a relevant application without first giving an acknowledgement under section 134ZA(2), they must determine the application as soon as is practicable.

(3) A sheriff of the appropriate sheriffdom may, on an application by a Licensing Board in relation to a relevant application, extend the period for determining the application under subsection (1).

(4) The sheriff may extend the period only if—

(a) it appears to the sheriff that there is a good reason to do so, and

(b) no previous extension has been granted in relation to the relevant application.

(5) The applicant in relation to a relevant application is entitled to be a party to proceedings on an application to a sheriff under subsection (3).

(6) In this section—

“prescribed requirements” has the same meaning as in section 134ZA,

“relevant application” has the same meaning as in section 134ZA.

134ZC Deemed grant of applications

(1) Subsection (2) applies where a Licensing Board have failed to determine a relevant application before the expiry of the determination period.

(2) Where this subsection applies—

(a) the application is deemed to have been granted on the date on which the determination period expired, and

(b) the deemed grant of the application has the same effect, for the purposes of this Act, as if the application had been granted by the Licensing Board.
A Licensing Board may not impose any conditions (other than those which they must impose under this Act) in respect of an application which is deemed to have been granted under subsection (2).

(4) Subsection (5) applies in relation to an application—

(a) that is deemed to have been granted under subsection (2), and

(b) in respect of which the Licensing Board must, on granting such an application, determine the period during which the thing applied for is to have effect.

(5) The thing applied for is to have effect for the duration of the period stated in the application (subject to any limits imposed by this Act).

(6) In this section—

“determination period” means, in relation to a relevant application, the period for determining the application under section 134ZB(1) including (if applicable) any extension to that period granted under subsection (3) of that section,

“prescribed requirements” has the same meaning as in section 134ZA,

“relevant application” has the same meaning as in section 134ZA.”.

Form etc. of communications under the 2005 Act

(1) Section 134 of the 2005 Act (form etc. of applications, proposals and notices) is amended as follows.

(2) In each of the following provisions, for “or notice” substitute “, notice or other communication”, namely—

(a) subsection (1)(a) and (d), and

(b) subsection (2).

(3) The section title becomes “Form etc. of applications, proposals, notices and other communications”.

PART 3
CIVIC LICENSING

Taxis and private hire cars

Refusal to grant private hire car licences on grounds of overprovision

In section 10 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) (taxi and private hire car licences), after subsection (3) insert—

“(3A) Without prejudice to paragraph 5 of Schedule 1, the grant of a private hire car licence may be refused by a licensing authority if, but only if, they are satisfied that there is (or, as a result of granting the licence, would be) overprovision of private hire car services in the locality (or localities) in their area in which the private hire car is to operate.
(3B) It is for the licensing authority to determine the localities within their area for the purposes of subsection (3A) and in doing so the authority may determine that the whole of their area is a locality.

(3C) In satisfying themselves as to whether there is or would be overprovision for the purposes of subsection (3A) in any locality, the licensing authority must have regard to—

(a) the number of private hire cars operating in the locality, and

(b) the demand for private hire car services in the locality.”.

61 Testing of private hire car drivers

In section 13 of the 1982 Act (taxi and private hire car driving licences), in subsection (5)—

(a) after “licence” where first occurring insert “or a private hire car driver’s licence”,

(b) after “taxi” where second occurring insert “or, as the case may be, private hire car”.

62 Exemptions from requirements of sections 10 to 21 of 1982 Act

(1) Section 22 of the 1982 Act (saving for certain vehicles etc.) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) Paragraph (c) of that subsection is repealed.

(4) After that subsection, insert—

“(2) The Scottish Ministers may by regulations specify further circumstances in which sections 10 to 21 (with the exception of subsection (7) of section 21) are not to apply.

(3) Regulations under subsection (2)—

(a) may make transitional, transitory and saving provision,

(b) are subject to the negative procedure.”.

(5) The title to section 22 becomes “Exemptions”.

Metal dealers

62A Penalties for failure to have appropriate licence or comply with conditions

In section 7 of the 1982 Act (offences etc.)—

(a) in subsection (1)(a), after “is” insert “a metal dealer’s licence, an itinerant metal dealer’s licence or”,

(b) in subsection (2)—

(i) the word “and” immediately following paragraph (aa) is repealed,

(ii) after paragraph (aa) insert—

“(ab) in a case where the licence is a metal dealer’s licence or an itinerant metal dealer’s licence, to such fine or imprisonment as is mentioned in subsection (1)(a) (or to both), and”.
63 Removal of exemption warrants for certain metal dealers

(1) The 1982 Act is amended as follows.

(2) In section 28 (metal dealers: licensing and regulation)—

(a) in subsection (1), for the words “Subject to subsection (2) below, a” substitute “A”,

(b) subsections (2) and (3) are repealed.

(3) Section 29 (metal dealers’ exemption warrants) is repealed.

64 Abolition of requirement to retain metal for 48 hours
Section 31 of the 1982 Act (retention of metal) is repealed.

65 Acceptable forms of payment for metal

After section 33 of the 1982 Act insert—

“33A Acceptable forms of payment for metal

(1) A metal dealer or an itinerant metal dealer may pay for metal only by a method of payment specified in subsection (2).

(2) The methods of payment are—

(a) by means of a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or

(b) by electronic transfer of funds to a bank or building society account in the name of the payee.

(3) If a metal dealer or an itinerant metal dealer pays for metal otherwise than in accordance with subsection (1), the dealer and each of the persons listed in subsection (4) (if any) commit an offence.

(4) The persons are—

(a) in a case of payment being made by a metal dealer at a place of business of the dealer, the person with day to day management of the place,

(b) in any case, any person who, acting on behalf of the metal dealer or the itinerant metal dealer, makes the payment.

(5) It is a defence for a metal dealer, an itinerant metal dealer or a person described in subsection (4)(a) who is charged with an offence under this section to prove that the dealer or, as the case may be, person—

(a) made arrangements to ensure that the payment was to be made only in accordance with subsection (1), and

(b) took all reasonable steps to ensure that those arrangements were complied with.

(6) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(7) The Scottish Ministers may by regulations—
(a) amend subsection (2) so as to add, amend or remove methods of payment, and
(b) make such consequential modification of section 33AA or 33B(3) as they consider appropriate.

(8) Regulations under subsection (7) are subject to the affirmative procedure.

(9) In this section, “place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer’s business as a metal dealer.

### 33AA Acceptable forms of payment: meaning of “bank or building society account”

(1) In section 33A(2)(b), “bank or building society account” means an account held with a bank or a building society.

(2) For the purposes of subsections (1) and (4)—
   (a) “bank” means an authorised deposit-taker that has its head office or a branch in the United Kingdom, and
   (b) “building society” has the same meaning as in the Building Societies Act 1986.

(3) In subsection (2)(a), “authorised deposit-taker” means—
   (a) a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 (but see subsection (4) for exclusions),
   (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule).

(4) The reference in subsection (3)(a) to a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 does not include—
   (a) a building society,
   (b) a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)),
   (c) a friendly society within the meaning given by section 116 of the Friendly Societies Act 1992, or
   (d) an insurance company within the meaning of section 275 of the Finance Act 2004.”.

### 66 Metal dealers and itinerant metal dealers: records

(1) The 1982 Act is amended as follows.
(2) Sections 30 (keeping of records) and 33 (receipts and invoices: itinerant metal dealers) are repealed.
(3) After section 33A (as inserted by section 65 of this Act), insert—
“33B  Requirement to keep records

(1) This section applies where a metal dealer or an itinerant metal dealer (“the dealer”), in the course of the dealer’s business—

(a) acquires any metal (whether or not for value), or

(b) processes or disposes of any metal (by any means).

(2) In respect of any metal acquired, the dealer must record the following information—

(a) the description and weight of the metal,

(b) the date and time of the acquisition of the metal,

(c) if the metal is acquired from another person—

(i) the name and address of the person,

(ii) the means by which the person’s name and address was verified,

(d) the price, if any, payable in respect of the acquisition of the metal, if that price has been ascertained at the time when the entry in the record relating to that metal is to be made,

(e) the method of payment of the price (if applicable),

(f) where no price is payable for the metal, the value of the metal at the time when the entry is to be made as estimated by the dealer,

(g) in the case of metal delivered to the dealer by means of a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) borne by the vehicle.

(3) Where the dealer has paid for metal, the dealer must keep a copy of—

(a) the cheque, or

(b) the document evidencing the electronic transfer of funds.

(4) In respect of any metal processed or disposed of, the dealer must record the following information—

(a) the description and weight of the metal immediately before its processing or disposal,

(c) in the case of metal which is processed, the process applied,

(d) in the case of metal disposed of by sale or exchange—

(i) the consideration for which it is sold or exchanged,

(ii) the name and address of the person to whom the metal is sold or with whom it is exchanged, and

(iii) the means by which the person’s name and address was verified,

(e) in the case of metal disposed of otherwise than by sale or exchange, its value immediately before its disposal as estimated by the dealer.

(5) The dealer must—

(a) keep separate records in relation to—

(i) metal acquired, and
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(ii) metal processed or disposed of,
(b) record the information immediately after the metal is acquired, processed or disposed of,
(c) keep a copy of any document produced by a person to verify that person’s name or address, and
(d) retain information recorded or documents kept under this section for a period of not less than 3 years beginning with the date on which the information was recorded or document obtained.

(6) The Scottish Ministers may by regulations—
(a) specify the means by which a person’s name and address may be verified for the purposes of this section,
(b) require further information to be recorded about any metal acquired, processed or disposed of by metal dealers or itinerant metal dealers.

(7) Regulations under subsection (6)—
(a) may make different provision for different purposes, and
(b) are subject to the negative procedure.

33C Form of records

(1) A metal dealer or an itinerant metal dealer (“a dealer”) must record the required information—
(a) in books with serially numbered pages, or
(b) by means of a device for storing and processing information.

(2) Where a dealer records the required information in books, the dealer must use separate books for recording the required information about—
(a) metal acquired, and
(b) metal processed or disposed of.

(3) Where a dealer uses a device for storing and processing information, the dealer must, by means of the device or otherwise, keep details of all modifications made in the records kept by the device.

(4) Where a dealer is required to keep a copy of a document under section 33B, it is sufficient for the dealer—
(a) to keep an electronic copy of the document, and
(b) in relation to a document verifying a person’s name or address, keep only one copy of the document.

(5) In this section, “required information” means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33B(2), (4) or (6).

33D Metal dealer to keep records for each place of business

(1) A metal dealer must keep separate records of the required information in relation to—
(a) each place of business operated by the dealer, and

(b) any metal acquired, processed or disposed of otherwise than at such a place of business.

(2) Where a metal dealer records the required information in books, the dealer must not, at any time at a place of business, use more than—

(a) one book for recording the required information about metal acquired, and

(b) one book for recording the required information about metal processed or disposed of.

(3) In this section—

“place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer’s business as a metal dealer,

“required information” means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33B(2), (4) or (6).”.

(4) In section 34 (offences relating to metal dealing)—

(a) after subsection (2) insert—

“(2A) Any metal dealer or itinerant metal dealer who fails to comply with a requirement of section 33B, 33C or 33D commits an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.”;

(b) in subsection (3), for the words from “furnishes” to “keep” substitute “produces any information or document which the dealer is required to record or keep under section 33B which is false or misleading in a material particular”.

66A Register of dealers in metal

After section 35 of the 1982 Act, insert—

“35A Register of metal dealers and itinerant metal dealers

(1) The Scottish Ministers may by regulations make provision for and about the establishment, keeping and maintaining of a register of metal dealers and itinerant metal dealers.

(2) Regulations under subsection (1) may, in particular, make provision—

(a) about who is to keep and maintain the register,

(b) requiring the provision of information to the person who keeps the register,

(c) specifying the information to be included in the register in relation to each person who holds a licence as a metal dealer or itinerant metal dealer,

(d) about the form and publication of the register,

(e) for the charging of fees in such circumstances as may be specified in the regulations.

(3) Regulations under subsection (1) may—
(a) make incidental, supplementary, consequential, transitional, transitory or
saving provision,
(b) modify this or any other enactment.

(4) Regulations under subsection (1) which contain provision which adds to,
replaces, or omits any part of an Act are subject to the affirmative procedure.

(5) Otherwise, regulations under subsection (1) are subject to the negative
procedure.”.

66B Interpretation of provisions relating to metal dealers etc.

(1) Section 37 of the 1982 Act (interpretation of sections 28 to 36) is amended as follows.

(2) In subsection (1), for the definition of “itinerant metal dealer” substitute—

““itinerant metal dealer” means a person who—
(a) carries on a business which consists wholly or substantially of
buying or selling for scrap—
(i) metal articles that are old, broken, worn out or defaced, or
(ii) partly manufactured articles that are made wholly or partly
from metal,
(b) collects articles of the kind described in paragraph (a)(i) and (ii) by
means of visits from place to place, and
(c) disposes of such articles without causing them to be kept in a
metal store or other premises (including by disposing or giving
custody of the articles to a person who keeps a metal store),”.

(3) For subsection (2) substitute—

“(2) For the purposes of sections 28 to 36, a person carries on business as a metal
dealer if the person—
(a) carries on a business which consists wholly or substantially of buying or
selling for scrap—
(i) metal articles that are old, broken, worn out or defaced, or
(ii) partly manufactured articles that are made wholly or partly from
metal,
(b) carries on business as a motor salvage operator (so far as that does not
fall within paragraph (a)).

(3) For the purposes of subsection (2)(b), a person carries on business as a motor
salvage operator if the person carries on a business which consists wholly or
substantially of—
(a) recovering salvageable parts from motor vehicles for re-use or sale and
selling or disposing of the rest of the vehicle for scrap,
(b) buying significantly damaged motor vehicles and subsequently repairing
and reselling them, or
(c) buying or selling motor vehicles which are to be the subject (whether
immediately or upon a subsequent resale) of any of the activities
mentioned in paragraphs (a) and (b).”.
66C Exemptions from requirements of sections 28 to 37 of 1982 Act

After section 37 of the 1982 Act insert—

“37A Exemptions

(1) The Scottish Ministers may by regulations make provision specifying circumstances in which the provisions of sections 28 to 37 are not to apply.

(2) Regulations under subsection (1)—

(a) may make transitional, transitory or saving provision,

(b) are subject to the negative procedure.”.

Public entertainment venues

67 Licensing of theatres etc.

(1) In section 41 of the 1982 Act (public entertainment licences)—

(a) in subsection (2)(d), the words “the Theatres Act 1968, or” are repealed,

(b) after subsection (3) insert—

“(3A) In relation to a public entertainment licence which authorises the use of premises for the performance of plays, no condition may be attached to the licence as to the nature of the plays which may be performed, or the manner of performing plays, under the licence.

(3B) Subsection (3A) does not prevent a licensing authority from attaching, by virtue of section 3B or in accordance with subsection (3) or paragraph 5 of Schedule 1, any condition which they consider appropriate on the grounds of public safety.”.

(2) In section 1 of the Theatres Act 1968 (“the 1968 Act”) (abolition of censorship of the theatre), subsection (2) is repealed.

(3) Sections 12 to 14 of the 1968 Act (licensing of premises for public performances of plays) are repealed.

(4) In section 15 of the 1968 Act (powers of entry and inspection)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (a) is repealed,

(ii) paragraph (b) is repealed,

(iii) the words “or, in a case falling within paragraph (b) above, any police officer or authorised officer of the licensing authority” are repealed,

(iv) paragraph (ii) is repealed,

(b) subsections (2), (3), (5) and (6) are repealed.

(5) In section 18 of the 1968 Act (interpretation), in subsection (1), the definition of “licensing authority” is repealed.

(6) Schedule 1 to the 1968 Act (provision about licenses to perform plays) is repealed.
67A Restriction of exemption from requirement for public entertainment licence

In section 41(2) of the 1982 Act (places not requiring public entertainment licences), in paragraph (f), for the words from “licensed” where first occurring to “(asp 16)” substitute “premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect”.

Sexual entertainment venues

68 Licensing of sexual entertainment venues

(1) The 1982 Act is amended as follows.

(2) In section 41(2) (definition of place of public entertainment), after paragraph (aa) insert—

“(ab) a sexual entertainment venue (as defined in section 45A) in relation to which Schedule 2 (as modified for the purposes of section 45B) has effect, while being used as such;”.

(3) After section 45 insert—

“45A Licensing of sexual entertainment venues: interpretation

(1) This section applies for the purposes of the interpretation of section 45B and Schedule 2 (as modified for the purposes of section 45B).

(2) “Sexual entertainment venue” means any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.

(3) For the purposes of that definition—

“audience” includes an audience of one,

“financial gain” includes financial gain arising directly or indirectly from the provision of the sexual entertainment,

“organiser”, in relation to the provision of sexual entertainment in premises, means—

(a) the person (“A”) who is responsible for—

(i) the management of the premises, or

(ii) the organisation or management of the sexual entertainment, or

(b) where A exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person,

“premises” includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted,

“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).

(4) For the purposes of the definition of “sexual entertainment”, “display of
nudity” means—

(a) in the case of a woman, the showing of (to any extent and by any means)
her nipples, pubic area, genitals or anus,

(b) in the case of a man, the showing of (to any extent and by any means) his
pubic area, genitals or anus.

(5) Sexual entertainment is provided if (and only if) it is provided (or allowed to
be provided) by or on behalf of the organiser.

(6) References in Schedule 2 (as modified for the purposes of section 45B) to the
use of any premises by a person as a sexual entertainment venue are to be read
as references to their use by the organiser.

(7) The following are not sexual entertainment venues—

(a) a sex shop (within the meaning of paragraph 2(1) of Schedule 2),

(b) such other premises as the Scottish Ministers may by order specify.

(8) An order under subsection (7)(b) may make different provision for different
purposes.

(9) Premises at which sexual entertainment is provided as mentioned in subsection
(2) on a particular occasion (“the current occasion”) are not to be treated as a
sexual entertainment venue if sexual entertainment has not been provided on
more than 3 previous occasions which fall wholly or partly within the period of
12 months ending with the start of the current occasion.

(10) For the purposes of subsection (9)—

(a) each continuous period during which sexual entertainment is provided on
the premises is to be treated as a separate occasion, and

(b) where the period during which sexual entertainment is provided on the
premises exceeds 24 hours, each period of 24 hours (and any part of a
period of 24 hours) is to be treated as a separate occasion.

(11) The Scottish Ministers may by order provide for—

(a) descriptions of performances, or

(b) descriptions of displays of nudity,

which are not to be treated as sexual entertainment for the purposes of this
section.

(12) An order under subsection (7)(b) or (11) is subject to the negative procedure.

45B Licensing of sexual entertainment venues

(1) A local authority may resolve that Schedule 2 (as modified for the purposes of
this section) is to have effect in their area in relation to sexual entertainment
venues.
(2) If a local authority passes a resolution under subsection (1), Schedule 2 (as so modified) has effect in their area from the day specified in the resolution.

(3) The day mentioned in subsection (2) must not be before the expiry of the period of one year beginning with the day on which the resolution is passed.

(4) A local authority must, not later than 28 days before the day mentioned in subsection (2), publish notice that they have passed a resolution under this section.

(5) The notice must—

(a) state the general effect of Schedule 2 (as modified for the purposes of this section), and

(b) be published electronically or in a newspaper circulating in the local authority’s area.

(6) For the purposes of this section, paragraphs 1 and 3 to 25 of Schedule 2 apply with the following modifications—

(a) references to a sex shop are to be read as references to a sexual entertainment venue,

(b) references to the use by a person of premises, vehicles, vessels or stalls as a sexual entertainment venue are to be read as references to their use by the organiser,

(c) in paragraph 1—

(i) in sub-paragraph (b)—

(A) the word “or immediately following paragraph (i) is omitted,

(B) paragraph (ii) is omitted, and

(ii) sub-paragraph (c) is omitted,

(d) in paragraph 7—

(i) in sub-paragraph (2), at the beginning insert “Subject to sub-

paragraph (3A),”, and

(ii) after sub-paragraph (3) insert—

“(3A)If a local authority consider it appropriate to do so in relation to an application, the local authority may dispense with the requirement to publish an advertisement under sub-paragraph (2) and may instead publish notice of the application electronically.

(3B)Publication under sub-paragraph (3A) must be not later than 7 days after the date of the application.”,

(e) in paragraph 9—

(i) in sub-paragraph (5)(c)—

(A) after the word “in” insert “the local authority’s area or”,

(B) after the word “for” insert “their area or”,

(ii) after sub-paragraph (5) insert—

“(5A)For the purposes of sub-paragraph (5)(c), a local authority must—
(a) from time to time determine the appropriate number of sexual
entertainment venues for their area and for each relevant locality, and

(b) publicise the determination in such manner as they consider
appropriate.”,

(iii) after sub-paragraph (6) insert—

“(6A) A local authority may refuse an application for the grant or renewal of a
licence despite the fact that a premises licence under Part 3 of the
Licensing (Scotland) Act 2005 is in effect in relation to the premises,
vehicle, vessel or stall to which the application relates.”,

(f) in paragraph 12(2)(b), for “shorter” substitute “other”,

(g) in paragraph 19, after sub-paragraph (1) insert—

“(1A) But it is not an offence—

(a) under sub-paragraph (1)(b) for the holder of a licence for a sexual
entertainment venue to employ a person under the age of 18 in the
business of the sexual entertainment venue if the employee’s
duties do not involve the employee being in the sexual
entertainment venue at a time when sexual entertainment is being
provided, or

(b) under sub-paragraph (1)(e) for the holder of a licence for a sexual
entertainment venue, or the servant, employee or agent of such a
person, to permit an employee under the age of 18 to enter the
sexual entertainment venue at times when sexual entertainment is
not being provided.”, and

(h) in paragraph 25, in each of sub-paragraphs (1)(a) and (2), for “45”
substitute “45B”.

(7) In carrying out functions conferred by virtue of this section, a local authority
must have regard to any guidance issued by the Scottish Ministers.”.

(4) The title of Part 3 becomes “Control of sex shops and sexual entertainment venues”.

Miscellaneous and general

69 Deemed grant of applications

(1) The 1982 Act is amended as follows.

(2) In section 3 (discharge of functions of licensing authorities)—

(a) in subsection (1), for the words from “shall” to the end substitute “must—

(a) consider each relevant application made to them within the period of 3
months beginning with the date on which the application was made, and

(b) subject to the following provisions of this section, reach a final decision
on the application within the period of 6 months beginning with the end
of the 3 month period referred to in paragraph (a).”,

(b) in subsection (4)—

(i) the words “applied for” are repealed,
(ii) for “or, as the case may be, renewed” substitute “, renewed or, as the case may be, varied”,

(iii) the words from “and” where first occurring to the end are repealed,

(c) after subsection (4) insert—

“(4A) A licence deemed to have been granted or renewed under subsection (4) is—

(a) in the case of a temporary licence, to remain in force for the duration of the period sought in the application (up to a maximum period of 6 weeks), or

(b) in any other case, to remain in force for the period of one year.

(4B) A variation of the terms of a licence deemed to have been granted under subsection (4) is to have effect for the remaining period of the licence.

(4C) Subsections (4) and (4B) do not affect—

(a) the powers of revocation under section 7(6)(a),

(b) paragraph 8(5) of Schedule 1 (which relates to renewals of existing licences),

(c) the powers of variation under paragraph 10 of that Schedule, or

(d) the powers of suspension and revocation under paragraphs 11 and 12 of that Schedule.”,

(d) for subsection (5) substitute—

“(5A) The deemed grant, renewal or variation of the terms of a licence under subsection (4) is, for the purposes of Schedule 1, to be treated as a decision of the licensing authority to grant, renew or vary the terms of a licence.

(5B) For the purposes of this section, a “relevant application” is an application under paragraph 1, 7 or 10 of Schedule 1.”.

(3) After section 45B (as inserted by section 68 of this Act) insert—

“45C Deemed grant of applications

(1) For the purpose of the discharge of their functions under this Part, every local authority must—

(a) consider each relevant application made to them within the period of 3 months beginning with the date on which the application was made, and

(b) subject to the following provisions of this section, reach a final decision on the application within the period of 6 months beginning with the end of the 3 month period referred to in paragraph (a).

(2) On an application by the local authority within the 6 month period referred to in subsection (1)(b), the sheriff may, if it appears that there is a good reason to do so, extend that period as the sheriff thinks fit.

(3) The applicant is entitled to be a party to proceedings on an application under subsection (2).

(4) Where the local authority have failed to reach a final decision on the application before the expiry of—

(a) the 6 month period referred to in subsection (1)(b), or
(b) such further period as the sheriff may have specified on application under subsection (2),
the licence is deemed to have been granted, renewed or, as the case may be, varied on the date of such expiry.

(5) A licence deemed to have been granted or renewed under subsection (4) is to remain in force for the period of one year.

(6) A deemed variation of the terms of a licence deemed under subsection (4) is to have effect for the remaining period of the licence.

(7) Subsections (4) and (6) do not affect—

(a) the powers of revocation under paragraph 13 of Schedule 2, and

(b) the powers of variation under paragraph 15 of that Schedule.

(8) The deemed grant, renewal or variation of the terms of a licence under subsection (4) has the same effect, for the purposes of Schedule 2, as a decision of the licensing authority to grant, renew or vary the terms of a licence.

(9) For the purposes of this section, a “relevant application” is an application under paragraph 6 or 15 of Schedule 2.”.

(4) In Schedule 1 (licensing: further provisions as to the general system), in paragraph 10, after sub-paragraph (5) insert—

“(6) Sub-paragraph (5) does not apply to a deemed variation of the terms of a licence under section 3(4).”.

(5) In Schedule 2 (control of sex shops and sexual entertainment venues), in paragraph 15, after sub-paragraph (4) insert—

“(4A) Sub-paragraph (4) does not apply to a deemed variation of the terms of a licence under section 45C(4).”.

69A Revocation of Part 2 licences

(1) The 1982 Act is amended as follows.

(2) In section 5 (rights of entry and inspection), in subsection (2)(a)(ii), after “suspended” insert “or revoked”.

(3) In Schedule 1 (licensing: further provisions as to the general system)—

(a) the italic heading preceding paragraph 10 becomes “Variation, suspension and revocation of licences”,

(b) in paragraph 11—

(i) in sub-paragraph (1), after “suspend” insert “or revoke”,

(ii) in sub-paragraph (2), after “suspension” insert “or revocation”,

(iii) in sub-paragraph (4), after “suspend” insert “or revoke”,

(iv) in sub-paragraph (6), after “order” insert “to suspend a licence”,

(v) in sub-paragraph (7), after “suspend” insert “or revoke”,

(vi) in sub-paragraph (8), after “suspension” insert “or revocation”,

(vii) in sub-paragraph (9)—
(A) after “suspension” where first occurring insert “or revocation”,

(B) after each subsequent occurrence of “suspension” insert “or, as the case may be, revocation”,

(viii) in sub-paragraph (10), after “suspension” where first occurring insert “or revocation”,

(c) in paragraph 12(5)(b), after “suspend” insert “or revoke”,

(d) in paragraph 13—

(ii) in sub-paragraph (3), after “suspending” insert “or revoking”,

(e) in paragraph 14(2)(b), after “terms,” insert “revocation”,

(f) in paragraph 17, in sub-paragraph (1)(d), before paragraph (i) insert—

“(ai) to revoke a licence or to refuse to do so,”.

(g) in paragraph 18(10)—

(i) after “suspension” where first occurring insert “or revocation”,

(ii) the words “above that the suspension be immediate” are repealed.

70 Procedure for hearings

(1) The 1982 Act is amended as follows.

(2) In Schedule 1 (licensing: further provisions as to the general system), after paragraph 18 insert—

“Power to make provision about hearings

18A(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a licensing authority under this Schedule.

(2) Regulations under this paragraph may, in particular, make provision—

(a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,

(b) about the rules of evidence which are to apply for the purposes of the hearing,

(c) about the representation of any party at the hearing,

(d) as to the times by which any step in the procedure must be taken, and

(e) as to liability for expenses.

(3) Regulations under this paragraph may make different provision for different purposes including, in particular, different types of licence.

(4) Regulations under this paragraph are subject to the negative procedure.”.

(3) In Schedule 2 (control of sex shops and sexual entertainment venues), after paragraph 24 insert—
24A(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a local authority under this Schedule.

(2) Regulations under this paragraph may, in particular, make provision—

(a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,

(b) about the rules of evidence which are to apply for the purposes of the hearing,

(c) about the representation of any party at the hearing,

(d) as to the times by which any step in the procedure must be taken, and

(e) as to liability for expenses.

(3) Regulations under this paragraph may make different provision for different purposes, including, in particular, different types of licence.

(4) Regulations under this paragraph are subject to the negative procedure.”.

71 Conditions for Part 3 licences

(1) The 1982 Act is amended as follows.

(2) After section 45C (as inserted by section 69) insert—

“Conditions of licences granted under this Part

45D Mandatory licence conditions

(1) The Scottish Ministers may by order prescribe conditions to which licences granted by local authorities under this Part are to be subject.

(2) Different conditions may be prescribed under subsection (1)—

(a) in respect of different licences or different types of licence,

(b) otherwise for different purposes, circumstances or cases.

(3) An order under subsection (1) is subject to the affirmative procedure.

(4) Subsection (1) does not affect any other power of the Scottish Ministers under this Act or any other enactment to prescribe conditions—

(a) to which licences granted by local authorities under this Part are to be subject, or

(b) to be imposed by local authorities in granting or renewing licences under this Part.

(5) The following conditions are referred to in this Part as “mandatory conditions”—

(a) conditions prescribed under subsection (1),

(b) conditions prescribed under any power referred to in subsection (4), and

(c) conditions imposed, or required to be imposed, by any provision of this Part.
(6) In this section and section 45E, references to licences granted by local authorities include references to—

(a) licences renewed by local authorities, and

(b) licences deemed by virtue of section 45C to have been granted or renewed by local authorities.

45E Standard licence conditions

(1) A local authority may determine conditions to which licences granted by them under this Part are to be subject.

(2) Conditions determined under subsection (1) are referred to in this Part as “standard conditions”.

(3) Different conditions may be determined under subsection (1)—

(a) in respect of different licences or different types of licence,

(b) otherwise for different purposes, circumstances or cases.

(4) A local authority must publish, in such manner as they think appropriate, any standard conditions determined by them.

(5) Standard conditions have no effect—

(a) unless they are published, and

(b) so far as they are inconsistent with any mandatory conditions.

(6) Subsection (1) is subject to paragraph 9(1A) of Schedule 2.”.

(3) In paragraph 9 of Schedule 2 (disposal of applications for licences)—

(a) in sub-paragraph (1)—

(i) in paragraph (a), the word “unconditionally” is repealed,

(ii) paragraph (b) is repealed,

(b) after sub-paragraph (1) insert—

“(1A) In granting or renewing a licence under sub-paragraph (1)(a), a local authority may (either or both)—

(a) disapply or vary any standard conditions,

(b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.”,

(c) in sub-paragraph (2)—

(i) for “sub-paragraph” where first occurring substitute “sub-paragraphs (2ZA) and”,

(ii) for “(1)” substitute “(1A)(b)”,

(d) after sub-paragraph (2) insert—

“(2ZA) A variation made under sub-paragraph (1A)(a) or a condition imposed under sub-paragraph (1A)(b) has no effect in so far as it is inconsistent with any mandatory condition to which the licence is subject.”,

(e) in sub-paragraph (2A), for “(1)” substitute “(1A)(b)”. 

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71A  Conditions for Part 3 licences: displays or advertising

In paragraph 9(2) of Schedule 2 to the 1982 Act (examples of conditions which may be imposed in relation to Part 3 licences), in paragraph (b), after “on or in” insert “or otherwise connected with”.

72  Civic licensing standards officers

After Part 3 of the 1982 Act insert—

“PART 3A

CIVIC LICENSING STANDARDS OFFICERS

45F  Civic licensing standards officers

(1) Each local authority must appoint for their area one or more officers (a “civic licensing standards officer”—

(a) to exercise, in relation to the authority’s area, the general functions conferred on civic licensing standards officers by virtue of section 45G, and

(b) to exercise any other functions that may be conferred on such an officer by virtue of this or any other enactment.

(2) A civic licensing standards officer appointed by a local authority is taken to be an authorised officer of the authority for the purposes of Parts 1 to 3.

(3) A person may hold more than one appointment under subsection (1) (so as to be a civic licensing standards officer for more than one local authority area).

(4) Nothing in this section prevents an officer of a local authority other than a civic licensing standards officer from being an authorised officer of the authority for a purpose of Parts 1 to 3.

(5) In this Part, a reference to a local authority includes a reference to that authority acting as the licensing authority for their area and a reference to an authorised officer of a local authority (however expressed) is to be construed accordingly.

45G  General functions of a civic licensing standards officer

(1) The general functions of a civic licensing standards officer are—

(a) to provide to any interested person information and guidance concerning the operation of Parts 1 to 3 in the officer’s area,

(b) to supervise the compliance by the holder of a licence granted under Parts 1 to 3 in the officer’s area with—

(i) the conditions of the licence, and

(ii) the other requirements of Parts 1 to 3,

(c) to provide mediation services for the purposes of avoiding or resolving disputes or disagreements between—

(i) the holder of a licence granted under Parts 1 to 3 in the officer’s area, and
(2) The function under subsection (1)(b) includes, in particular, power for a civic licensing standards officer, where the officer believes that a condition to which the licence is subject has been or is being breached—

(a) to give a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice, and

(b) to refer the breach to the local authority which granted the licence for consideration at a meeting of the authority.

(3) A civic licensing standards officer may only refer a breach of a condition under subsection (2)(b) if—

(a) the officer has given notice under subsection (2)(a) and the holder of the licence has failed to comply with it, or

(b) the officer considers that it is appropriate for the breach to be referred to the authority without such a notice being given.

(4) In this section, a reference to an officer’s area is a reference to—

(a) the local authority area for which the officer is appointed under section 45F(1), or

(b) where the officer is appointed for more than one local authority area, the area for which the officer is exercising a function at the relevant time.”.

73 Electronic communications under the 1982 Act

(1) The 1982 Act is amended as follows.

(2) In Schedule 1 (licensing: further provisions as to the general system)—

(a) after paragraph 3(3), insert—

“(3A) Where a licensing authority have determined to accept objections and representations by means of an electronic communication under paragraph 16A, an objection or representation is made for the purpose of sub-paragraph (1) of this paragraph if it is sent—

(a) to the authority by means of an electronic communication which complies with the determination, and

(b) within the time specified in sub-paragraph (1).

(3B) Sub-paragraph (3A) is without prejudice to sub-paragraph (3).”,

(b) after paragraph 16 insert—

“Electronic communications

16A(1) A licensing authority may determine to accept—

(a) applications for the grant or renewal of a licence under paragraph 1,

(b) objections or representations under paragraph 3,

(c) notifications of a change to a licence under paragraph 9,

by means of an electronic communication.
(2) Where a licensing authority make a determination under sub-paragraph (1) they must—

(a) specify in the determination—

(i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,

(ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and

(iii) any means of authentication (in addition to an electronic signature) that are acceptable, and

(b) publicise the determination as they consider appropriate.

(3) In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—

(a) to be in writing is satisfied if the communication is—

(i) in the form specified under sub-paragraph (2)(a)(i), and

(ii) sent to the address specified under sub-paragraph (2)(a)(ii),

(b) to be signed is satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).

(4) A licensing authority may determine to—

(a) give notices under paragraphs 5, 9, 10, 11 or 12, and

(b) give reasons under paragraph 17,

by means of an electronic communication.

(5) A licensing authority may only give a notice or reasons by means of an electronic communication if—

(a) the person to whom the notice or reasons is or are to be given has agreed to receive notices and reasons by means of an electronic communication, and

(b) the communication is sent to an electronic address, and is in an electronic form, specified for that purpose by the person.

(6) In relation to any notice or reasons given by means of an electronic communication, any requirement of this Schedule for the notice or reasons to be given in writing is satisfied if the communication is sent in accordance with sub-paragraph (5).

(7) When a licensing authority gives a notice or reasons by means of an electronic communication then, unless the contrary is proved, it is to be treated as having been received by the person to whom it was sent on the second working day after the day on which it was sent.

(8) For the purposes of sub-paragraph (7), “working day” means a day which is not—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day.
(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
(d) a day appointed for public thanksgiving or mourning, or
(e) a day which is a local or public holiday in the area in which the electronic communication is to be sent.

(9) A licensing authority may make different determinations for different purposes including, in particular, for different types of licence.

(10) In this Schedule—

“electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,

“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.”.

(3) In Schedule 2 (control of sex shops and sexual entertainment venues)—

(a) after paragraph 8(4) insert—

“(4A) Where a local authority have determined to accept objections and representations by means of an electronic communication under paragraph 22A, an objection or representation is made for the purpose of sub-paragraph (2) of this paragraph if it is sent—

(a) to the authority by means of an electronic communication which complies with the determination, and

(b) within the time specified in sub-paragraph (2).

(4B) Sub-paragraph (4A) is without prejudice to sub-paragraph (4).”,

(b) after paragraph 22 insert—

“Electronic communications

22A(1) A local authority may determine to accept—

(a) applications for the grant or renewal of a licence under this Schedule,

(b) objections or representations under paragraph 8,

(c) notifications of a change to a licence under paragraph 14,

by means of an electronic communication.

(2) Where a local authority make a determination under sub-paragraph (1) they must—

(a) specify in the determination—

(i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,

(ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and

(iii) any means of authentication (in addition to an electronic signature) that are acceptable, and

(b) publicise the determination as they consider appropriate.
In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—

(a) to be in writing is satisfied if the communication is—

(i) in the form specified under sub-paragraph (2)(a)(i), and

(ii) sent to the address specified under sub-paragraph (2)(a)(ii),

(b) to be signed is satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).

A local authority may determine to—

(a) give notices under paragraphs 8, 10, 13, 14 or 15, and

(b) give reasons under paragraph 23,

by means of an electronic communication.

A local authority may only give a notice or reasons by means of an electronic communication if—

(a) the person to whom the notice or reasons is or are to be given has agreed to receive notices and reasons by means of an electronic communication, and

(b) the communication is sent to an electronic address, and is in an electronic form, specified for that purpose by the person.

In relation to any notice or reasons given by means of an electronic communication, any requirement of this Schedule for the notice or reasons to be given in writing is satisfied if the communication is sent in accordance with sub-paragraph (5).

When a licensing authority gives a notice or reasons by means of an electronic communication then, unless the contrary is proved, it is to be treated as having been received by the person to whom it was sent on the second working day after the day on which it was sent.

For the purposes of sub-paragraph (7), “working day” means a day which is not—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning, or

(e) a day which is a local or public holiday in the area to which the electronic communication is sent.

A local authority may make different determinations for different purposes including, in particular, for different types of licence.

In this Schedule—

“electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,
“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.”.

**Part 4**

**General**

**Interpretation**

(1) In this Act—

“the 1982 Act” means the Civic Government (Scotland) Act 1982,

“the 2005 Act” means the Licensing (Scotland) Act 2005.

(2) See section 40 for the interpretation of words and expressions used in Part 1.

**Regulations**

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—

(a) different provision for different purposes,

(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(2) Regulations under section 2(4), 8(3) or 20(3) are subject to the affirmative procedure.

(3) Regulations under section 76(1) containing provisions which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.

(4) All other regulations under this Act are subject to the negative procedure.

**Ancillary provision**

(1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision of this Act or any provision made under it.

(2) Regulations under this section may modify this or any other enactment.

**Minor and consequential amendments and repeals**

Schedule 2 contains—

(a) minor amendments, and

(b) amendments and repeals consequential on the provisions of this Act.

**Commencement**

(1) Section 57(1) and (2) and this Part, other than section 77, come into force on the day after Royal Assent.

(2) The other provisions of this Act (including section 77) come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under this section may include transitional, transitory or saving provision.
79 Short title

The short title of this Act is the Air Weapons and Licensing (Scotland) Act 2015.
SCHEDULE 1
(introduced by section 2(3))

EXEMPTIONS

Approved air weapon clubs

1 It is not an offence under section 2(1) for an individual (“A”) to use or possess an air weapon without holding an air weapon certificate if—
   (a) A is a member of an approved air weapon club,
   (b) the use or possession occurs while A is engaged as such a member—
      (i) in target shooting at the club, another approved air weapon club, an event or competition, or
      (ii) in connection with such target shooting, and
   (c) where A is under the age of 14, A’s use and possession of an air weapon is supervised by another club member aged 21 years or more.

Registered firearms dealers and their employees

2 (1) It is not an offence under section 2(1) for an individual to use, possess, purchase or acquire an air weapon without holding an air weapon certificate if—
   (a) the individual is carrying on business as a registered firearms dealer or is the employee of a registered firearms dealer, and
   (b) the possession occurs in the ordinary course of the business as such a dealer.

20 (2) For the purposes of sub-paragraph (1), it is irrelevant whether the use, possession, purchase or acquisition of the air weapon occurs at a place—
   (a) which is not a place of business of the registered firearms dealer, or
   (b) which the dealer has not registered as a place of business under section 33 or 37 of the 1968 Act.

3 It is not an offence under section 2(1) for an individual (“A”) to—
   (a) borrow an air weapon from a registered firearms dealer, and
   (b) use and possess the weapon on land occupied by the dealer, without holding an air weapon certificate, if the conditions in sub-paragraph (4) are complied with.

4 (4) The conditions are—
   (a) A uses and possesses the air weapon under the supervision of the registered firearm dealer or an employee of the dealer (“the supervisor”), and
   (b) where A is under the age of 14, the supervisor is aged 21 years or more.

Auctioneers

3 (1) It is not an offence under section 2(1) for an individual to possess, acquire or purchase an air weapon without holding an air weapon certificate if—
   (a) the individual is carrying on business as an auctioneer or is the employee of an auctioneer, and
Carriers and warehouse keepers

4 It is not an offence under section 2(1) for an individual to possess an air weapon without holding an air weapon certificate if—

(a) the individual is carrying on business as a carrier or warehouse keeper or is the employee of a carrier or warehouse keeper, and

(b) the possession occurs in the ordinary course of the business as a carrier or warehouse keeper.

Artistic performers

5 (1) It is not an offence under section 2(1) for an individual to use or possess an air weapon without holding an air weapon certificate while the individual is taking part in an activity listed in sub-paragraph (2).

(2) The activities are—

(a) a theatrical performance or a rehearsal of such a performance,

(b) the production of a film for cinema, television or other genuine and prearranged artistic purpose.

Cadet corps

6 (1) It is not an offence under section 2(1) for an individual to use or possess an air weapon without holding an air weapon certificate if—

(a) the individual is a member of an approved cadet corps or the instructor of such a member, and

(b) the use or possession occurs while the individual is engaged in drill or target shooting exercises as such a member or instructor.

(2) In this paragraph “approved cadet corps” means a cadet corps which has been approved by the Secretary of State under section 54(5)(b) of the 1968 Act.

Bodies corporate etc.

7 (1) It is not an offence under section 2(1) for a person who is not an individual ("the entity") to possess, purchase or acquire an air weapon without holding an air weapon certificate if an officer of the entity holds an air weapon certificate in the officer’s capacity as such an officer.

(2) For the purposes of sub-paragraph (1), a reference to an officer of the entity is a reference to—

(a) in relation to a body corporate (other than a limited liability partnership)—

(i) a director, manager, secretary or similar officer of the body,
(ii) where the affairs of the body are managed by its members, a member,

(b) in relation to a limited liability partnership, a member,

(c) in relation to a Scottish partnership, a partner,

(d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

Holders of police permits

8 (1) It is not an offence under section 2(1) for an individual who holds a police permit under section 12 to possess or acquire an air weapon without holding an air weapon certificate if the permit authorises the possession or acquisition.

(2) It is not an offence under section 24 for an individual who holds a police permit under section 12 to sell (or expose for sale) an air weapon, in the course of the holder’s business, if the permit authorises the sale.

Holders of visitor permits

9 It is not an offence under section 2(1) for an individual who holds a visitor permit under section 13 to use, possess, purchase or acquire an air weapon without holding an air weapon certificate if the permit authorises the use, possession, purchase or, as the case may be, acquisition.

Authorised events

10 (1) It is not an offence under section 2(1) for an individual to—

(a) at an event in respect of which an event permit has been granted by the chief constable under section 17, and

(b) engaging in an event activity.

(2) In this paragraph, “event activity” has the meaning given in section 17(7).

Supervised use of air weapons on private land

11 (1) It is not an offence under section 2(1) for an individual (“A”) to—

(a) borrow an air weapon from the occupier of private land, and

(b) use and possess the weapon on that land,

without holding an air weapon certificate, if the conditions in sub-paragraph (2) are complied with.

(2) The conditions are—

(a) A uses and possesses the air weapon under the supervision of the occupier of the land or an employee or agent of the occupier (“the supervisor”),

(b) the supervisor holds an air weapon certificate,

(c) A complies with any conditions attached to the supervisor’s certificate so far as relevant to the use and possession of the air weapon by A, and

(d) where A is under the age of 14, the supervisor is aged 21 years or more.
Use of air weapons at recreational shooting facilities

12 (1) It is not an offence under section 2(1) for an individual ("A") to borrow, hire, use or possess an air weapon without holding an air weapon certificate at a recreational shooting facility, if—

(a) A reasonably believes that an individual who is responsible for the management and operation of the facility holds an air weapon certificate, and

(b) A’s use or possession occurs only while A is at the facility.

(2) It is not an offence under section 2(1) for an individual ("B") to use or possess an air weapon without holding an air weapon certificate at a recreational shooting facility, if—

(a) B reasonably believes that an individual who is responsible for the management and operation of the recreational shooting facility holds an air weapon certificate, and

(b) B is an employee of the operator of the facility and is acting in the ordinary course of the employer’s business as such an operator.

(3) In this paragraph, “recreational shooting facility” means—

(a) a miniature rifle range or a shooting gallery at which air weapons are used, or

(b) a facility for combat games which involve an air weapon, which is operated with a view to making a profit.

Museums

13 (1) It is not an offence under section 2(1) for an individual who is responsible for the management of a museum or is an employee of the museum to possess, purchase or acquire an air weapon without holding an air weapon certificate if—

(a) the possession, purchase or acquisition is for the purposes of the museum, and

(b) either—

(i) there is a museums firearms licence in force in respect of the museum, or

(ii) an individual mentioned in sub-paragraph (2) holds an air weapon certificate.

(2) The individuals are—

(a) an individual responsible for the management of the museum, or

(b) a curator at the museum.

(3) In this paragraph—

(a) a reference to an individual responsible for the management of the museum is a reference to a member of the board of trustees or the governing body or an individual exercising corresponding functions,

(b) “museums firearms licence” means a licence granted under the Schedule to the Firearms (Amendment) Act 1988.
Air Weapons and Licensing (Scotland) Bill
Schedule 1—Exemptions

Air weapons on ships

14 It is not an offence under section 2(1) for a person to use and possess an air weapon without holding an air weapon certificate while on board a ship if the weapon is part of the equipment of the ship.

Purchase of air weapons for delivery outwith Scotland

15 It is not an offence under section 2(1) for an individual to purchase an air weapon from a registered firearms dealer without holding an air weapon certificate if—

(a) the purchaser is aged 18 years or more, and

(b) the weapon is to be delivered to a place outwith Great Britain, or to a registered firearms dealer in England or Wales, without first coming into the purchaser’s possession.

Loaning of air weapons for exempted purposes

16 (1) It is not an offence under section 24(1) or (2) for a person listed in sub-paragraph (2) to lend or to let on hire an air weapon to an individual (“A”), who does not hold an air weapon certificate, for the purpose of A’s using and possessing the weapon in accordance with an exemption under this schedule.

(2) The persons are—

(a) a holder of an air weapon certificate, or

(b) a person who—

(i) does not hold an air weapon certificate, but

(ii) is entitled to use or possess an air weapon without committing an offence by virtue of an exemption under this schedule.

Public servants carrying out official duties

17 (1) It is not an offence under this Part for a person listed in sub-paragraph (3) to carry out an activity listed in sub-paragraph (2) without holding an air weapon certificate, if the carrying out of the activity is for or in connection with the person’s duties.

(2) The activities are the use, possession, purchase, acquisition, manufacture, testing, repair, sale, transfer or disposal of an air weapon.

(3) The persons are—

(a) a constable,

(b) a member of police staff,

(c) a police cadet appointed under section 25 of the Police and Fire Reform (Scotland) Act 2012,

(d) a person providing forensic services in pursuance of section 31 of the Police and Fire Reform (Scotland) Act 2012,

(e) a member of the Ministry of Defence police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987,

(f) a member of the British Transport Police,
(g) a member of the Civil Nuclear Constabulary,
(h) a civilian officer of the British Transport Police or the Civil Nuclear Constabulary,
(i) a member of any other police force while executing a warrant or otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
(j) a person in the armed forces of Her Majesty,
(k) a member of the armed forces of another country when that member is serving with the armed forces of Her Majesty,
(l) the Queen’s and Lord Treasurer’s Remembrancer (or a person authorised to act on the Remembrancer’s behalf).

(4) In this paragraph “armed forces” means naval, military or air services.

Holders of certificates or permits with conditions

18 (1) It is not an offence under section 6(4) for a holder of an air weapon certificate to fail to comply with a condition attached to the holder’s certificate if the conditions in sub-paragraph (2) are complied with.

(2) The conditions are—

(a) that the holder of the certificate would be entitled to use, possess, purchase or, as the case may be, acquire an air weapon by virtue of an exemption under this schedule if the holder did not hold the certificate, and
(b) that the failure relates to the use, possession, purchase or, as the case may be, acquisition of an air weapon in accordance with the exemption.

19 (3) It is not an offence under section 15(4) for a holder of a police permit or a visitor permit to fail to comply with a condition attached to the holder’s permit if the conditions in sub-paragraph (4) are complied with.

(4) The conditions are—

(a) that the holder of the permit is entitled to use, possess, purchase or, as the case may be, acquire an air weapon by virtue of an exemption under this schedule, and
(b) that the failure relates to the use, possession, purchase or, as the case may be, acquisition of an air weapon in accordance with the exemption.

SCHEDULE 2
(introduced by section 77)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1

AMENDMENTS AND REPEALS RELATING TO PART 1

Firearms Act 1968

1 (1) The Firearms Act 1968 is amended as follows.
(2) In section 3(1) (offences relating to manufacturing, selling or transferring firearms when not a firearms dealer)—
   (a) immediately following paragraph (a), insert “or”,
   (b) the word “or” immediately following paragraph (b) is repealed,
   (c) paragraph (c) is repealed.

(3) In section 21A (firing an air weapon beyond premises), after subsection (1) insert—
   “(1A) A person commits an offence if the person—
   (a) is supervising the use and possession of an air weapon on private
   premises by a person under the age of 18, and
   (b) allows the supervised person to fire any missile beyond those premises.”.

(4) Section 22(4) (offence for person under 18 to possess an air weapon or ammunition for
   an air weapon) is repealed.

(5) Section 23 (exceptions from section 22(4) of that Act) is repealed.

(6) In section 24(4) (supplying firearms to minors), in paragraph (b), for the words from
   “by” to the end substitute “the person holds an air weapon certificate granted under
   section 5 of the Air Weapons and Licensing (Scotland) Act 2015 or the possession is
   otherwise in accordance with Part 1 of that Act.”.

(7) In section 24ZA (failing to prevent minors from having air weapons), for subsection (2)
   substitute—
   “(2) Subsection (1) does not apply where—
   (a) the person under the age of 18 holds an air weapon certificate granted
   under section 5 of the Air Weapons and Licensing (Scotland) Act 2015,
   or
   (b) the use or possession of the weapon by the person under the age of 18 is
   otherwise in accordance with Part 1 of that Act.”.

(8) In section 57 (interpretation)—
   (a) in subsection (3), for “22(4), 22(5), 23(1)” substitute “21A(1A)”,
   (b) in subsection (4), in the definition of “firearms dealer”, in paragraph (b), for “sells
   or transfers” substitute “manufactures, sells, transfers, repairs or tests”.

(8A) In Schedule 4 (particulars to be entered by firearms dealer in register of transactions)—
   (a) in Part 1, in the note, after “2” insert “or 3”,
   (b) in Part 2, for the note substitute—
   “Notes:
   This Part does not apply in relation to Scotland.
   In this Part “air weapon” includes any component of, or accessory to, an air weapon.”,
   (c) the heading of Part 2 becomes—
   “PARTICULARS RELATING TO AIR WEAPONS: ENGLAND AND WALES”,
   (d) after that Part insert—
“PART 3

PARTICULARS RELATING TO AIR WEAPONS: SCOTLAND

Notes:
This Part applies in relation to Scotland.

In this Part “air weapon” includes any component of, or accessory to, an air weapon.

1 The quantities and description of air weapons manufactured and the dates of manufacture.

2 The quantities and description of air weapons purchased or acquired with the names and addresses of the sellers or transferors and the date of each transaction.

3 The quantities and description of air weapons accepted for sale, repair, testing, cleaning, storage, destruction, or any other purposes, with the names and addresses of the transferors and the date of each transaction.

4 The quantities and description of air weapons sold or transferred with the names and addresses of the purchasers or transferees and the date of each transaction.

5 The quantities and description of air weapons in possession for sale or transfer at the date of the last stocktaking or such other date in each year as may be specified in the register.”.

(9) In Schedule 6 (prosecution and punishment of offences)—
(a) in the table in Part 1 (punishments)—
   (i) in the entry for section 21A (person making improper use of air weapon), in the first column, for “21A” substitute “21A(1) and (1A),”
   (ii) the entry for section 22(4) is repealed,
   (iii) the entry for section 23(1) is repealed,
(b) in Part 2 (supplementary provisions as to trial and punishment of offences)—
   (i) in paragraph 7, for “21A, 22(3) or (4), 23(1)” substitute “21A(1), 21A(1A), 22(3),”
   (ii) in paragraph 8, for “21A, 22(3) or (4), 23(1),” substitute “21A(1), 21A(1A), 22(3),”.

1A In Schedule 9 to the Criminal Procedure (Scotland) Act 1995 (certificates as to proof of certain routine matters), at the end of the table insert—

| “The Air Weapons and Licensing (Scotland) Act 2015” | A constable or a person employed by the Scottish Police Authority, if the constable or person is authorised to do so by the chief constable of the Police Service of Scotland. | In relation to a person identified in the certificate, that on the date specified in the certificate the person held, or as the case may be, did not hold, an air weapon certificate (within the meaning of Part 1 of that Act).” |
Violent Crime Reduction Act 2006

2 Section 32 of the Violent Crime Reduction Act 2006 (sales of air weapons by way of trade or business to be face to face) is repealed.

PART 2

AMENDMENTS RELATING TO PART 2

Licensing (Scotland) Act 2005

3 (1) The 2005 Act is amended as follows.
   (1A) In section 28(2) (period of effect of premises licence), for “34(1)” substitute “33(1)”.
   (1B) In section 29(4) (application to vary premises licence), for “and 22” substitute “, 22 and 24A”.
   (1C) In section 35 (variation on transfer), in each of subsections (1) and (3)(b), the words “or 34(1)” are repealed.
   (2) In section 37 (review of premises licence on Licensing Board’s initiative)—
       (a) in subsection (3), for “subsection” where second occurring substitute “section”,
       (b) in subsection (4)—
           (i) in paragraph (a), for “subsection” substitute “section”,
           (ii) in paragraph (b), for “subsection” substitute “section”.
   (3) In section 49(1)(c) (Licensing Board’s duty to update premises licence), the words “or 34(1)” are repealed.
   (4) In section 57 (notification of occasional licence application to chief constable and Licensing Standards officer), in subsection (5)—
       (a) for “Subsections (2) and (3) have” substitute “Subsection (3) has”,
       (b) for “references” where first occurring substitute “reference”,
       (c) for “references” where second occurring substitute “a reference”.

PART 3

AMENDMENTS RELATING TO PART 3

Civic Government (Scotland) Act 1982

4 (1) The 1982 Act is amended as follows.
   (2) In Schedule 1 (licensing: further provisions as to the general system)—
       (a) in paragraph 5—
           (i) the sub-paragraph (2A) which was inserted by section 172(6)(d) of the Criminal Justice and Licensing (Scotland) Act 2010 is renumbered as sub-paragraph (2ZA),
           (ii) in the sub-paragraph (2A) which was inserted by paragraph 11(6)(b)(ii) of Schedule 1 to the Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006, SSI 2006/475, for “(1)(b)” substitute “(1A)(b)”,

(b) in paragraph 7(3), for “(2), (2A)” substitute “(1A), (2), (2ZA), (2A)”. 
Air Weapons and Licensing (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; to amend and extend the licensing provisions of the Civic Government (Scotland) Act 1982; and for connected purposes.

Introduced by: Kenny MacAskill
On: 14 May 2014
Bill type: Government Bill
INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Air Weapons and Licensing (Scotland) Bill (introduced in the Scottish Parliament on 14 May 2014) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sideling in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

PURPOSE

4. The Bill introduces a system of licensing for air weapons in Scotland. The Bill creates a number of new offences related to possession, use and acquisition of air weapons by persons who do not hold a licence or do not act in accordance with the licensing regime. The Bill also sets out the framework through which the Police Service of Scotland may grant an air weapon licence to appropriate individuals.

5. The Bill will give local communities the power to regulate sexual entertainment venues in their areas. The Bill also amends the licensing regimes in relation to alcohol licensing, taxis and private hire cars, metal dealers, as well as making systematic changes across the civic licensing regimes contained within the Civic Government (Scotland) Act 1982 (“the 1982 Act”).

6. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.
STRUCTURE AND SUMMARY OF THE BILL

7. The Bill is in four parts:

- **Part 1 Air weapons** sets out a new licensing system for air weapons administered by the Police Service of Scotland. Specific provisions include:
  - a definition of the air weapons that will be subject to licensing;
  - a requirement for air weapon certificates and the process for applications, grants (including conditions and duration) variations, renewal and revocation of these;
  - a system of police permits, visitor permits and event permits;
  - restrictions on the commercial sale, sale for delivery outwith Scotland, manufacture, repair, testing of air weapons and the operation of recreational shooting facilities;
  - Enforcement powers and offences;
  - Power to set fees and provide guidance;
  - Air gun clubs;
  - Exemptions from the licensing regime.

- **Part 2 Alcohol licensing** amends the existing licensing regime for alcohol licensing included within the Licensing (Scotland) Act 2005 (“the 2005 Act.”) Specific provisions include:
  - Amendment of the licensing objective in relation to children to also include young persons;
  - Amendment of the duration of a licensing policy statement to align with the term of Local Government elections;
  - Inserting a fit and proper person test in relation to the issue or continued holding of a premises or a personal licence;
  - Amendment of the transfer provisions for a premises licence;
  - Providing Licensing Standards Officers with a new power to report conduct of a personal licence holder;
  - Removal of the automatic requirement for a hearing to be held where a Licensing Board is notified of a relevant or foreign offence in relation to a premises or personal licence;
  - Amendment of the definition of relevant offences and foreign offences to no longer disregard a matter that is spent for the purposes of the Rehabilitation of Offenders Act 1974;
  - Creation of new offences of giving, or making available, alcohol to a child or young person for consumption in a public place;
  - Inclusion of the flavouring angostura bitters in the definition of alcohol for the purposes of the Act;
This document relates to the Air Weapons and Licensing (Scotland) Bill as amended at Stage 2
(SP Bill 49A)

- Clarification that for an overprovision assessment, the whole Board area may be considered as an area of overprovision;
- For an overprovision assessment allow Boards to take account of licensed hours, among other things;
- A duty on Boards to prepare an annual financial report in respect of their licensing activities;
- Removal of the requirement for a premises licence holder to notify a change in interested parties and amendment of the definition of an “interested party” to remove premises managers;
- Changes to the personal licence holder requirements including removal of the five year restriction on re-applying for a licence revoked on grounds of failing to undertake refresher training or notifying the board of such, and other changes to the personal licence holder requirements;
- A requirement for a Licensing Board to issue an acknowledgement of complete applications, unless the Board does not consider that it would be appropriate to do so;
- Automatic grant of a licence where a Licensing Board has failed to determine an application within the required period or the extended period as granted by a sheriff. This clarifies compliance with the EU Services Directive.

Part 3 Civic Licensing amends the existing licensing regimes included within the 1982 Act:

Sexual entertainment venues

- Sets out a new licensing system for sexual entertainment venues administered by local authorities. Specific provisions include:
  - The definition of sexual entertainment venues;
  - The power for local authorities to license sexual entertainment venues according to the existing structure set out in Schedule 2 of the 1982 Act;
  - The power for local authorities to determine the number of sexual entertainment venues in their area.

Metal dealers

- Amendments to the metal dealer regime. Specific provisions include:
  - Removal of the exemption warrants system that allowed a metal dealer with a larger turnover to be exempted;
  - Limit payment for metal by metal dealers or itinerant metal dealers to prescribed methods i.e. bank transfer or cheque;
  - Amended standards for identification of customers;
  - Amended standards of record keeping;
  - Removal of mandatory requirement that metal dealers should not process metal for 48 hours after receiving it;
Conferring power on the Scottish Ministers to establish a register of metal dealers and itinerant metal dealers;

Amended definitions of metal dealer and itinerant metal dealer.

**Taxis and private hire cars**

- Amendments to the taxis and private hire cars regime. Specific provisions include:
  - The power to refuse to grant private hire car licences on grounds of overprovision;
  - The extension of taxi driver testing to include private hire car drivers;
  - Removal of the contract exemptions to the licensing and regulation of taxis and private hire cars, bringing hire cars used on contracts into the regime.

**Public entertainment venues**

- Amendments to the public entertainment regime. Specific provisions include:
  - Abolish ‘theatre licences’ as currently required under the Theatres Act 1968 and instead regulate theatres through the existing public entertainment licensing regime provided for in the 1982 Act;
  - Restrict the exemption concerning premises licensed under the Licensing (Scotland) Act 2005.

**Miscellaneous and general**

- Amendments to the operation of all civic government licensing regimes. Specific provisions include:
  - Power for Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings;
  - Introduction of a new role, Civic Licensing Standards Officer;
  - Create an ability for a Licensing Authority to revoke a licence under Part 2 of the 1982 Act
  - Where it has not already been provided for, the deemed grant of a licence where the Local Authority has failed to determine an application within the required period or the extended period granted by a sheriff.

- **Part 4 General Provision** sets out general provisions, such as for the making of ancillary provision by regulations. It also contains definitions, the short title and provisions for commencement of the Act by order.

**PART 1 – AIR WEAPONS**

8. The provisions in this Part establish a licensing regime in relation to air weapons.
Meaning of air weapon

Section 1 – Meaning of “air weapon”

9. Section 1 defines the term “air weapon” for the purposes of the Part. Subsection (2) adopts the definition from section 1(3)(b) of the Firearms Act 1968 (“the 1968 Act”). Section 1(3)(b) of the 1968 Act provides that an air weapon is an air rifle, air gun or air pistol which does not fall within section 5(1) of the 1968 Act and which is not of a type declared by the Secretary of State by rules to be “specially dangerous”. The Firearms (Dangerous Air Weapons) (Scotland) Rules 1969 (S.I. 1969/270) as amended are the applicable rules made by the Secretary of State.

10. The effect of this is that the Part applies to air weapons capable of a muzzle energy equal to or lower than 12 foot pounds (ft/lb), or 6 ft/lb for an air pistol (approximately 16.27 joules and 8.13 joules respectively). Air weapons above these thresholds – or those that come within section 5(1) of the 1968 Act, for example by being disguised as another object, or designed or adapted to use a self-contained gas cartridge system – will continue to require to be held on a Firearms Certificate issued under the 1968 Act. Note that section 48 of the Firearms (Amendment) Act 1997 provides that any reference to an air rifle, air pistol or air gun in the Firearms Acts 1968 to 1997 includes a reference to any such rifle, pistol or gun which is powered by compressed carbon dioxide and therefore such weapons also fall to be licensed by the Part.

11. Subsection (4)(a)(i) adds a lower power threshold of one joule (approximately 0.74 ft/lb) to this definition, so that air weapons with a muzzle energy of one joule or below do not require to be held on an air weapon certificate. Subsection 4(za) excludes air weapons that are not captured by the definition of “firearm” at section 57(1) of the 1968 Act, that is “a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged”. This means that, although certain air powered weapons may exceed 1 joule of muzzle energy, they do not fall to be regulated under this Part if they are not firearms for the purposes of the 1968 Act – for example, low powered airsoft weapons or paintball guns. Subsection (4)(a)(ii) also excludes air weapons designed for use only underwater, for example spear guns, from requiring a certificate. Such weapons are excluded from existing UK firearms legislation by regulation 2 of the Firearms (Dangerous Air Weapons) (Scotland) Amendment rules 1993 (S.I. 1993/1541).

12. Subsection (3) sets out that component parts and sound moderators for air weapons are included in the definition of “air weapon”, and require to be held on an air weapon certificate.

Air weapon certificates

Section 2 – Requirement for air weapon certificate

13. This section makes it an offence for a person to use, possess, purchase or acquire an air weapon (as defined in section 1) without holding a valid air weapon certificate or otherwise than in accordance with the Part. Subsection (2) specifies that this offence is triable summarily or on indictment, and sets out the maximum penalties for both. The offence attracts strict liability. A “person” includes non-natural (e.g. corporate bodies) as well as natural persons.

14. Subsection (3) introduces schedule 1, which sets out a number of exemptions from the requirement to hold an air weapon certificate, and certain other offences created by the Part. Commentary on schedule 1 begins at paragraph 259 of these Notes. Subsection (4) provides the
Scottish Ministers with the power to add, remove or modify exemptions in schedule 1 by regulations. Such regulations are subject to the affirmative procedure in the Scottish Parliament.

Section 3 – Application for grant or renewal of air weapon certificate

15. This section sets out the process by which an individual can apply for an air weapon certificate, or the renewal of a certificate which has previously been granted. Subsection (1) states that applications must be made to the Chief Constable of the Police Service of Scotland, and sets a lower age limit of 14 for applicants.

16. Subsection (2) provides that applications for an air weapon certificate must be made in the form specified in regulations issued under section 37 and must be verified as set out in section 4. Additionally, applicants below the age of 18 must provide information specified in section 7. If an application is not accompanied by the required information it cannot be considered by the Chief Constable. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

17. Subsection (3) requires the Chief Constable to keep a register of all applications for a new or renewed air weapon certificate, even if the application is ultimately unsuccessful.

Section 4 – Verification of applications

18. This section, combined with section 3(2)(a), requires an application for a new or renewed air weapon certificate to be verified by an appropriate individual before it can be considered by the Chief Constable. Subsection (2) sets out who can verify an application but subsection (2)(c) lists those who can never verify an application, and subsection (3) requires the verifier to confirm the accuracy of any information supplied with the application. In every case the verifier must have known the applicant personally for at least two years, but not be related to them (see the definition of “relative” in section 40) or be ordinarily resident outside the United Kingdom, or be a Registered Firearms Dealer or be a constable or member of police staff of the Police Service of Scotland or a member or employee of the Scottish Police Authority. The Chief Constable must also be satisfied that verifiers are of good standing in the community. Further detail on who can verify an application will be provided in guidance published by the Scottish Ministers under section 39.

Section 5 – Grant or renewal of air weapon certificate

19. This section allows the Chief Constable to issue a new or renewed air weapon certificate provided that the applicant is fit to be entrusted with an air weapon; is not prohibited from possessing any firearms by section 21 of the 1968 Act (which makes provision to prohibit for life or 5 years possession of firearms, including air weapons, by persons who have been convicted and sentenced to specified terms of imprisonment); has a good reason to use, possess, purchase or acquire an air weapon (for example, pest control, sporting target shooting, or being a collector); and in all the circumstances can do so without danger to the public safety or the peace (this last test is intended to allow account to be taken of factors not only directly about the applicant but beyond, such as the applicant’s wider domestic situation or acquaintances). Further
clarity on how the Chief Constable should test applicants against these criteria will be provided in guidance published by the Scottish Ministers under section 39.

20. Subsection (2) allows the Chief Constable to consider applicants who already hold a firearm or shotgun certificate issued under the 1968 Act to have met the “fit” and “not prohibited” criteria without further enquiry, on the grounds that these tests will already have been met for the grant of the firearm or shotgun certificate.

21. Subsection (3) allows the police to visit an applicant’s home, or any other place where air weapons are intended to be stored or used, and conduct enquiries relating to the criteria in subsection (1) before granting or renewing an air weapon certificate.

Section 6 – Air weapon certificate: conditions

22. This section relates to conditions which are applied to air weapon certificates. Conditions are defined in section 40(1) as including requirements and restrictions and may comprise positive or negative obligations. Conditions may therefore place restrictions on the way that the certificate holder stores or uses their weapons, or may require the holder to carry out certain administrative functions (for example, informing the Chief Constable if they change address).

23. Subsection (1) sets out that all air weapon certificates will carry certain mandatory conditions, which will be specified in regulations issued under section 37. Subsection (2) allows the Chief Constable to attach additional conditions to certificates as required, and to change a certificate’s conditions at the time of renewal.

24. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by subsection (1)), or any other condition attached as a requirement of this Part (for example, the conditions for 14-17 year olds required by section 7(3)).

25. Subsections (4) and (5) create the offence of non-compliance with any conditions attached to an air weapon certificate, and set out the maximum penalty available respectively. This offence attracts strict liability.

Section 7 – Special requirements and conditions for young persons

26. This section sets out additional requirements for applications and certificates granted where the applicant is aged under 18. When combined with the minimum age for applicants at section 3(1), this section applies to applicants aged 14-17.

27. When read with section 3(2)(b), subsection (2) of this section requires that applications for an air weapon certificate from an individual aged 14-17 must contain a statement of consent from the applicant’s parent or guardian in the form and manner prescribed by regulations under section 37. The term “guardian” is defined at section 40(1).
28. Subsections (3) to (5) set out mandatory conditions for air weapon certificates granted to 14-17 year olds. The condition in subsection (4) prohibits a 14-17 year old with an air weapon certificate from purchasing, hiring, accepting a gift of or otherwise owning (for example by inheriting or finding) an air weapon, meaning that they may only use borrowed air weapons. This condition applies to all air weapon certificates granted to young persons. Subsection (5) lists the specific activities for which a 14-17 year old might be granted an air weapon certificate. The Chief Constable must apply one or more of the conditions listed at subsection (5) to the young person’s air weapon certificate, as appropriate.

29. Subsection (6) disapplies the requirement that a young applicant need satisfy the Chief Constable that the applicant has a good reason for purchasing or acquiring an air weapon because an air weapon certificate granted to a young person will not permit them to purchase, hire, accept a gift of or own such a weapon and therefore that aspect of the test for grant or renewal is not relevant.

30. Subsection (7) defines agriculture for the purposes of this section, specifically subsection (5)(d). The definition used at section 85 of the Agricultural Holdings (Scotland) Act 1991 is adopted, which refers to “horticulture, fruit growing; seed growing; dairy farming; livestock breeding and keeping; the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds; and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes: and “agricultural” shall be construed accordingly”.

Section 8 – Duration of air weapon certificate

31. Subsection (1) sets the normal duration of air weapon certificates at five years, except in the case of a certificate issued to a 14-17 year old, where the certificate expires on the holder’s 18th birthday. At this point the young person’s air weapon certificate can be renewed and the conditions required by section 7 may be removed (for example, the prohibition on purchasing a weapon).

32. Subsection (2) provides that an air weapon certificate will remain valid beyond its stated expiry date, provided that the holder has applied to the Chief Constable for a renewal before that expiry date and the Chief Constable has not yet approved or rejected that renewal. The renewal application must be valid, i.e. comply with the requirements in section 3 and section 36, for this subsection to apply. The effect of this section is that the holder neither has to surrender the holder’s weapons nor commits the offence at section 2(1) when the original certificate expires, provided that renewal is being actively considered by the Chief Constable.

33. Subsection (3) provides the Scottish Ministers with the power to change the duration of air weapon certificates other than those in relation to young people. The regulations will be subject to the affirmative procedure in the Scottish Parliament.

Section 9 – Alignment of different types of certificate

34. This section allows air weapon certificates to be made co-terminous with firearm or shotgun certificates issued under the 1968 Act. This allows for all certificates to be due for renewal at the same time, minimising the workload for the applicant and the Chief Constable.
Regulations under section 36 are expected to make provision for a proportionately lowered fee where such air weapon certificates are granted or renewed for significantly shorter duration. This section does not affect the duration of firearm or shotgun certificates.

35. Subsections (1) and (2) allow an applicant who already holds a valid firearm and/or shotgun certificate to request that the expiry date on an air weapon certificate – if granted or renewed – match the expiry date on their existing firearm and/or shotgun certificate(s). Because the standard duration for firearm, shotgun and air weapon certificates are all set at five years, an air weapon certificate issued in this way will necessarily have a shorter than normal duration when it is first granted.

36. Subsections (3) and (4) allow an applicant who already holds a live air weapon certificate to request that that certificate be renewed before it has run its full five year lifespan, and re-issued on the same date that a new or renewed firearm and/or shotgun certificate is granted, so that the expiry dates on all certificates are aligned. This will necessarily mean that the air weapon certificate which they originally paid for on a five year basis will not have lasted for its full duration.

Section 10 – Variation of air weapon certificate

37. This section allows the Chief Constable to vary any of the details on an air weapon certificate after it has been granted or renewed, including adding, amending or removing conditions on the certificate (except the mandatory conditions required by section 6, and, if applicable, section 7). The Chief Constable may vary a certificate at any time, but is obliged to notify the certificate holder of the changes made.

38. Subsection (2)(a) separately allows the holder of an air weapon certificate to request that the Chief Constable make such a variation, for example to provide an updated contact address, or to request the removal or amendment of an outdated condition. Decisions whether to grant such variations are made at the Chief Constable’s discretion.

39. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by section 6(1)), or any other condition attached as a requirement of this Part (for example, the conditions for 14-17 year olds required by section 7(3)).

40. Subsection (4) allows the Chief Constable to require an air weapon certificate holder to relinquish their certificate within 21 days, for the purpose of varying the physical certificate in any way. Failure to do so may result in revocation of the certificate under section 11(2)(c).

Section 11 – Revocation of air weapon certificate

41. This section deals with revocation of an air weapon certificate. Subsection (1) requires the Chief Constable to revoke an air weapon certificate if satisfied that there is a danger to public safety or the peace if the certificate holder continues to possess an air weapon, or that the certificate holder is prohibited from possessing firearms under section 21 of the 1968 Act. These tests reflect those at sections 5(1)(d) and 5(1)(b) respectively.
42. Subsection (2) separately provides – but in contrast with subsection (1) does not require – the Chief Constable with discretion to revoke an air weapon certificate where the Chief Constable has reason to believe that the certificate holder is no longer a fit person to possess an air weapon (for example, if the holder was convicted of a crime of violence, or there is evidence of drug or alcohol abuse that meant that they could no longer be trusted with a firearm), or that they no longer have a good reason to hold a certificate (for example, if the holder had been a member of an airgun club but had not renewed membership of it). These tests reflect those at sections 5(1)(a) and 5(1)(c) respectively.

43. Subsections (2)(b) and (2)(c) provide the Chief Constable with discretion to revoke an air weapon certificate where the holder has failed to comply with a condition on that certificate, or has failed to surrender the certificate to the police for the purpose of a variation (as required by Section 10(4)). As with subsection (2)(a), in these circumstances the Chief Constable has the power to revoke but is not required to do so.

44. Subsections (3) to (6) set out the process for the revocation of an air weapon certificate. The Chief Constable must provide at least seven days’ advance notice of a revocation, within such time the certificate holder must relinquish the certificate and any air weapons or commit an offence (unless a reasonable excuse, for example illness, prevents them from doing so). Subsection (7) provides that, should the certificate holder make an appeal against the decision of the Chief Constable to revoke under section 35, the notice period will be suspended until such time as the appeal is disposed of or abandoned. However, subsection (7)(b) requires that the certificate holder must still surrender their certificate and weapons. If an appeal is successful then the court will quash the notice. If the appeal is rejected then the notice continues to run its remaining period from the date it was suspended.

Permits

Section 12 – Police permits

45. This section makes provision for police permits, which are distinct from air weapon certificates and are intended for use in transient situations where an individual may find themselves in possession of an air weapon, but grant of an air weapon certificate would not be appropriate (for example, where the executor of an estate takes possession of an air weapon when ingathering the deceased’s property). In this respect this section is intended to perform a similar function to that of section 7 of the 1968 Act, which allows the police to issue similar permits to allow the temporary possession of a firearm covered by section 1 of that Act. This section should be read in conjunction with the exemption at paragraph 8 of schedule 1 to the Bill.

46. Subsection (1) sets out that the Chief Constable may issue a permit to allow an individual to possess or acquire and/ or sell an air weapon in the course of business without requiring an air weapon certificate (or, in the case of sale in the course of business, being a Registered Firearms Dealer). These permissions may be applied or omitted from the permit at the Chief Constable’s discretion. Subsection (2) states that a police permit must not be granted to anyone prohibited from possessing firearms under section 21 of the 1968 Act, which is explained in more detail at paragraph 19 of these Notes.
47. Subsection (3) allows police permits to have variable durations, set at the discretion of the Chief Constable in each case but, as reflects the transient situation for which a permit is to cater, the duration of a permit is not intended to be of the order of that for an air weapon certificate.

48. Subsection (4) provides that applications for a police permit must comply with the requirements set out in regulations made under section 37 or the application will not be treated as having been made. The effect is that an application for a permit cannot be considered by the Chief Constable if the application processes set out in the regulations are not followed. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

Section 13 – Visitor permits

49. This and the following related sections provide for a system whereby visitors to Scotland may apply to the Chief Constable for a permit to use, possess, purchase or acquire air weapons while in Scotland, without holding an air weapon certificate. This section should be read in conjunction with the exemption at paragraph 9 of schedule 1.

50. Subsection (4) sets out the criteria for grant of a visitor permit. For individual visitors, subsection (4)(a) requires the applicant to have a good reason, and subsection (4)(c) provides that the visitor must not be prohibited from possessing firearms, nor should their possession of an air weapon present a danger to the public. These requirements match those for applicants for an air weapon certificate in section 5, with the omission of the ‘fit person’ test which would be difficult to apply effectively to visitors from abroad.

51. Subsections (2) and (3) allow for applications by groups of two to 20 people to be made on behalf of the group. The Chief Constable does not have to grant or refuse every member of the group a permit en bloc and can reject some while accepting others. Subsection (4)(b) provides that the Chief Constable must be satisfied that each member of the group individually is to use and possess an air weapon only for one of the listed activities. Each member of the group individually must also not be prohibited from possessing firearms, nor should their possession of an air weapon present a danger to the public. Subsection (5) permits the Chief Constable to require proof from the person applying on behalf of the group that the group has the permission of the owner or occupier of the land in question for the activities mentioned in subsection (4)(b)(i) and (ii).

52. Subsection (6) requires the Chief Constable to attach a condition to a visitor permit granted as part of a group application which restricts the permit holder to taking part in the activity or activities listed in subsection (4)(b) for which the permit has been granted. However, subsection (6) does not apply to a visitor who is part of a group but is aged 14-17, who will be subject to the separate restrictions under section 14.

53. Subsection (7) allows visitor permits to have variable durations, set at the discretion of the Chief Constable, although subsection (8) sets a maximum duration of 12 months.

54. Subsection (9) requires that an application for a visitor permit must comply with the requirements set out in regulations issued under section 37 or it will not be regarded as having
been made. The effect is that an application for a permit cannot be considered by the Chief Constable if the application processes set out in the regulations are not followed. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

55. Subsection (10) provides definitions, including specifying that applicants for a visitor permit must be aged 14 or over, and must live outside Scotland but intend to visit (or, be visiting at the time of application).

Section 14 – Visitor permits: young persons

56. This section makes provision where applications for visitor permits are from people under 18 years of age. When read with the definition of “qualifying visitor” in section 13(10) the effect is that this section applies to applicants aged 14 to 17 years.

57. Subsection (2) requires that applications for a visitor permit from an individual aged 14 to 17 years must contain a statement of consent from the applicant’s parent or guardian, set out in a form to be specified in regulations made under section 37. The term “guardian” is defined at section 40(1) and should be construed in light of the relevant jurisdiction of the applicant.

58. Subsections (3) and (4) provide that certain mandatory conditions set out in section 7 must be applied to visitor permits granted to young people, either individually or as part of a group. This means that young people with a visitor permit are subject to equivalent conditions as a young person residing in Scotland who holds an air weapon certificate.

59. Subsection (5) makes equivalent provision to that in section 7(6) as a young person with a visitor permit will not be able to purchase, hire, accept a gift of or own an air weapon while in Scotland.

Section 15 – Police and visitor permits: conditions

60. This section relates to conditions that are applied to police and visitor permits which have been granted under section 12 or section 13 respectively. Conditions will have the same effect as described in section 6. Subsection (1) sets out that all such permits will be subject to any mandatory conditions, which will be specified in regulations issued under section 37. Subsection (2) allows the Chief Constable to attach additional conditions to police and visitor permits as required.

61. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions required by subsection (1), or any other condition attached as a requirement of this Part (for example, by virtue of the visitor’s age (under section 14) and/ or their being part of a group (under section 13)).

62. Subsections (4) and (5) make it an offence for the permit holder to contravene any condition attached to a permit under this section, and set out the penalty. This offence attracts strict liability.
Section 16 – Police and visitor permits: variation and revocation

63. This section relates to variation and revocation of police permits or visitor permits which have been granted under section 12 and section 13 respectively.

64. Subsection (1) allows the Chief Constable to vary any details on a police permit or a visitor permit after it has been granted, including adding, amending or removing conditions, except any mandatory condition required by section 15(1), or any conditions which must be attached to a visitor permit by virtue of the visitor’s age (under section 14) and/ or their being part of a group (under section 13). Subsection (2) provides that a variation may occur either on the application of the permit holder, or at the Chief Constable’s discretion although the Chief Constable is obliged to notify the permit holder of the changes made. Subsection (4) allows the Chief Constable to require a permit holder to relinquish their permit within 21 days, for the purpose of varying it in this way. Guidance is expected to set out that failure to surrender a permit in this way would be grounds for the permit to be revoked.

65. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions required by section 15(1), or any other condition attached as a requirement of this Part (for example, by virtue of the visitor’s age (under section 14) and/ or their being part of a group (under section 13)).

66. Subsection (1)(d) allows the Chief Constable to revoke a police or visitor permit at any time, at the Chief Constable’s discretion. The Chief Constable must notify the permit holder of the revocation, and subsection (5) requires this notification to provide at least seven days’ notice of revocation, within which time the permit holder must relinquish the revoked permit and any air weapons possessed.

67. Subsections (6) and (7) make it an offence for a permit holder to fail, without reasonable excuse, to relinquish a permit for the purpose of revocation within the timescale specified by the Chief Constable.

68. Subsection (8) provides that when a permit holder appeals against a decision to revoke a permit, the notice period for that revocation is put on hold until the outcome of the appeal is known. However, by virtue of subsection (8)(b) the holder must still surrender the permit and any weapons to the Chief Constable. This mirrors the provision at section 11(7).

Section 17 – Event permits

69. This section provides for air weapon event permits. These are distinct from other permits as they are to be required where an event is to take place at which people may borrow, hire use or possess an air weapon for a short timescale, without holding individual air weapon certificates. Examples of situations where an event permit might be granted would be a Highland Games with an air weapon shooting component, or a variant of modern biathlon or pentathlon. This section should be read in conjunction with the exemption at paragraph 10 of schedule 1.

70. Subsection (1) sets out that applications for an event permit should be made to the Chief Constable, by a person responsible for the event. A “person” here includes non-natural (e.g.
corporate bodies) as well as natural persons. Event permits are granted at the Chief Constable’s discretion, and permit the borrowing, hiring, possessing and/or using of air weapons at a specified time and place, for the purpose of participating in a planned event activity as defined at subsection (7). Subsection (2) adds that the Chief Constable may attach conditions to an event permit as required.

71. Subsection (3) requires that an event permit – or a copy thereof – be displayed at the event to which it pertains. This requirement allows a participant at the event to confirm that a permit is in place and the exemption therefore applies when handling air weapons.

72. Subsections (4) and (5) create the offence of failing to comply with any condition attached to an event permit, or failing to display the permit as required by subsection (3) without a reasonable excuse. In either case the offence is committed by the event organiser named on the permit. The offence in subsection (4)(a) attracts strict liability.

73. Subsection (6) states that applications for an event permit cannot be considered unless they comply with the requirements set out in regulations to be made under section 37. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

Air weapon clubs and recreational shooting facilities

Section 18 – Approval of air weapon clubs

74. This section sets out the process by which an air weapon club can be approved by the Chief Constable, to allow its members to benefit from the exemption at paragraph 1 of schedule 1, as well as allowing members to put forward their club membership as evidence that they meet the ‘good reason’ criteria required by section 5(1)(c) for the grant of an individual air weapon certificate.

75. Subsection (1) states that the Chief Constable may, at the Chief Constable’s discretion, approve an air weapon club on receipt of an application from a club. Subsection (2) states that an application for an air weapon club approval cannot be considered unless it complies with the requirements set out in regulations to be made under section 37. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

76. Subsection (3) allows the Chief Constable to withdraw a club approval at any time, by giving notice to the club to that effect.

77. Subsection (4) states that all club approvals will be subject to mandatory conditions, which will be specified in regulations issued under section 37. Subsection (5) provides for the Chief Constable to attach other conditions to air weapon club approvals, which may place positive or negative obligations on the club’s secretariat and membership. But, in accordance with subsection (6), the Chief Constable may not attach any conditions which are inconsistent with any mandatory conditions.
Section 19 – Variation of approval

78. This section allows the Chief Constable to vary any of the details on an air weapon club approval after it has been granted or renewed, including adding, amending or removing conditions on the approval (except the mandatory conditions required by section 18(4)). The Chief Constable may vary an approval at any time, but is obliged to notify the club of the changes made.

79. Subsection (2)(a) separately allows the club to request that the Chief Constable make such a variation, for example to provide an updated contact address, or to request the removal or amendment of an outdated condition. Decisions whether to grant such variations are made at the Chief Constable’s discretion.

80. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by section 18(4)).

Section 20 – Duration of approval

81. Subsection (1) sets the duration of air weapon club approvals at six years, which is consistent with approvals issued to rifle or muzzle-loading pistol clubs under section 15 of the Firearms (Amendment) Act 1988 (“the 1988 Act”).

82. Subsection (2) provides that an air weapon club approval will remain valid beyond its stated expiry date, provided that the club has applied to the Chief Constable for a renewal before that expiry date and the Chief Constable has not yet approved or rejected that renewal. The effect of this subsection is that club members can continue to benefit from the exemption at paragraph 1 of schedule 1 when the original approval expires, provided that renewal is being actively considered by the Chief Constable.

83. Subsection (3) provides the Scottish Ministers with the power to change the duration of air weapon club approvals. The regulations will be subject to the affirmative procedure.

Section 21 – Alignment of club approvals

84. This section allows air weapon club approvals to be made co-terminous with a rifle club approval issued by the Scottish Ministers under section 15 of the 1988 Act. This allows for both approvals to be due for renewal at the same time, minimising the workload for the applicant and the Chief Constable. Regulations under section 36 are expected to make provision for a proportionately lowered fee where such air weapon club approvals are granted or renewed for significantly shorter duration. This section does not affect the duration of rifle club approvals.

85. Subsections (1) and (2) allow an air weapon club which already holds a valid rifle club approval to request that the expiry date on an air weapon club approval – if granted or renewed – matches the expiry date on their existing rifle club approval. Because the standard duration for rifle and air weapon club approvals are both set at six years, an air weapon club approval issued in this way will necessarily have a shorter than normal duration when it is first granted.
86. Subsections (3) and (4) allow a club that already holds a live air weapon club approval to request that that approval be renewed before it has run its full six year lifespan, and re-issued on the same date that a new or renewed rifle club approval is granted, so that the expiry dates on both approvals are aligned. This will necessarily mean that the air weapon club approval which was originally paid for on a six year basis will not have lasted for its full duration.

87. References in this section to “rifle club approvals” include clubs approved for the use of small-bore rifles, full-bore rifles and/or muzzle-loading pistols, all of which are approved under section 15 of the 1988 Act.

Section 22 – Power to enter and inspect club premises

88. This section empowers the Chief Constable – or a delegated officer not below the rank of inspector – to authorise a police constable or member of police staff to enter and inspect any approved air weapon club premises, other than a private dwelling, to ensure that the requirements in this Part are being complied with. Subsection (3) provides that the inspection should, where possible, take place at a reasonable time, which may be any time that the club is operating including in the evenings or at weekends. Subsections (1)(b) and (2) set out that the police constable or member of police staff can inspect anything on the club premises, including requiring electronic information to be reproduced in a way that can be removed from the premises. However inspection should only be of those things for the purpose of ascertaining whether the provisions of the Part or any conditions attached to a club’s approval are being complied with.

89. Subsection (4) requires that the police constable or member of police staff must produce their authorisation if asked before entering a club premises to inspect it in accordance with this section.

90. Subsections (6) and (7) set out the offence of intentionally obstructing a police constable or member of police staff from carrying out their duties when authorised under this section – for example, by refusing them access to the club premises, or by concealing evidence from them.

Section 23 – Requirements for recreational shooting facilities

91. This section and the exemption in paragraph 12 of schedule 1 set out arrangements for commercial recreational shooting facilities where individuals who do not hold air weapon certificates will be able to borrow or hire air weapons for short durations, for a specific purpose – for example, a miniature rifle range at a funfair.

92. Subsection (1) sets out that the operator of such a facility (or, where the operator is a non-natural person, must ensure that an individual responsible for the management and operation of the facility) must hold a valid air weapon certificate granted for this purpose, and must display this certificate (or a copy) at the venue. This requirement allows users of the facility to confirm that a certificate is in place and the exemption in paragraph 12 of schedule 1 therefore applies to them.
93. Subsections (2) and (3) make it an offence for anyone to operate a recreational shooting facility without either holding a valid air weapon certificate or ensuring that an individual responsible for the management and operation of the facility holds one for that purpose, or to fail to display that certificate at the facility without a reasonable excuse. The offence in subsection (2)(a) attracts strict liability.

94. Subsection (4) defines a recreational shooting facility for the purposes of the section as a shooting range or gallery, or a facility for combat games, where air weapons are used and which is run for the purpose of making a profit. Subsection (5) makes it clear that approved air weapon clubs are not subject to the requirements of the section.

**Transactions involving air weapons and commercial matters**

**Section 24 – Restrictions on transactions involving air weapons**

95. Subsection (1) makes it an offence for any person except a Registered Firearms Dealer under section 33 of the 1968 Act to manufacture, sell, transfer, expose for sale or transfer, repair or test an air weapon by way of trade or business, or to possess an air weapon for one of these purposes. This subsection makes analogous provision to that in section 3(1) of the 1968 Act and adds manufacture, repair and test of air weapons to the activities limited to Registered Firearms Dealers. This offence only applies to sales, transfers etc. by way of trade or business, and does not prohibit private sales between individuals. “Person” here includes non-natural persons (e.g. corporate bodies) as well as natural persons. The offences in this section attract strict liability.

96. Subsection (2)(a), (b) and (d) makes it an offence for anyone to sell or transfer an air weapon (including private sales) without first confirming that the recipient is entitled to have the air weapon by: showing a valid air weapon certificate; demonstrating that the recipient does not need to have a certificate; or, by virtue of being a Registered Firearms Dealer.

97. Subsection (2)(c) specifically allows a Registered Firearms Dealer to sell an air weapon to someone without requiring to see an air weapon certificate or evidence that an exemption applies, provided that the air weapon in question will be sent out of Great Britain, or to a Registered Firearms Dealer in England or Wales where the buyer can collect it, without first coming into the possession of the purchaser. Where the purchaser is an individual (as opposed to, for example, a corporate body) the individual must also be aged 18 or over for this paragraph to apply. For example, an overseas visitor to Scotland who does not hold a visitor permit allowing purchase might have a Registered Firearms Dealer export an air weapon directly to their home country.

98. Subsection (3) broadly reflects subsection (2), and makes it an offence to manufacture, repair or test an air weapon for anyone without confirming that they hold a valid air weapon certificate or are a Registered Firearms Dealer or do not need to have a certificate.

99. Subsection (4) sets out the penalties for any of the offences committed in this section.
Section 25 – Requirement for commercial sales of air weapons to be in person

100. This section requires that commercial sales of air weapons are done face-to-face, and is intended to make analogous provision to section 32 of the Violent Crime Reduction Act 2006. Subsection (1) sets out that this section applies to all sales by way of trade or business except those between two Registered Firearms Dealers, and to those where the sale is concluded outside Great Britain (for example mail order sales).

101. Subsection (2) requires that, at the point at which possession of the air weapon(s) is/are transferred to the purchaser, both the purchaser and the seller – or their representative – must be physically present, otherwise the seller commits an offence. Subsection (3) sets out different categories of person who may act as a representative of the seller for the purposes of this section. A “person” here means a non-natural (e.g. corporate bodies) as well as a natural person. This offence attracts strict liability.

Enforcement

Section 27 – Power of search with warrant

102. This section relates to search warrants issued where there is a reasonable ground to suspect that an air weapon offence has been, is being or is about to be committed or there is a danger to the public safety or the peace involving an air weapon. Subsection (1) sets out that such a warrant may be granted by a sheriff on application by a constable or member of police staff. Subsections (2) and (3) set out what a constable or member of police staff may do under such a warrant – that is, enter and search premises and seize or detain anything found there in relation to the commission of an air weapon offence. This includes anything in the possession of a person on those premises, and includes the power to require that any electronic information to be reproduced in a way that can be removed from the premises.

103. Subsections (4) and (5) make it an offence for any person to obstruct intentionally a police constable while carrying out a search under this section, and set out the attached penalty. “Person” includes both natural and non-natural persons.

Section 28 – Production of air weapon certificate

104. Subsection (1) empowers a constable to require the production of an individual’s air weapon certificate, or proof that the person does not require to hold a certificate, if the constable believes that an air weapon is in that person’s possession. “Person” in this section includes both natural and non-natural persons. Subsection (2) allows the constable to seize any air weapons held and require the person’s name and address if a certificate or exemption is not provided.

105. Subsections (3) and (4) make it an offence to fail to provide a name and address, or to provide a false one, when required by this section. This offence attracts strict liability.

Section 29 – Cancellation of air weapon certificate

106. This section allows a court to order the cancellation of an individual’s air weapon certificate when that individual is convicted of one or more of the offences, or is subject to one
of the other orders, set out in subsection (1). Orders may make provision about any type of firearm as well as air weapons.

107. Subsection (3) requires the court to notify the Chief Constable of a cancellation made under this section, at which point the Chief Constable must notify the certificate holder and allow 21 days for surrender of the certificate.

108. Subsections (4) and (5) make it an offence for an individual to fail to surrender the certificate within 21 days when required by subsection (3)(b), without reasonable excuse (for example, if they were unable to comply because they were serving a prison sentence).

Section 30 – Forfeiture and disposal of air weapons

109. This section allows a court to order the forfeiture or disposal of any air weapon in the possession of someone who has been convicted of any offence introduced by this Part. Subsection (3) allows a police constable to seize the weapon(s) in question, and subsection (4) allows the Chief Constable to apply to a sheriff to dispose of the weapon(s) in any manner the Chief Constable sees fit, for example by sale at auction, destruction by scrap metal dealer, or transfer to a museum if the weapon is of historic or other significance.

110. Subsection (5) provides that a court may not order the forfeiture or disposal of an air weapon which is possessed by a museum following a conviction for an air weapon offence or where it was seized or detained by a constable. This provides for situations where, for example, a person is convicted of possession of an air weapon where he or she has stolen it from a museum, or a member of museum staff commits an offence with a museum weapon, so that the court does not inadvertently order forfeiture and thereby prevent the museum from getting return of an air weapon which may be of historic or other significance.

111. Subsections (6) and (7) set out what happens to air weapons where the Chief Constable has revoked an air weapon certificate, police permit or visitor permit on which they are held, but the holder appeals against that revocation. If the appeal is successful then the air weapons must be returned to their owner, and if it is not then the court may order their disposal as the Sheriff considers appropriate.

112. Subsections (8) and (9) set out what happens to air weapons where the air weapon certificate, police permit or visitor permit on which they are held has been revoked and the holder does not appeal, or withdraws their appeal. In such a case the Chief Constable and the owner of the weapon should seek to agree arrangements for disposal (for example, transfer to someone permitted to possess air weapons, or sale through a Registered Firearms Dealer). If an agreement cannot be reached then the Chief Constable may dispose of them as he or she sees fit, which may be by one of the methods outlined in paragraph 109 above. In such a circumstance subsection (10) requires the Chief Constable to notify the owner of the method of disposal, who may then appeal against the Chief Constable’s decision under section 35(2)(n).
Offences

Section 31 – Failure to keep air weapons secure or to report loss to police

113. This section makes it an offence for a person in possession of an air weapon to fail to take reasonable precautions for its safe custody, or to fail to report the loss or theft of the air weapon to the Chief Constable as soon as reasonably practicable (this allows for any reasonable delay as a result of, for example, a person being ill in hospital or temporarily unaware of the loss or theft due to being on holiday). These offences apply to any person who possesses an air weapon, including natural and non-natural persons. The offences attract strict liability.

Section 32 – False statements, certificates and permits

114. This section creates two offences around providing false information in order to obtain an air weapon certificate, permit, or approval, or producing a falsified or improperly altered certificate or other information in order to obtain the repair or testing of an air weapon.

115. Subsection (1) makes it an offence to knowingly or recklessly make a statement which contains false information in order to procure an air weapon certificate, police permit, visitor permit, event permit, or club approval. This could include, for example, providing a false name, or declining to disclose a criminal history when asked. This offence may also be committed by the person verifying the application, if the verifier knew that the information was incorrect or was reckless in verifying false information.

116. Subsection (2) makes it an offence to produce a false or improperly altered air weapon certificate, police permit or visitor permit, or to provide any other false information, in order to purchase or acquire an air weapon, or to have one repaired or tested. This could include, for example, impersonating an air weapon certificate holder, or amending the details on an expired certificate so that it appeared to still be live.

Section 33 – Time limit for offences

117. This section provides that anyone committing a summary-only air weapon offence could have proceedings brought against them up to three years after that offence has been committed. Section 136 of the Criminal Procedure (Scotland) Act 1995 normally sets a time limit of six months after the offence has been committed. This only applies to summary-only offences, which is all of the offences in this Part except the ones at section 2 and section 24.

Section 34 – Offences by bodies corporate etc.

118. This section provides for cases where there may be an offence committed by a non-natural person such as a body corporate, partnership or unincorporated association (e.g. an auctioneer, carrier firm, operator of a recreational shooting facility etc.). Subsection (2) states that both the individual who committed the specific offence, as well as the corporate entity on whose behalf the criminal act was done, can be proceeded against for the purpose of that offence.
General

Section 35 – Appeals

119. This section allows persons to appeal against various decisions made by the Chief Constable in administering the air weapon licensing regime. Subsection (2) lists the decisions that can be appealed.

120. Subsections (1) and (3) set out that appeals must be made to the appropriate sheriff, as defined by subsection (8), within 21 days of the decision being appealed against. Subsections (4) and (5) state that the sheriff should undertake a full consideration of the merits of the Chief Constable’s decision of new, including considering any evidence that the Chief Constable may not have been aware of at the time.

121. Subsection (6) allows the sheriff hearing the appeal either to dismiss it or to direct the Chief Constable to take whatever action the sheriff sees fit to resolve the matter under appeal (for example, ordering the Chief Constable to grant a refused certificate, or not to revoke a certificate).

122. Subsection (7) states that the decision of the sheriff may only be appealed on point of law. The effect of this is that appeals may be made on point of law ultimately to the Inner House of the Court of Session. The “appropriate sheriff” is defined as being the sheriff of the sheriffdom where the appellant resides or, where the appellant resides outside Scotland, the sheriff at Lothian and Borders. The latter is necessary because in certain circumstances an appellant may reside outside of Scotland, for example where a visitor permit has been refused.

Section 36 – Fees

123. This section allows the Scottish Ministers to set out fees for various aspects of the air weapon licensing regime in secondary legislation. Regulations under this section will be subject to the negative procedure in the Scottish Parliament. Subsection (1) provides that a fee can be set in relation to any application for a certificate, permit etc. under this Part, or to any other service provided by the Chief Constable in relation to the Chief Constable’s performance of functions under the Part. Subsection (2) provides that the Scottish Ministers may set out a range of fees taking into account different circumstances – for example, lower fees for co-terminous certificates – as well as situations where a fee may be waived entirely. Subsection (2)(c) allows fees to be raised or reduced by reference to factors specified in the regulations, such as inflation.

124. Subsection (3) provides that until the appropriate fee is tendered with an application it is not valid and this means the Chief Constable cannot consider any application under the Bill until the appropriate fee has been paid.

Section 37 – Power to make further provision

125. This section allows the Scottish Ministers to make regulations via secondary legislation setting out detailed provisions regarding the application and grant process for air weapon certificates, police permits, visitor permits, event permits, or club approvals. This would include, for example, setting out templates for application forms, granted certificates, and specifying the
conditions referred to in section 6. Regulations under this section will be subject to the negative procedure in the Scottish Parliament.

Section 37A – Crown application

126. This section exempts the Crown from criminal liability for any contravention of a provision made by or under Part 1 of the Bill. Enforcement against the Crown is restricted to one of the authorities named in subsection (2) seeking a declarator of unlawfulness in the Court of Session. Subsection (3) makes it clear, though, that this exemption does not extend to persons in the public service of the Crown. Instead, paragraph 17 of schedule 1 exempts certain public servants from the requirement to hold an air weapon certificate when dealing with air weapons in the course of their duties.

Section 38 – Transitional arrangements for existing certificate holders

127. This section introduces a temporary exemption that applies to persons who are aged 14 years or over and already hold a firearm and/ or shotgun certificate issued under the 1968 Act at the point when the section 2 offence is brought into force. Under subsection (2) such persons can possess and use (but not purchase or acquire) air weapons without holding an air weapon certificate, until their existing firearm and/ or shotgun certificate expires or is renewed. When renewing the firearm or shotgun certificate the individual should apply to the Chief Constable for first grant of an air weapon certificate if it is desired to continue to possess or use an air weapon.

128. This section also applies to firearm and shotgun certificates issued in the rest of Great Britain, so someone from England or Wales who holds valid a firearm and/ or shotgun certificate could visit Scotland with an air weapon without requiring to apply for a visitor permit, subject to the restrictions set out below.

129. Subsection (3) requires that a person making use of this exemption must nonetheless comply with the mandatory conditions for air weapon certificates to be specified in regulations issued under Section 37 – and, in the case of an individual aged below 18, can only use the air weapon for of the purposes mentioned in section 7(5). Subsections (4) to (6) set out the offence, exception and penalty related to non-compliance with the conditions mentioned in subsection (3). This offence attracts strict liability.

130. Subsection (7) sets out that this transitional exemption applies from the day that the offence at section 2 comes into effect, and ends on the day that the individual’s firearm and/ or shotgun certificate is renewed or expires. Subsection (7)(b)(ii) provides that should the firearm and/ or shotgun certificate be surrendered, cancelled or revoked before its stated expiry date, the transitional exemption will also end.

131. Subsections (8) and (9) apply where the individual holds both a firearm and shotgun certificate, which are not co-terminous. Subsection (8) states that the transitional exemption ends on the later of the two certificate expiry dates. Subsection (9) states that should either certificate be surrendered the transition exemption continues in force until the remaining one expires or is surrendered, while if either certificate is cancelled or revoked then the transitional exemption
ends immediately. Subsection (10) ensures that those making use of the exemption are also able to make use of the exemption in paragraph 16 of schedule 1.

Section 39 – Guidance

132. This section allows the Scottish Ministers to publish, revise and revoke guidance on any aspect of the air weapon licensing regime. Subsection (1) obliges the Chief Constable to take account of this guidance when carrying out his or her duties. Guidance will also be publicly available so that all stakeholders are aware of the Scottish Ministers’ view on application of the regime.

Section 40 – Interpretation of Part 1

133. This section provides definitions for various terms used throughout the Part.

134. Subsections (4) and (5) provide that where terms used in the Part are the same as those used in existing UK firearms legislation then the jurisprudence of the courts on interpretation of those terms in the existing UK firearms legislation applies equally to those terms when used in the Bill. The effect of this is to ensure that common terms are interpreted consistently across the Bill and the wider corpus of firearms legislation.

PART 2 – ALCOHOL LICENSING

135. The provisions in this Part amend the licensing regime for alcohol licensing within the Licensing (Scotland) Act 2005.

Licensing objectives

Section 41 – Licensing objectives: protecting young persons from harm

136. Section 41 amends the licensing objective at section 4(1)(e) of the 2005 Act to include young persons. The term young person is defined at section 147 of the 2005 Act and means a person aged 16 or 17. Under the current legislation, Boards must ensure that their decision making is underpinned by the five licensing objectives, including the objective ‘to protect children from harm’. This amendment expands this requirement so that Boards must also consider protecting ‘young people’ from harm.

Statements of licensing policy

Section 42 – Statements of licensing policy: licensing policy periods

137. Section 42 amends section 6 of the 2005 Act in relation to statements of licensing policy. A statement of licensing policy will generally have effect from 18 months after a local government election until 18 months after the next local government election. For example, the next local government elections are scheduled for May 2017 and May 2021 with the result that, in the usual case, the statements of licensing policy would last November 2018 until November 2022.
138. It is possible for the Licensing Board to decide that a statement of licensing policy should come into effect earlier than it otherwise would, and if they do so, then they must publish the licensing policy statement and publicise the date on which the licensing policy statement is to come into effect.

Fit and proper person test

139. The Bill introduces a ‘fit and proper person test’ into the processes for obtaining, reviewing and potentially revoking licences under the 2005 Act by virtue of sections 43 to 48. In each of these sections, the fit and proper test is considered with regard to the licensing objectives. It also makes some associated changes to the handling of information relating to relevant offences and foreign offences.

Section 43 – Premises licence application: ground for refusal

140. Section 43 amends section 22 of the 2005 Act with regard to objections and representations in relation to premises licences applications. Section 43 clarifies that an objection to or representation concerning a premise licence application may include any information that the person submitting the objection or representation considers relevant to consideration of any of the grounds for refusal, including information in relation to the applicant, a connected person in relation to the applicant, or any person who would be an interested party in relation to the premises if the application were to be granted.

141. Section 43 also amends section 23 of the 2005 Act in relation to the grounds of refusal for a premises licence application. Section 43 provides that it is a ground for refusal at a hearing when determining premises licence applications in section 23 of the 2005 Act, if the Licensing Board considers that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a premises licence. An amendment is also made to section 23(8) so that, where the Licensing Board refuses a licence on the fit and proper person ground, the Board must state the licensing objective that the ground relates to.

142. Section 43 also amends section 23(6) of the 2005 Act in relation to determination of premises licence applications. Section 43 clarifies that any conviction notice supplied by the chief constable and any antisocial behaviour report by the chief constable supplied to the Board, is relevant to the specific consideration of the new fit and proper test as well as to consideration of the existing ground of refusal that the application would be inconsistent with one or more of the licensing objectives.

Section 44 – Application to transfer premises licence: ground for refusal

143. Section 44 amends section 33 of the 2005 Act in relation to grounds for refusal for an application to transfer a premises licence (whether on the application of the current licence holder or someone else). Section 44 provides that it is a ground for refusal at a hearing when determining applications to transfer premises licences under section 33 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence.
144. This section also expands the information that can be provided to the Licensing Board by the Chief Constable upon receiving notice of a transfer of a premises licence. This includes information in relation to the transferee, a connected person in relation to the licence holder or an interested party in relation to the licensed premises, if the application for the transfer were to be granted. If information is provided, the Licensing Board must hold a hearing to determine the application.

**Section 45 – Ground for review of premises licence**

145. Section 45 makes amendments with regards to review of a premises licence (both on an application by a third party for a review and on a proposal for a review initiated by the Licensing Board itself). Section 45 provides that it is a ground for review of a premises licence, if having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence. If a review is based on this ground, the review application or proposal must include a summary of the information on which the applicant or the Board based its view that the alleged ground applies.

146. Section 45 clarifies that any person who makes a premises licence review application may include in the application any information that the person considers relevant to the Licensing Board’s consideration of the alleged ground of review, including information related to the licence holder, connected persons in relation to the licence holder or an interested party in relation to the licensed premises.

147. Section 45 also amends section 37 of the 2005 Act in relation to a review of a premises licence on the Licensing Board’s initiative. Section 45 clarifies that the Licensing Board’s review proposal may include information that the Board considers relevant to its consideration of the alleged ground of review, in relation to the licence holder, connected persons in relation to the licence holder or interested parties in relation to the licensed premises.

148. If at the review hearing the Licensing Board is satisfied that the fit and proper person ground for review is established, the Board must revoke the licence. Thereafter the Board must provide notification of its determination to the licence holder and where the decision is taken in connection with a premises licence review application, the applicant. A decision to revoke the licence is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff principal.

149. Section 45 also amends section 39 of the 2005 Act to provide that a revocation of a licence will take effect 28 days after the Board makes its decision. This provides a short period of grace in which action may be taken to render the premises licence acceptable to the Licensing Board, for example by varying the licence to remove a premises manager or by transferring the premises licence to a new licence holder.

150. Section 45 also inserts a new section 39B into the 2005 Act, which provides that, where a Licensing Board has revoked a premises licence on the grounds that the licence holder is not a fit and proper person, then the Board must recall the revocation if a relevant application is made within the 28 day period, and the Board ultimately grants the relevant application. The period of 28 days may be extended by the Board pending determination of a relevant application.
relevant applications would be applications for transfer of the licence, or for a premises licence variation that the Board considers would remove the ground on which the licence had been revoked.

Section 46 - Personal licence applications and renewals: ground for refusal

151. Section 46 makes amendments to sections 73, 74 and 78 of the 2005 Act in relation to personal licence applications and renewals. Section 46 provides that it is a ground for refusal at a hearing when determining personal licence application or personal licence renewal application under section 74 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence.

152. Subsection (2) provides that on giving a notice under subsection (3)(a) or (b) of section 73 of the 2005 Act, the Chief Constable may also provide to the Licensing Board any information in relation to the applicant that the Chief Constable considers may be relevant to consideration of the application by the Board.

153. Section 46 also inserts a new section 73A into the 2005 Act to provide that where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board’s area. A Licensing Standards Officer may, within 21 days of the date of receipt of this notice, respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration of the application by the Board. If information is supplied to the Board by the Chief Constable or by a Licensing Standards Officer, the Board may hold a hearing.

Section 47 – Personal licence holders: procedure on receipt of notice of conviction

154. Section 83 of the 2005 Act provides the procedure that a Licensing Board must follow where they receive notice of a conviction (or otherwise become aware of a conviction) of a personal licence holder. The Board must notify the Chief Constable of the conviction and, where the existence of the conviction is confirmed by the Chief Constable, the Board must hold a hearing to review the licence.

155. Section 47 of the Bill amends section 83 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

Section 48 – Personal licence holders: conduct inconsistent with the licensing objectives

156. Section 84 of the 2005 Act provides the procedure that a Licensing Board must follow when, in the course of reviewing a premises licence under section 38 of the 2005 Act, they find that a personal licence holder was acting on the premises in a manner not consistent with the
This document relates to the Air Weapons and Licensing (Scotland) Bill as amended at Stage 2 (SP Bill 49A)

licensing objectives. Where the Licensing Board makes such a finding a hearing must be held where the Board can revoke, suspend or endorse the licence if they believe it necessary to do so.

157. Section 48 of the Bill amends section 84 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

Transfer of premises licences

Section 48A – Transfer of premises licences

158. Section 48A amends the transfer provisions at section 33 of the 2005 Act to provide that it is the transferee that commences the transfer procedure in all circumstances. This also includes amendments to the procedures for the transfer of premises licences. Section 33A is inserted into the 2005 Act to make further provision in relation to the new transfer procedure. Section 34 (transfer on application of person other than the licence holder) of the 2005 Act is repealed as it is no longer necessary in light of the amendments to section 33. The appeal provisions at Part 1 of schedule 5 to the 2005 Act are also amended.

159. Section 48A amends section 33 of the 2005 Act to allow for any person, other than an individual under 18, to apply to the appropriate Licensing Board for the transfer of a premises licence to that person.

160. Subsection (2) inserts a new section 33(1A) into the 2005 Act to provide that the application must specify the date on which the transfer is to take effect, be accompanied by the original premises licence, or a statement of reasons for failure to produce the licence, and a written statement signed by the current holder of the premises licence consenting to the transfer to the transferee, or if that is not practical a statement of the reasons for failure to provide the written consent of the current holder of the premises licence. It is envisaged that this might cover instances of death, insolvency, dissolution and incapacity.

161. Subsection (2) also provides that the current requirement to provide the chief constable with a copy of the application in section 33(4) of the 2005 Act is amended, such that no copy need be provided if the Board must refuse the application under section 33(8A).

162. Subsection (2) also inserts section 33(8)(za) into the 2005 Act. The effect is that, if the written consent of the current licence holder is provided and the other requirements of section 38(8) of the 2005 Act are met (i.e. the transferee has no relevant conviction and there is no recommendation from the chief constable for refusal), then the transfer application must be granted. Thereafter, a new subsection 33(8A) is inserted providing that, where an application is not accompanied by a consent statement from the original licence holder, it must be refused unless the Board agrees to dispense with the requirement for a consent statement under the new section 33A(4).
163. Subsection (4) inserts a new section 33A into the 2005 Act, which make further provision for the procedures to be followed for applications to transfer a premises licence. Subsection (2) of the new section 33A requires the Board to take all reasonable steps to notify the original premises licence holder of the application. It is envisaged that this would allow the original premises licence holder to flag up where the holder’s consent had been faked, or the holder would otherwise not be in agreement with the transfer.

164. Where a notice of consent by the original premises licence holder has not been provided, subsection (4) of the new section 33A provides that the Board may dispense with the requirement if it is satisfied that the applicant has taken all reasonable steps to contact the original premises licence holder to obtain written consent, but has received no response. Where the Board decides not to dispense with the requirement for a letter of consent, subsection (5) of the new section 33A provides that it must notify the applicant and provide its reasons for that decision.

165. Subsection (6) of the new section 33A provides that where it has been decided to dispense with the requirement for a letter of consent, the Board must hold a hearing to determine the transfer application.

166. Subsection (7) of the new section 33A provides that, where an application is granted, the transfer is to take place on the date specified by the applicant, or where this date has passed, such date as the Board may determine.

167. Section 48A(6) amends Part 1 of schedule 5 to the 2005 Act, on appeals to the sheriff principal, to reflect the new transfer procedure. The right of appeal against a refusal to grant a premises transfer application is amended by subsection (6)(b) to extend to either the applicant or the premises licence holder. Subsection (6)(c) provides that the right of appeal against the granting of a premises licence transfer application is provided to the original holder of the premises licence. Subsection (6)(c) also provides that the right of appeal against the Board’s refusal to dispense with the requirement for a consent statement, as per the new section 33A(4), is provided to the applicant for a premises licence transfer.

**Relevant offences and foreign offences**

**Section 49 – Premises licences: procedure in relation to relevant offences or foreign offences**

168. Section 49 amends section 44 of the 2005 Act so that when a Licensing Board receives a notice of conviction in relation to a premises licence holder (or a person connected to the premises licence holder) they must initiate a review of the premises licence and hold a hearing only where the Chief Constable has made a recommendation under section 44(5), namely that having regard to the conviction specified in the notice, it is necessary for the purposes of any of the licensing objectives that the premises licence should be varied, suspended or revoked. Where the Chief Constable has not made such a recommendation then the Board may either make a premises licence review proposal, (and hold a hearing), or decide to take no further action in relation to the conviction.
Section 50 – Personal licences: procedure in relation to relevant offences or foreign offences

169. Section 50 amends section 83 of the 2005 Act so that when a Licensing Board receives notice of a conviction in relation to a personal licence they must hold a hearing only where the Chief Constable has made a recommendation under section 83(5), namely that having regard to the conviction specified in the notice it is necessary for the purposes of any of the licensing objectives that personal licence should be varied, suspended or revoked. Where the Chief Constable has not made such a recommendation then the Board may either hold a hearing, or decide to take no further action in relation to the conviction.

Section 51 – Relevant offences and foreign offences: spent convictions

170. Section 51 repeals section 129(4) of the 2005 Act which prohibits any consideration of a conviction for a relevant offence or foreign offence if it is spent for the purposes of the Rehabilitation of Offenders Act 1974. This amendment will make it possible for spent convictions to be brought to and considered by Boards as part of their decision-making.

Supply of alcohol to a child or young person

Section 52 – Offences of supplying alcohol to a child or young person

171. Subsection (1) of this provision inserts section 104A into the 2005 Act making it a criminal offence for a person, other than a child or young person, to buy or attempt to buy alcohol for or on behalf of a child or to give or otherwise make available alcohol to a child.

172. It also inserts a new section 104B which makes it a criminal offence for a person, other than a child or young person, to buy, attempt to buy, give or otherwise make alcohol available, to a young person. “Young person” is defined in section 147 of the 2005 Act as a person who is 16 or 17 years of age.

173. It is not an offence under either section however to buy alcohol for, or give alcohol to, a child or young person, a) for consumption other than in a public place or b) for the purposes of religious worship.

174. In addition, it is not an offence under section 104B – if beer, wine, cider or perry is bought, given or made available to the young person along with a meal to be consumed in relevant premises.

175. These exceptions do not apply to the offences of buying alcohol on behalf of a child or young person.

176. There is also a defence to the section 104B offence if the person who bought or gave the alcohol did not know the young person was under 18 years.

177. A person convicted of either offence may receive a fine, not exceeding level 5 on the standard scale, imprisonment for up to three months, or both.
178. In both sections, “public place” is defined as relevant premises, any place to which public
have access to at the relevant time (on payment or not), and any place to which the public do not
have access but which the child or young person unlawfully gains access to. The term “relevant
premises” is defined in section 122 of the 2005 Act.

179. Subsection (2) repeals subsections (4), (5) and (7) of section 105 of the 2005 Act (and
consequentially renames that section), as the substance of those subsections is replicated in new
sections 104A and 104B.

Miscellaneous

Section 53 – Meaning of “alcohol”: inclusion of angostura bitters

180. This provision amends section 2 of the 2005 Act to include angostura bitters within the
definition of “alcohol”. Angostura Bitters were exempt from Excise and were excluded from the
2005 Act definition of alcohol. However, they are now liable for Excise duty and have been
brought into the definition of alcohol.

Section 54 – Overprovision

181. Section 54 amends section 7 of the 2005 Act which deals with the duty of Licensing
Boards to assess overprovision, and provides that where a Board determines the “localities” for
the purposes of the Act then it may determine that the whole of the Board’s area is a single
locality.

182. Section 7 is further amended so that the Licensing Board may have regard to such matters
as the Board considers appropriate, including the licensed hours of licensed premises in the
locality, when assessing if there is overprovision.

183. Amendments are also made to allow these wider factors to be taken into account at:

- section 23(5)(e) of the 2005 Act (refusal of a premises licence on grounds of
overprovision), and
- section 30(5)(d) of the 2005 Act (refusal to vary premises licence on grounds of
overprovision).

These amendments remove specific reference to numbers and capacity when considering
whether there would be overprovision as a ground for refusal, when a Board is determining a
premises licence application or an application for a premises licence variation.

184. Removing these references means that Licensing Boards can refuse an application if they
consider that there would be overprovision if the application was granted. Their consideration of
overprovision would not be confined to considering only numbers and capacity but could take
account of other factors too.
Section 55 – Duty of Licensing Boards to produce annual financial report

185. This provision inserts section 9A into the 2005 Act requiring Licensing Boards to produce an annual financial report on their alcohol licensing activities.

186. Section 9A(1), (2) and (3) place a duty on Licensing Boards to prepare and publish the annual financial report no later than three months after the end of the financial year. It should contain details of relevant income received by the Licensing Board during the financial year; details of relevant expenditure incurred in respect of the Board’s area during the year; and an explanation of how the amounts in the report were calculated. The Board is required to break down its figures into the component sources of relevant income and expenditure. Relevant income for example would be premises licence application fees, personal licence fees or fees charged in respect of an application to vary a premises licence and relevant expenditure would for example be the salary cost of a Licensing Standards Officer in respect of his duties under the alcohol licensing regime or the costs for the Board in administering the alcohol licensing regime.

187. Section 9A (4) and (5) provide that the aforementioned annual financial report may also include such other information about the performance of the Licensing Board’s functions as they consider appropriate, and that at the request of the Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section. Subsection (6) gives the Scottish Ministers an order making power to make further provision about reports under this section, including provision about the form and content of reports; further details on what constitutes relevant income and relevant expenditure; and the publication of reports.

Section 55A – Licensing Standards Officers: general function in relation to personal licences

188. Section 55A amends section 14(1) of the 2005 Act which deals with general functions of Licensing Standards Officers. This provision makes it clear that Licensing Standards Officers have a new general function of being able to provide information to Licensing Boards about the conduct of personal licence holders or applicants for a personal licence which is inconsistent with the licensing objectives.

Section 55B – Powers of Licensing Standards Officers

189. Section 55B inserts section 84B into the 2005 Act to provide Licensing Standards Officers with a specific power to report conduct of a personal licence holder, who is or was working in licensed premises in their area, which is inconsistent with the licensing objectives, to the relevant Licensing Board.

190. Where a Licensing Board receives such a report from a Licensing Standards Officer the Board may hold a hearing, but is under no obligation to do so.
Section 56 – Interested parties

191. This provision amends section 40A (connected persons and interested parties: licence holder’s duty to notify changes,) to remove the references to interested parties, including within the section title. It also removes a requirement to notify changes of interested parties. The licence holder now only requires to provide notification in respect of connected persons.

192. It also amends the definition of an interested party at section 147(5) by permitting that a premises manager can be an interested party. This has the effect of allowing the premises manager to be subject to vicarious liability for offences under s141B.

Section 57 – Personal licences: grant, duration and renewal

193. This provision amends section 74 of the 2005 Act regarding the determination of a personal licence application. Section 74(3) provides conditions which must be met before an application can be granted. This provision amends section 74(3)(c) which currently states a personal licence cannot be granted if one has been revoked in the last five years. This provision amends section 74(3)(c) to provide that the provision is not applicable to persons who have had a personal licence revoked under section 87(3) of the 2005 Act. Accordingly, if a personal licence is revoked under section 87(3) the person will no longer have to wait for five years to elapse before applying for a new personal licence.

194. This provision also amends section 77(8) of the 2005 Act to increase the length of time prior to the expiry date of a personal licence that the relevant Licensing Board must give notice to the licence holder that the licence will cease to have effect on the expiry date unless renewed. The period of time is increased to nine months before the expiry date of a personal licence.

195. The provision amends section 78 of the 2005 Act to increase the length of the time period in which a personal licence holder may apply to the relevant Licensing Board for renewal of the licence, as well as to increase the length of the period provided for the Licensing Board’s consideration of this application. The period of time to submit an application under section 78(1) is now within the nine months period beginning 12 months before the expiry date of the licence.

196. The provision also amends Section 78(5) of the 2005 Act to remove the requirement that an applicant for renewal of a personal licence must not already hold a personal licence.

197. Finally section 84A of the 2005 Act is amended to provide that if a Chief Constable reports conduct inconsistent with the licensing objectives to the relevant Licensing Board, the whole of section 84(8) now applies in relation to an order made under subsection (2) of this section as opposed to only section 84(8)(a). This means that the Board making the order must now notify the order to the licence holder, the Board who gave the original notice and the Board who issued the licence, if these are different Boards.

Section 58 – Processing and deemed grant of applications

198. Section 58 inserts a requirement for Licensing Boards to issue an acknowledgement for relevant applications, where the application meets the requirements. The requirements for an
application form are those imposed under the 2005 Act or any other relevant enactment in respect of the type of application.

199. The acknowledgement must amongst other things inform the applicant of the timescale within which the application must be decided. The acknowledgement must be issued as soon as is practicable.

200. Where an application does not meet the requirements, the Licensing Board must give notice to the applicant that they are treating the application as incomplete and as not having been made, along with their reasons.

201. A Licensing Board must determine accepted applications within nine months of the date of receipt, as recorded in the letter of acknowledgement. This period of nine months can be extended, once, on application to the sheriff. The sheriff may extend the period for determining the application only if it appears to them, that there is a good reason for doing so. The applicant is entitled to be a party to proceedings to consider such an extension.

202. The Licensing Board is not required to issue an acknowledgement where it would not be appropriate to do so, however this would not alter the requirement to determine an application within nine months unless an extension has been granted by the sheriff. A Board may for example decide to grant a minor variation under subsection 30(2) without first issuing an acknowledgement.

203. If the Licensing Board fails to determine the application in this period then the licence will be deemed to have been granted and the Licensing Board must issue the licence to the applicant as soon as practicable. The Licensing Board must apply the relevant mandatory conditions, under schedule 3, or 4, including, where applicable, the Late Opening Premises Conditions, as set out in The Licensing Conditions (Late Opening Premises)(Scotland) Regulations 2007, but at time of issue, may not apply pool conditions or local conditions to a licence granted in this way.

Section 59 – Form etc. of communications under the 2005 Act

204. Section 59 expands the order making power provided at section 134 of the 2005 Act in relation to the form etc. of applications, proposals and notices to also include other communications. This means, for example, that the Scottish Ministers may make regulations expressly facilitating the use of email or other internet based systems for any type of application, notice, proposal or communication required under the 2005 Act.

PART 3 – CIVIC LICENSING

205. This Part of the Bill makes a number of amendments to the licensing provisions in the Civic Government (Scotland) Act 1982.
Taxis and private hire cars

Section 60 – Refusal to grant private hire car licences on grounds of overprovision

206. Section 60 amends section 10 of the 1982 Act. This enables (but does not require) the licensing authority to refuse a private hire car licence application on the grounds of overprovision of private hire car services in a given locality or localities. It allows the licensing authority to determine the localities within their area, allowing them to either treat the whole licensing authority area as one locality or sub-divide it. The section also provides that when assessing overprovision the licensing authority must have regard to the number of private hire cars operating in the locality and the demand for private hire car services in the locality.

Section 61 – Testing of private hire car drivers

207. Section 61 amends section 13 of the 1982 Act to allow licensing authority to require testing of applicants for a private hire car driver licence, as per the current ability to do so for a taxi driver’s licence. Licensing authorities will be able to require the same testing of both taxi and private hire car drivers or different elements of testing (or no testing) of one set of drivers.

Section 62 – Exemptions from requirements of sections 10 to 21 of 1982 Act

208. Section 62 amends section 22 of the 1982 Act to remove the exemption at subsection (c) which applies to ‘any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours’. This brings vehicles that are being used on contract in this manner into the licensing regime for taxis and private hire cars. Examples of the type of service that could potentially be brought within the licensing regime for taxi and private hire cars are: executive hire work – where a car is hired to transport an individual between meetings over the course of a day; airport transfers – where a car is hired to transport customers on longer journeys (meaning the car can only do one job in the 24 hour period) e.g. collecting from Glasgow Airport and taking a group to Iona.

209. Subsection (4) gives the Scottish Ministers the power to specify by order further exemptions from taxi and private hire car licensing. It is assumed the definition of a hire car within the 1982 Act makes clear the type of operation that should covered: ‘…‘hire car’ means a motor vehicle with a driver…which is, with a view to profit, available for hire by the public for personal conveyance.’ However, if it becomes clear types of service not intended to be covered are being swept up in taxi and private hire car licensing, this power could be used e.g. where a service is providing some kind of transport as an ancillary part of the wider service, not the main focus. An example could be if child-minders are being expected to be licensed as private hire car drivers and their vehicles licensed for collecting children in their care from school by car. The power could be used to make explicit that this type of operation is not intended to be covered.

Metal dealers

Section 62A – Penalties for failure to have appropriate licence or comply with conditions

210. Section 62A amends section 7 of the Civic Government (Scotland) Act 1982 to increase the penalties for the offences of operating without a metal dealer’s licence or itinerant metal dealer’s licence (where a licence is required) to a maximum fine of £20,000 and or six months
imprisonment on summary conviction. Section 62A also increases the maximum penalties for the offence of failing to comply with a condition of a metal dealer’s or itinerant metal dealer’s licence to the same level i.e. a fine of £20,000 or six months imprisonment, or both.

Section 63 – Removal of exemption warrants for certain metal dealers

211. This section amends section 28 of the 1982 Act and repeals section 29 of the 1982 Act to remove the current provisions that allow a metal dealer with an audited turnover in excess of a figure specified by order (currently £1 million) to be exempted from licensing requirements. This will have the effect of ensuring that all dealers are subject to licensing requirements.

Section 64 – Abolition of requirement to retain metal for 48 hours

212. This section repeals section 31 of the 1982 Act to remove the mandatory requirement that metal dealers should not process metal for 48 hours after receiving it. This would allow a dealer to process metal quickly (which may be required for the safe operation of the site).

Section 65 – Acceptable forms of payment for metal

213. This section creates a new section 33A in the 1982 Act. This specifies acceptable forms of payment that may be accepted by a metal dealer or itinerant metal dealer. The acceptable forms of payment are a cheque or electronic transfer into a bank or building society account. Cash is not an acceptable form of payment. A dealer who makes payment in a method not specified commits an offence. The offence extends to a person with day to day management responsibilities and the person who makes the payment. The metal dealer and manager are provided with a defence that they have made arrangements to ensure that payment is made by the specified methods and have taken all reasonable steps to ensure compliance. Subsection (7) gives Scottish Ministers the power by regulation to add or remove forms of payment that are acceptable and to make any consequential changes to section 33A or 33B(3) in consequence of changes to the acceptable form of payment.

214. Section 65 also adds a new section 33AA into the 1982 Act which provides a definition of what constitutes an acceptable bank or building society account is for the purposes of the regime. Subsection (4) in particular stipulates types of account that are not acceptable, with reference to Part 4A of the Financial Services and Markets Act 2000.

Section 66 – Metal dealers and itinerant metal dealers: records

215. This section amends the record keeping requirements for metal dealers and itinerant metal dealers. A new section 33B is inserted into the 1982 Act and provides the details that must be recorded by a dealer when metal is acquired or disposed of and supports the separate provisions stipulating acceptable forms of payment by requiring dealers to keep copies of documentation evidencing the form of payment used. Subsection (6) of section 33B provides the Scottish Ministers the power by regulation to amend the record keeping requirement and to stipulate particular means that can be used for the purpose of establishing a person’s name and address e.g. passport, driving licence, residency permit, bank statement etc.
216. The section also inserts a new section 33C into the 1982 Act to stipulate how records should be stored and a new section 33D to require records to be kept for each place of business a dealer operates from.

217. The section also creates an offence in relation to a failure to comply with the new requirements in relation to record keeping and amends the existing offence in relation to providing false or misleading information.

Section 66A – Register of dealers in metal

218. Section 66A create a new section 35A in the 1982 Act that provides regulation-making powers to the Scottish Ministers to establish, keep and maintain a register of metal dealers and itinerant metal dealers and the matters that regulations establishing the register may cover. These matters may include such things as who is to keep and maintain the register, the duty to provide information, the information to be covered by the register, the form and publication of the register and any fees that may be relevant. Examples of information that may be included in the register might include the name (or trading names) of the person holding the licence, a contact address for the person and the person’s place of business, which type (or types) of licence the person holds and the date on which the licence (or licences) will expire.

Section 66B – Interpretation of provisions relating to metal dealers etc.

219. Section 66B amends section 37 of the 1982 Act to amend the definition of both metal dealers and itinerant metal dealers to encompass those who buy or sell metal as opposed to those who both buy and sell metal (which was the previous position). The 1982 Act is amended to provide the activities that are licensable and it is explicitly stated that a motor salvage operator, as defined in subsection (3), is carrying out the business of a metal dealer and will require a licence to do so.

220. The section provides that a licence is required for those who carry on a business that “wholly or substantially” consists of buying or selling scrap. This means that those who deal in scrap metal to a significant degree will require a licence but those whose involvement is peripheral or tangential will not. It will be a matter of fact or degree whether a licence is necessary in individual circumstances but, for example, it might well be the case that a plumber who acquires some metal piping in the course of domestic repairs would not require to be licensed. Conversely, a skip hirer who takes substantial amounts of metal from a building site, and that forms a substantial part of the hiree’s business may require to be licensed.

Section 66C – Exemptions from requirements of sections 28 to 37 of 1982 Act

221. Section 66C creates a new section 37A within the 1982 Act. The new section creates a regulation-making power that will allow the Scottish Ministers to set out circumstances where the metal dealer and itinerant metal dealer regime does not apply, thereby resulting in a licence not being required.
Public entertainment venues

Section 67 – Licensing of theatres etc.

222. This section repeals existing licensing requirements in the Theatres Act 1968 (“the 1968 Act”) and supporting provisions in the 1968 Act that allow for powers of entry and inspection and prevent licensing being used to censor the content of plays.

223. The section also removes the exemption for premises licensed under the 1968 Act from the 1982 Act thereby allowing plays to fall into the activities that may be licensed under public entertainment licensing arrangements. An equivalent of the anti-censorship provisions in the 1968 Act is inserted into the 1982 Act.

Section 67A – Restriction of exemption from requirements for public entertainment licence

224. Sections 67A restricts the exemption from public entertainment licensing requirements contained in section 41(2)(f) of the 1982 Act, to specify that the exemption is only applicable to premises in possession of a premises licence within the meaning of section 17 of the 2005 Act. This would result in those in possession of an occasional licence issued under section 56 of the 2005 Act no longer being exempt from public entertainment licensing requirements.

Sexual entertainment venues

Section 68 – Licensing of sexual entertainment venues

225. The Section creates a new licensing regime for sexual entertainment venues.

226. This is achieved by amending the existing licensing scheme for sex shops found in Part 3 and Schedule 2 of the 1982 Act, such that it applies to sexual entertainment venues also, with modifications as necessary. The following paragraphs explain the key features of the new regime as modified.

227. The section amends section 41(2) of the 1982 Act to preclude a sexual entertainment venue from being licensed under public entertainment licences.

228. The section creates a new section 45A which establishes for the purposes of the legislation what is meant by a sexual entertainment venue and provides definitions of ‘audience’, ‘financial gain’, ‘organiser’, ‘premises’, ‘sexual entertainment’ itself and ‘display of nudity’. A power is provided by the section to allow the Scottish Ministers to prescribe types of premises that are not sexual entertainment venues. Sex shops are specifically identified as not being sexual entertainment venues.

229. A power is provided by the section to allow the Scottish Ministers to prescribe descriptions of performances or displays of nudity that are not to be treated as sexual entertainment for the purposes of the legislation.
231. The section specifies that a venue hosting sexual entertainment very occasionally (defined as three occasions or less) would not be treated as a sexual entertainment venue.

232. A new section 45B is created which requires a resolution by a local authority in order for sexual entertainment venue licensing to have effect in their area. The section requires that a resolution under the section would not have effect until a specified date (which cannot be less than one year after the resolution is passed). A resolution must be publicised either electronically or in a local newspaper.

233. 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.

234. Section 45B also clarifies that a licence for a sexual entertainment does not have to be granted even when a premises licence under Part 3 of 2005 Act (an alcohol licence) is in place.

235. Unlike sex shops, it will be permissible for a person under 18 to enter a sexual entertainment venue or be employed by such a venue but only at times when sexual entertainment is not taking place.”

236. Section 45B also provides that local authorities must have regard to any guidance issued by the Scottish Ministers.

**Miscellaneous and general**

**Section 69 – Deemed grant of applications**

237. The section modernises and expands the requirement for licensing authorities to deal with matters expeditiously. Failure to do so has the result that the application will be deemed to have been authorised. The expanded requirement also includes applications for variations to a licence so that a failure to take a decision within the specified timescale would have the effect that the variation would be deemed to have been agreed.

238. Section 3 of the 1982 Act is amended to modernise the language to provide greater clarity of the requirement to consider an application within three months and then reach a final decision within a further six months.

239. Section 3(4) is amended to include variations and to clarify the language used to describe the effect of a failure of a licensing authority to reach a decision.

240. A new subsection (4A) is inserted in section 3 of the 1982 Act to specify the duration of a licence or temporary licence granted under the ‘deemed grant provisions’.
241. A new subsection (4B) is inserted in section 3 of the 1982 Act to clarify that a licence issued under these provisions is not immune to the separate powers of a licensing authority to vary, suspend or revoke licences or to consider renewal.

242. A new section 45C is added to the 1982 Act to replicate these provisions in relation to sex shops and sexual entertainment venues.

Section 69A – Revocation of Part 2 licences

243. This section gives a licensing authority the ability to revoke a Part 2 licence, in addition to the current ability to suspend such licences. This is achieved by a number of amendments to the provisions of the 1982 Act. While it will be for the licensing authority to determine what the most appropriate disposal is in the circumstances, it is now possible for the authority to revoke a licence in circumstances where previously its only option was to suspend it. Paragraph 11 of Schedule 1 to the 1982 Act sets out those circumstances in full.

Section 70 – Procedure for hearings

244. Section 70 amends the 1982 Act by inserting paragraph 18A, in Schedule 1 and inserting paragraph 24A in Schedule 2. The new paragraphs create an order-making power to allow the Scottish Ministers to make provision about hearings in relation to activities licensed under Part 1 to 3 of the 1982 Act. The regulations may cover notice of hearings, rules of evidence, representation, timescales for steps in the procedure, and liability for expenses. The regulations may differentiate between different purposes, for example, different types of licence.

Section 71 – Conditions for Part 3 licences

245. This section recreates powers that allow the Scottish Ministers to set mandatory conditions that would apply to all licences issued under Part 3 of the 1982 Act. The condition setting power is broad, would be specified by Order and could encompass different licences and particular purposes and sets of circumstances or cases.

246. The section also allows local licensing authorities to produce standard conditions to which licences issued by them under this Part would be subject. The conditions would have no effect until they are published and cannot be inconsistent with the mandatory conditions. Standard conditions can be varied or dis-applied for particular applications, although a variation could also not be inconsistent with a mandatory requirement.

Section 71A – Conditions for Part 3 licences: displays or advertising

247. Section 71A amends paragraph 9(2)(b) of Schedule 2 of the 1982 Act to expand the definition of conditions that may be imposed to include displays or advertisements “in connection” with the premises. Currently a local authority can set reasonable licence conditions with regard to displays or advertising of a sex shop that are “on or in” the premises. As a result of these amendments, conditions can also be imposed on sex shops and sexual entertainment venues licensed by the authority in relation to displays and advertising that are in other locations e.g. flyers handed out in the streets in the vicinity or left in other pubs, or posters erected nearby.
Section 72 – Civic licensing standards officers

248. Section 72 inserts a new Part 3A into the 1982 Act. This introduces a statutory requirement for a local authority or licensing authority to appoint an individual or individuals in a new role, referred to as a ‘Civic Licensing Standards Officer’. These new Civic Licensing Standards Officers will have the same powers and duties as an ‘authorised officer’ within the 1982 Act but will also have specific functions in relation to providing information and guidance, checking compliance, providing mediation and taking appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act.

Section 73 – Electronic communications under the 1982 Act

249. The section amends Schedule 1 of the 1982 Act to permit a licensing authority to determine to receive electronic communications for a variety of matters. The matters are:

(a) applications for the grant or renewal of a licence under paragraph 1,
(b) objections or representations under paragraph 3,
(c) notifications of a change to a licence under paragraph 9.

250. Where a licensing authority makes a determination to receive electronic communications they must specify the form of electronic communication, the address to be used and any means of authentication that may be used in addition to an electronic signature.

251. The section clarifies that an electronic communication meeting the requirements set out will meet any requirement under schedule 1 for a communication to be in writing and signed.

252. A licensing authority may also determine to make communications in respect of the giving of notices or the giving of reasons electronically. The giving of reasons or notices electronically would only be acceptable if the intended recipient has agreed to receive communications in such a form and has specified an address. If the requirements are satisfied then any requirement for a notice or reasons to be given in writing will be met.

253. Determinations in relation to electronic communications may be made for different purposes and for different licences.

254. Similar amendments regarding electronic communications are made to Schedule 2 in respect of sex shops and sexual entertainment venues.

PART 4 – GENERAL PROVISION

Section 74 – Interpretation

255. Section 74 defines various expressions used in the Bill.
Section 75 – Regulations

256. Section 75 provides procedural requirements for orders and regulations made under the Bill.

Section 78 – Commencement

257. Section 78 provides that the provisions of the Bill (except those which come into force at the beginning of the day following the day on which the Bill receives Royal Assent) will come into force on a date or dates determined by order, made by Ministers.

Section 79 – Short title

258. Section 79 gives the short title of the Bill.

SCHEDULE 1: EXEMPTIONS

Paragraph 1 – Approved air weapon clubs

259. This paragraph exempts members of an air weapon club approved by the Chief Constable under section 18 from the requirement to hold an air weapon certificate, for the purpose of possessing or using an air weapon for target shooting at that club. The air weapon in question may be owned by the club and held on an air weapon certificate issued to the club secretary, or borrowed from elsewhere (for example another club member who holds their own air weapon certificate).

260. Sub-paragraph (b)(i) sets out that this exemption applies while the member is target shooting at other approved air weapon clubs, or at an event or competition, provided that the shooting is in connection with their club membership. Sub-paragraph (b)(ii) also allows possession and use of an air weapon in connection with club target shooting, for example to allow a club member to transport an air weapon owned by the club between shooting venues.

261. Sub-paragraph (c) requires that, where an air weapon club member is aged below 14, they must be supervised by another club member aged 21 or over for this exemption to apply. There is no lower age limit to the application of this exemption.

Paragraph 2 – Registered firearms dealers and their employees

262. This paragraph exempts firearms dealers who are registered with the Chief Constable under section 33 of the 1968 Act from requiring to hold an air weapon certificate when carrying out their business.

263. Sub-paragraph (1)(b) extends this exemption to the Registered Firearms Dealer’s employees, and sub-paragraph (2) allows this exemption to apply anywhere (i.e. not just at the dealer’s usual place of business). Sub-paragraphs (3) and (4) allow for an individual to borrow an air weapon from a Registered Firearms Dealer and use it on land the dealer occupies provided
the individual is supervised by the dealer or an employee of the dealer. Where the individual is under 14 then the supervisor must be aged 21 or over.

264. Sub-paragraph (1)(b) extends this exemption to the Registered Firearms Dealer’s employees, and sub-paragraph (2) allows this exemption to apply anywhere (i.e. not just at the dealer’s usual place of business).

Paragraph 3 – Auctioneers

265. This paragraph exempts auctioneers and their employees from requiring to hold an air weapon certificate when carrying out their business. This exemption only allows the possession, acquisition and purchase of air weapons, not their use.

266. Sub-paragraph (2) extends this exemption to allow an auctioneer to sell an air weapon by way of trade or business without committing the offence at section 24, provided that the auctioneer holds a police permit issued under section 12.

Paragraph 4 - Carriers and warehouse keepers

267. This paragraph exempts carriers and warehouse keepers, and their employees, from requiring to hold an air weapon certificate when carrying out their business. This exemption only allows the possession of air weapons, not their use, acquisition or purchase.

Paragraph 5 – Artistic performers

268. This paragraph allows an individual taking part in a theatrical performance, a rehearsal, or a film production – as defined by sub-paragraph (2) – to possess and use an air weapon without holding an air weapon certificate. This exemption only applies to the performer involved, and only for the duration of the performance. This exemption does not permit purchase or acquisition of an air weapon.

Paragraph 6 – Cadet corps

269. This paragraph exempts members of a cadet corps approved under section 54(5)(b) of the 1968 Act, and their instructors, from requiring to hold an air weapon certificate for the purposes of drilling and target shooting with air weapons.

Paragraph 7 – Bodies corporate etc.

270. This paragraph exempts corporate bodies from possessing, purchasing or acquiring an air weapon provided that a natural person who is an officer of the body listed in sub-paragraph (2) has an air weapon certificate.
Paragraph 8 – Holders of police permits

271. This paragraph sets out the specific exemption that applies to a holder of a permit issued under section 12. Sub-paragraph (2) extends this exemption to allow a permit holder to sell an air weapon by way of trade or business without committing the offence at section 24.

Paragraph 9 – Holders of visitor permits

272. This paragraph sets out the specific exemption that applies to a holder of a permit issued under section 13.

Paragraph 10 – Authorised events

273. This paragraph sets out the specific exemption that applies to attendees at an event covered by a permit issued under section 17. Sub-paragraph (1)(b) specifies that the attendee must be using the air weapon to engage in an activity at the event for the exemption to apply. Use of an air weapon at an event when not engaging in event activities is therefore not exempted from the section 2(1) offence.

Paragraph 11 – Supervised use of air weapons on private land

274. This paragraph allows a person without an air weapon certificate to borrow an air weapon from an individual who holds a valid air weapon certificate, and to possess and use it while on private land and under the supervision of the certificate holder, or their employee. Any use must be in line with the conditions attached to the relevant air weapon certificate.

275. Sub-paragraph (2)(d) provides that if the borrower is younger than 14, then the supervisor must be aged 21 or over. There is no lower age limit to the application of this exemption.

Paragraph 12 – Use of air weapons at recreational shooting facilities

276. This paragraph sets out the specific exemption that applies to participants at a commercial recreational shooting facility which complies with the requirements at section 23. Sub-paragraph (1)(b) specifies that this exemption only applies while the user is on site – thus they cannot remove air weapons from the premises. Sub-paragraph (2) extends this exemption to apply to employees working at the recreational shooting facility.

Paragraph 13 - Museums

277. This exemption relates to museums which hold air weapons as part of their collection. Sub-paragraph (1)(b) sets out that, for this exemption to apply, the museum must either be approved by the Scottish Ministers under Schedule 1 to the 1988 Act (which will be the case if it already holds section 1 or 2 firearms), or, if the only firearms held by the museum are air weapons to which section 1 of the 1968 Act does not apply, a responsible person as defined by sub-paragraph (2) must hold an air weapon certificate.
278. Provided that either of these requirements is met the employees of the museum are exempted from requiring individual air weapon certificates to possess, purchase or acquire air weapons in the course of their duties at the museum.

**Paragraph 14 - Air weapons on ships**

279. This exemption applies to the possession and use of air weapons while on board a ship, provided that the air weapons are part of the ship’s equipment. This might cover, for example, air weapons for pest control, or an air weapon range on a cruise liner. An air weapon certificate or police permit would be required to remove an air weapon from the ship, or to purchase or acquire new air weapons for it.

**Paragraph 15 – Purchase of air weapons for delivery outwith Scotland**

280. This paragraph sets out the specific exemption that allows someone who does not hold an air weapon certificate to purchase an air weapon in the manner set out in section 24(2)(c), without committing the offence at section 2(1) of purchasing an air weapon without a valid air weapon certificate.

**Paragraph 16 – Loaning of air weapons for exempted purposes**

281. This exemption allows the holder of an air weapon certificate (or a person who does not hold a certificate but is entitled to possess or use an air weapon without committing an offence by virtue of another exemption) to lend or let on hire an air weapon to another individual who does not hold an air weapon certificate, without committing an offence under section 24(1) or (2). Section 24 otherwise limits the lending or letting on hire of air weapons by way of trade or business (or the possession of air weapons for such purposes) to Registered Firearms Dealers. This exemption only applies provided that the recipient of the loaned or hired air weapon will possess or use the air weapon in accordance with one of the exemptions in schedule 1. For example, this would allow an operator of a recreational shooting facility to lend or let on hire air weapons for the purposes of the exemption at paragraph 12, or a theatrical armourer to lend or let on hire air weapons for purposes of the exemption at paragraph 5.

**Paragraph 17 – Public servants carrying out official duties**

282. This paragraph exempts various categories of public servants listed at sub-paragraph (3) from requiring an air weapon certificate. This exemption relates to members of the police or armed forces who may be required to use or take possession of air weapons in connection with their duties (for example, a police constable seizing an air weapon, or a police forensic examiner testing its muzzle energy). This exemption only applies while the individual is carrying out their role as a public servant, and only when they are required to handle an air weapon in the fulfilment of their duties.

**Paragraph 18 – Holders of certificates or permits with conditions**

283. This paragraph allows an air weapon certificate, visitor or police permit holder to make use of the exemptions in the schedule notwithstanding any condition which may be attached to the certificate or permit. This means that a person who holds, for example, a visitor permit that
permits use and possession, can take advantage of the exemption in paragraph 15 to purchase an air weapon for delivery to that person’s home country. Or, an air weapon certificate holder whose certificate has a condition limiting them to shooting for pest control purposes could separately be a member of an approved air weapon club, and shoot at the club under the exemption in paragraph 1.

SCHEDULE 2: MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1 – AMENDMENTS AND REPEALS RELATING TO PART 1

Paragraph 1 – Firearms Act 1968 (c.27)

284. This paragraph amends various provisions of the Firearms Act 1968 as it applies in Scotland. Sub-paragraph (2) repeals the offence limiting sales of air weapons to Registered Firearms Dealers, as this requirement is recreated by section 24 of the Bill. Sub-paragraph (8)(b) also extends the definition of Firearms Dealer to include anyone who manufactures, repairs or tests air weapons by way of trade or business. This brings the definition of Firearms Dealers in Scotland in line with the commercial offences being introduced at section 24 of the Bill. Sub-paragraph (8A) amends Schedule 4 to the 1968 Act so that Registered Firearms Dealers in Scotland are required to record the full range of air weapon transactions (sale, transfer, manufacture, repair or test) in their register of transactions, in the same way as for more powerful firearms.

285. Sub-paragraphs (3) to (8) amend and repeal various provisions relating to use of air weapons by young people, as these provisions are superseded by the creation of an air weapons licensing regime. Sub-paragraph (9) amends the table of offences and penalties in the 1968 Act accordingly.

Paragraph 1A – Criminal Procedure (Scotland) Act 1995

286. This paragraph inserts a new provision in Schedule 9 to the Criminal Procedure (Scotland) Act 1995, which lists a number of statutory offences in relation to which certain routine matters may be proved by certificate (rather than by oral evidence at trial). It allows a constable or a person employed by the Scottish Police Authority to certify that an accused individual held, or (as the case may be) did not hold, an air weapon certificate at the time of an alleged offence under Part 1, and for this to be used as sufficient evidence of that fact in criminal proceedings relating to the offence.

Paragraph 2 – Violent Crime Reduction Act 2006 (c.38)

287. This paragraph repeals section 32 of the Violent Crime Reduction Act 2006 in Scotland, which is restated by section 25 of the Bill.

PART 2 – AMENDMENTS RELATING TO PART 2

288. Paragraph 3 deals with minor amendments. It inserts reference to section 24A of the 2005 Act (power to request antisocial behaviour report) into section 29(4) of the 2005 Act (application to vary premises licence). A Licensing Board, when determining an application for a ‘major’
variation to a premises licence, will now be able to request that a chief constable provides it with a report on all cases, complaints or representations made regarding antisocial behaviour on or in the vicinity of the premises in question.

289. This paragraph also removes a spent reference in section 57(5) of the 2005 Act (notification of application to chief constable and Licensing Standards officer) to the previously repealed section 57(2) of that Act.
AIR WEAPONS AND LICENSING (SCOTLAND) BILL  
[AS AMENDED AT STAGE 2]  

SUPPLEMENTARY FINANCIAL MEMORANDUM  

INTRODUCTION  
1. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this Supplementary Financial Memorandum is published to accompany the Air Weapons and Licensing (Scotland) Bill (introduced in the Scottish Parliament on 14 May 2014) as amended at Stage 2.

2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.

3. The purpose of this Supplementary Financial Memorandum is to set out the expected costs associated with the new and amended provisions included in the Bill following Stage 2 amendments. The majority of amendments do not significantly affect the assumptions in the original Financial Memorandum. This document addresses those amendments where additional costs are likely to be substantially altered or where the future additional costs are uncertain as they are dependent on the level of demand but there is a potential for significant costs to be incurred.

SUMMARY OF CHANGES NOT SUBSTANTIALLY ALTERING COSTS  
4. The Bill was amended at Stage 2 to make a number of changes that the Scottish Government does not judge to be substantially altering the financial costs associated with the Bill.

5. In Part 1 of the Bill, changes in relation to the licensing of air weapons clarified the types of weapon to be covered by the legislation; ensured that the Bill did not prevent sales of air weapons to the rest of Great Britain; changed the period of notice in which a person must report the loss or theft of an air weapon to the chief constable; and made a number of technical amendments.

6. In Part 2 of the Bill, changes in relation to alcohol licensing create a new transfer regime for premises licences in response to calls from the Law Society; provide Licensing Standards Officers with a new power to report conduct of a personal licence holder; allow for
This document relates to the Air Weapons and Licensing (Scotland) Bill as amended at Stage 2
(SP Bill 49A)

commencement the day after Royal Assent of the Bill provision that removes the current five-
year restriction on re-applying for a personal licence that has been revoked due to the failure of
the applicant to supply the appropriate evidence of having undergone refresher training; as well
as a range of technical amendments.

7. In Part 3 of the Bill, changes in relation to licensing of metal dealers and itinerant metal
dealers included an increase in penalties for licensing offences; tightened definitions used in
relation to the requirement for payment for scrap metal to be made via bank transfer or cheque;
new expanded definitions of who will be considered a dealer in metal and a power for the
Scottish Ministers to create exemptions from licensing requirements. In relation to the
provisions creating a new licensing regime for sexual entertainment venues, the power of local
authorities to deal with displays and advertising has been expanded to allow authorities to
consider these matters where they occur “in connection” with the premises as opposed to
physically “on or in” the premises. A new provision has been added to remove the exemption
from public entertainment licensing requirements currently enjoyed by holders of an alcohol
occasional licence issued under the Licensing (Scotland) Act 2005. In relation to Part 2 licences,
including taxis and private hire cars, an ability to revoke a licence has been created.

8. Further information on the changes can be found in the Revised Explanatory Notes.

REGISTER OF METAL DEALERS

9. The Bill was amended at Stage 2 to insert a new section 66A to allow the Scottish
Ministers to establish via regulations under the Civic Government (Scotland) Act 1982 a register
for metal dealers and itinerant metal dealers.

10. The Scottish Government has responded to a recommendation from the Stage 1 report of
the Local Government and Regeneration Committee to take steps to provide a register. This will
assist local licensing authority officers and the police in enforcing licensing requirements. It will
also assist members of the public who wish to ensure that a dealer is indeed licensed.

11. The regulation-making power enables the establishment of the register and sets out the
matters that regulations establishing the register may cover. These matters cover the maintenance
of the register, the duty to provide information, the information to be covered by the register, the
form and publication of the register and any fees that may be relevant.

COSTS ON THE SCOTTISH ADMINISTRATION

12. Establishing a register may cause a significant cost to the Scottish Government depending
upon the route chosen to deliver a register.

13. Establishing a national database from scratch would be expensive. Databases for alcohol
licensing have been looked at in the past so some comparison is possible. The expertise to
establish an on-line register normally requires the engagement of outside consultants which
would cost tens of thousands of pounds. More significantly, paying for necessary IT to be rolled
out amongst each local authority would take the costs into the order of hundreds of thousands.
Clearly the numbers of metal dealers and itinerant metal dealers is significantly lower than the
number of alcohol licences (over 16,000 premises and 50,000 personal licences) so the cost would be commensurately less. Nevertheless, much of the cost of establishment is incurred irrespective of whether a licensing database is small or large. A similar exercise of establishing a stand-alone database in England and Wales was costed in an impact assessment at £250k to £1m for start-up costs with on-going support costs of between £50k and 175k per annum.

14. Start-up costs might be expected to be of a similar level in Scotland.

15. An alternative route would be to build upon existing arrangements. SEPA already publishes data on-line for scrap metal dealers as all dealers are also registered as licensed waste carriers. SEPA’s capacity to undertake such a task has not been fully explored but clearly the costs would be dramatically decreased if the register was created in such a way as to utilise existing infrastructure. In England and Wales, a similar solution was adopted, using the website of the Environment Agency to host a stand-alone database. The costs were thus much lower, although still substantial (£110k of start-up costs).

16. It would be the Scottish Government’s preference to explore with SEPA the possibility of building upon its existing record-keeping arrangements and to utilise its website in order to deliver an effective register in the most cost-effective fashion.

COSTS ON LOCAL AUTHORITIES

17. Local authorities are under an existing obligation under paragraph 14 of Schedule 1 to the Civic Government (Scotland) Act 1982 to maintain a register of applications. The register, which is open to public inspection, includes the detail of the application, the final decision and the terms of any licence issued. Whilst the register is open to public inspection, the Scottish Government is not aware that any authority does so in a way that is particularly user-friendly and accords with expectations in the 21st century. For the particular problem of metal theft and its possible linkage with the scrap metal trade, a more modern approach is required.

18. Whatever final solution is decided upon, it is likely that there will be cost to local authorities in gathering data and supplying data to whoever is charged with maintaining the register. Given the numbers of dealers in each authority is not large, the duty should not be unduly onerous or likely to incur significant expense over and above the costs already incurred for meeting the existing obligation to maintain a register. Given that the existing fee for a metal dealer’s licence is typically priced in the low hundreds of pounds (and this covers a range of costs including staffing, processing, inspecting and so on), it is unlikely that the additional administrative burden of the new register could add more than tens of pounds to the cost per licence.

19. The regulation-making power makes provision for the setting of fees so that licensing authorities would be able to recover some costs – for example, the cost of proving a certified extract from the register. Beyond this, as is normal, any costs falling to the licensing authority are recoverable by the authority through licensing fees via paragraph 15 of Schedule 1 to the Civic Government (Scotland) Act 1982.
COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

20. The costs of establishing and maintaining a register will fall naturally upon the public bodies that will undertake the task. It is possible that metal dealers will see higher licensing fees as costs incurred by licensing authorities are recoverable. They are likely to be in the order of the fairly low additional costs incurred by the licensing authority (discussed above).

21. That said, the on-going costs of supplying information and updating it are not likely to be very significant. The greater cost would be likely to be in establishing a register (although, as discussed above, the costs will depend upon the route chosen to establish the register). These start-up costs are unlikely to be faced by local licensing authorities and are therefore likely to be irrecoverable from licensing fees.

22. The regulation-making power does allow for the charging of fees but this is expected to be a nominal amount that may be applicable for an individual seeking an extract from the register. (One authority currently charges £30 for an extract from the Civic Government Register).
AIR WEAPONS AND LICENSING (SCOTLAND) BILL  
[AS AMENDED AT STAGE 2]  

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM  

INTRODUCTION  

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Air Weapons and Licensing (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.  

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2  

2. The amended or new delegated powers provisions in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.  

PART 3  

Section 65 – Power to make provision about acceptable forms of payment for metal  

Power conferred on: the Scottish Ministers  
Power exercisable by: regulations made by statutory instrument  
Revised or new power: revised  
Parliamentary procedure: affirmative procedure  

Provision  

3. Section 65 of the Bill provides a new section 33A in the Civic Government (Scotland) Act 1982 (“the 1982 Act”). This new section 33A of the 1982 Act provides acceptable forms of payment that may be made by a metal dealer or itinerant metal dealer. The acceptable forms of payment are a cheque or electronic transfer.  

4. The new section 33A(7) that is inserted into the 1982 Act provides the Scottish Ministers the power by regulations to add, amend or remove forms of payment that are acceptable. It also enables the Scottish Ministers to make appropriate consequential modifications to the record keeping requirements specified in the new section 33B(3) of the 1982 Act.
5. Amendment at Stage 2 expands the power in the new section 33A(7) of the 1982 Act so as to make consequential amendment to the new section 33AA of the 1982 Act (also introduced at Stage 2) which provides a definition of bank and building society account for the purposes of further specifying how metal dealers can make payment for scrap metal.

**Reason for Taking Power**

6. The ability to make amendments to the definition in the new section 33AA of the 1982 Act is limited to a consequence of changes to the methods of payment in the new section 33A(2), inserted into the 1982 Act, which add, amends or removes methods of payment. The expanded power provides a degree of future-proofing so that if new payment methods are developed that are suitable for facilitating cashless transactions, consequential changes to new section 33AA of the 1982 Act can be made to facilitate this.

**Choice of Procedure**

7. The current regulation making powers in the new section 33A(7) of the 1982 Act are subject to affirmative procedure. Affirmative procedure allows for a more detailed level of Parliamentary scrutiny. It is the view of the Scottish Government that this remains appropriate for the expanded powers in section 33A(7).

**Section 66 – Power to make specify particular means that can be used for the purpose of verifying a person’s name and address**

- **Power conferred on:** the Scottish Ministers
- **Power exercisable by:** regulations made by statutory instrument
- **Revised or new power:** revised
- **Parliamentary procedure:** negative procedure

**Provision**

8. Section 66 of the Bill provides a new section 33B in the Civic Government (Scotland) Act 1982. This set out record keeping requirements for a metal dealer or itinerant metal dealer.

9. The new section 33B(6) in the 1982 Act provides the Scottish Ministers the power by regulations to require further information to be recorded about any metal acquired, processed or disposed of by metal dealers or itinerant metal dealers.

10. Amendment at Stage 2 expands the power so as to allow the Scottish Ministers to specify particular means that can be used for the purpose of verifying a person’s name and address.

**Reason for Taking Power**

11. The new record keeping requirements in the Bill will require dealers’ to seek evidence of a person’s name and address. The regulation making power is required to specify the particular means that might be acceptable – these may be items such as a passport or driving licence. By setting out the means in secondary legislation Ministers will be able to include any new means that may emerge in the future as suitable proofs.
Choice of Procedure

12. The current regulation making powers in the new section 33B(6) of the 1982 Act are subject to negative procedure. It is the view of the Scottish Government that this remains appropriate. It is not intended that the regulations will change the provisions of the Act. It is not anticipated that the means by which a person’s identity can be verified will be controversial. As such, it remains the view of the Scottish Government that the use of negative procedure would be appropriate here bearing in mind the balance required between scrutiny for a provision of this nature and the use of valuable parliamentary resources.

Section 66A – Power to make provision for a register of metal dealers

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Revised or new power: new
Parliamentary procedure: negative procedure (or affirmative procedure where the Regulations amends or repeals any part of an Act)

Provision


14. The new section 35A, inserted into the 1982 Act, provides new regulation making powers for the Scottish Ministers to make provisions to establish a register of metal dealers and the matters that regulations establishing the register may cover. These matters cover the maintenance of the register, the duty to provide information, the information to be covered by the register, the form and publication of the register and any fees that may be relevant.

15. New section 35A(3) of the 1982 Act also provides the Scottish Ministers, when making an regulations concerning the establishment of the register, to include such, incidental, supplementary, consequential, transitional, transitory or saving provision as is considered appropriate, and to modify any enactment.

Reason for Taking Power

16. The Scottish Government has responded to a recommendation from the Stage 1 report of the Local Government and Regeneration Committee to take steps to provide a register of metal dealers. This will assist local licensing authority officers and Police in enforcing licensing requirements. It will also assist members of the public who wish to ensure that a dealer is indeed licensed.

17. The regulation making powers will enable the Scottish Ministers to establish the register and set out the mechanics of how the register will work.

Choice of Procedure

18. The register for metal dealers and itinerant metal dealers will be primarily concerned with the collating and making available of information centrally. This information is itself already
available, due to the requirements for licensing authorities to publish details of licences already contained within paragraph 14 of Schedule 1 to the 1982 Act but is not held in a central and consistent format. The new arrangements therefore represent an evolution of existing procedures and the way that information is accessed.

19. As the regulations will concern principally administrative functions and the technical details of the register, the use of negative procedure is appropriate bearing in mind the balance required between scrutiny for a provision of this nature and the use of valuable parliamentary resources.

20. However, it worth noting that it is envisaged that the initial setting up of the register may require consequential amendment of the 1982 Act. As such the initial regulations are expected to be subject to affirmative procedure. (Where amendments are made to primary legislation in this manner the additional scrutiny provided by the affirmative procedure is considered appropriate.)

Section 66C – Power to create exemption from metal dealer and itinerant metal dealer licensing requirements

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations made by statutory instrument</td>
</tr>
<tr>
<td>Revised or new power:</td>
<td>new</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>negative procedure</td>
</tr>
</tbody>
</table>

21. An amendment at Stage 2 of the Bill makes provision for a new section 37A to be inserted into the 1982 Act.

22. The new section 37A, inserted in to the 1982 Act provides new regulation making powers that will allow the Scottish Ministers to set out circumstances where the metal dealer and itinerant metal dealer regime does not apply. Such circumstances could perhaps relate to particular premises or activities where it is concluded that a scrap metal dealers or itinerant metal dealers regime should not apply, thereby resulting in a licence not being required.

Reason for Taking Power

23. The Scottish Government is confident that the definition of a dealer is now the right one. It provides clarity to capture those activities that should fall within licensing, but avoids licensing those peripheral activities where the metal acquired is wholly incidental. It is also flexible enough to respond to the particular facts of individual cases.

24. Nevertheless, we believe it right to enhance the flexibility to deal with circumstances that may not emerge until after the new regime is up-and-running.

25. This amendment will allow the Scottish Ministers to prescribe circumstances where the metal dealer and itinerant metal dealer regime does not apply and a licence is not required. This may be some example where it becomes apparent that a licence is being required by licensing authorities in circumstances where it was not envisaged that a licence would be necessary.
Choice of Procedure

26. It is the view of the Scottish Government that it is appropriate for the regulations to be subject to negative procedure. The provisions will provide the flexibility to provide additional exemptions to the metal dealer and itinerant metal dealer licensing regime if a need to do so is identified. It is anticipated that any exemptions from licensing which may be provided by this regulation making power are unlikely to be controversial and may well be in response to the emergence of an activity which should not fall within the regime. As such, it is considered that the use of negative procedure is appropriate here.
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.
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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

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Stewart Stevenson
Scottish National Party
Introduction

1. At its meeting on 16 June 2015, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Air Weapons and Licensing (Scotland) Bill as amended at Stage 2 (“the Bill”). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Bill was introduced by the then Cabinet Secretary for Justice on 14 May 2014. The Bill makes provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; to amend and extend the licensing provisions of the Civic Government (Scotland) Act 1982; and for connected purposes.

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”).

4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 5th report of 2015.

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1 Air Weapons and Licensing (Scotland) Bill as amended at Stage 2 available here: http://www.scottish.parliament.uk/S4_Bills/Air%20Weapons%20and%20Licensing%20Bill/b49as4-stage2-amend.pdf

Delegated Powers Provisions

5. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

6. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the substantially amended or new delegated powers provisions listed below, and that it is content with the Parliamentary procedure to which they are subject:

- Section 65 – inserting new section 33A(7)(b) of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) – Acceptable forms of payment for metal
- Section 66 – inserting section 33B(6)(a) of the 1982 Act - Metal dealers and itinerant metal dealers: records
- Section 66A – inserting new section 35A of the 1982 Act – Register of dealers in metal
- Section 78(1) – Commencement
Recommendation

7. The Committee comments on the remaining power in the Bill as follows:

Section 66C—inserting new section 37A of the 1982 Act—Exemptions from requirements of sections 28 to 37 of 1982 Act

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative


9. The new section 37A provides a new regulation making power, which enables the Ministers to make provision specifying circumstances in which the provisions of sections 28 to 37 of the 1982 Act on metal dealer licensing are not to apply. This extends to the disapplication of the amendments and new provisions made by sections 63 to 66B of the bill to the regime for metal dealer licensing.

10. The SDPM states:

“The Scottish Government is confident that the definition of a dealer is now the right one. It provides clarity to capture those activities that should fall within licensing, but avoids licensing those peripheral activities where the metal acquired is wholly incidental. It is also flexible enough to respond to the particular facts of individual cases. Nevertheless, we believe it right to enhance the flexibility to deal with circumstances that may not emerge until after the new regime is up-and-running.

This amendment will allow the Scottish Ministers to prescribe circumstances where the metal dealer and itinerant metal dealer regime does not apply, and a licence is not required.”

11. The Committee notes that this power is designed to permit the Scottish Ministers the flexibility to grant exemption in relation to particular activities, operators or premises, should this be required once the new regime contained in the bill is in force, so that a licence in those circumstances would not be required. However the power is framed more widely. It allows regulations to make provision specifying circumstances in which the provisions of sections 28 to 37 of the 1982 Act are not to apply (that is, the entire licensing and regulation of metal dealers regime in the 1982 Act, as amended by sections 63 to 66C of the bill). For example, the power is capable of being used to disapply provisions for offences. (There are offence provisions related to metal dealer licensing in sections 33A and 34 of the 1982 Act, as amended by the bill; for example in connection with the disposal of metal to, or purchase from, a person aged under 16).
12. The Committee considers therefore, given the potential scope of this power, that regulations under new section 37A of the 1982 Act would be more suitably scrutinised by the Parliament by the affirmative procedure, rather than the negative procedure.

13. The Committee therefore calls on the Scottish Government to consider amending the Bill at Stage 3, so that the power in section 66C (inserting new section 37A of the 1982 Act) is subject to the affirmative procedure.
Air Weapons and Licensing (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 79
Long Title
Schedules 1 and 2

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Alex Fergusson
1 In section 2, page 2, line 4, at end insert—
<(  ) Subsection (1) does not apply to a person who holds a firearm or shotgun certificate.>

Section 5

Alex Fergusson
2 In section 5, page 3, line 16, leave out subsection (2)

Alex Fergusson
3 In section 5, page 3, line 16, leave out <may> and insert <must>

Alex Fergusson
4 In section 5, page 3, line 17, leave out <paragraphs (a) and (b) of>

After section 41

Patrick Harvie
5 After section 41, insert—
<Licenseing objectives: social and cultural life>
In section 4 of the 2005 Act (the licensing objectives), after subsection (1)(e) insert—
“(f) promoting social and cultural life.”.>

Patrick Harvie
6 After section 41, insert—
<Licenseing objectives to be considered in respect of the Licensing Board’s area as a whole>
In section 4 of the 2005 Act (the licensing objectives), at the end of subsection (1), insert as a fullout “considered across the Licensing Board’s area taken as a whole.”.>
Section 45

Patrick Harvie

7 In section 45, page 26, line 1, at end insert—

<( ) in subsection (1)—

(i) for “any of” substitute “ensuring that”,
(ii) at the end insert “are achieved across the Licensing Board’s area taken as a whole”.>

Section 54

Michael Matheson

8 In section 54, page 33, line 11, after <overprovision),> insert <—

( )>

Michael Matheson

9 In section 54, page 33, line 12, at end insert—

<( ) for “that description,” substitute “the same or similar description as the subject premises,”.>

Michael Matheson

10 In section 54, page 33, line 13, after <overprovision),> insert <—

( )>

Michael Matheson

11 In section 54, page 33, line 14, at end insert—

<( ) for “that description,” substitute “the same or similar description as the subject premises (taking account of the variation),”.>

Section 55

Michael Matheson

12 In section 55, page 33, line 17, at end insert—

<9ZA Annual functions report

(1) Each Licensing Board must prepare and publish a report not later than 3 months after the end of each financial year.

(2) A report under this section must include—

(a) a statement explaining how the Board has had regard to—

(i) the licensing objectives, and

(ii) their licensing policy statement and any supplementary licensing policy statement (including the Board’s statement under section 7(1) (duty to assess overprovision)),

in the exercise of their functions under this Act during the financial year,
(b) a summary of the decisions made by (or on behalf of) the Board during the financial year, and

(c) information about the number of licences held under this Act in the Board’s area (including information about the number of occasional licences issued during the year).

(3) A report under this section may include such other information about the exercise of the Licensing Board’s functions under this Act as the Board consider appropriate.

(4) At the request of a Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section.

(5) In discharging their duties under subsection (1) and section 9A(1) (annual financial report), a Licensing Board may, if they consider it appropriate, prepare and publish a combined report containing the information required under this section and under section 9A (which combined report must be published not later than 3 months after the end of the financial year in question).

(6) The Scottish Ministers may by regulations make further provision about reports under this section including, in particular, provision about—

(a) the form and required content of reports,

(b) the publication of reports.

(7) In this section, “financial year” means a yearly period ending on 31 March.

Michael Matheson

13 In section 55, page 34, leave out lines 10 and 11

After section 59

Dr Richard Simpson

14 After section 59, insert—

REGISTER OF ALCOHOL PREMISES LICENCES AND PERSONAL LICENCES

(1) The Scottish Ministers must keep a register (referred to in this section as “the Register”) of—

(a) premises licences granted under section 23(4)(a) of the 2005 Act, and

(b) personal licences granted under section 74(2) of the 2005 Act.

(2) The Scottish Ministers must by regulations make further provision in relation to the Register.

(3) Regulations under subsection (2) may in particular make provision as to—

(a) the information that is to be recorded in the Register in relation to each such licence,

(b) the form and manner in which such information is to be recorded,

(c) arrangements to ensure that the Register accurately reflects the premises licences and personal licences currently in force,
(d) requirements on—
   (i) licensing authorities,
   (ii) premises licence holders and personal licence holders,

   to provide the Scottish Ministers with information for the purposes of the Register.

(4) The Scottish Ministers must make such arrangements as they consider appropriate for publishing the Register and otherwise making it available to the public free of charge.

Section 60

Cameron Buchanan

15 In section 60, page 38, line 34, leave out <are satisfied> and insert <can prove>

Cameron Buchanan

16 In section 60, page 39, line 4, leave out <satisfying themselves as to> and insert <proving>

Section 61

Cameron Buchanan

17 In section 61, page 39, line 10, leave out from <in> to the end of line 14 and insert <after subsection (5) insert—

   “(5A) A licensing authority may require an applicant for a private hire car driver’s licence to take a test of such matters relating to the operation of the private hire car as the authority consider desirable, and the authority may refuse to grant a licence to a person if they are not satisfied that the person has adequate knowledge of any of these matters.

   (5B) The matters referred to in subsection (5A) may not consist of a test of the person’s knowledge of the area to which the licence is to relate and of the layout of roads in that area.”.>

Section 68

Michael Matheson

18 In section 68, page 49, line 34, at end insert—

   <(3C) The applicant must also, not later than 7 days after the date of the application—

   (a) send a copy of the application to each person or body listed in the local authority’s determination under sub-paragraph (3D), and

   (b) submit to the local authority a certificate stating that the applicant has complied with this sub-paragraph.

   (3D) For the purposes of sub-paragraph (3C), a local authority must—

   (a) from time to time determine the persons or bodies who must receive a copy of the application, and

   (b) publicise the determination in such manner as they consider appropriate.”.>
Cara Hilton

22 In section 68, page 50, line 12, leave out from beginning to <provided.”,> in line 24

Michael Matheson

19 In section 68, page 50, line 12, leave out from <19> to end of line 24 and insert <19(1)(e), for the words from “without” to the end of paragraph (e) substitute “knowingly permits any person under the age of 18 to enter the sexual entertainment venue—

(i) at a time when sexual entertainment is being provided, or

(ii) without reasonable excuse, at any other time,”, and>

Michael Matheson

20 In section 68, page 50, line 28, at end insert—

<45BA Statements of policy in relation to sexual entertainment venues

(1) This section applies where a local authority passes a resolution under section 45B(1).

(2) The local authority must prepare a statement of their policy with respect to the exercise of their functions in relation to the licensing of sexual entertainment venues (a “SEV policy statement”).

(3) In preparing a SEV policy statement, a local authority must—

(a) consider the impact of the licensing of sexual entertainment venues in their area, having regard, in particular, to how it will affect the objectives of—

(i) preventing public nuisance, crime and disorder,

(ii) securing public safety,

(iii) protecting children and young people from harm,

(iv) reducing violence against women, and

(b) consult such persons or bodies as they consider appropriate.

(4) The local authority must publish the SEV policy statement at the same time and in the same manner as they publish the notice of the resolution under section 45B(4).

(5) The local authority must—

(a) from time to time review the SEV policy statement and make such revisions as they consider appropriate (if any), and

(b) publish the revised statement in such manner as they consider appropriate.

(6) Subsection (3) applies to a review of a SEV policy statement as it applies to preparing such a statement.

(7) In exercising their functions in relation to the licensing of sexual entertainment venues, a local authority must have regard to their SEV policy statement or revised statement.

(8) In this section—

(a) “children” means persons under the age of 16,
(b) “young people” means persons aged 16 or 17.”.
Air Weapons and Licensing (Scotland) Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Air weapons: requirements for grant or renewal of an air weapon certificate**
1, 2, 3, 4

*Notes on amendments in this group*
Amendment 2 pre-empts amendments 3 and 4

**Group 2: Alcohol licensing: licensing objectives**
5, 6, 7

**Group 3: Alcohol licensing: overprovision**
8, 9, 10, 11

*Debate to end no later than 35 minutes after proceedings begin*

**Group 4: Alcohol licensing: annual functions report**
12, 13

**Group 5: Alcohol licensing: register of alcohol premises licences and personal licences**
14

**Group 6: Private hire cars: overprovision**
15, 16
Group 7: Testing of private hire car drivers
17

Debate to end no later than 1 hour 10 minutes after proceedings begin

Group 8: Notice of sexual entertainment venue licence application
18

Group 9: Sexual entertainment venues: access of persons under 18
22, 19

Notes on amendments in this group
Amendment 22 pre-empts amendment 19

Group 10: Sexual entertainment venue licensing policy statement
20

Debate to end no later than 1 hour 30 minutes after proceedings begin
Business Motion: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-13613— That the Parliament agrees that, during stage 3 of the Air Weapons and Licensing (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

- Groups 1 to 3: 35 minutes
- Groups 4 to 7: 1 hour 10 minutes
- Groups 8 to 10: 1 hour 30 minutes.

The motion was agreed to.

Air Weapons and Licensing (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 8, 9, 10, 11, 12, 13, 18 and 20.

Amendment 19 was agreed to (by division: For 84, Against 28, Abstentions 0).

The following amendments were disagreed to (by division)—

1 (For 19, Against 96, Abstentions 0)
3 (For 19, Against 98, Abstentions 0)
4 (For 19, Against 100, Abstentions 0)
5 (For 9, Against 109, Abstentions 0)
6 (For 9, Against 109, Abstentions 0)
7 (For 9, Against 109, Abstentions 0)
15 (For 14, Against 102, Abstentions 0)
17 (For 14, Against 100, Abstentions 0)
22 (For 33, Against 67, Abstentions 14).

Amendment 14 was moved and, with the agreement of the Parliament, withdrawn.

The following amendments were not moved: 2 and 16.
The Minister for Parliamentary Business moved a motion without notice under Rule 9.8.5A to move the first time limit by 15 minutes. The motion was agreed to. As a consequence, subsequent time limits were also moved by 15 minutes. The Deputy Presiding Officer altered the time of Decision Time by 10 minutes in consequence of the motion under Rule 9.8.5A being agreed to and notified members accordingly.

Air Weapons and Licensing (Scotland) Bill - Stage 3: The Cabinet Secretary for Justice (Michael Matheson) moved S4M-13606—That the Parliament agrees that the Air Weapons and Licensing (Scotland) Bill be passed.

After debate, the motion was agreed to ((DT) by division: For 92, Against 17, Abstentions 0).
On resuming—

Business Motion

The Deputy Presiding Officer (Elaine Smith): Good afternoon, colleagues. The first item of business this afternoon is consideration of business motion S4M-13613, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Air Weapons and Licensing (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Air Weapons and Licensing (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 3: 35 minutes
Groups 4 to 7: 1 hour 10 minutes
Groups 8 to 10: 1 hour 30 minutes.

Motion agreed to.

Air Weapons and Licensing (Scotland) Bill: Stage 3

The Deputy Presiding Officer (Elaine Smith): The next item of business is stage 3 proceedings on the Air Weapons and Licensing (Scotland) Bill.

In dealing with the amendments, members should have the bill as amended at stage 2, which is SP bill 49A, the marshalled list of amendments, which is SP bill 49A-ML, and the groupings of amendments, which is SP bill 49A-G.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The voting period thereafter will be 30 seconds. Following that, I will allow a period of one minute for the first division after each debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak button as soon as possible after I call the group.

Members should now refer to the marshalled list of amendments, please.

Section 2—Requirement for air weapon certificate

The Deputy Presiding Officer: Group 1 is on air weapons: requirements for grant or renewal of an air weapon certificate. Amendment 1, in the name of Alex Fergusson, is grouped with amendments 2 to 4. If amendment 2 is agreed to, I cannot call amendments 3 and 4, due to a pre-emption.

Alex Fergusson (Galloway and West Dumfries) (Con): I thank the Presiding Officers for allowing these amendments, which were also lodged at stage 2, to be brought back at stage 3. We believe that they are worthy of further consideration, and I am grateful to the Presiding Officers for permitting that.

The purpose of amendments 1 and 2 is really quite simple: it is to save unnecessary bureaucracy, unnecessary expense and unnecessary use of police officers’ valuable time. Surely those are three worthy aims.

As we know, there are an estimated 500,000 air weapons in Scotland and presumably at least 300,000 people who own them. Each and every one of those people will have to undergo a process to be approved for and obtain an air weapon certificate. That is a pretty monumental task in anybody’s book, but when it is to be carried out by Police Scotland, which is in the process of reducing Scotland’s specialist resource of civilian firearms officers from an already miserly 34 to the
Elaine Murray (Dumfriesshire) (Lab): My apologies, Presiding Officer, I did not realise that we had to notify you in advance if we wanted to speak on amendments.

The Deputy Presiding Officer: You do not have to notify us in advance, but if we run out of time I cannot call members because the timings are based on what we know.

Elaine Murray: I will bear that in mind.

The Countryside Alliance has contacted us about this issue and I have had a couple of constituents contact me to say that people who already have a firearms licence should automatically be allowed to have an air weapons licence.

I resist the amendments in this group. Firearms regulations differ from the arrangements in the bill. If somebody has one firearm, they are not automatically allowed to have another firearm—another lethal weapon. Therefore, the fact that somebody has a licence for a firearm should not necessarily mean that they are automatically entitled to have an air weapon—another lethal weapon—without showing that there is a good reason for that.

I therefore resist the idea that somehow because someone has a licence for one firearm they should be allowed to have any number of air weapons without having to prove that they have a good reason for having them.

The bill does provide for some exemptions and quite rightly so, but I believe that the chief constable should be satisfied that someone has a good reason for holding a lethal weapon, because airguns of the size and power in question are lethal weapons and people should have to have a good reason for having one.

I understand that farmers in particular may feel that, because they tend to have a shotgun licence, they should be allowed to have an air weapons licence, but this is not just about the farming community; it is about the whole community in Scotland. It is important that the bill stays as it is and is not amended in this regard.

On the second set of amendments in this group—amendments 3 and 4—amendment 3 proposes substituting “must” for “may”. I think that “may” is the normal terminology in legislation, but in any case they are just another way of trying to do the same thing as amendments 1 and 2. I would resist all four amendments in Alex Fergusson’s name.

Liam McArthur (Orkney Islands) (LD): The minister will be aware of the concerns expressed by my colleague Tavish Scott at stage 1 about the proportionality and effectiveness of the bill as it stands. I very much welcome the fact that Alex
Fergusson has succeeded in lodging his amendments.

From my experience, Police Scotland is indeed struggling to cope with the workload pressures already involved in administering shotgun licences. The amendments lodged by Alex Fergusson would at least offer some opportunity to make the bill a bit more proportionate and ease some of those workload pressures on Police Scotland.

I am therefore happy to lend the amendments my support.

The Cabinet Secretary for Justice (Michael Matheson): Mr Fergusson has lodged a group of amendments that would fundamentally change the way in which we and the police intend to approach the licensing of air weapons under this bill.

The amendments reflect some of the objections that we have heard to the principles of air weapons licensing. Those objections were expressed by some of the shooting representatives on our expert consultative panel and by others who responded to our public consultation in early 2013. The Local Government and Regeneration Committee heard similar views during the first evidence session on the bill last November and again at stage 2, when Mr Buchanan lodged his amendments. However, as I said at stage 2, we believe that the measures and tests set out in part 1 of the bill achieve our aim of establishing a familiar, proportionate and practical licensing regime for air weapons.

Amendment 1 and the consequential amendment 2 seek to provide an automatic exemption from the need for an air weapons certificate for any person who already holds a firearms certificate or shotgun certificate issued by the police under the Firearms Act 1968. We considered that as a potential exemption from the licensing requirement when we first developed the bill, but we rejected the option for several reasons.

Under the Firearms Act 1968, for example, the tests for the grant of a firearms or shotgun certificate are different. The test for granting shotgun certificates is less stringent. There is no fit-and-proper-person test, and the onus is on the police to demonstrate the absence of a good reason to be granted a certificate, rather than the applicant having to show good reason. That is not the right approach to the licensing of firearms, including air weapons.

Also, firearms, shotguns and air weapons are used for different purposes and in different circumstances, as the police clearly explained when they gave evidence to the committee at stage 1. It does not necessarily follow that someone who has a legitimate reason for requiring a powerful rifle, for example, will also have a good reason for requiring an air weapon.

The bill gives us the chance to set out proper provisions for the regulation of air weapons in a modern Scotland. Applicants should be required to demonstrate that they have a reasonable and proper use for the guns and that they can be entrusted to use them responsibly and safely.

Liam McArthur: Will the cabinet secretary take an intervention?

Michael Matheson: I will first finish my points.

Amendments 3 and 4 offer an alternative to the first two amendments in the group. They would require the chief constable to consider any applicant who holds a firearms or shotgun certificate automatically to meet the requirements to be granted an air weapon certificate without any further inquiry. Accepting those amendments would undermine the fundamental principle behind the licensing regime and the tests that are set out in it.

Having said all that, we have been clear that the new licensing regime should not place undue burdens on the police or applicant. We have made provision in section 5(2) to allow the chief constable to take as satisfied the tests that a person is fit to be entrusted with an air weapon, and that they are not prohibited from possessing firearms under the Firearms Acts 1968, if they already hold a firearms or shotgun certificate.

We also make provision at section 9 to allow the alignment of air weapons certificates with those for firearms and shotguns. Coterminal certificates exist to align firearms and shotgun licences. The addition of air weapons will mean that all certificates fall to be renewed on the same date, reducing the burden on the applicant and the licensing authority. The fee for a coterminal air weapons certificate application will, as a result, be set at a lower level than that for a full application, as the police will be able to conduct all their inquiries at the same time.

Those measures go significantly towards the aims set out in Mr Fergusson’s amendments, but without compromising our overall objective of setting an adequate and fair test for the granting of certificates.

Liam McArthur: I have listened carefully to the cabinet secretary’s points. He has gone some way to addressing the concerns around burden, but Police Scotland is clearly struggling to deal with the workload pressures in operating gun licensing provisions. What he has set out will not satisfactorily address the concerns about the additional workload under the new regime. What reassurances will he give that Police Scotland is...
geared up to deal with the workload pressures that will come as a result of the bill?

**Michael Matheson:** The member should consider Police Scotland’s evidence to the Local Government and Regeneration Committee when it outlined how gun certificates are dealt with. There is a peak and trough in workload, and we are timing the introduction of air weapons licensing to fit into the period when a lower number of firearms and shotgun certificates require renewal.

Police Scotland is introducing a new database to deal with licences. It is confident that it can manage requirements smoothly, proportionately and reasonably. I am confident that, given the assurances that Police Scotland has given us, we can take forward the new regime. On that basis, I encourage Parliament to reject amendments 1 to 4.

**The Deputy Presiding Officer:** I invite Alex Fergusson to wind up and to indicate whether he will press or withdraw his amendment.

**Alex Fergusson:** I am grateful to members for their contributions. I say to Elaine Murray that the issue is not by any means just about the farming community, although we and other members will have received representations from that community. Indeed, many different people will consider that the extra burden that is to be placed on them is as unnecessary as it is disproportionate.

The cabinet secretary has pointed out, understandably, that the applicant has to show good reason for possessing a shotgun instead of the other way round, as happens in the current firearms licensing regime. At the end of the day, however, police officers or enforcement officers still have to decide whether that reason is good enough, so a burden is still being placed on the police.

I do not know whether the cabinet secretary is aware of this, but—and I will come back to this issue later this afternoon—I am reliably informed that Police Scotland is already failing to keep up with quite a heavy backlog of shotgun certificate and firearms licence applications. However much the Government might be trying to bring the processes together, I cannot see that this new process will be anything other than a very heavy burden on Police Scotland officers, when most of us think that they have better things to do.

We have made the arguments, and I accept that we are where we are. Nevertheless, I will press amendment 1.

**The Deputy Presiding Officer:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division. As this is the first division of the afternoon, I suspend the meeting for five minutes, after which there will be a 30-second division.

14:46

Meeting suspended.

14:51

On resuming—

**The Deputy Presiding Officer:** We move to the division on amendment 1.

**For**

Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McArthur, Liam (Orkney Islands) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beattie, Colm (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Section 5—Grant or renewal of air weapon certificate

Amendment 2 not moved.

Amendment 3 moved—[Alex Fergusson].

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Ferguson, Alex (Stirling) (SNP) West Dumfries (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McArthur, Liam (Orkney Islands) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Claydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross- shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
The Deputy Presiding Officer: The result of the division is: For 19, Against 98, Abstentions 0.

Amendment 3 disagreed to.

Amendment 4 moved—[Alex Fergusson].
Amendment 4 disagreed to.

The result of the division is: For 19, Against 100, Abstentions 0.

Patrick Harvie (Glasgow) (Green): I was prompted to lodge my amendments after the recent decision about the Arches venue in Glasgow. Members will be aware of the press coverage of Glasgow licensing board’s decision to revoke the Arches’ ability to operate past midnight, effectively closing it as a club venue, with the consequent job losses and the cultural loss of the venue to Glasgow and Scotland.

Members will be aware of the 40,000 members of the public who signed a petition calling for that licensing board decision to be reversed. [Interuption.]

The Deputy Presiding Officer: Order, please. Could we hear the member?

Hanzala Malik (Glasgow) (Lab): Will the member take an intervention?

Patrick Harvie: Not at the moment, thank you.

Members will also be aware of the open letter that was signed by more than 400 leading names in Scotland—

Hanzala Malik: Will the member give way?

Patrick Harvie: Not at the moment, thank you.

The letter was signed by almost 400 members of the arts community in Glasgow. They said:

“our main concern is that we are not satisfied that full consideration has been given to the potentially catastrophic impact this decision will have on the cultural life of Scotland.”

The letter goes on to look at the social as well as cultural benefit of the venue:

“Thousands of people from all over the country come together at the Arches at weekends, and it is widely regarded by leading professionals as one of the best venues in the world.”

Later on, it says:

“As a key venue at the centre of Glasgow’s remarkable cultural renaissance of the past 25 years The Arches importance to the future of the cultural life of Scotland cannot be overstated”.

Having discussed the situation with colleagues who serve on licensing boards, I intend to address two issues through my amendments. First, the existing licensing objectives focus on the issues of potential harm, crime and disorder, the threat to public safety, nuisance, the impact on public health and the need to protect children from harm. Those are important factors and licensing boards should take them into account, but positive factors can come from licensed venues and their cultural and social benefit to a community. Those factors should also be taken into account.
Amendment 5 would introduce the additional licensing objective of "promoting social and cultural life."

John Mason (Glasgow Shettleston) (SNP): Is the member arguing that a venue that is causing problems should be closed if it is a stand-alone venue but allowed to stay open if it is linked to an arts venue?

Patrick Harvie: I am arguing that our approach to licensing should take a holistic look at all the impacts of a decision, not just some of them.

Amendments 6 and 7 address a second concern that colleagues on licensing boards threw up. They often feel drawn to making a decision purely about one venue rather than about the wider impact. In this case, we are looking at the harm that is caused by recreational drugs. Most of the people who went clubbing at the Arches used a recreational drug, but it was a licensed and legal recreational drug—alcohol—and most of us also use it. Recreational drugs pose a risk of harm that we should take seriously.

The Arches has a long-standing record as one of the most progressive, enlightened and responsible venues in relation to illegal drugs. It reported issues to the police, made sure that medical facilities were on site for when someone got into trouble and trained its staff well. The idea that closing such a venue means that people who use illegal recreational drugs when they go out clubbing will instead go to the library or to a poetry reading is nonsense. People will use the same drugs in less responsible and experienced venues. Let us not kid ourselves—many clubs in Glasgow, and elsewhere, will not report it to the police when they find drugs on the premises; they will flush them. Let us not pretend that there are not irresponsible venues out there.

By taking our current approach to licensing, we risk increasing the incentive for such irresponsible behaviour. Amendments 6 and 7 ask that we balance the decision about individual premises with the wider impact on the community.

15:00

Sandra White (Glasgow Kelvin) (SNP): I hear what Patrick Harvie is saying, but to be precise we are talking about one venue operating in two different ways. As John Mason suggested, people say that the Arches nightclub pays for the cultural part of it—and obviously we are sorry about anyone losing their job—but surely it would be better to give money to the cultural part of the Arches, rather than doing as Patrick Harvie suggests, which is to say that if a venue is safe to use drugs, it is all right as a cultural and social venue? What about all the other social venues that do not participate in that?

Patrick Harvie: The argument for additional arts funding to try to salvage some of the Arches business model is still on the table.

The case that I am making for amendments 6 and 7 is not the same as for amendment 5. Amendment 5 is about cultural and social life as a licensing objective. For amendments 6 and 7, I would make the same case for a purely commercial club venue, which had no artistic element as part of its business model, as for the Arches. If we have a responsible venue, which behaves well, trains its staff and provides medical facilities, do we really think that we are improving public safety by closing it down and ensuring that its customers will go elsewhere, to a less experienced or less responsible venue? It is not appropriate to leave the alcohol licensing regime to mop up the harm that is done by irrational drug laws in this country.

I move amendment 5.

The Deputy Presiding Officer: Despite the fact that the Parliament agreed a timetabling motion, it is clear from the number of members who have requested to speak that the agreed time will not be sufficient. Therefore, under rule 9.8.5A, I am minded to accept a motion without notice to propose that the time limit be extended by 15 minutes.

Motion moved,

That, under Rule 9.8.5A, the first time limit be moved by 15 minutes.—[Joe FitzPatrick.]

Motion agreed to.

The Deputy Presiding Officer: That will extend the time limit for subsequent groups. I notify members that the clock in the chamber was reset in error. The time used in debate on amendments began at 2.32 pm and the timetable for consideration of amendments will be taken from that time.

Claire Baker (Mid Scotland and Fife) (Lab): I appreciate the concerns that Patrick Harvie raises and I recognise that it is about the regrettable closure of the Arches in Glasgow. There is a discussion to be had about how licensing boards operate, the proportionate policing of Glasgow’s club scene and the responsibility of licensed premises to meet public safety demands. We have not had much time to consider the amendments, but I am not convinced that the bill is the right way in which to deal with those issues.

We may need to have the debate at another time. It should not be rushed and would need to include full consultation with all interested parties.
Sandra White: As I explained earlier, I understand about the cultural part of the Arches, but I have real concerns about the definition of “social and cultural life” in amendment 5. I know exactly what Patrick Harvie is saying about the Arches, but there are other forms of cultural life. Would the definition bring in strip clubs or sexual entertainment premises? I am worried that the amendment would go against everything that is sought by some of the amendments to the bill that I have lodged.

As Claire Baker said, perhaps we should have a further debate on this and look at the definition. However, at this late stage, the bill is not the proper channel to go through.

Cameron Buchanan (Lothian) (Con): On amendment 5, I can understand the desire to promote sensible social activities, but does Patrick Harvie not consider that the aim of “promoting social and cultural life” is already achieved by adherence to the current licensing objectives on the public’s behalf?

Licensing objectives are intended to protect the public and that should remain their core purpose. I appreciate the principles behind amendments 6 and 7, but I have concerns about their implementation. The objectives are meant to protect the public from particular problems and licensing decisions should respond to those when necessary. The key phrase is “where necessary”: local issues should be responded to locally.

Will Patrick Harvie confirm whether the intention of amendments 6 and 7 is to clarify the board’s responsibility for its whole area or to encourage restrictions to be applied across a whole board area, even when many parts of that area will not have pressing licensing issues?

As has been said, it is hard not to be sympathetic to the aims behind Mr Harvie’s amendments, but this is not the time or the place to debate them.

Ken Macintosh (Eastwood) (Lab): I sympathise with Patrick Harvie’s motivation in lodging these amendments. The future of the Arches is an issue that has been raised by colleagues—including Drew Smith and Claire Baker—on the Labour side of the chamber. However, I would put two arguments to Mr Harvie. First, changing the legislation governing licensing to introduce a whole new objective of “promoting social and cultural life” would be a fairly significant development, which at the least deserves fuller consideration.

A second, related point is that it is not generally good practice to introduce new proposals such as this one at stage 3. Civic licensing is already a complicated area, and the Civic Government (Scotland) Act 1982 has been amended many times.

I urge Mr Harvie, having made his point, to withdraw amendment 5.

Michael Matheson: I am grateful to Patrick Harvie for taking us through his amendments. The licensing objectives represent the values on which the Scottish alcohol licensing system is based, and they are central to the way in which licensing boards carry out their functions under the 2005 act.

The current licensing objectives contained in the 2005 act are “preventing crime and disorder ... securing public safety ... preventing public nuisance ... protecting and improving public health; and ... protecting children from harm.”

By virtue of section 41 of the bill, the last of those will soon include “young persons”, too.

Patrick Harvie’s proposed objective of “promoting social and cultural life” sits very uneasily within an act whose purpose is the regulation of the sale of alcohol. It is difficult to see how it could operate in practice for licensing boards, the trade and the public. I am concerned that, while the aim is laudable, we should not be charging licensing boards with the promotion of social and cultural life. The existing licensing objectives concern themselves with mitigating the effects of alcohol. However, the proposed new objective does not have that same concern as its primary aim.

I am sure that we all expect boards to take decisive action to address alcohol misuse. Amendment 5 has the potential to create difficulties for licensing boards in deciding which objective should be deemed more important than another when considering an individual case, and to deter boards from taking the sorts of decisions that we would expect them to take.

I do not believe that legislation concerning the regulation of the sale of alcohol is the appropriate means by which to consider the promotion of social and cultural life in Scotland. In addition, I am of the view that the promotion of social and cultural life in Scotland is not dependent on the sale and consumption of alcohol. As such, I do not believe that that should become one of the licensing objectives in the 2005 act. I therefore ask Mr Harvie to withdraw amendment 5 and not to move amendments 6 and 7. If those amendments were agreed to, they would undermine the entire alcohol licensing regime and all that it sets out to achieve.

Patrick Harvie: Michael Matheson’s final comment that the objective would undermine
everything that the licensing regime sets out to achieve is a wee bit of hyperbole. Amendment 5 is intended to broaden the aims that we seek to achieve through the licensing regime.

The cabinet secretary says that the regulation of the sale of alcohol is not the place for the promotion of cultural life in Scotland. If that is the case, it is certainly not the place either for the promotion of the objectives of our country’s drug laws.

Whether members support or oppose our current drug laws, the fact is that the impact of incidents of illegal drug use was a critical issue that led to the licensing board’s decision on the Arches. Once again, I cannot accept the argument that moving recreational drug use from one venue to another increases public safety—certainly not if we are moving it from a responsible, well-trained venue to other venues that are less so.

Drew Smith (Glasgow) (Lab): One issue that the licensing board had to deal with in the case of the Arches was concern from the police. Would the amendments mean that the licensing board could disregard those police concerns, which were at the root of the decision that was taken on the Arches?

Patrick Harvie: I would not want any licensing board in Scotland to disregard the concerns of the police, but I want what one member—I think that it was Claire Baker—called proportionate policing. Is it proportionate or intelligent to signal to other club venues in Glasgow, or elsewhere, that if they report incidents to the police instead of covering them up, they will be putting their licence at risk? At the moment we risk sending out a signal that irresponsible behaviour is less likely to lead to a licence being at risk.

Several members have pointed out that amendment 5 was lodged late, which I freely admit. Some may feel that the change it proposes is too big to introduce at stage 3. I felt that the amendment was a necessary response to recent events, and to challenge the idea that we focus only on harm. We would be wrong to ignore the harm that is caused by licensing the sale of alcohol, but we are also wrong if we fail to acknowledge the good that is done by licensing responsible, well-trained venues, and supporting them to operate even when there are problems. Those problems may be better dealt with on those premises than elsewhere.

I will press amendment 5 to a vote. Whether or not members support it, I think that this issue requires further debate and a recognition that we have been shying away from problems and pretending that our current approach to licensing solves them, when it manifestly does not.
The Deputy Presiding Officer: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
Harvie, Patrick (Glasgow) (Green)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
McArthur, Liam (Orkney Islands) (LD)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffee, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Sirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dunfries) (Con)
Findlay, Neil (Lothian) (Lab)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffiths, Mark (Central Scotland) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malki, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McTavish, Margaret (Cumbernauld and Kilsyth) (SNP)
Milkovic, Ana (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 9, Against 109, Abstentions 0.

Amendment 6 disagreed to.

Section 45—Ground for review of premises licence

Amendment 7 moved—[Patrick Harvie].

The Deputy Presiding Officer: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.
Amendments 9 to 11.

The name of the cabinet secretary, is grouped with alcohol licensing: overprovision. Amendment 8, in the division is: For 9, Against 109, Abstentions 0.

Yousaf, Humza (Glasgow) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Thompson, Brian (Glasgow) (Lab)

Section 55—Duty of Licensing Boards to produce annual financial report

The Deputy Presiding Officer: The amendments in the group are minor technical amendments concerning overprovision.

Section 7 of the 2005 act places a duty on licensing boards to make an assessment of overprovision of licensed premises in any locality within their areas and subsequently include a statement regarding it in their licensing policy statements. That allows boards to consider the unique circumstances of their areas, including distinct localities within them, and decide whether, based on local need, it is appropriate to restrict access to alcohol through limits on new licences, licences of a particular type or variations of existing licences within the entire area or identified parts of it.

It is important that the overprovision assessment is an effective and robust tool for licensing boards. In respect of the overprovision ground for refusal for a premises licence or for a major variation of a premises licence, our amendments to the bill at stage 2 made the wording of the 2005 act more concise. The technical amendments in this group have been lodged in response to concerns that were raised by stakeholders that our stage 2 amendments had, in reality, made the wording overly brief.

On further consideration, we agree that it will clarify interpretation if there is more detail at section 23(5)(e) of the 2005 act, which concerns the refusal of a premises licence on grounds of overprovision, and section 30(5)(d) of the 2005 act, which concerns the refusal to vary a premises licence on grounds of overprovision. We lodged these technical amendments to rectify that so that the updated sections 23(5)(e) and 30(5)(d) of the 2005 act would be clearer to the reader.

I ask the Parliament to support the amendments.

I move amendment 8.

Amendment 8 agreed to.

Amendments 9 to 11 moved—[Michael Matheson]—and agreed to.

The Deputy Presiding Officer: The result of the division is: For 9, Against 109, Abstentions 0.

Amendment 7 disagreed to.

Section 54—Overprovision

The Deputy Presiding Officer: Group 3 is on alcohol licensing: overprovision. Amendment 8, in the name of the cabinet secretary, is grouped with amendments 9 to 11.
their functions. Amendment 12 addresses a concern first raised by Alcohol Focus Scotland and others, supported by the Local Government and Regeneration Committee, about the need for licensing boards to provide greater clarity about how they carry out their business.

John Wilson moved a non-Government amendment at stage 2 to oblige licensing boards to lodge annual reports on the exercise of their functions. The Government is sympathetic to the views that were expressed during the bill process, and I am grateful to Mr Wilson for agreeing to withdraw his amendment at stage 2 to allow my officials to carry out some informal stakeholder engagement before lodging the Government amendment.

Section 55 already imposes a duty on licensing boards to produce an annual financial report. Amendment 12 imposes a further duty on boards to prepare and publish an annual report on the exercise of their functions no later than three months after the end of each financial year. The amendment sets out what generally should be included in the report and what boards should have regard to in its compilation.

Amendment 12 also allows licensing boards to publish a combined financial and functions report, if they so wish. To ensure that the reports remain as effective and useful as possible, amendment 12 provides Scottish ministers with the power to make further provision about the annual reports using secondary legislation. We would expect to consult on the most effective and proportionate format and content before laying secondary legislation is required.

The annual reports will ensure increased accountability and transparency from licensing boards so that the public can see how they go about their business. I ask Parliament to support amendments 12 and 13.

I move amendment 12.

John Wilson (Central Scotland) (SNP): I thank the cabinet secretary for taking on board the aim of the amendments that I lodged at stage 2, which were based on discussions with Alcohol Focus Scotland. I welcome the cabinet secretary’s decision to lodge amendments 12 and 13 at stage 3, and I look forward to their being agreed to.

Amendment 12 agreed to.

Amendment 13 moved—[Michael Matheson]—and agreed to.

After section 59

The Deputy Presiding Officer: Group 5 is on alcohol licensing: register of alcohol premises licences and personal licences. Amendment 14, in the name of Dr Richard Simpson, is the only amendment in the group.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I was not a member of the committee that considered the bill, but I observed the evidence that was given by a number of people at stage 1 about information that is available to the public. Amendment 14 would create a national alcohol licensing register to ensure that communities would have access to comprehensive information on licensed premises to help them to participate in the licensing process, particularly in relation to overprovision. Collating data at licensing board level in a uniform manner and publishing it centrally, preferably with information available at the ward or small data area level, could ensure a much more accessible form of information for communities.

Currently, licensing boards have to keep a public licensing register, but Alcohol Focus Scotland was recently able to locate only 16 publicly available registers, covering 19 of the 40 licensing board areas. The form and content of the information provided in the registers is highly variable, and not all the registers are available electronically. Alcohol licensing registers are potentially valuable tools for communities and other stakeholders to make use of in supporting their involvement in the licensing process, but there is a need to consider the form in which they are produced to ensure that they are as accessible and helpful as possible.

There is a national online register for tobacco outlets in Scotland, which can be searched by local authority area, postcode and type of premises. Examples of other possible approaches include mapping tools such as that produced by Lambeth Council, and the new website that shows alcohol and tobacco outlet density for small neighbourhood areas across Scotland. That website was created by a partnership involving the University of Edinburgh’s centre for research on environment, society and health—CRESH—the University of Glasgow, Alcohol Focus Scotland and ASH Scotland.

At stage 1, Dr Niamh Shortt from CRESH said:

“One of the most striking things in the documentation” that the committee sent out

“was the very small number of applications that were refused. In 2011-12, only 21 licences were refused, whereas 347 were granted. In 2012-13, 12 were refused and 332 were granted. That shows the difficulties for local authorities in looking at”—

and fulfilling—

“licensing objectives.”—[Official Report, Local Government and Regeneration Committee, 19 November 2014; c 15.]
CRESH found that no data was available on licensed premises at the local area level, and that the data that was available was so variable that it took CRESH nine months to cleanse it before being able to put it into a research paper. Members might wish to look at the paper that has now been published, because it shows the relationship between the density—indeed, the overprovision—of licensed premises and alcohol problems in different areas.

It is a huge disappointment that communities have been unable to challenge overprovision largely because they have been unable to access the data. Access to total board area data and small area data is vital.

Amendment 14 would allow ministers to make provision for a national register to be completed by boards; it would not overburden licensees but would require boards to produce information in a specific format that would be publishable on the web.

Paragraph (3)(a) of the proposed new section that amendment 14 would insert would ensure that the information to be recorded not only would include the number of personal licences but could include data on the linear sales areas for off-licences and the number of drinking places available in on-licences.

I move amendment 14.

John Scott (Ayr) (Con): I will be brief. I welcome the cabinet secretary addressing the problem that is faced by individual licence holders who fail to renew their licences on time. I understand that that provision will be enacted swiftly, and I would be grateful if the cabinet secretary could publicise now—and widely thereafter—that welcome change.

Michael Matheson: I am grateful to Richard Simpson for lodging amendment 14, and I am sympathetic to the views that he expresses. However, I do not believe that it is appropriate to introduce the issue at this stage. The issue has not been brought before the Local Government and Regeneration Committee, nor has it been subjected to detailed financial consideration. I understand that a similar service in relation to e-planning has cost several million pounds to set up.

I am also concerned that the amendment, as drafted, is unworkable, because it incorrectly places a burden on licensing authorities to provide information when, in fact, the information that is required is held by licensing boards.

I assure the chamber that the Scottish Government is alert to the issue and that work is already in hand to go some way towards addressing it. Government amendment 12, which public health bodies such as Alcohol Focus Scotland pressed for, will impose a duty on licensing boards to report on the exercise of their functions and provide considerable information on the licences that are held, including occasional licences. We intend to consult widely to ensure that those reports are as useful as they can be without imposing an undue burden on licensing boards.

Furthermore, Police Scotland is already well advanced in rolling out its national Inn Keeper database. The police are a statutory consultee, which means that licensing boards will be provided with information from that national database.

The Scottish Government is working with a wide range of partner organisations to develop a business case for a national online licensing solution. Initial work has led to the development of a wider scope that is looking beyond just alcohol licensing to the civic regimes and central Government licensing regimes.

As all members will be aware, Scottish Government resources are limited. Therefore, rather than hastily commit to a specific project, we would do better to subject a major project such as that which is proposed to proper scoping and cost benefit analysis. That would allow us to assess the widest possible benefits to stakeholders while using effectively the resources that the Scottish Government, local authorities and others have in the area.

I ask Richard Simpson to withdraw amendment 14, on the basis that the Scottish Government already has work under way to develop an action plan for the delivery of a national licensing solution.

Dr Simpson: I am prepared to withdraw my amendment.

Under subsection (6) of the new section to be inserted by amendment 12—the annual functions report amendment, which we have just agreed to—it will be possible for ministers do much of what I am asking for, through “the form and required content of reports”.

I understand from the cabinet secretary’s comments that that would be the case.

If communities are to participate fully in seeking to prevent overprovision, it is essential that they have that information. I therefore urge the cabinet secretary to pursue the development work that he has referred to as rapidly as possible and to ensure that we have an electronic system that allows proper access to the information.

On the basis of the cabinet secretary’s reassurances, I seek to withdraw the amendment.

Amendment 14, by agreement, withdrawn.
Section 60—Refusal to grant private hire car licences on grounds of overprovision

15:30

The Deputy Presiding Officer: Group 6 concerns overprovision of private hire cars. Amendment 15, in the name of Cameron Buchanan, is grouped with amendment 16.

Cameron Buchanan: The amendments make it clear that if a licensing authority wishes to refuse a private car hire licence solely on the ground of overprovision, it must prove that there is, or would be, overprovision.

I consider strongly that refusing a private hire car licence solely on the ground of overprovision is anti-competitive and would hurt consumers, jobs and, indeed, the local economy. In the interests of compromise, I have worded the amendments to ensure that such refusals are kept to cases in which overprovision is certain.

Refusals due to overprovision would be against the best interests of the public for four reasons. First, restricting the supply of private hire vehicles would limit the ability of consumers to choose between different services and select their preferred option. That choice is crucial to increasing and maintaining standards of service in the industry. Secondly, preventing new entrants would prevent prices from going as low as they could do in a less restricted market, as an expanded supply of private hire vehicles would bring down prices and make such transport an even more affordable option for all consumers. Thirdly, experience elsewhere has shown that those lower prices would allow more people than before to make frequent use of private transport. That can be a great convenience and it would be a loss to the Scottish public if they were denied the same opening up of travel options that is available in other places. Finally, it is apparent that determining that there is overprovision in a locality would prevent economic growth and job creation.

If someone wishes to start work as a private hire vehicle driver, the licensing authority should not stand in their way just because other drivers have already entered the market and do not want competition for fares. For that reason, the amendments aim to provide some measure of protection against unfair licence refusals by ensuring that authorities can refuse licences on the ground of overprovision only where that is certain.

I move amendment 15.

Ken Macintosh: It is clear from Mr Buchanan’s comments that he believes that a competitive free market trumps every other consideration for this Parliament. I urge colleagues to resist the amendments.

Mr Buchanan suggests that we replace a local authority's judgment that it is satisfied that there is overprovision with a requirement for there to be proof of overprovision. The matter was debated by the committee at stage 2, when I believe that Mr Buchanan asked the Government to remove section 60 altogether. The Scottish Government agreed to provide further guidance. That was accepted by the committee, and I ask Mr Buchanan to accept the committee’s judgment on the matter.

Michael Matheson: I am grateful to Cameron Buchanan for explaining his amendments.

Section 60 will allow a licensing authority to refuse a private hire car licence where it is satisfied that granting it would result in an overprovision of private hire cars. I remain of the view that an optional overprovision test in relation to private hire cars is a useful addition to the taxi and private hire car licensing regime.

There are already appropriate checks and balances in place in relation to those who are unhappy with a decision that a licensing authority has made. Paragraph 18 of schedule 1 to the Civic Government (Scotland) Act 1982 provides that, where a private hire car driver licence is refused, the applicant can require the licensing authority to provide reasons for that refusal and can appeal the decision to the sheriff court. If, during any appeal hearing, the licensing authority is unable to demonstrate that it has reasonably reached its decision, the sheriff can uphold the appeal and remit the case back to the authority to be reconsidered or reversed.

I am concerned that the amendments would create uncertainty in the minds of licensing authorities and might deter them from considering an overprovision test in relation to private hire cars.

It would be wrong to take that tool away from licensing authorities or to discourage its use. An overprovision test would allow licensing authorities to ensure that those entering the private hire car trade can have an expectation of making a reasonable income while reducing the temptation for private hire car drivers to attempt to operate in illegal competition with taxis. I therefore ask Cameron Buchanan to withdraw amendment 15 and not to move 16.

Cameron Buchanan: Having listened to the arguments on both sides, I would like to press amendment 15.

The Deputy Presiding Officer: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.
The Deputy Presiding Officer: There will be a division. This will be a one-minute division.

For

Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGirr, Jamie (Highlands and Islands) (Con)
Mline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northerm and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Donnan, James (Glasgow Cathcart) (SNP)
Duggdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Wheeless, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 14, Against 102, Abstentions 0.

Amendment 15 disagreed to.

Amendment 16 not moved.

Section 61—Testing of private hire car drivers

The Deputy Presiding Officer: Group 7 is on testing of private hire car drivers. Amendment 17, in the name of Cameron Buchanan, is the only amendment in the group.

Cameron Buchanan: Amendment 17 would prevent licensing authorities from requiring testing of the navigational knowledge of applicants for a
private hire car driver licence, although it would allow other forms of background checks or testing.

Satellite navigation now allows drivers to navigate efficiently without extensive knowledge of roads, which makes requiring a knowledge test an unnecessary barrier to employment and growth in the industry. [Interuption.]

The Deputy Presiding Officer: Order, please. I need to hear the member.

Cameron Buchanan: Furthermore, restricting competition would act against the interests of consumers by keeping prices higher than they should be.

Some people may prefer the possibility that they will pay a little extra to be driven by someone with extensive local knowledge who does not need to use a satellite navigation system. Those people are free to choose a taxi instead of a private hire vehicle.

The point is that people should be free to choose for themselves which type of private transport to opt for. The Government should not allow that choice to be taken away from them. We should allow the market to reflect customers’ preferences by letting them make their own decisions, rather than allowing licensing authorities to dictate what sort of taxi industry there should be.

I recall that the minister argued at stage 2 that the testing provisions should provide licensing authorities with discretion, and that tests could cover issues such as customer care and disability awareness so that private services can meet customers’ needs. I acknowledge those points. Amendment 17 retains that discretion and would allow such tests to take place, including checks to allay any fears about an applicant’s criminal background. That is very important.

The point is that allowing knowledge testing of all drivers is a distinct issue. It would probably become a method to shield incumbents from the competitive effects of a technological change. Customer preference for either local knowledge or technology should be left to the customer, and testing should be introduced only where it is in consumers’ best interests.

I believe that amendment 17 strikes the appropriate balance and therefore urge members to act on behalf of consumers by supporting it.

I move amendment 17.

Michael Matheson: I am grateful to Cameron Buchanan for explaining amendment 17.

I am mindful of Cameron Buchanan’s concerns that it is not desirable to create a barrier to entry to the private hire car trade that is too high. That is why the provisions on the ability to test private hire car drivers have deliberately been drafted to be flexible. Whether and what to test is at the discretion of the local licensing authority.

We are also happy to make the point that any test should be proportionate and necessary within the guidance that will accompany the legislation. Accordingly, where the local authority does not see a requirement to take forward a knowledge test of any kind for private hire car drivers, they are not required to do so.

However, I suspect that many passengers would quite rightly expect that a private hire car driver has a reasonable knowledge of the area and how to get about it. It is right to give local licensing authorities the ability to test that.

I remain of the view that the licensing authority is best placed to decide whether any testing of private hire car drivers should occur and what the test should involve. I therefore ask Cameron Buchanan to withdraw amendment 17.

The Deputy Presiding Officer: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
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Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
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Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dorman, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Central) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLennan, Sheila (Angus South) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gilly (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 14, Against 100, Abstentions 0. Amendment 17 disagreed to.

Section 68—Licensing of sexual entertainment venues

The Deputy Presiding Officer: Group 8 is on notice of sexual entertainment venue licence application. Amendment 18, in the name of the cabinet secretary, is the only amendment in the group.

Michael Matheson: Amendment 18 is an important measure in supporting community engagement in the licensing of sexual entertainment. The issue was raised by Cara Hilton at stage 2, and I undertook at that time to lodge an amendment at stage 3.

Although the current process already allows for robust notification procedures, with requirements for both newspaper advertising and notices to be publicly displayed, there are advantages in requiring specific notification to particular bodies that will have an interest in the licensing of sexual entertainment venues. There is a practical advantage in ensuring that important stakeholders, including violence against women partnerships and community councils, are notified of applications early, so that they have sufficient time to consider applications and to make such representations to the authority as they consider appropriate. [Interruption.

The Deputy Presiding Officer: Order, please. Can we hear the cabinet secretary?

Michael Matheson: There is also an advantage in that it will send a very clear message that groups that are identified as being appropriate to receive copies of the application, including violence against women partnerships and community groups, are at the heart of the licensing process.
Rather than identify particular bodies in primary legislation, my preference is for each local authority to identify which organisations in its area should be notified of applications, because local authorities are best placed to make that judgement. However, the statutory guidance that will follow the bill will indicate the types of bodies and organisations that should be considered, and my intention is that they will certainly include bodies such as violence against women partnerships. Local authorities will have to take that guidance into consideration when compiling their list of recipients. Local authorities will also have to have regard to their sexual entertainment venue licensing policy statement and the full range of objectives that are set out in that document.

I move amendment 18.

Amendment 18 agreed to.

The Deputy Presiding Officer: Group 9 is on sexual entertainment venues: access of persons under 18. Amendment 22, in the name of Cara Hilton, is grouped with amendment 19. If amendment 22 is agreed to, I cannot call amendment 19, because it will have been pre-empted.

15:45

Cara Hilton (Dunfermline) (Lab): I thank the Zero Tolerance Trust for working with me on amendment 22, and I thank Scotland’s Commissioner for Children and Young People, who has given the amendment his support.

The purpose of amendment 22 is to prevent under-18s from working in sexual entertainment venues. It would remove the option of young people being employed in those venues at any time and ensure that sexual entertainment venues cannot be accessed by children and young people at any time.

I recognise that Michael Matheson’s amendment 19 seeks to clarify the circumstances in which young people may enter sexual entertainment venues, and that it would oblige operators to provide a reasonable excuse, but I do not accept that that provides sufficient safeguards. When I lodged the same amendment at stage 2, there was some debate about the employment rights of, for example, an apprentice plumber who attended a job at a sexual entertainment venue. The reality is that that affects very few young people, but there will be significant risks to a large number of young people if the bill proceeds as it is.

The Zero Tolerance Trust has argued that allowing under-18s to be employed in sexual entertainment venues will in essence create a groomers’ charter by allowing venues to employ teenage girls to work as cleaners or in office roles and then to persuade or subtly coerce them to become performers when they reach 18. That is a real concern for vulnerable young women including care leavers, and for women who live with poverty or disadvantage. Even if sexual entertainment is not taking place, a young person who works in one of those venues will be exposed to sexually explicit materials and could be at risk of sexual exploitation, of being propositioned for sex or of being exposed to an industry that damages women and to an environment in which sexual entertainment is normalised. That could lead a vulnerable young person to come to the view that sexual entertainment is an acceptable form of employment for them.

Scotland’s Commissioner for Children and Young People, Tam Baillie, has said that “the approach being taken in this Bill towards young people being employed in sexual entertainment venues appears in direct contradiction to a range of key Scottish Government policies and legislation, including Getting It Right For Every Child”

and the Children and Young People (Scotland) Act 2014. If we are serious about having an equal Scotland and about tackling domestic abuse and violence, and if we really want to make Scotland the best place for girls to grow up in, the Scottish Government must be consistent. Michael Matheson’s amendment 19 is well intentioned, but as Tam Baillie said, it has the “potential to create more difficulties than it solves”.

The use of the word “reasonable” leaves the way open to wider interpretation. I think that that could be to the detriment of young people and that it will put more young people at risk. It is already the case that no one under the age of 18 can work in a sex shop under any circumstances. That provision should also apply to sexual entertainment venues. My amendment 22 would allow that to happen.

My amendment 22 is in the best interests of children and young people right across Scotland. I urge the Scottish Government and members to listen to the views of Scotland’s Commissioner for Children and Young People and of groups including Barnardo’s Scotland, the Zero Tolerance Trust, Rape Crisis Scotland and Scottish Women’s Aid. Members should support my amendment.

I move amendment 22.

Michael Matheson: Amendments 19 and 22 follow issues that were highlighted by Scotland’s Commissioner for Children and Young People ahead of the stage 1 debate and which were subsequently pursued by Zero Tolerance Scotland. Each concerns the position of young people in relation to sexual entertainment venues and the particular concern that a young person
could be employed in such a venue—as a cleaner, for example—and then find themselves being drawn into becoming a dancer. At stage 2, I agreed to consider the matter further and to lodge an appropriate Government amendment at stage 3.

We have always made it clear that the bill’s intention is to tighten up the licensing of sexual entertainment venues, which have been treated hitherto in more or less the same way as any other licensed premises. That has meant that under-18s could perhaps collect glasses or undertake similar activities while the premises are open and the sexual entertainment is taking place. We do not believe that that is acceptable. That is why the bill, as introduced, made it clear that under-18s should never be on the premises while sexual entertainment is taking place.

I have fully considered the concerns that have been raised about the employment of under-18s in such venues, and in response, we have lodged amendment 19, which would remove the provision in the bill that would have permitted a young person to be employed by a sexual entertainment venue. Amendment 22 would do likewise, as Cara Hilton has outlined. Therefore, both amendments mean that under-18s should not generally be able to access such venues.

However, the Government amendment goes further in providing protection. There is a misunderstanding about how the law works in this area, which has led to some stakeholders confusing the impacts of amendments 19 and 22. I hope to make that clear this afternoon.

The Civic Government (Scotland) Act 1982 includes a provision for a reasonable excuse that will permit a young person to be in a sexual entertainment venue. Cara Hilton’s amendment would simply remove the provision in the bill relating to the employment without addressing the reasonable excuse in the 1982 act and would therefore permit a young person to be in such a venue at any time, including when sexual entertainment is being provided if that young person has a reasonable excuse. It will be a matter for the courts to determine what might constitute a reasonable excuse.

However, the Government’s amendment would restrict availability of that defence of a reasonable excuse only to when the sexual entertainment was not taking place. That is, under amendment 19, no person under 18, whether an employee or otherwise, will be permitted on the premises while sexual entertainment is taking place and only where there is a reasonable excuse for that young person will they be permitted within the premises when no entertainment is taking place. Cara Hilton’s amendment does not go that far.

Therefore, both the Government amendment 19 and Cara Hilton’s amendment 22 would remove the provision in the bill that permits an under-18 to be employed in a sexual entertainment venue. However, Cara Hilton’s amendment is less restrictive than the Government’s amendment in that it would allow the reasonable excuse defence to be applied at all times, whereas amendment 19 will restrict that defence to times when sexual entertainment is not taking place.

**Liam McArthur:** I am very grateful to the cabinet secretary for giving way. He will be aware of the children’s commissioner’s concerns, specifically in relation to that point. In his briefing the commissioner states:

“Amendment 19 also shifts the focus from young people in an employment capacity to young people more generally. There is therefore a possibility that venue owners could find ways for younger children and young people to be ‘legitimately allowed to enter sexual entertainment venues.’”

How would the cabinet secretary respond to that specific concern?

**Michael Matheson:** Unfortunately, the children’s commissioner has got the law wrong in this area, because of the reasonable excuse provision, which is provided for in the Civic Government (Scotland) Act 1982, which has not been addressed. That is why the Government’s amendment 19 addresses that point.

Government amendment 19 makes it clear that no person under 18 can ever be employed in a sexual entertainment venue. It also makes it clear that no under-18 can be on the premises when sexual entertainment is taking place. Finally, it makes it clear that even when sexual entertainment is not taking place, an under-18 can be on the premises only if it is shown that there is good reason for them to be there.

For those reasons, I ask Parliament to reject amendment 22 and to support amendment 19, which imposes further restrictions to protect young people.

**Ken Macintosh:** In speaking in support of the powerful words of my colleague Cara Hilton on her amendment 22, I simply draw members’ attention to the excellent briefing from Scotland’s Commissioner for Children and Young People. [Interruption] The minister made an argument based on legal advice that was remarkably unconvincing for me. He made an argument that there should be reasonable excuse—[Interruption]

**The Deputy Presiding Officer (John Scott):** Order.

**Ken Macintosh:** I have to say that the children’s commissioner has laid out a very clear argument.
He says that he is concerned that:

“A young person working in an SEV”—a sexual entertainment venue—is likely to be at increased risk of grooming/exploitation by their employer or those associating with them.

Even if sexual entertainment is not taking place at the time the young person is present, it is likely that environment itself is unsuitable. For example, sexually explicit materials may be on display.

A young person will be working in an environment where sexual entertainment is ‘normalised’ and therefore may form a view that sexual entertainment is an acceptable form of employment for them."

His conclusion is clear:

“A sexual entertainment venue is no place for a child or a young person.”

It is difficult to disagree with either of the children’s commissioner’s observations or conclusions. I urge members to follow the commissioner’s recommendations, to support Cara Hilton’s amendment 22 and to reject the minister’s amendment 19.

The Deputy Presiding Officer: I call Cara Hilton to wind up, and to seek to withdraw or to press her amendment 22.

Cara Hilton: There is a danger that the bill could put children and young people at risk of harm. My amendment would remove the option of any under 18-year-olds being employed by a sexual entertainment venue. [Interruption.]

The Deputy Presiding Officer: Order. Order! Allow Cara Hilton to be heard.

Cara Hilton: Amendment 22 will ensure that such venues cannot be accessed by children and under 18-year-olds in any circumstances or at any time.

I am not at all convinced by the cabinet secretary’s arguments.

Kevin Stewart (Aberdeen Central) (SNP): Will Cara Hilton take an intervention?

Cara Hilton: No—I have no time. I am sorry.

Kevin Stewart: We have plenty of time.

Cara Hilton: Amendment 19, by allowing venues a reasonable excuse to allow young people on premises, will open up many loopholes, which will put young people, especially young women, at risk of sexual exploitation. The venues are completely unsuitable for young people at any time.

Today, we have an opportunity to send out a strong message about the Scotland that we want. I want a Scotland that protects our children and young people from harm and exploitation and which challenges the objectification of women and girls. I urge the chamber to vote for amendment 22 and to reject amendment 19.

The Deputy Presiding Officer: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Finn, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Begg, Colin (Midlothian North and Musselburgh) (SNP)
Begg, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Rodenick (North East Fife) (SNP)
Campbell, Rodenick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dorris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Amendment 19 moved—[Michael Matheson].

The Deputy Presiding Officer: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: The result of the division is: For 33, Against 67, Abstentions 14.
It has always been envisaged that a local authority that seeks to license sexual entertainment in its area will have to undertake a full and proper exercise to reach a determination of how to approach the licensing function. In other words, it will have to adopt a policy in respect of the exercise of its functions that relate to licensing sexual entertainment venues.

Amendment 20 seeks to formalise that by requiring the preparation and publication of a policy statement, and it also requires that, in preparing its policy, the authority should focus on listed objectives. Some of those objectives are traditional licensing issues—for example, prevention of nuisance and crime, and protecting children and young people from harm. We have also included the objective of reducing violence against women in order to make it clear to local authorities that that important issue is at the heart of the licensing regime, and that part of the licensing authority’s role will be to ensure improved working conditions and a safer environment for the women who work in those venues.

The Scottish Government will produce statutory guidance to assist local authorities in developing their policies. Once those policies are prepared, the local authorities must have regard to their own policy statements when exercising their functions in relation to the licensing of sexual entertainment venues. As a result, the policy statement will need to be considered when a list of persons or bodies who are to receive copies of licence applications is prepared, or when it is decided that such an application should be granted. That will ensure that the policy statement is fully embedded in the licensing process. Finally, the amendment also lays out the mechanics of how and when the policy statement should be published and reviewed.

I move amendment 20.

Cara Hilton: I thank the cabinet secretary for engaging with me and the Zero Tolerance Trust on this amendment and amendment 18. I am pleased that both amendments reflect many of the issues that I raised during stage 2 in respect of consulting violence against women partnerships and obliging local authorities to produce a licensing policy statement.

Amendment 20 is important, because it will ensure that local authorities, in offering a licence for a sexual entertainment venue, fully consider the wider public policy priorities including tackling violence against women and protecting young people from harm. There is absolutely no doubt that there needs to be a lot more public scrutiny before such venues are granted licences. I hope that the amendment will ensure that there is more joined-up thinking on the policy at local and national levels, and I am very happy to support it.
Amendment 20 agreed to.

The Deputy Presiding Officer: That brings us to the end of stage 3 consideration of amendments.

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Gas Weapons and Licensing (Scotland) Bill

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-13606, in the name of Michael Matheson, on the Air Weapons and Licensing (Scotland) Bill.

16:03

The Cabinet Secretary for Justice (Michael Matheson): I am pleased to open the stage 3 debate on the Air Weapons and Licensing (Scotland) Bill. For the purposes of rule 9.11 of standing orders, I advise the Parliament that Her Majesty, having been informed of the purport of the bill, has consented to place her prerogative and interests, so far as they are affected by the bill, at the Parliament’s disposal for the purposes of the bill.

As members are aware, the bill sets out a new licensing regime for air weapons and amends the existing alcohol licensing and civic licensing regimes. I thank past and present members of the Local Government and Regeneration Committee for their detailed scrutiny of the bill over the past 13 months, and I am also grateful to the Finance Committee and the Delegated Powers and Law Reform Committee for their consideration of the bill.

The Local Government and Regeneration Committee invited a wide range of stakeholders to give evidence at stage 1. That evidence, as well as the committee’s stage 1 report—which supported the general principles of the bill—has proven to be extremely valuable in helping the Government to reflect on whether we had the provisions exactly right.

The stage 2 committee meetings helped us to further refine the bill. We have in front of us today a bill that will make a number of significant improvements to the relevant licensing regimes.

We have a long-standing commitment to reducing gun crime, and the licensing of air weapons is central to that aim. It featured in our 2007 and 2011 manifestos, and the power to regulate air weapons was finally devolved to this Parliament in the Scotland Act 2012.

We have acted on that new power and consulted widely with experts and the public. Our proposals have not been universally welcomed, but we believe that they strike the right balance between respecting the interests of people who shoot legitimately—for work, sports, pest control or leisure—and the need to ensure that those who would misuse guns do not have access to them.
Alexander Fergusson (Galloway and West Dunfries) (Con): I appreciate the cabinet secretary verifying that the principal purpose is to reduce crime involving air weapons, but can he tell me what evidential back-up he has to suggest that the measure will reduce gun crime using air weapons, which is already at an almost record low?

Michael Matheson: The member is correct to say that gun crime is at an almost record low. However, within the category of gun crime, almost half of all the offences involve air weapons. He may also have noticed from the most recently published statistics that, in the area where there was an increase in gun crime, the increase was due to the use of air weapons. Having a licensing regime will assist us to be more effective in ensuring that people who are not suitable to have such weapons do not have access to them.

The bill does not ban air weapons in Scotland, but those who should not have access to firearms—including those who deliberately and maliciously target property, animals or other people—will no longer be allowed to have air weapons. That will better protect the public from suffering harm at the hands of those who misuse their guns.

When publishing the committee’s stage 1 report, the committee’s convener, Kevin Stewart, said:

“There is no doubt air weapons are dangerous ... That is why we welcome plans to introduce a licensing regime ... It is a timely and important piece of work.”

I welcome and agree with his remarks and I am sure that the majority of members also agree with them and support the provisions.

Alcohol licensing is of constant interest to the Parliament. That part of the bill is largely focused on quite technical issues. We know that outdoor drinking dens attract vulnerable young people and place them at immediate and long-term risk. That is why the bill creates offences in relation to the supply of alcohol by adults to children and young people in a public place. That will give the police the powers that they require to address the problem of drinking dens.

A fit-and-proper-person test is being introduced for premises licences and personal licences, and licensing boards will also be able to consider spent licences. Those changes were widely called for to ensure that only those who are suitable can hold a licence.

We are clarifying that a licensing board, when considering overprovision, may determine that the whole of its area is a single locality. We have listened to calls for licensing boards to provide greater clarity about how they carry out their business. Therefore, as well as imposing a duty on boards to report annually on their income and expenditure, the bill requires boards to publish an annual report on the exercise of their functions.

Various members expressed concerns about the five-year ban on someone reapplying for a personal licence after they have had their licence revoked for failure to submit a refresher training certificate. We are removing that ban. That will come into effect on the day following royal assent.

The bill improves the effectiveness of civic licensing regimes with a variety of reforms across a wide area. It will deliver an improved regime for the licensing of metal dealers that will raise standards in the industry and make it more difficult for metal thieves to convert the proceeds of crime into cash. The bill ensures that all dealers are licensed, bans the use of cash as payment for scrap, tightens record-keeping arrangements and requires proper identification of customers. It also increases the scope of licensing to capture some important peripheral activities, such as door-to-door collectors. It increases penalties for licensing offences and creates a power that will enable the creation of a register of metal dealers.

I take the opportunity to record my thanks to those who have helped in developing the proposals—particularly the British Metals Recycling Association, which has represented the interests of the many legitimate and reputable scrap metal dealers, and the British Transport Police, which has led the fight against metal theft in recent years.

The bill allows communities a greater say over whether sexual entertainment, such as lap dancing, takes place in their areas by allowing local authorities the power to provide for a licensing regime for such activity and thereby to control the number of licences that are granted for sexual entertainment venues. Central to that is the belief that the voice of communities should be heard and that local authorities should have a clear influence over whether an activity such as sexual entertainment should take place in their areas. Local authorities are best placed to reflect the views of the communities that they serve and to determine whether sexual entertainment establishments should be authorised and under what conditions.

I welcome the amendments to the bill that reinforce the role that imposing proper control over sexual entertainment venues can play in tackling violence against women. I applaud the role that many individuals and organisations have played in getting us to this point, but I particularly acknowledge Sandra White, who has worked tirelessly for many years to highlight the issues and to push for the introduction of such a licensing regime.
The bill also makes a small number of changes in relation to taxi and private hire car licensing regimes. Local authorities are responsible for hire car licensing regimes. They have discretion in applying a local regime that best meets their area’s requirements, and that can take account of the views of customers and the trade. In general, the local process works well.

Specific provisions in the bill include the power to refuse, on the ground of overprovision, to grant private hire car licences; the extension of driver testing to allow testing of private hire car drivers; and the removal of the contract exemptions from the licensing and regulation of taxis and private hire cars, which will bring hire cars that are used on contracts into the licensing regime. The bill also simplifies and improves licensing arrangements by, for example, providing for the licensing of theatres within the public entertainment licensing regime.

I have set out the Government’s thinking on some of the key areas of a wide-ranging bill.

I move,

That the Parliament agrees that the Air Weapons and Licensing (Scotland) Bill be passed.

The Deputy Presiding Officer: Before I call Cara Hilton, I inform members that, to allow everyone to speak in the debate, I have determined that decision time will take place at 10 past five.

16:14

Cara Hilton (Dunfermline) (Lab): I echo the cabinet secretary’s comments and thank all who were involved in devoting time and energy to supporting us in our scrutiny of the Air Weapons and Licensing (Scotland) Bill. I particularly thank the parliamentary staff for the support that they provided to the Local Government and Regeneration Committee during the bill’s progress.

I joined the committee mid-way through the process, so I missed many of the early evidence sessions, but I thank all the witnesses and interest groups that engaged with the committee and provided evidence on the wide range of topics that the bill covers. I thank the cabinet secretary for his willingness to work with committee members and other MSPs to improve the bill and for engaging with and responding constructively to all stakeholders involved.

The bill is certainly a bill of many parts. It introduces a new licensing regime for air weapons, as well as reforming local authority licensing functions in respect of alcohol, taxis and private hire cars, scrap metal dealers and theatres. The bill also introduces a new licensing regime for sexual entertainment venues.

According to the policy memorandum, the bill’s aim is to protect public safety, preserve public order, reduce crime and advance public health. During the stage 2 debate back in April, my colleague Alex Rowley suggested that combining such a diverse range of subjects and objectives into a single bill, which is based on possibly outdated legislation, is perhaps not the best way to legislate. I hope that this Scottish Government and future Governments will reflect on that.

The committee’s report on the bill stated that “The Bill is what could be described as a ‘pick and mix’.” That sums up the situation pretty well. Scottish Labour will support the bill today, but we do not think that it is perfect.

Considerable progress has been made on alcohol licensing. I was pleased that our amendments were accepted and to hear the reassurance that was given to Dr Richard Simpson that work on the issue that his amendment raised is under way.

We are concerned that some parts of section 68 of the bill, as amended by the Government today, could put children and young people at risk. I am disappointed that my amendment to totally ban under-18s from sexual entertainment venues was rejected, despite having the backing of Scotland’s Commissioner for Children and Young People, Barnardo’s Scotland, the Zero Tolerance Trust, Scottish Women’s Aid and Rape Crisis Scotland.

I am disappointed that the Scottish Government believes that it is acceptable for young people to have access to sexual entertainment venues if owners can come up with a reasonable excuse. That directly contradicts a range of key Scottish Government policies that Scottish Labour supports, such as getting it right for every child and the Children and Young People (Scotland) Act 2014. It is also inconsistent with the Scottish Government’s strategy on violence against women.

Michael Matheson: Does Cara Hilton understand the point that I made about her amendment and the Government’s amendment in relation to under-18s having access to sexual entertainment venues? Had we gone with the amendment that Cara Hilton proposed, the reasonable excuse defence could have been used at any time when the venue was being used for sexual entertainment or not for sexual entertainment, whereas the Government amendment bans under-18s from being on the premises and closes down the use of the reasonable excuse defence, so that it cannot be used to allow a young person to be on the
premises when sexual entertainment is taking place. Those are the provisions that we will now have in law, under the bill.

Cara Hilton: That is one interpretation, but I am not convinced by those arguments. I lodged the same amendment at stage 2 and I did not hear those arguments then; this is the first time that I have heard those arguments, so I am a bit doubtful as to their validity.

Kevin Stewart (Aberdeen Central) (SNP): Oh.

The Deputy Presiding Officer: Order.

Cara Hilton: I have lost my place now.

I am pleased that the Scottish Government introduced positive amendments that will improve notification procedures and require local authorities to fully consider the impact of licensing sexual entertainment venues on the local authority's wider objectives, such as reducing violence against women and protecting children and young people. I hope that that will give local communities a bigger say in whether such venues can operate in their areas.

The cabinet secretary’s amendments in those areas reflect what I hoped to achieve in the amendments that I lodged at stage 2. That is welcome progress. I hope that we can develop more joined-up policy making at local and national levels in building towards the type of Scotland that we all want to see.

The sex industry can never be allowed to operate in a vacuum. Our approach needs to reflect the goals in “Equally Safe” of a Scotland where all individuals are equally safe and respected and where our town and city centres are welcoming to all. Until now, the industry has in effect been unregulated so, although the bill is far from ideal, the new licensing regime that it proposes is certainly better than the current situation.

Regardless of the debates about the legality of the new regime, we have to be vigilant in monitoring that regime. In licensing such venues, the Scottish Government risks normalising a harmful form of sexual exploitation. As the Zero Tolerance Trust pointed out in its initial briefing to the Local Government and Regeneration Committee,

“If we are to move beyond women’s value and worth being located in their bodies and their perceived sexual attractiveness, we need to move beyond seeing sexual entertainment venues as normal and harmless.”

We need to challenge a culture where women and girls are viewed and treated as sexualised objects. To fail to send out a clear message on that is to fail our young people.

There is no doubt that the taxi and private hire car industry is changing rapidly, and it is vital that the legislation reflects the pace of change. During the committee’s evidence sessions, there was concern about whether the bill will be robust enough and future proofed enough to prevent taxi app companies from bypassing local regimes. I hope that it will be, but only time will tell.

I know that the Scottish Taxi Federation was pleased with the assurances that it received from the cabinet secretary. We all agree that it is vital that there is a level playing field and a fairer deal for all in the sector.

Scottish Labour fully supports the air weapons proposals in the bill. It is estimated that 500,000 airguns are owned by people throughout Scotland. The bill will—rightly—require anyone who owns an airgun to demonstrate a legitimate reason for having such a weapon.

There is no doubt in my mind that air weapons are dangerous. The tragic death of two-year-old Andrew Morton 10 years ago and the heartache that his family continue to endure every day highlight the real and pressing need for us to act to prevent future tragedies.

Half of all firearms offences involve the use of an air weapon, and every single day our police officers and animal welfare groups have to deal with the consequences of those weapons being misused. The proposals in the bill are welcome and will ensure that Scotland has a strong and robust air weapons licensing regime.

The bill’s proposals on metal dealers and metal theft are welcome and will bring Scotland into line with the rest of the UK. Metal theft is a big issue in many of our communities, and it is never a victimless crime. We hope that the bill will strengthen the licensing of metal dealing and reduce metal theft and related criminal activity, which not only inconvenience the public but endanger the public and offenders, too.

I notice that I have run out of time. In conclusion, although the bill is not without its flaws, many of the proposals that it contains are welcome, and it is certainly a step in the right direction. Scottish Labour will support the bill, and I look forward to the rest of the debate.

16:21

Alex Fergusson (Galloway and West Dumfries) (Con): In opening the debate for the Scottish Conservatives, I am sorry to say that I find myself every bit as perplexed about the bill now as I was at stage 1. The vast majority of it is greatly to be welcomed, in particular the provisions on alcohol licensing, metal dealers and public and sexual entertainment venues. In general, although
officers with no previous experience of weaponry

Instead, it will be carried out by rank-and-file police
are being reduced from 34 to 14 as we speak.
officers of Police Scotland, but not by the trained
airguns. That process is to be carried out by
estimated 500,000 airguns in Scotland are to
peak.
Scotland, which is a drop of 73 per cent from their
make up 0.06 per cent of all reported crime in
Such offences
are at their second
year
2014, would not be published until October this
which should have been published in November
most recent statistics on air weapon offences,
stage 1, I raised a concern about the fact that the
provisions
—
1. It contains the new licensing provisions—they
do not, please note, tighten up existing provisions—that relate to the new air weapons
regime that the Government wishes to introduce.
For us, that is a red-line issue that also involves an
important point of democratic principle. We believe
that part 1 should always have been a separate
piece of legislation.

However, the problem that we on the
Conservative side of the chamber have—which
will come as no surprise to members—is with part
1. It contains the new licensing provisions—they
do not, please note, tighten up existing provisions—that relate to the new air weapons
regime that the Government wishes to introduce.
For us, that is a red-line issue that also involves an
important point of democratic principle. We believe
that part 1 should always have been a separate
piece of legislation.

During the stage 1 debate, Kevin Stewart
intervened on me to ask what might be different in
a separate bill that would lead me to support it.
The answer to that is quite possibly nothing, but
the point is that we could have had a clear debate and decision-making process on a completely new
area of licensing provision while almost certainly
unanimously agreeing on a separate bill that
covered the provisions in parts 2 and 3 of this bill.
We on the Conservative side of the chamber are
forced into the position of being unable to support
the bill despite agreeing very much with a large
part of it.

I will spend the brief time that is available to me
explaining why we are so opposed to part 1. At
stage 1, I raised a concern about the fact that the
most recent statistics on air weapon offences,
which should have been published in November
2014, would not be published until October this
year—almost a year late. Lo and behold, the
statistics have now been published, and they show
that air weapon offences are at their second
lowest level in the past decade. Such offences
make up 0.06 per cent of all reported crime in
Scotland, which is a drop of 73 per cent from their
peak.

Against that background, the possessors of the
estimated 500,000 airguns in Scotland are to
undergo a process to license them to possess
airguns. That process is to be carried out by
officers of Police Scotland, but not by the trained
civilian specialist firearms officers, whose numbers
are being reduced from 34 to 14 as we speak.
Instead, it will be carried out by rank-and-file police
officers with no previous experience of weaponry
at all, whose training—I am reliably informed—
consists largely of learning about the legislation
involved, rather than any hands-on weaponry
training that might help officers to prepare for the
task that they will have to undertake.

I am equally reliably informed that Police
Scotland has a current backlog of more than 500
shotgun and firearms licence applications, so one
can only begin to imagine what additional pressures the airgun licensing regime will place on
it. Once a licence or permit has been gained, it will
not be required to purchase the ammunition for
those weapons. That could mean that those
holders of airguns who do not bother or want to
get a licence or permit—everybody agrees that
there will be many of them—will have no difficulty in obtaining ammunition for their weapons. I
suggest that those who are most likely to carry out
airgun crimes are probably those least likely to
bother to get a permit, especially one that costs
around £80. I do not believe or accept that this
new regime will have any impact on crime
statistics whatsoever.

I suggested earlier that amendments 1 and 2
would reduce bureaucracy, expense and the
unnecessary use of human resources. Had they
been accepted, I am sure they would have had
that effect, but they were not. We are left with a bill
that will create a whole new layer of bureaucracy
and expense. It will take up countless hours of
police officers’ time to introduce a licensing regime
that will do nothing to reduce the minute amount of
crime that a minuscule number of airgun owners
or possessors currently commit.

As I said earlier, the bill seems a perfect
example of using a sledgehammer to crack a nut.
That the sledgehammer is being wielded by a
Scottish Government that preaches the gospel of
cutting down on unnecessary red tape, expense
and time wasting at every possible opportunity
almost defies belief. We do not believe that this
sledgehammer will crack the targeted nut; all it will
do is place an unnecessary increased burden on
thousands of perfectly law-abiding citizens, which
is not something that Conservative members can
support.

16:26

Kevin Stewart (Aberdeen Central) (SNP): In
April, we debated and agreed the general
principles of the Air Weapons and Licensing
(Scotland) Bill, and today we debate the bill in
the form in which we hope it will be enacted. Although
there is no formal role for me in this debate, as
convener of the Local Government and
Regeneration Committee I would like to share the
work of the committee and its effectiveness in
realising change.
As I pointed out at stage 1, licensing has an important role. It is integral to preserving public order and safety, reducing crime and advancing public health. A key aim of the bill is to improve the efficiency of the licensing regimes, contributing to the creation of a better regulatory environment for business. The bill is wide ranging and covers the creation of new licensing systems in Scotland for the use of air weapons and the operation of sexual entertainment venues. The bill also amends existing licensing systems on alcohol sales, scrap metal dealers, taxis and private car hires, and public entertainment venues. The importance of those regimes and the objectives that they seek to reinforce should not be underplayed.

Our level of engagement with key stakeholders allowed us to make meaningful changes to the bill that will improve the effectiveness of the provisions. For example, the bill now enables the sale of air weapons to customers in the rest of Great Britain; requires alcohol licensing boards to publish annual reports outlining how they have contributed to the licensing objectives; empowers licensing authorities to deal with issues connected to advertising of sexual entertainment venues; updates the definition of metal dealers so as to include those who do not buy metal but sell it; more clearly defines the forms of payment to metal dealers; and provides the legislative framework for the creation of a national database of metal dealers.

The work of the committee has led to major change in the bill from stage 1, and the vast bulk of that work has been pretty co-operative. We have seen where there has been division and mistake because of misunderstandings. I was disappointed that a committee member was briefing against colleagues in the press, and I will be interested to see how some colleagues have voted on certain amendments, particularly amendment 19.

I thank the cabinet secretary for being extremely co-operative as we have tried to get the bill absolutely right. As I said, we have made great moves towards getting it right. I will give one example: the penalties for metal theft. The committee believed that the original proposals on that were far too lenient, but now we have a fine of up to £20,000 and/or up to six months in prison. We have reached that conclusion because of the work of the committee.

The bill now strikes the right balance. It allows businesses and ordinary folk to go about their lives while seeking to prevent or reduce the harm that is caused by people who seek to avoid regulation or to carry out criminal acts. The bill is proportionate to the issues that it tackles, which is why I will vote in favour of it at decision time.

16:31

Elaine Murray (Dumfriesshire) (Lab): The intention of people who support the bill has never been to ban air weapons; it has been to regulate them. Air weapons can and, sadly, do kill. It is wrong that anyone who wants to can keep and use a lethal weapon without any checks on why they have it and whether they can be relied on to use it responsibly and for a legitimate purpose. I am pleased that the bill will rectify that situation.

Like other members, I was lobbied to exclude people who already hold a firearms licence. The bill excludes them from some but not all of the licence tests. That is correct because, although a person who has a firearm might be a suitable person also to have an airgun licence, they might not have a good reason for doing so and it is correct that the chief constable should be required to ascertain that they have a good reason for having an air weapon.

I note the concern that the Law Society of Scotland raises in its stage 3 briefing that there are around 500,000 air weapons in Scotland that cannot be properly traced and that they might be sold off or given away in advance of the bill coming into force rather than being handed in to the police. Does the cabinet secretary have a strategy to try to encourage people to hand in their weapons rather than give them away and have them circulating illegally in Scotland?

In that briefing, the Law Society also makes the point that the purchase of ammunition is not regulated and that there is no requirement in the bill to produce the weapons certificate when purchasing ammunition. I suspect that the purchase of ammunition might still be reserved—I think that it is only the licensing of air weapons that has been handed over to the Scottish Parliament—and therefore it is not possible for that to be addressed here. Perhaps it needs to be addressed at Westminster.

The regulation of air weapons will protect people, domestic pets and wild animals. It is difficult to assess the numbers of wild animals that have been injured or killed by air weapons, as they might die in places where their carcasses will never be discovered.

I was a bit concerned about an amendment that was agreed to at stage 2 that allows young people to use airguns for pest control. Originally, the bill had permitted only young people who were commercial pest controllers or employed by them to shoot pests. I accept that shooting can be a humane method of pest control in the right hands, but I am a bit concerned that, because of that stage 2 amendment, untrained young people—or, indeed, untrained adults—can use airguns to shoot live animals and, potentially, cause them...
significant suffering if they are not instantly dispatched.

I seek the cabinet secretary’s reassurance on whether other legislation, such as the Animal Health and Welfare (Scotland) Act 2006, provides sufficient protection for wild animals that might be considered pests but are, after all, still sentient creatures and might suffer badly if untrained individuals take pot shots at them in the name of pest control.

I mentioned scrap metal dealers during the stage 1 debate, having discussed the bill with a local and reputable metal dealer. I was pleased to note that, at stage 2, the Government introduced amendments to prevent a scrap metal dealer from paying in cash by clarifying that only a bank or building society account may be used when undertaking a sale of metal. That is welcome. It will prevent the theft of scrap metal, which has been a serious problem for some time—since metal prices rose—and can have serious consequences for public safety and public convenience. Welcome amendments were made regarding record-keeping requirements and establishing a register of metal dealers, which had both been argued for.

It is correct that local government will take responsibility for regulating sexual entertainment venues, taking into account the views of local communities. I agree that councils are best placed to do that. I pay tribute to Sandra White and others who have campaigned on the issue of sexual entertainment venues for many years. It is easy to be portrayed as a bit of a killjoy and illiberal when taking on such an issue, but people in this chamber rightly recognise that commercial sexual exploitation is a form of violence against women.

16:35

Liam McArthur (Orkney Islands) (LD): I join others in thanking Kevin Stewart’s committee and committee witnesses for their work on what is, by common consent, a wide-ranging and complex bill. Cara Hilton was right to remind us of the committee’s observation that the bill was a bit of a pick and mix. I have sympathy for the view that it is two bills masquerading as one, and Alex Fergusson quite rightly pointed to the implications of that for the vote on the bill at decision time. The cabinet secretary was his characteristically reasonable and measured self as he sought to deal with the amendments at stage 3 today. However, I am disappointed that there was not a willingness to accept some of the amendments in relation to airguns, and I will turn to that issue in a minute.

There is much in the bill that we welcome. Part 2, on alcohol licensing, and part 3, on civic licensing, set out reforms with which we strongly agree. Kevin Stewart articulated those reforms very fairly in his observations. A couple of examples are the closing of the loophole that means that, although it is illegal to buy alcohol for a child, it is legal to buy alcohol to share with a child in a public place; and creating additional record-keeping requirements for scrap metal dealers, including recording the identity of those who sell metal. Those are both eminently sensible moves.

The fact remains, however, that a great deal of the bill relates to the licensing of air weapons, an issue on which we have consistently voiced concerns—my colleague Tavish Scott did so during the stage 1 debate. Unfortunately, those concerns have not been adequately addressed. There have been opportunities to do so, most recently this afternoon, when we welcomed Alex Fergusson’s amendments at stage 3. I felt that they sought a practical way ahead on some of the issues while lifting the burden on those already struggling to manage requirements for existing gun licensing, for which there is a backlog, as Alex Fergusson indicated.

The Government is rightly concerned about public safety, but crime statistics suggest that the number of incidents involving air weapons is small and falling—evidence to the committee was very clear about that. I do not dispute that problems exist. In justifying the proposals on air weapons, the current justice secretary and previous ones have cited well-publicised incidents when young children have been hurt because of the inappropriate use of an airgun. Those incidents are appalling and have been roundly and rightly condemned, but those involved were prosecuted under laws that we already have. I cannot see any evidence of how the bill will reduce the risk of such incidents happening.

At stage 1, Tavish Scott called for a proportionate response to the problem, but the bill before us at this stage does not strike the right balance. The introduction of blanket restrictions will have a significant impact on individuals and practices that currently present no risk to public safety, without necessarily providing any deterrent for those intent on acting irresponsibly. Indeed, there is even an argument that the restrictions could encourage more people to trade up to more powerful weapons. I would be interested to know whether the bill has been either island proofed or rural proofed in any way, as the Government has committed to doing.

Steps might need to be taken to address the inappropriate ownership and use of airguns, but I fear that the proposals in the bill are more a way of allowing ministers to claim that they are taking action than an effective response to any problem
that exists. On that basis and despite our welcome of many other aspects of the bill, we will not be able to support it at decision time.

16:39

Sandra White (Glasgow Kelvin) (SNP): The bill is an important one that deals with metal theft, air weapon licensing, alcohol licensing and, of course, sexual entertainment venues. I will limit my comments to the part of the bill that deals with sexual entertainment venues.

I am grateful to the many members who have mentioned that I have been pursuing the licensing of sexual entertainment venues for more years than I care to remember. I thank the Local Government and Regeneration Committee for all the work that it did on this part of the bill. I also thank the clerks—I see that they are in the chamber—for the advice that they have given me and their help in lodging various amendments. I also thank the Scottish Government and the Cabinet Secretary for Justice for introducing the bill. Special thanks must go to the previous justice secretary, Kenny MacAskill, who worked with me when I brought my member’s bill to the chamber a number of years ago—unfortunately, the Opposition parties voted it down, but we did not give in; we brought it back again. I thank everyone who has helped with the current bill, but if it were not for the previous justice secretary, Kenny MacAskill, I do not know whether it would have got this far.

A number of members have talked about the granting of sexual entertainment licences for lap-dancing clubs. I represent Glasgow city centre, and such clubs are a part of that. In fact, many people have come to me about the proliferation of lap-dancing clubs in Glasgow city centre. It has been decided that local authorities will be responsible for their licensing, and that is absolutely right—there cannot be mandatory licensing; it must be for local authorities to represent the people in their areas. I thank Councillor Coleman, of Glasgow City Council, who gave me enormous amounts of advice and support while I was pushing through this part of the bill. It is fantastic that, as a result of all the work of everyone concerned, from 10 past 5 tonight, if a local authority wishes no lap-dancing and sexual entertainment licences to be granted in its area, none will be granted. I call that empowering local people—not just local authorities but local communities—who wish not to have this type of entertainment in their areas.

As others have said—I have long said it myself—sexual entertainment is a form of violence against women. I have already mentioned some of the examples that I have encountered of people being in such establishments. The bill is therefore a really good piece of legislation to come out of the Scottish Parliament. Lots of people on community councils and not just women’s groups but groups throughout Scotland very much welcome the bill. The idea that women can be objectified through lap dancing and people paying for that type of thing will be long gone when the legislation is implemented. Others besides me have worked on it for many years, and I thank everyone who has helped me to bring it forward. I look forward to 10 past 5 tonight, when we will finally be able to say yes to this legislation.

16:43

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I welcome many of the changes that the bill will bring about, although I think that there will, in due course, need to be a more fundamental revision of the Civic Government (Scotland) Act 1982.

On airguns, I accept—as Alex Fergusson said—that the bill is not going to eliminate the problem totally. However, I believe that, as with firearms legislation, it will make a significant difference. It is right that it parallels firearms legislation, because the reality is that airguns cause a great deal of harm to people, pets and wild animals. It is therefore absolutely right to have a fit-and-proper-person test. People should have a reasonable and proper use for such weapons.

The issue of alcohol comes up frequently at community councils, and the bill makes some good progress. The fit-and-proper-person test for licensed premises and personal licence applications is a good measure, as is the renewed and reinforced focus on overprovision, which relates the measure to the whole licensing board area. In speaking to his amendment 14, Richard Simpson made the important point that communities must have all the information in order to be able to object to overprovision meaningfully and realistically. That is why he wanted a national register. He withdrew amendment 14 because some defect in it was pointed out, but he referred to subsection (6) of the new section that will be introduced by amendment 12, which is the amendment on the annual functions reports that was agreed to. I think that it is possible, through that subsection, to provide the information that Richard Simpson was seeking. I think that the cabinet secretary accepted that, and I hope that he will keep Parliament informed on that.

Everybody welcomes the provisions on scrap metal. We know that there is a problem with metal theft, so anything that makes it more difficult to dispose of stolen metal has to be a good thing.

Last, but by no means least, is the issue of sexual entertainment venues. The provisions in
the bill about empowering local authorities and enabling them to say no are correct and widely welcomed. We should pay tribute to Cara Hilton and Zero Tolerance for the way in which they have developed the policy, in partnership with the minister to a large extent, over the past few weeks. That has resulted in the agreement today to an amendment on a statement of policy by local authorities, and the requirement for that statement to take into account the wider policy context. That is welcome progress.

Also welcome is the requirement for local bodies to be notified. Again, that includes community councils, violence against women partnerships and others, following the statutory guidance that was announced by the cabinet secretary today.

The main problem in this area today was the debate around amendment 19 and amendment 22. We all had strong briefings on the issue from Barnardo’s and the children’s commissioner, and we had previous influential briefings from Zero Tolerance that emphasised the position that sexual entertainment is an example of the objectification and sexual exploitation of women and is, therefore, intrinsically undesirable. People will therefore understand why we supported Cara Hilton’s amendment on the issue of people under 18. We had a problem when the cabinet secretary introduced a whole lot of new arguments that had not been presented at stage 2.

Kevin Stewart: Will Malcolm Chisholm give way?

The Deputy Presiding Officer: The member is in his last minute.

Malcolm Chisholm: If Cara Hilton’s amendment had dealt with a new issue, we would not be able to complain. However, it dealt with an issue on which she had lodged an amendment at stage 2, when we heard not one word of the explanation that we heard today. It was absolutely impossible for us to assess what the cabinet secretary was saying, which is why we supported amendment 22, along with Zero Tolerance and the children’s commissioner.

16:47

John Wilson (Central Scotland) (SNP): I want to take this opportunity to welcome the discussion and debate on what are clearly important issues for Scotland. The health and security of everyone in Scotland are of the utmost concern, and this bill has created important discussion around those issues.

I put on record my welcome of the cabinet secretary’s willingness to listen to and act on the discussions that took place in the committee and elsewhere, particularly at stage 2, and to accept the issues that were being raised by external organisations.

I put on record my thanks to the many organisations that came and gave evidence to the committee, and to the individuals who responded to the call for evidence. Without that evidence, some of the issues that have been discussed today might not have been discussed, as they might have been lost in the debate.

The bill covers a number of areas, as members have said: air weapons; alcohol licensing; taxis and private hire cars; metal dealers; the licensing of public entertainment venues; and the licensing of sexual entertainment venues. Some of the issues that were debated at stage 1 and stage 2 have been lost today, because they were dealt with in a consensual manner. For example, issues around the licensing of public entertainment venues were accepted and adopted by all concerned, because there was confusion about how sexual entertainment venues licensing might impact on public entertainment venues.

With regard to metal dealers, we heard evidence in committee about the cost of metal theft in Scotland. One witness indicated in written evidence that the cost of metal theft in Scotland could be up to £40 million. I am glad that the fines have been increased to take account of the issues that have been raised because, clearly, we have not been targeting those who are seriously involved in metal theft. It is hoped that the fines will help to deter some of those characters, and to safeguard the infrastructure of communities in Scotland.

There are issues about the interpretation of air weapons licensing. I have had a number of representations from members of the airsoft community who are concerned with how the changes in the legislation may affect them. It will be incumbent on the cabinet secretary in guidance and in regulation in the future to ensure that airsoft and related communities are clear about what is covered in the licensing regime. There are issues related to the strength of the weapon being used: technological advances that are taking place, particularly in the airsoft area, mean that some of those weapons may soon become covered by the air weapons licensing that we are proposing today.

I welcome the discussions that are taking place, and I welcome the fact that the cabinet secretary has been so consensual.

Access to sexual entertainment venues, dealt with in amendments 22 and 19, is an area that the Local Government and Regeneration Committee discussed at stage 2 in terms of the relevant issues and the impact that provisions in the bill may have on employment in, and access to, those venues. I am glad that the cabinet secretary...
lodged an amendment on that; although the majority in the chamber accepted it, it is quite clear that there is still much debate to be held outwith the chamber.

I will support the bill as amended at stage 3, and I look forward to its implementation. If it needs to be worked on in the future, I look forward to the opportunity to do that.

The Deputy Presiding Officer: We will now have closing speeches.

16:51

Cameron Buchanan (Lothian) (Con): The Air Weapons and Licensing (Scotland) Bill has drawn out areas of both consensus and contention, as today’s debate has shown. As I have commented before, legislation should be passed only when it is targeted and when it acts effectively in the public’s best interests. Where that has been the case, such as with metal dealers, it seems to me that the bill would improve matters, and we have heard how the bill has the support of most metal dealers as well as our committee.

However, it is apparent that the aim of protecting people from unnecessary or unhelpful government intervention has not been applied throughout the bill. As a result, the Scottish Conservatives do not believe that it is in the best interests of the people of Scotland.

A guiding principle throughout our consideration of the bill has been that law-abiding people should not find themselves unnecessarily caught under a legislative net just because it is easier or politically expedient for the Government to impose wide-reaching obligations. The provisions on air weapons are a case in point.

Kevin Stewart: Will the member give way?

Cameron Buchanan: Certainly.

Kevin Stewart: I thank Mr Buchanan for giving way. We recognise that there is a small minority of abusers of air weapons. However, the use of those weapons by abusers has led to the deaths of people in this country, including, as mentioned previously, Andrew Morton. Surely it is right to act to ensure that we do not have any more deaths or injuries by making sure that we have the right licensing regime in place.

Cameron Buchanan: What evidence do we have that a licensing regime will prevent deaths? I cannot see it. I do not think it will make any difference; I think that those people will go under cover. [Interruption.]

The Deputy Presiding Officer: Mr Buchanan, carry on.

Cameron Buchanan: The misuse of air weapons is confined to a tiny minority of users, as recently published statistics on recorded crimes in Scotland involving firearms for 2013-14 have confirmed. On a side note, it is welcome that the Scottish Government finally changed its initial decision to withhold publication of this data until well after today’s debate.

A targeted response to the small number of crimes involving air weapons would be to focus on better enforcement of existing laws, but the bill instead imposes an extensive and costly licensing process upon users.

Furthermore, it is difficult to see how those provisions could be in the public’s best interests in terms of security, when Police Scotland’s already pressured resources could be invested instead in tackling crimes more prevalent than the 0.06 per cent of crimes that involve air weapons. The administration of air weapon licensing would involve a disproportionately large commitment of the police’s resources, as we heard from Alex Fergusson, which may threaten the public security achieved through police operations in other areas.

Those major concerns suggest that the bill does not adhere to the principles of targeted and effective government, a position that is reinforced by the provisions relating to the licensing of the taxi and private hire vehicle market. There are legitimate concerns that, in order to protect consumers, drivers of private hire vehicles should be required to have background checks and to understand the various needs of passengers. An appropriate solution would be to allow tests of only those things, yet the bill will also permit the knowledge test to be required of all private hire drivers, despite the availability of perfectly adequate satellite navigation.

That overreaching of the testing provisions, combined with licensing authorities’ power to refuse to grant a licence for a private hire vehicle solely on the grounds of overprovision, has the effect that the bill does not act in the public’s best interests. Experience elsewhere has indicated that an expanded supply of private hire vehicles would lower prices and, in doing so, allow more people to afford regular use of private transport. Such a development would clearly be in the public’s interest, yet the unnecessary testing provisions and anti-competitive ability to refuse licences on the grounds of overprovision would stand as barriers against that progress.

Colin Keir (Edinburgh Western) (SNP): Will the member give way?

The Deputy Presiding Officer: The member is closing.

Cameron Buchanan: Those things are plainly not in Scottish consumers’ best interests.
There are some aspects of the bill that we agree with and that could be beneficial. The problem is that they are embedded within a bill of many parts that includes aspects that we cannot agree with. The welcome provisions include those relating to metal dealerships as well as some sensible reforms to theatre and sexual entertainment venue licensing. However, our principles are not a loose commitment that we wish to see fulfilled only some of the time. For us to be able to support the bill it would have to be focused throughout on genuine improvements on behalf of the Scottish public, and it certainly should not violate the principles of targeted and effective government. Accordingly, the Scottish Conservatives will regrettably vote against the Air Weapons and Licensing (Scotland) Bill.

16:56

Ken Macintosh (Eastwood) (Lab): Not only do I thank all members present for their contribution to the debate but I extend our appreciation to all those outwith the Parliament who have taken the time to give evidence to help us shape the bill. I give particular thanks to members of the Local Government and Regeneration Committee and their clerks for their work—and indeed to the cabinet secretary and the bill team for taking a constructive approach to the bill. The bill itself encompasses an odd mix of policy objectives and is not without criticism, but overall it is stronger as a result of parliamentary scrutiny and amendment.

Before I talk about some of the issues covered by the bill, it is worth putting it on record that we—that is the Scottish Government and the Scottish Parliament—may need to return to civic licensing sooner rather than later. The cabinet secretary said at stage 1 that he had no wish to review the Civic Government (Scotland) Act 1982, but evidence to the committee suggested that the 1982 act is nearing the end of its shelf life. Witnesses from both Edinburgh and Glasgow city councils suggested that it was no longer fit for purpose and others from the business community commented on the piecemeal nature of the 1982 act following three decades of amendments. Even today we had amendments that arguably open up a whole new set of criteria that could be applied in shaping our town and city centre activities, so I urge the cabinet secretary to revisit the Local Government and Regeneration Committee’s recommendations on that point and instigate a review.

If passed today, the bill will create a new offence relating to possessing, purchasing or acquiring an air weapon without holding a valid air weapons certificate. For those of us who remember the death of two-year-old Andrew Morton—some 10 years ago now—that law has been a long time in the waiting and it is all the more welcome for that wait. I recognise that gun licensing generally remains a divisive issue, and I am conscious that we should not subject the law-abiding air weapon owners of Scotland to what is sometimes regarded as the tyranny of the majority. However, in this case the bill is proportionate to the problem that we still face as a society. The casual cruelty often inflicted on domestic pets—cats and dogs—and even passing birds by irresponsible airgun users would be reason enough to introduce a more regulated form of ownership. The fact that last year half of all offences involving a firearm involved an air weapon is even more persuasive for me and my colleagues. Scottish Labour is very pleased to support the air weapons proposal.

The whole area of licensing sexual entertainment venues is fraught with difficulty. There is an argument that suggests that if you license an activity you are implicitly or even explicitly endorsing it. I came across that argument when I was proposing action on sunbeds and skin cancer through an amendment to the Civic Government (Scotland) Act 1982. There is an interpretation that by licensing such venues we are almost approving of them. I am sure that many of us in the chamber would object to any such interpretation being made of our actions this afternoon.

Women suffer—in fact, all of Scotland suffers—from the objectification of women and discrimination and violence against women. That is recognised in the Scottish Government’s policy.

Equality groups have mostly taken the view that they support sexual entertainment licensing on the basis that that is better than having unlicensed venues, but concerns remain—those concerns were raised by my colleague Cara Hilton—that the bill does not quite do enough to align with Scottish Government policy on gender equality. I regret, for example, the fact that the proposals to restrict the display of sexualised images in public places that are accessible by children were not included in the bill, if even for discussion. I am grateful to Child’s Eye Line UK and my colleague Cara Hilton for raising that issue during stages 1 and 2.

It is worth noting the support for such a proposal from Girlguiding through its girls matter campaign, which highlights the desire of young people to be subject to less objectifying and to stop children’s exposure to harmful sexualised content in mainstream media. It is worth pointing out that the Parliament has already acted to prevent the display of tobacco products because we deemed them to be harmful. Therefore, I hope that the Parliament has the opportunity to return to that issue at some point in the near future if we are to improve the environment in which we bring up not just our young girls, but all our children.
The bill will help to empower licensing authorities to limit the number of private hire cars where there is overprovision, and is welcome for that reason. However, many stakeholders have expressed concern that the current legislation does not deal with the technological challenges that face the industry—for example, remote booking through mobile apps and new operators whose business models are not based on traditional divisions between taxis and private hire cars. I believe that the cabinet secretary has stated that the Government is taking separate steps to address that issue. I look forward to seeing the fruits of that work in due course.

We are happy to welcome the measures in the bill that take a firmer stance on scrap metal theft. The disruption that is caused by such crime causes great strain on our communities and vital public services. From the stealing of train cables from the railways to the stealing of aluminium cables from pylons, the cost of those crimes to the Scottish economy is estimated to be £700 million each year.

In particular, we welcome the proposal to establish a national register of metal dealers. That will help to inform both buyers and sellers on the legitimacy of those whom they are dealing with and further protect them from unintentional law breaking. We are pleased that the minister has agreed to amendments that will avoid causing disruption to daily business practice.

In conclusion, notwithstanding the rather animated discussion earlier about whether we should legislate to make reasonable excuse for a young person to be in a sexual entertainment venue, we have reached broad agreement on the bill. I thank all my colleagues across the chamber for the contribution that they have made and look forward to seeing the benefits that I hope the legislation will bring to our communities.

17:02

Michael Matheson: I have listened with interest to all the members who have contributed to our stage 3 debate. I think that Cara Hilton described the bill as a "pick and mix" because it covers a variety of areas in which licensing provision needs to be made. Changes were made to the bill as a result of the stage 1 and stage 2 processes and the parliamentary scrutiny that it has been subject to, but it continues to fully deliver on its original intentions. The parliamentary scrutiny process has strengthened it.

In my opening speech, I said that I believe that the provisions go a long way towards protecting the public, pets and wildlife from the painful and pointless tragedies that they are often subjected to, which are caused by the irresponsible use of things such as air weapons. Earlier this afternoon, before the debate, I met Sharon McMillan and her family and friends. She is the mother of Andrew Morton, who was tragically killed by an air weapon some 10 years ago. She and her husband Andy have campaigned tirelessly over the years for something to be done about the dangers of air weapons. I sincerely hope that the passage of the bill under Parliament's support will reassure them that, through the bill, we are delivering progress and helping to ensure that nobody has to go through the same pain that they have had to go through as a family. [Applause.]

During consideration of the bill, I have listened closely to concerns and issues that a range of stakeholders have raised. Issues were raised about the implementation and timing of the introduction of the provisions on licensing air weapons. Elaine Murray suggested having an information campaign so that individuals are aware of the regime's implications for them. I assure her that work is already being done to ensure that we have a sufficiently robust and widespread information campaign.

We intend to introduce some of the bill's provisions in a way that allows the public and others who might hold an air weapon some time to decide whether to surrender that weapon or apply for a certificate for it. That will take a bit of time, but work is being taken forward to progress that. I know that Police Scotland, shooting organisations and other stakeholders will all be keen to look at how that is progressed and at how the guidance on the bill is developed.

On a number of occasions, in interventions on me and in his speech, Alex Fergusson raised the issue of the evidence base for the bill. He also asked whether the bill is disproportionate to the risks that are out there. He referred to the most recent statistics on incidents involving firearms in Scotland.

I welcome the fact that gun crime is at a lower level than it was in 2007, but that headline figure ignores the fact that the figures that were published just last week also show a rise in recorded offences involving firearms for the first time in seven years. Within that, offences involving air weapons are up by 6 per cent, which goes against the trend of shotguns and other forms of firearms.

I do not believe that we can be complacent. As almost 50 per cent of all firearms incidents involve an air weapon, that gives us a good signal on the need to take proactive action to address the issue.

If Alex Fergusson and his colleagues, including Liam McArthur, are not persuaded by me that the bill, in bringing in a licence for the provision of air weapons, will prevent crime, they have only to...
look at the evidence that was put to the committee at stage 1 by Police Scotland. It was clear in that that a licensing regime for the provision of air weapons will help to reduce crime that is associated with them and at the same time improve public safety. We cannot ignore that message. That is why we introduced the bill. [Interruption.]

The Deputy Presiding Officer: While I do not wish to dispel the end-of-term spirit, I ask members to curtail their vital conversations for just another two minutes, please.

Michael Matheson: I deeply regret the fact that the Conservatives and the Liberal Democrats cannot bring themselves to support the bill tonight. I think that they will come to regret that as well.

Members have raised the issue of resourcing in Police Scotland. Police Scotland told the committee that it is taking forward a range of work to prepare for the introduction of the licensing regime. It is reviewing its licensing of firearms to make sure that that is integrated in a single force rather than being done in different component parts, as happened with the different forces in the past.

Alex Fergusson raised issues about delays. There are periods when there are delays because of a spike in applications but, in general, there is no overall delay in dealing with firearms certificates in Scotland. In individual cases, inquiries might need to be made, which result in delays.

I do not believe that a small number of incidents—more than 180 last year—is insignificant. It is not insignificant when they harm or maim an individual or an animal. We should not dismiss that as insignificant in the way that I think Alex Fergusson did this afternoon.

The bill improves how we deal with alcohol licensing. The provisions will support our licensing boards in making sure that we continue to make progress in tackling Scotland’s unhealthy relationship with alcohol, which costs this country £3.6 billion a year in associated social and health costs.

I have no doubt that we have all experienced the impact of metal theft in our constituencies. The bill’s provisions will make significant improvements in that area, too.

It has been clear that the lack of sufficient legislation to license sexual entertainment venues has not been acceptable. The bill will strengthen local authorities’ ability to make decisions about what they consider to be appropriate in their areas based on local circumstances and their ability to do so consultatively and collaboratively.

The bill covers a number of licensing areas. After it is passed today, it will deliver significant improvements to public safety in relation to air weapons and to public health through how we deal with alcohol licensing. It will also deliver significant improvements in dealing with the scourge of metal theft and, equally, in tackling violence against women in sexual entertainment venues. That will ensure that Scotland continues to be seen as a progressive place in dealing with those issues.
Decision Time

17:12

The Deputy Presiding Officer (John Scott):
There are five questions to be put as a result of today’s business. The first question is, that motion S4M-13606, in the name of Michael Matheson, on the Air Weapons and Licensing (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
The result of the division is: For 92, Against 17, Abstentions 0.

The Deputy Presiding Officer: The result of the division is: For 92, Against 17, Abstentions 0.

Motion agreed to,

That the Parliament agrees that the Air Weapons and Licensing (Scotland) Bill be passed.
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Air Weapons and Licensing (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; to amend and extend the licensing provisions of the Civic Government (Scotland) Act 1982; and for connected purposes.

PART 1

AIR WEAPONS

Meaning of “air weapon”

1 Meaning of “air weapon”

(1) This section defines the expression “air weapon” for the purposes of this Part.

(2) The expression generally has the same meaning as that given in section 1(3)(b) of the Firearms Act 1968 (“the 1968 Act”).

(3) In addition, the expression includes—

(a) the component parts of an air weapon (within the meaning of section 1(3)(b) of the 1968 Act), and

(b) any accessory to such a weapon designed or adapted to diminish the noise caused by discharging the weapon.

(4) But the expression does not include—

(za) an air weapon which is not a firearm (within the meaning of section 57(1) of the 1968 Act),

(a) an air weapon (within the meaning of section 1(3)(b) of the 1968 Act)—

(i) which is not capable of discharging a missile with kinetic energy of more than one joule as measured at the muzzle of the weapon, or

(ii) that is designed to be used only when submerged in water, or

(b) the component parts of an air weapon described in paragraph (za) or (a)(i) or (ii).

(5) Other words and expressions used in this Part are defined in section 40.
Air weapon certificates

2 Requirement for air weapon certificate

(1) It is an offence for a person to use, possess, purchase or acquire an air weapon without holding an air weapon certificate.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(3) Schedule 1 contains exemptions from—

(a) the offence under subsection (1), and

(b) certain other offences under this Part.

(4) The Scottish Ministers may by regulations amend schedule 1 so as to—

(a) add further exemptions,

(b) remove or modify exemptions.

3 Application for grant or renewal of air weapon certificate

(1) An individual aged 14 years or more may apply to the chief constable for—

(a) the grant of an air weapon certificate, or

(b) the renewal of an air weapon certificate.

(2) An application is valid only if it complies with the requirements of—

(a) section 4 (verification of applications),

(b) if applicable, section 7 (special requirements and conditions for young persons), and

(c) any regulations under section 37 which apply to the application.

(3) The chief constable must maintain a register containing the details of each application made under this section (whether or not the application results in an air weapon certificate being granted or renewed).

4 Verification of applications

(1) An application for the grant or renewal of an air weapon certificate must be verified in the prescribed form and manner by an individual who meets the requirements of subsection (2) (“a verifier”).

(2) The requirements are that a verifier must—

(a) have known the applicant for at least 2 years,

(b) in the opinion of the chief constable, be of good standing in the community,

(c) not be—

(i) a relative of the applicant,

(ii) a registered firearms dealer,
(iii) a constable or a member of police staff,
(iv) a member of, or a member of staff of, the Scottish Police Authority, or
(v) ordinarily resident outwith the United Kingdom.

(3) In verifying the application, a verifier must confirm that, to the best of the verifier’s knowledge and belief, the information supplied in the application is correct.

5 Grant or renewal of air weapon certificate

(1) The chief constable may only grant or renew an air weapon certificate if satisfied that the applicant—

(a) is fit to be entrusted with an air weapon,
(b) is not prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act,
(c) has a good reason for using, possessing, purchasing or acquiring an air weapon, and
(d) in all the circumstances, can be permitted to possess an air weapon without danger to the public safety or to the peace.

(2) The chief constable may, when considering an application made under section 3 by an applicant who holds a firearm or shot gun certificate, treat paragraphs (a) and (b) of subsection (1) as being satisfied in relation to the applicant.

(3) The chief constable may, before determining an application made under section 3, require that the applicant permit a constable or member of police staff—

(a) to visit the applicant at the applicant’s usual place of residence,
(b) to inspect any place where the applicant intends to store or use an air weapon.

6 Air weapon certificate: conditions

(1) Every air weapon certificate is subject to any prescribed mandatory conditions.

(2) The chief constable may, when granting or renewing an air weapon certificate, attach conditions to the certificate (and, in the case of a renewal, may attach different conditions from those attached to the certificate prior to its renewal).

(3) The chief constable may not attach to an air weapon certificate a condition which is inconsistent with—

(a) a prescribed mandatory condition which applies to air weapon certificates, or
(b) a condition which must be attached to the certificate under this Part.

(4) It is an offence for a holder of an air weapon certificate to fail to comply with a condition attached to the holder’s certificate.

(5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

7 Special requirements and conditions for young persons

(1) This section applies where an applicant for an air weapon certificate is under the age of 18.
(2) A parent or guardian of the applicant must consent in the prescribed form and manner to the applicant making the application.

(3) Where the chief constable grants an air weapon certificate to an individual under the age of 18, the chief constable must attach to the certificate—

(a) the condition described in subsection (4), and

(b) one or more of the conditions described in subsection (5).

(4) The condition is that the holder may not purchase, hire, accept a gift of or own, an air weapon.

(5) The conditions are that—

(za) the holder may use and possess an air weapon only for sporting purposes (including shooting live quarry) on private land,

(a) the holder may use and possess an air weapon only for the purposes of target shooting on private land,

(b) the holder may use and possess an air weapon only for the purposes of participating in events or competitions,

(c) the holder may use and possess an air weapon only for the purposes of the holder’s membership of an approved air weapon club,

(d) the holder may use and possess an air weapon only for the purposes of protecting livestock, crops or produce on land used for or in connection with agriculture,

(e) the holder may use and possess an air weapon only for the purposes of pest control.

(6) It is sufficient, for the purposes of section 5(1)(c), for the chief constable to be satisfied that the applicant has a good reason for using or possessing an air weapon.

(7) For the purposes of this section, “agriculture” is to be construed in accordance with section 85 of the Agricultural Holdings (Scotland) Act 1991.

8 Duration of air weapon certificate

(1) An air weapon certificate expires (unless earlier revoked or cancelled)—

(a) in the case of a certificate granted to an individual under the age of 18, when the individual attains the age of 18,

(b) in any other case, at the end of the period of 5 years beginning with the date on which the certificate is granted or renewed.

(2) Where an individual has applied for the renewal of an air weapon certificate before its expiry but the chief constable has not, as at the date of its expiry, determined whether or not to grant the renewal, the certificate is to continue to have effect until the application is determined.

(3) The Scottish Ministers may by regulations amend subsection (1)(b) to specify a different period.

9 Alignment of different types of certificate

(1) Subsection (2) applies where an individual—

(a) holds a firearm or shot gun certificate, and
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(b) makes an application for the grant or renewal of an air weapon certificate under section 3.

(2) Where this subsection applies, the applicant may request that the chief constable grant or renew an air weapon certificate for such shorter period than is provided for in section 8 as is appropriate to secure that it expires on the same day as the applicant’s firearm or shot gun certificate (or, if the applicant holds both a firearm and shot gun certificate, either of them).

(3) Subsection (4) applies where an individual—
   (a) holds an air weapon certificate, and
   (b) makes an application for the grant or renewal of a firearm or shot gun certificate under the 1968 Act.

(4) Where this subsection applies, the applicant may make an application under section 3 of this Act for the air weapon certificate to be renewed as from the same day as that on which the firearm or shot gun certificate is granted or renewed.

10 Variation of air weapon certificate

(1) The chief constable may, by giving notice to the holder of an air weapon certificate—
   (a) vary the holder’s certificate,
   (b) attach conditions to the certificate, or
   (c) vary or revoke a condition attached to the certificate other than—
       (i) a prescribed mandatory condition which applies to air weapon certificates, or
       (ii) a condition which must be attached to the certificate under this Part.

(2) The chief constable may give a notice under subsection (1)—
   (a) on the application of the holder of an air weapon certificate, or
   (b) of the chief constable’s own accord (at any time).

(3) The chief constable may not attach to an air weapon certificate a condition which is inconsistent with—
   (a) a prescribed mandatory condition which applies to air weapon certificates, or
   (b) a condition which must be attached to the certificate under this Part.

(4) For the purposes of this section, the chief constable may by notice given to the holder of an air weapon certificate require the holder to produce the certificate within the period of 21 days beginning with the date on which the notice is given.

11 Revocation of air weapon certificate

(1) The chief constable must revoke an air weapon certificate if—
   (a) the chief constable is satisfied that the holder of the certificate can no longer be permitted to possess an air weapon without danger to the public safety or to the peace, or
   (b) the holder is prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.
(2) The chief constable may revoke an air weapon certificate if—

(a) the chief constable has reason to believe that the holder—

(i) is no longer a fit person to be entrusted with an air weapon, or

(ii) no longer has a good reason to use, possess, purchase or acquire an air weapon,

(b) the chief constable is satisfied that the holder of the certificate has failed to comply with a condition attached to the certificate, or

(c) the holder fails to produce the certificate when required to do so under section 10(4).

(3) An air weapon certificate is revoked by the chief constable giving notice to the holder of the certificate to that effect.

(4) A notice under subsection (3) must—

(a) be given at least 7 days before the date on which the revocation is to take effect, and

(b) require the holder to surrender the certificate and any air weapons that the holder possesses by such date as the chief constable may specify in the notice.

(5) It is an offence for a person, without reasonable excuse, to fail to comply with the requirements of a notice given under subsection (3).

(6) A person who commits an offence under subsection (5) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(7) In the event that the holder of an air weapon certificate makes an appeal under section 35 against a decision to revoke the holder’s certificate—

(a) the revocation does not take effect, but

(b) the holder must still surrender the certificate and any air weapons that the holder possesses in accordance with the requirements of the notice given under subsection (3), pending the determination or withdrawal of the appeal.

Permits

12 Police permits

(1) The chief constable may, on the application of an individual, grant a permit (“a police permit”) authorising the individual—

(a) to possess or acquire an air weapon without holding an air weapon certificate, or

(b) to sell (or expose for sale) an air weapon in the course of that individual’s business.

(2) A police permit must not be granted to an individual who is prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.

(3) A police permit expires (unless earlier revoked or cancelled) on the expiry date specified in the permit.

(4) An application for a police permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.
Visitor permits

(1) The chief constable may, on the application of a qualifying visitor, grant a permit (“a visitor permit”) authorising the visitor to use, possess, purchase or acquire an air weapon without holding an air weapon certificate for the period (or a part of it) that the qualifying visitor is in Scotland.

(2) A person may, on behalf of a group of 2 to 20 qualifying visitors, make an application to the chief constable for each member of the group to be granted a visitor permit.

(3) The chief constable may grant a visitor permit to some or all of the members of the group.

(4) The chief constable may grant a visitor permit only if satisfied—

(a) in the case of an individual application, that the qualifying visitor has a good reason for using, possessing, purchasing or acquiring an air weapon while visiting Scotland,

(b) in the case of a group application, that each qualifying visitor is to use and possess an air weapon while visiting Scotland only—

(i) for sporting purposes (including shooting live quarry) on private land,

(ii) for the purposes of target shooting on private land, or

(iii) for the purposes of participating in an event or competition,

(c) in every case—

(i) that the qualifying visitor can be permitted to possess an air weapon without danger to the public safety or to the peace, and

(ii) that the qualifying visitor is not prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.

(5) For the purposes of subsection (4)(b)(i) and (ii) the chief constable may require the applicant to produce evidence that the owner or occupier of the land consents to the visitors’ intended use or possession of air weapons on the land.

(6) Except where section 14 applies, the chief constable must, on granting a visitor permit in respect of a group application, attach to the permit as a condition that the holder of the permit may use and possess an air weapon only for such of the purposes described in subsection (4)(b) as the chief constable may specify in the condition.

(7) A visitor permit expires (unless earlier revoked or cancelled) on the expiry date specified in the permit.

(8) No visitor permit is to be granted for a period of longer than 12 months.

(9) An application for a visitor permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.

(10) For the purposes of this section and section 14—

“group application” means an application under subsection (2) for visitor permits made by a person on behalf of qualifying visitors in a group,

“individual application” means an application under subsection (1) for a visitor permit made by the qualifying visitor,

“qualifying visitor” means an individual who is—
(a) aged 14 years or more,
(b) not ordinarily resident in Scotland, and
(c) visiting (or intending to visit) Scotland.

14 Visitor permits: young persons

(1) This section applies—
(a) where an individual applicant for a visitor permit is under the age of 18,
(b) in respect of any individual who is—
(i) under the age of 18, and
(ii) on whose behalf a visitor permit is applied for as part of a group application.

(2) A parent or guardian of the applicant or individual under the age of 18 must consent in the prescribed form and manner to the making of the application.

(3) The chief constable must, on granting a visitor permit in respect of an individual application, attach to the permit—
(a) the condition described in section 7(4), and
(b) one or more of the conditions described in subsection (5) of that section.

(4) The chief constable must, on granting a visitor permit in respect of a group application, attach to the permit—
(a) the condition described in section 7(4), and
(b) one or more of the conditions described in paragraphs (za) to (b) of subsection (5) of that section.

(5) It is sufficient, for the purposes of section 13(4)(a), for the chief constable to be satisfied that the applicant has a good reason for using or possessing an air weapon.

15 Police and visitor permits: conditions

(1) Every police permit and visitor permit is subject to any prescribed mandatory conditions.

(2) The chief constable may, when granting a police permit or a visitor permit, attach conditions to the permit.

(3) The chief constable may not attach to a police permit or a visitor permit a condition which is inconsistent with—
(a) a prescribed mandatory condition which applies to police permits or, as the case may be, visitor permits, or
(b) a condition which must be attached to the permit under this Part.

(4) It is an offence for the holder of a police permit or a visitor permit to fail to comply with a condition attached to the permit.

(5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
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16 Police and visitor permits: variation and revocation

(1) The chief constable may, by giving notice to the holder of a police permit or a visitor permit—

(a) vary the permit,

(b) attach conditions to the permit,

(c) vary or revoke a condition attached to the permit other than—

(i) a prescribed mandatory condition which applies to the permit, or

(ii) a condition which must be attached to a permit under this Part, or

(d) revoke the permit.

(2) The chief constable may give a notice under subsection (1)—

(a) on the application of the holder of a police permit or visitor permit, or

(b) of the chief constable’s own accord (at any time).

(3) The chief constable may not attach to a police permit or a visitor permit a condition which is inconsistent with—

(a) a prescribed mandatory condition which applies to police permits or, as the case may be, visitor permits, or

(b) a condition which must be attached to the permit under this Part.

(4) For the purposes of paragraphs (a) to (c) of subsection (1), the chief constable may by giving notice to the holder of a police permit or a visitor permit require the holder to produce the permit within the period of 21 days beginning with the date on which the notice is given.

(5) A notice given under subsection (1) which revokes a police permit or a visitor permit must—

(a) be given at least 7 days before the date on which the revocation is to take effect, and

(b) require the holder of the permit to surrender the permit and any air weapons that the holder possesses by such date as the chief constable may specify in the notice.

(6) It is an offence for the holder of a police permit or a visitor permit, without reasonable excuse, to fail to comply with a requirement contained in a notice under subsection (1).

(7) An individual who commits an offence under subsection (6) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(8) In the event that the holder of a police permit or a visitor permit makes an appeal under section 35 against a decision to revoke the holder’s permit—

(a) the revocation does not take effect, but

(b) the holder must still surrender the permit and any air weapons that the holder possesses in accordance with the requirements of the notice given under subsection (1), pending the determination or withdrawal of the appeal.
Event permits

(1) The chief constable may, on the application of a person ("the organiser") who is organising or otherwise responsible for an event, grant a permit authorising individuals at the event to borrow, hire, use and possess air weapons while engaging in an event activity without holding an air weapon certificate ("an event permit").

(2) The chief constable may, when granting an event permit, attach conditions to it.

(3) The organiser must ensure that the event permit (or a copy of it) is prominently displayed at the event so as to be capable of being read by any person attending the event.

(4) It is an offence for the organiser—
   (a) to fail to comply with a condition attached to the event permit, or
   (b) without reasonable excuse, to fail to comply with subsection (3).

(5) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(6) An application for an event permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.

(7) For the purposes of this section, an "event activity" is an activity—
   (a) involving the use and possession of air weapons by individuals, and
   (b) which has been planned by (or on behalf of) the organiser as part of the event.

Approval of air weapon clubs

(1) The chief constable may, on the application of an air weapon club, grant or renew an approval of the club.

(2) An application for the grant or renewal of an approval of an air weapon club is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.

(3) The chief constable may, at any time by giving notice to an approved air weapon club, withdraw the club’s approval.

(4) Every approval of an air weapon club is subject to any prescribed mandatory conditions.

(5) The chief constable may, when granting or renewing an approval, attach conditions to the approval (and in the case of a renewal, may attach different conditions from those attached to the approval prior to its renewal).

(6) The chief constable may not attach to an approval a condition which is inconsistent with a prescribed mandatory condition which applies to approvals.

Variation of approval

(1) The chief constable may, by giving notice in writing to an approved air weapon club—
   (a) vary the club’s approval,
   (b) attach conditions to the club’s approval, or
(c) vary or revoke a condition attached to the club’s approval other than a prescribed mandatory condition which applies to approvals.

(2) The chief constable may give a notice under subsection (1)—
   (a) on the application of the approved air weapon club, or
   (b) of the chief constable’s own accord (at any time).

(3) The chief constable may not attach to an approval a condition which is inconsistent with a prescribed mandatory condition which applies to approvals.

20 Duration of approval

(1) An approval of an air weapon club expires (unless earlier withdrawn) at the end of the period of 6 years beginning with the date on which the approval is granted or renewed.

(2) Where an approved air weapon club has applied for the renewal of its approval before its expiry but the chief constable has not, as at the date of its expiry, determined whether or not to grant the renewal, the approval is to continue to have effect until the application is determined.

(3) The Scottish Ministers may by regulations amend subsection (1) to specify a different period.

21 Alignment of club approvals

(1) Subsection (2) applies where an air weapon club—
   (a) is approved as a rifle club under section 15 of the Firearms (Amendment) Act 1988 (“the 1988 Act”), and
   (b) makes an application for the grant or renewal of an approval under section 18(1) of this Act.

(2) Where this subsection applies, the club may request that the chief constable grant or renew its approval under section 18(1) of this Act for such shorter period than is provided for in section 20(1) of this Act as is appropriate to secure that it expires on the same day as the club’s approval under section 15 of the 1988 Act.

(3) Subsection (4) applies where a club—
   (a) is an approved air weapon club, and
   (b) makes an application for the grant or renewal of an approval as a rifle club under section 15 of the 1988 Act.

(4) Where this subsection applies, the club may make an application under section 18(1) of this Act for the club’s approval to be renewed as from the same day as that on which the club’s application for approval under section 15 of the 1988 Act is granted or renewed.

22 Power to enter and inspect club premises

(1) The chief constable may, for the purposes of ascertaining whether the provisions of this Part or any conditions attached to an approved air weapon club’s approval are being complied with, authorise a constable or a member of police staff—
   (a) to enter any club premises of an approved air weapon club, and
(b) to inspect those premises and anything on them which is relevant to the purposes for which the authorisation was granted.

(2) The power of a constable or a member of police staff under subsection (1)(b) to inspect anything on club premises includes power to require any information which is stored in electronic form and accessible from the premises to be produced in a form which is visible and legible.

(3) A constable or a member of police staff may exercise the powers of entry conferred by this section only at a reasonable time, unless it appears to the constable or member of police staff that the purposes of entering the club premises may be frustrated if the constable or member of police staff seeks to enter at a reasonable time.

(4) A constable or a member of police staff must, if asked, produce the authorisation before entering any premises under this section.

(5) The chief constable may delegate the power to grant an authorisation under subsection (1) only to a constable who holds the rank of inspector or above.

(6) It is an offence for a person to obstruct intentionally a constable or a member of police staff in the exercise of the constable’s or member of police staff’s powers under an authorisation granted under this section.

(7) A person who commits an offence under subsection (6) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(8) In this section, “club premises”, in relation to an approved air weapon club, means any premises, other than a dwelling, occupied or used by the club.

23 Requirements for recreational shooting facilities

(1) A person who operates a recreational shooting facility must—

(a) hold or (if not an individual) ensure that an individual responsible for the management and operation of the facility holds, an air weapon certificate, and

(b) at all times that the facility is in use, display the certificate (or a copy of it) prominently on the facility so as to be capable of being read by anyone considering whether to use the facility.

(2) It is an offence for a person who operates a recreational shooting facility—

(a) to fail to comply with subsection (1)(a), or

(b) without reasonable excuse, to fail to comply with subsection (1)(b).

(3) A person who commits an offence under subsection (2) is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

(4) In this section, “recreational shooting facility” means—

(a) a miniature rifle range or a shooting gallery at which air weapons are used, or

(b) a facility for combat games which involve using an air weapon, which is operated with a view to making a profit.

(5) This section does not apply to an approved air weapon club.
Restrictions on transactions involving air weapons

(1) It is an offence for a person other than a registered firearms dealer, by way of trade or business, to—

(a) manufacture, sell, transfer, repair or test an air weapon,
(b) expose an air weapon for sale or transfer, or
(c) possess an air weapon for the purposes of its sale, transfer, repair or testing.

(2) It is an offence for a person (“A”) to sell or transfer an air weapon to another person (“B”) unless—

(a) B is a registered firearms dealer,
(b) B holds an air weapon certificate (without a condition attached to it preventing B from purchasing or acquiring an air weapon) and shows it to A,
(c) A is a registered firearms dealer and is satisfied that—
(i) in a case where B is an individual, B is aged 18 years or more, and
(ii) the air weapon is to be delivered to a place outwith Great Britain, or to a registered firearms dealer in England or Wales, without first coming into B’s possession, or
(d) B provides evidence to A that B is otherwise entitled to purchase or acquire an air weapon without holding an air weapon certificate by virtue of the provisions of this Part.

(3) It is an offence for a person (“A”) to manufacture, repair or test an air weapon for another person (“B”) unless—

(a) B is a registered firearms dealer,
(b) B holds an air weapon certificate and shows it to A, or
(c) B provides evidence to A that B is otherwise entitled to possess an air weapon without holding an air weapon certificate by virtue of the provisions of this Part.

(4) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

Requirement for commercial sales of air weapons to be in person

(1) This section applies where a person (“the seller”) sells an air weapon by way of trade or business to an individual in Great Britain who is not a registered firearms dealer.

(2) It is an offence for the seller, for the purposes of the sale, to transfer possession of the weapon to the purchaser otherwise than at a time when both the purchaser and the seller (or a representative of the seller) are present in person.

(3) The reference in subsection (2) to a representative of the seller is a reference to—

(a) a person who is employed by the seller in the seller’s business as a registered firearms dealer,
(b) a registered firearms dealer (“A”) who has been authorised by the seller to act on
the seller’s behalf in relation to the sale, or

(c) a person who is employed by A in A’s business as a registered firearms dealer.

(4) A person who commits an offence under this section is liable, on summary conviction,
to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on
the standard scale (or both).

Enforcement

27 Power of search with warrant

(1) A sheriff may, on the application of a constable or a member of police staff, grant a
warrant to the applicant under this section if satisfied, by evidence on oath, that there is
a reasonable ground for suspecting—

(a) that an air weapon offence has been, is being, or is about to be committed, or

(b) that, in connection with an air weapon, there is a danger to the public safety or to
the peace.

(2) A warrant under this section may authorise a constable or a member of police staff—

(a) to enter at any time any place named in the warrant, if necessary by force, and to
search the place and every person found there,

(b) to seize and detain anything that the constable or member of police staff may find
at the place, or on any such person, in respect of which or in connection with
which the constable or member of police staff has a reasonable ground for
suspecting—

(i) that an air weapon offence has been, is being or is about to be committed,
or

(ii) that in connection with an air weapon there is a danger to the public safety
or to the peace.

(3) The power of a constable or a member of police staff under subsection (2)(b) to seize
and detain anything found at any place, or on any person found there, includes power to
require any information which is stored in any electronic form and is accessible from the
place or by the person to be produced in a form—

(a) which is visible and legible and can be taken away, or

(b) from which it can be readily produced in a visible and legible form and can be
taken away.

(4) It is an offence for an individual to obstruct intentionally a constable or member of
police staff in the exercise of the constable’s or member of police staff’s powers under a
warrant granted under this section.

(5) An individual who commits an offence under subsection (4) is liable, on summary
conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding
level 5 on the standard scale (or both).

28 Production of air weapon certificate

(1) A constable may require a person whom the constable believes to be in possession of an
air weapon to produce—

- a registered firearms dealer (“A”) who has been authorised by the seller to act on
  the seller’s behalf in relation to the sale, or
- a person who is employed by A in A’s business as a registered firearms dealer.

A person who commits an offence under this section is liable, on summary conviction,
to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on
the standard scale (or both).
(a) the person’s air weapon certificate, or
(b) evidence that the person is entitled to possess an air weapon without holding an
air weapon certificate by virtue of the provisions of this Act.

(2) Where a person fails to produce the air weapon certificate or evidence required under
subsection (1), the constable may—
(a) seize and detain the air weapon, and
(b) require the person to provide (immediately) the person’s name and address.

(3) It is an offence for a person—
(a) to fail to comply with a requirement under subsection (2)(b), or
(b) to provide a false name or address.

(4) A person who commits an offence under subsection (3) is liable, on summary
conviction, to a fine not exceeding level 3 on the standard scale.

29 Cancellation of air weapon certificate

(1) Subsection (2) applies where an individual (“A”) holding an air weapon certificate—
(a) is convicted of—
(i) an air weapon offence,
(ii) an offence under the 1968 Act, or
(iii) an offence for which A is sentenced to imprisonment or to detention in a
young offenders’ institution,
(b) has been ordered to keep the peace or to be of good behaviour and, as a condition
of that, is not to possess, carry or use an air weapon or other firearm,
(c) is subject to a community payback order under section 227A of the Criminal
Procedure (Scotland) Act 1995 which contains a requirement not to possess, carry
or use an air weapon or other firearm, or
(d) has been ordained to find caution and as a condition of that, is not to possess,
carry or use an air weapon or other firearm.

(2) Where this subsection applies, the court by or before which A is convicted, or which
imposes the condition or requirement, may cancel the air weapon certificate held by A.

(3) Where the court cancels an air weapon certificate under this section—
(a) the court must notify the chief constable of the cancellation, and
(b) the chief constable must, by notice given to A, require A to surrender A’s air
weapon certificate within the period of 21 days beginning with the date the notice
is given.

(4) It is an offence for an individual, without reasonable excuse, to fail to comply with the
requirements of a notice under subsection (3)(b).

(5) An individual who commits an offence under subsection (4) is liable, on summary
conviction, to a fine not exceeding level 3 on the standard scale.

30 Forfeiture and disposal of air weapons

(1) Subsection (2) applies where a person (“A”) is convicted of an air weapon offence.
(2) Where this subsection applies, the court by or before which A is convicted may make such order as to the forfeiture or disposal of any air weapon found in A’s possession as the court thinks fit.

(3) A constable may seize and detain an air weapon which may be the subject of an order for forfeiture under this section or which, but for subsection (5), could be the subject of such an order.

(4) A sheriff may, on an application of the chief constable, order the disposal (by any means the chief constable thinks fit) of any air weapon seized and detained by a constable under this Part.

(5) No order is to be made under subsection (2) or (4) for the forfeiture or disposal of an air weapon which is possessed for the purposes of a museum.

(6) Subsection (7) applies where—

(a) an air weapon is surrendered in pursuance of—

(i) a notice given under section 11(3) which revokes an individual’s air weapon certificate, or

(ii) a notice given under section 16(1) which revokes an individual’s police permit or visitor permit, and

(b) the individual appeals against the decision to revoke the individual’s air weapon certificate, police permit or, as the case may be, visitor permit (and does not withdraw that appeal prior to its determination).

(7) Where this subsection applies—

(a) if the appeal is successful, the air weapon must be returned,

(b) if the appeal is dismissed, the sheriff may make such order for the disposal of the air weapon as the sheriff considers appropriate.

(8) Subsection (9) applies where—

(a) an air weapon is surrendered in pursuance of—

(i) a notice given under section 11(3) which revokes an individual’s air weapon certificate, or

(ii) a notice given under section 16(1) which revokes an individual’s police permit or visitor permit, and

(b) the individual—

(i) does not appeal against the decision to revoke the individual’s air weapon certificate, police permit or, as the case may be, visitor permit, or

(ii) makes and subsequently withdraws an appeal against such a decision.

(9) Where this subsection applies, the air weapon is to be disposed of—

(a) in such manner as the chief constable and the owner of the weapon may agree, or

(b) in default of such agreement, in such manner as the chief constable may decide.

(10) Where the chief constable decides to dispose of an air weapon under subsection (9)(b), the chief constable must give the owner notice of the decision.
Offences

31 Failure to keep air weapons secure or to report loss to police

(1) It is an offence for a person—

(a) to fail to take reasonable precautions for the safe custody of an air weapon possessed by the person, or

(b) to fail to report as soon as reasonably practicable to the chief constable the loss or theft of an air weapon possessed by the person.

(2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

32 False statements, certificates and permits

(1) It is an offence for an individual to knowingly or recklessly make any statement which is false in any material particular for the purposes of procuring (either personally or for another person)—

(a) the grant, renewal or variation of an air weapon certificate,

(b) the grant or variation of a police or visitor permit,

(c) the grant of an event permit, or

(d) the grant, renewal or variation of an approval of an air weapon club.

(2) It is an offence for an individual, with a view to purchasing, acquiring or procuring the repair or testing of an air weapon—

(a) to produce a false air weapon certificate, police permit or visitor permit,

(b) to produce an air weapon certificate, police permit or visitor permit which has been improperly altered, or

(c) to knowingly or recklessly make a statement which is false in a material particular.

(3) An individual who commits an offence under this section is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

33 Time limit for offences

Section 136 of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences) applies to an air weapon offence which is triable only summarily as if the references in subsection (1) of that section to 6 months were to 36 months (and subsection (2) of that section were omitted).

34 Offences by bodies corporate etc.

(1) Subsection (2) applies where—

(a) an offence under this Part has been committed by—

(i) a body corporate,

(ii) a Scottish partnership, or

(iii) an unincorporated association other than a Scottish partnership, and
(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate (other than a limited liability partnership)—

(i) a director, manager, secretary or similar officer of the body,

(ii) where the affairs of the body are managed by its members, a member,

(b) in relation to a limited liability partnership, a member,

(c) in relation to a Scottish partnership, a partner,

(d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

**General**

### Appeals

(1) A person aggrieved by a decision of the chief constable under a section listed in subsection (2) may appeal against the decision to the appropriate sheriff.

(2) The sections are—

(a) section 5(1) (grant or renewal of air weapon certificate),

(b) section 6(2) (air weapon certificates: conditions),

(c) section 7(3)(b) (special requirements and conditions for young person’s air weapon certificate),

(d) section 10(1) (variation of air weapon certificate),

(e) section 11(1)(a) or (2) (revocation of air weapon certificate),

(f) section 12(1) (police permits),

(g) section 13(1) or (6) (visitor permits),

(h) section 14(3)(b) or (4)(b) (visitor permits: young persons),

(i) section 15(2) (police and visitor permits: conditions),

(j) section 16(1) (police and visitor permits: variation and revocation),

(k) section 17(1) or (2) (event permits),

(l) section 18(1), (3) or (5) (approval of air weapon clubs),

(m) section 19(1) (variation of approval for air weapon club),

(n) section 30(9)(b) (forfeiture and disposal of air weapons).

(3) An appeal must be made within the period of 21 days beginning with the date on which the decision appealed against was made.
(4) An appeal under this section is to be determined on the merits (and not by way of review).

(5) The sheriff hearing the appeal may consider any evidence or other matter, whether or not it was available at the time the chief constable made the decision appealed against.

(6) On determining the appeal, the sheriff may—
   (a) dismiss the appeal,
   (b) give the chief constable such direction as the sheriff considers appropriate as respects the matter which is the subject of the appeal.

(7) The decision of the sheriff may be appealed against only on a point of law.

(8) In this section, “the appropriate sheriff” means—
   (a) in a case where the appellant resides in Scotland, a sheriff of the sheriffdom in which the appellant resides, or
   (b) in a case where the appellant resides outwith Scotland, a sheriff of the sheriffdom of Lothian and Borders, sitting at Edinburgh.

36 **Fees**

(1) The Scottish Ministers may by regulations make provision for the charging of fees by the chief constable—
   (a) in respect of applications under this Part, and
   (b) otherwise in respect of the performance of functions by the chief constable under this Part.

(2) Regulations under subsection (1) may—
   (a) specify different fees for different circumstances,
   (b) specify circumstances in which no fee is payable,
   (c) provide for fees to be determined by reference to such factors (including the value of money) as may be specified in the regulations.

(3) Where regulations under subsection (1) provide for a fee to be charged in respect of an application under this Part, the application is valid only when the fee is paid.

(4) Nothing in this section limits the generality of section 75.

37 **Power to make further provision**

(1) The Scottish Ministers may by regulations make further provision for the purposes of this Part.

(2) Without limiting that generality (or the generality of section 75), regulations under subsection (1) may—
   (a) make provision about the application processes under this Part (for example, prescribing the form and content of applications, any required supporting documentation or making further provision about the verification of applications),
   (b) make provision in relation to air weapon certificates, police permits, visitor permits, event permits and approvals of air weapon clubs (for example, prescribing their form and content or the conditions which may or must be attached to them).
37A  Crown application

(1) No contravention of any provision made by or under this Part makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), any provision made by or under this Part applies to a person in the public service of the Crown as it applies to other persons.

38  Transitional arrangements for existing certificate holders

(1) This section applies where, on the day on which section 2(1) comes into force, a person aged 14 years or more holds a firearm certificate or a shot gun certificate (“the existing certificate”).

(2) It is not an offence under section 2(1) for the person to use and possess an air weapon without holding an air weapon certificate for the duration of the transitional period.

(3) The person must, in relation to such use or possession, comply with—

(a) any prescribed mandatory conditions which apply to the use and possession of air weapons, and

(b) if the person is under the age of 18, the conditions mentioned in section 7(5).

(4) A person who fails to comply with a condition mentioned in subsection (3) commits an offence.

(5) But it is not an offence under subsection (4) for a person to fail to comply with a condition mentioned in subsection (3) if—

(a) the person is entitled to use or possess an air weapon by virtue of an exemption under schedule 1, and

(b) the failure relates to the use or possession of an air weapon in accordance with the exemption.

(6) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(7) In this section, the “transitional period” means, in relation to an existing certificate, the period—

(a) beginning with the day on which section 2(1) comes into force, and

(b) ending with (the earlier of)—

(i) the day on which the existing certificate is, or falls to be, renewed, or

(ii) the day on which the existing certificate is surrendered, cancelled or revoked.

(8) For the purposes of subsection (7)(b)(i), where a person holds both a firearm certificate and a shot gun certificate, the existing certificate is the certificate which is, or which falls to be, renewed later.

(9) For the purposes of subsection (7)(b)(ii), where a person holds both a firearm certificate and a shot gun certificate—
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(a) the surrender of one of the certificates does not end the transitional period, but
(b) the cancellation or revocation of either certificate ends the transitional period.

(10) For the purposes of paragraph 16 of schedule 1, this section is to be treated as if it were an exemption under that schedule.

39 Guidance

(1) The chief constable must, in exercising any function under this Part, have regard to any guidance issued by the Scottish Ministers.

(2) The Scottish Ministers must publish any guidance they issue for the purposes of this Part.

(3) The Scottish Ministers may revise and revoke such guidance.

40 Interpretation of Part 1

(1) In this Part, unless the context otherwise requires—

“the 1968 Act” means the Firearms Act 1968,
“acquire” means hire, accept as a gift or borrow and “acquisition” is to be construed accordingly,
“air weapon” is to be construed in accordance with section 1,
“air weapon certificate” means an air weapon certificate granted under section 5(1),
“air weapon club” means an association of individuals which has as a purpose the activity of target shooting with air weapons,
“air weapon offence” means any offence under this Part,
“approval”, in relation to an air weapon club, means an approval granted to the club under section 18(1),
“approved air weapon club” means an air weapon club which has been granted an approval by the chief constable under section 18(1),
“chief constable” means the chief constable of the Police Service of Scotland,
“condition” includes requirement and restriction,
“constable” has the meaning given in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,
“event permit” means a permit granted under section 17(1),
“firearm certificate” is to be construed in accordance with section 57(4) of the 1968 Act,
“guardian”, in relation to an individual, means a person appointed by deed or will or by a court of competent jurisdiction to be the guardian of the individual,
“member of police staff” means an individual appointed under section 26 of the Police and Fire Reform (Scotland) Act 2012,
“member of staff of the Scottish Police Authority” means an individual appointed under paragraph 6(1) of schedule 1 to the Police and Fire Reform (Scotland) Act 2012,
“miniature rifle range” is to be construed in accordance with section 11 of the 1968 Act,

“museum” means a museum or similar institution which has as its purpose, or one of its purposes, the preservation for the public benefit of a collection of historical, artistic or scientific interest which is maintained wholly or mainly out of money provided by Parliament, a Minister of the Crown, the Scottish Ministers or a local authority,

“police permit” means a permit granted under section 12(1),

“prescribed” means any place and includes a vehicle, vessel or moveable structure,

“registered firearms dealer” means a person registered as a firearms dealer under section 33 of the 1968 Act,

“relative”, in relation to an individual, means—

(a) the spouse, civil partner, parent, stepparent, child, stepchild, grandparent or grandchild of the individual or of the individual’s spouse, former spouse, civil partner or former civil partner, or

(b) the sibling, uncle, aunt, nephew or niece (whether of the full blood or of the half blood or by affinity) of the individual or the individual’s spouse, former spouse, civil partner or former civil partner,

and includes, in relation to an individual who is living or has lived with another individual as if they were spouses or civil partners, any individual who would fall within paragraph (a) or (b) if the parties were married or civilly partnered to each other,

“shot gun certificate” is to be construed in accordance with section 57(4) of the 1968 Act,

“transfer” includes let on hire, give, lend and part with possession,

“visitor permit” means a permit granted under section 13(1).

(2) In this Part, a reference to an individual holding an air weapon certificate, a police permit or a visitor permit is a reference to an individual holding an air weapon certificate, police permit or, as the case may be, visitor permit—

(a) granted to the individual under section 5, 12 or, as the case may be, 13 and

(b) which has not expired or been revoked or cancelled.

(3) In this Part, a reference to a condition attached to an air weapon certificate, police permit, visitor permit, event permit or approval of an air weapon club includes a reference to any condition to which the certificate, permit or as the case may be, approval is subject by virtue of this Act.

(4) Any expression used in this Part which is also used in an Act listed in subsection (5) is, unless the context otherwise requires, to be construed in accordance with any decisions or opinions of a court interpreting the expression for the purposes of the Act.

(5) The Acts are—

(a) the 1968 Act,

(b) the Firearms (Amendment) Act 1988, and
(c) the Firearms (Amendment) Act 1997.

**PART 2**

**ALCOHOL LICENSING**

**Licensing objectives**

41 **Licensing objectives: protecting young persons from harm**

In section 4 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) (the licensing objectives), in subsection (1)(e), after “children” insert “and young persons”.

**Statements of licensing policy**

42 **Statements of licensing policy: licensing policy periods**

In section 6 of the 2005 Act (statements of licensing policy)—

(a) in subsection (1), for “3 year period” substitute “licensing policy period”,

(b) in subsection (2), for “3 year period” substitute “licensing policy period”,

(c) after subsection (3) insert—

“(3ZA) A Licensing Board may, in preparing a licensing policy statement, decide that the licensing policy period to which the statement relates is to begin on a date earlier than it otherwise would under subsection (7).

(3ZB) Where a Licensing Board make a decision under subsection (3ZA) they must, when publishing the licensing policy statement under subsection (6), publicise the date on which they have decided the licensing policy period is to begin."

(d) in subsection (4), for “3 year period” substitute “licensing policy period”,

(e) for subsection (7) substitute—

“(7) Subject to subsection (3ZA), in this section, “licensing policy period” means the period between each relevant date.

(8) For the purposes of subsection (7), “relevant date” means the date occurring 18 months after an ordinary election of councillors for local government areas takes place under section 5 of the Local Government etc. (Scotland) Act 1994.”.

**Fit and proper person test**

43 **Premises licence application: ground for refusal**

(A1) The 2005 Act is amended as follows.

(A2) In section 22 (objections and representations)—

(a) after subsection (1) insert—

“(1A) A person giving a notice under subsection (1) may include in the notice any information that the person considers may be relevant to consideration by the Board of any ground for refusal including, in particular, information in relation to—

(a) the applicant,

...
(b) where the applicant is neither an individual nor a council, a connected person in relation to the applicant, or
(c) any person who would be an interested party in relation to the subject premises if the application were to be granted.”,

(b) in subsection (3)(b), after “representation” insert “(including any information included under subsection (1A))”.

(A3) In section 23 (determination of premises licence application)—

(a) in subsection (5)—

(i) after paragraph (b) insert—

“(ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence,”,

(ii) in paragraph (c), after “would” insert “otherwise”,

(b) in subsection (6), for the words “the granting of the application would be inconsistent with one or more of the licensing objectives,” substitute “either of the grounds of refusal specified in subsection (5)(ba) and (c) applies,”,

(c) in subsection (8)(b), for “(5)(c)” substitute “(5)(ba) or (c)”.}

44 Application to transfer premises licence: ground for refusal

(1) The 2005 Act is amended as follows.

(2) In section 33 (transfer on application of licence holder)—

(a) after subsection (7) insert—

“(7A) On giving a notice under subsection (6)(a) or (b), the chief constable may also provide to the Licensing Board any information in relation to—

(a) the transferee,

(b) where the transferee is neither an individual nor a council, a connected person, or

(c) any person who would be an interested party in relation to the licensed premises if the application for the transfer of the licence to the transferee were to be granted,

that the chief constable considers may be relevant to consideration by the Board of the application.”,

(b) in subsection (8)—

(i) the word “and” immediately following paragraph (a) is repealed,

(ii) after paragraph (b) insert “, and

(c) no information has been provided under subsection (7A),”,

(c) in subsection (10)—

(i) after “notice” insert “and any information provided under subsection (7A)”,

(ii) in paragraph (a), for the words from “it” to “objectives” substitute “a ground for refusal applies”,

5
(d) after subsection (10) insert—

“(11) The grounds for refusal are—

(a) that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence,

(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.”.

45 Ground for review of premises licence

(1) The 2005 Act is amended as follows.

(2) In section 36 (application for review of premises licence)—

(a) in subsection (3), before paragraph (a) insert—

“(za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence,”,

(b) in subsection (5), before paragraph (a) insert—

“(za) where the ground is that specified in subsection (3)(za), a summary of the information on which the applicant’s view that the alleged ground applies is based,”,

(c) after subsection (5) insert—

“(5A) A person making a premises licence review application may include in the application any information that the applicant considers may be relevant to consideration by the Licensing Board of the alleged ground for review including, in particular, information in relation to—

(a) the licence holder,

(b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or

(c) any person who is an interested party in relation to the licensed premises.”.

(3) In section 37 (review of premises licence on Licensing Board’s initiative)—

(a) in subsection (4), before paragraph (a) insert—

“(za) where the ground is that specified in section 36(3)(za), a summary of the information on which the Board’s view that the alleged ground applies is based,”,

(b) after subsection (4) insert—

“(5) A Licensing Board making a premises licence review proposal may include in the proposal any information that the Board considers may be relevant to their consideration of the alleged ground for review including, in particular, information in relation to—

(a) the licence holder,

(b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or

(c) any person who is an interested party in relation to the licensed premises.”.
(4) In section 39 (Licensing Board’s powers on review)—

(a) after subsection (1), insert—

“(1A) Subsection (1) is subject to subsection (2A).”,

(b) after subsection (2), insert—

“(2A) Where, at a review hearing in relation to any premises licence, the Licensing Board are satisfied that the ground for review specified in section 36(3)(za) is established, the Board must revoke the licence.

(2B) Subject to section 39B, a revocation under subsection (2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision.”.

(5) In section 39A (notification of determinations), in subsection (1)—

(a) the word “or” immediately following paragraph (a) is repealed,

(b) after paragraph (b), insert “, or

(c) decides to revoke a premises licence under section 39(2A),”.

(5A) After section 39A insert—

“39B Recall of revocation of licence under section 39(2A)

(1) This section applies where a Licensing Board decides to revoke a premises licence under section 39(2A).

(2) The Board must recall the revocation if—

(a) a relevant application is made before the end of the period referred to in section 39(2B) (“the 28 day period”), and

(b) the Board grants the application.

(3) The Board may extend the 28 day period pending determination of a relevant application.

(4) In this section, “relevant application” means—

(a) an application under section 33(1) for the transfer of the premises licence, or

(b) a premises licence variation application seeking a variation of the licence that the Board considers would remove the ground on which the licence was revoked under section 39(2A).

(5) This section does not affect the right to appeal against the decision to revoke the licence under section 39(2A).”.

(6) In Part 1 of schedule 5 (appeals to the sheriff principal), in the entry in the left-hand column relating to a decision under section 39(1), after “39(1)” insert “or (2A)”.

46 Personal licence applications and renewals: ground for refusal

(1) The 2005 Act is amended as follows.

(2) In section 73 (notification of application to the chief constable), after subsection (4) insert—
“(5) On giving a notice under subsection (3)(a) or (b), the chief constable may also provide to the Licensing Board any information in relation to the applicant that the chief constable considers may be relevant to consideration by the Board of the application.”.

(3) After section 73 of the 2005 Act insert—

“73A Notification of application to Licensing Standards Officer

(1) Where a Licensing Board receive a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board’s area.

(2) A Licensing Standards Officer may, within 21 days of the date of receipt of a notice under subsection (1), respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration by the Board of the application.”.

(4) In section 74 (determination of personal licence application)—

(a) in subsection (2), after paragraph (c) insert—

“(ca) no information has been provided under section 73(5) or 73A(2),”,

(b) after subsection (5A) insert—

“(5AA) If—

(a) all of those conditions are met in relation to the applicant,

(b) the notice received from the chief constable under subsection (3)(a) or (b) of section 73 does not include a recommendation under subsection (4) of that section, and

(c) information has been provided under subsection (5) of that section or under section 73A(2),

the Board may hold a hearing for the purpose of considering and determining the application.”,

(c) in subsection (5B), after “(5A)” insert “or (5AA)”,

(d) in subsection (6)—

(i) for “(5) or (5A)” substitute “(5), (5A) or (5AA)”,

(ii) after “notice” insert “and any information provided under section 73(5) or 73A(2)”,

(iii) in paragraph (a), for the words from “it” to “objectives” substitute “a ground for refusal applies”,

(e) after subsection (6) insert—

“(6A) The grounds for refusal are—

(a) that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence,

(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.”.

(5) In section 78 (renewal of personal licence), in subsection (5), for “73 and 74” substitute “73, 73A and 74”.
47 Personal licence holders: procedure on receipt of notice of conviction

(1) The 2005 Act is amended as follows.

(2) In section 83 (procedure where Licensing Board receive notice of conviction)—

(a) after subsection (8), insert—

“(8A) Subsection (8) is subject to subsection (9A).”,

(b) after subsection (9), insert—

“(9A) Where, at the hearing, the Licensing Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.”,

(c) in subsection (10), after “(9)” insert “or (9A)”.

(3) In Part 2 of schedule 5 (appeals to the sheriff), in the entry in the left-hand column relating to a decision to make an order under section 83(9), 84(7) or 86(3), for “83(9)” substitute “83(9) or (9A)”.

48 Personal licence holders: conduct inconsistent with the licensing objectives

(1) The 2005 Act is amended as follows.

(2) In section 84 (conduct inconsistent with the licensing objectives)—

(a) after subsection (6), insert—

“(6A) Subsection (6) is subject to subsection (7A).”,

(b) after subsection (7), insert—

“(7A) Where, at the hearing, the Licensing Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.”,

(c) in subsection (8), after “(7)” insert “or (7A)”.

(3) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives), in subsection (3), for “(6), (7)” substitute “(6), (6A), (7), (7A)”.

(4) In Part 2 of schedule 5 (appeals to the sheriff), in the entry in the left-hand column relating to a decision to make an order under section 83(9), 84(7) or 86(3), for “84(7)” substitute “84(7) or (7A)”.

Transfer of premises licences

48A Transfer of premises licences

(1) The 2005 Act is amended as follows.

(2) In section 33 (transfer of premises licence on application of licence holder)—

(a) for subsections (1) to (3) substitute—
“(1) Any person, other than an individual under the age of 18, may apply to the appropriate Licensing Board for the transfer of a premises licence to the person (such person being referred to in this section and section 33A as the “transferee”).

(1A) An application under subsection (1) must—

(a) specify the date on which the transfer is to take effect, and

(b) be accompanied by—

(i) the premises licence to which the application relates or, if that is not practicable, a statement of the reasons for failure to produce the licence, and

(ii) a written statement signed by the holder of the premises licence consenting to its transfer to the transferee (a “consent statement”) or, if that is not practicable, a statement of the reasons for failure to obtain the licence holder’s written consent.”,

(b) in subsection (4), after “constable” insert “, unless the Board must refuse the application under subsection (8A)”,

(c) in subsection (8), before paragraph (a) insert—

“(za) the application is accompanied by a consent statement referred to in subsection (1A)(b)(ii),”,

(d) after subsection (8) insert—

“(8A) If the application is not accompanied by a consent statement referred to in subsection (1A)(b)(ii), the Board must refuse the application, unless the Board dispenses with the requirement for a consent statement under section 33A(4).”.

(3) The title of section 33 becomes “Application for transfer of premises licence”.

(4) After section 33 insert—

“33A Application for transfer: further provision

(1) This section applies where a Licensing Board receives an application under section 33(1) for the transfer of a premises licence.

(2) The Board must take all reasonable steps to give notice of the application to the premises licence holder.

(3) Subsection (4) applies where the application is not accompanied by a consent statement referred to in section 33(1A)(b)(ii).

(4) The Board may dispense with the requirement for a consent statement if satisfied that the transferee has taken all reasonable steps to contact the premises licence holder in order to obtain consent but has received no response.

(5) Where the Board decides under subsection (4) not to dispense with the requirement for a consent statement, the Board must give notice of the decision, and of the reasons for it, to the transferee.

(6) Where the Board decides under subsection (4) to dispense with the requirement for a consent statement the Board must hold a hearing under section 33(9) for the purpose of considering and determining the application.
(7) Where the Board grants the application, the transfer of the licence takes effect—

(a) on the date specified in the application in accordance with section 33(1A)(a), or

(b) where the Board grants the application after that date, on such date as the Board may determine.”.

(5) Section 34 (transfer on application of person other than licence holder) is repealed.

(6) In Part 1 of schedule 5 (appeals to the sheriff principal)—

(a) in column 1 of the entry relating to a decision to refuse an application under section 33(1) or 34(1) for transfer of a premises licence, the words “or 34(1)” are repealed,

(b) in column 2 of that entry, after “applicant” insert “or the premises licence holder”,

(c) after that entry insert—

| “A decision to grant an application under section 33(1) for transfer of a premises licence” | The person from whom the premises licence is to be transferred |
| A decision under section 33A(4), in relation to an application under section 33(1) for transfer of a premises licence, not to dispense with the requirement for a consent statement | The applicant” |

49 Premises licences: procedure in relation to relevant offences or foreign offences

In section 44 of the 2005 Act (procedure where Licensing Board receive notice of conviction in relation to a premises licence)—

(a) in subsection (7), after “subsection (4)(b)” insert “which includes a recommendation under subsection (5),”,

(b) after subsection (7) insert—

“(7A) If the Licensing Board receive from the chief constable a notice under subsection (4)(b) which does not include a recommendation under subsection (5), the Licensing Board must—

(a) make a premises licence review proposal in respect of the premises licence, or

(b) decide to take no further action in relation to the conviction.”.

50 Personal licences: procedure in relation to relevant offences or foreign offences

In section 83 of the 2005 Act (procedure where Licensing Board receive notice of a conviction in relation to a personal licence)—

(a) in subsection (7), after “subsection (4)(b)” insert “which includes a recommendation under subsection (5),”,

(b) after subsection (7) insert—
“(7A) If the Licensing Board receive from the chief constable a notice under subsection (4)(b) which does not include a recommendation under subsection (5), the Licensing Board must—

(a) hold a hearing, or

(b) decide to take no further action in relation to the conviction.”,

(c) in subsection (8), for “the hearing” substitute “a hearing under subsection (7) or (7A)(a)”.

51 Relevant offences and foreign offences: spent convictions

In section 129 of the 2005 Act (relevant offences and foreign offences), subsection (4) is repealed.

Supply of alcohol to a child or young person

52 Offences of supplying alcohol to a child or young person

(1) After section 104 of the 2005 Act insert—

“104A Supply of alcohol to a child

(1) A person, other than a child or young person, who—

(a) buys or attempts to buy alcohol—

(i) on behalf of a child, or

(ii) for a child, or

(b) gives alcohol (or otherwise makes it available) to a child,

committed an offence.

(2) Subsection (1)(a)(ii) and (b) does not apply to the buying of alcohol for, or (as the case may be) giving or making available of alcohol to, a child—

(a) for consumption other than in a public place, or

(b) for the purposes of religious worship.

(3) In subsection (2)(a), “public place” includes—

(a) relevant premises,

(b) any place to which the public have access for the time being (whether on payment of a fee or otherwise), and

(c) any place to which the public do not have access but to which the child unlawfully gains access.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to—

(a) a fine not exceeding level 5 on the standard scale,

(b) imprisonment for a term not exceeding 3 months, or

(c) both.
104B Supply of alcohol to a young person

(1) A person, other than a child or young person, who knowingly—

(a) buys or attempts to buy alcohol—

(i) on behalf of a young person, or

(ii) for a young person, or

(b) gives alcohol (or otherwise makes it available) to a young person, commits an offence.

(2) Subsection (1)(a)(ii) and (b) does not apply to—

(a) the buying of alcohol for, or (as the case may be) giving or making available of alcohol to, a young person—

(i) for consumption other than in a public place, or

(ii) for the purposes of religious worship, or

(b) the buying, or (as the case may be) giving or making available, of beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises.

(3) In subsection (2)(a)(i), “public place” includes—

(a) relevant premises,

(b) any place to which the public have access for the time being (whether on payment of a fee or otherwise), and

(c) any place to which the public do not have access but to which the young person unlawfully gains access.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to—

(a) a fine not exceeding level 5 on the standard scale,

(b) imprisonment for a term not exceeding 3 months, or

(c) both.”.

(2) In section 105 of the 2005 Act (purchase of alcohol by or for a child or young person)—

(a) subsections (4), (5) and (7) are repealed,

(b) the section title becomes “Purchase of alcohol by a child or young person”.

Miscellaneous

53 Meaning of “alcohol”: inclusion of angostura bitters

In section 2 of the 2005 Act (meaning of “alcohol”), in subsection (1)(b), paragraph (iv) is repealed.

54 Overprovision

(1) The 2005 Act is amended as follows.

(2) In section 7 (duty to assess overprovision)—
(a) in subsection (2), after “Act” insert “and in doing so the Board may determine that the whole of the Board’s area is a locality”,

(b) in subsection (3)—
   (i) the word “must” is repealed,
   (ia) at the beginning of paragraph (a) insert “must”,
   (ib) the word “and” immediately following that paragraph is repealed,
   (ic) after that paragraph insert—
   “(aa) may have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality, and”,

(3) In section 23(5)(e) (refusal of premises licence on grounds of overprovision)—
   (a) for the words from “that,” where first occurring to “situated,” substitute “that”,
   (b) for “that description,” substitute “the same or similar description as the subject premises.”.

(4) In section 30(5)(d) (refusal to vary premises licence on grounds of overprovision)—
   (a) for the words from “that,” where first occurring to “situated,” substitute “that”,
   (b) for “that description,” substitute “the same or similar description as the subject premises (taking account of the variation),”.

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Duties of Licensing Boards to produce annual reports

(1) The 2005 Act is amended as follows.

(2) After section 9 insert—

“9ZA Annual functions report

(1) Each Licensing Board must prepare and publish a report not later than 3 months after the end of each financial year.

(2) A report under this section must include—

   (a) a statement explaining how the Board has had regard to—
      (i) the licensing objectives, and
      (ii) their licensing policy statement and any supplementary licensing policy statement (including the Board’s statement under section 7(1) (duty to assess overprovision)),

      in the exercise of their functions under this Act during the financial year,

   (b) a summary of the decisions made by (or on behalf of) the Board during the financial year, and

   (c) information about the number of licences held under this Act in the Board’s area (including information about the number of occasional licences issued during the year).

(3) A report under this section may include such other information about the exercise of the Licensing Board’s functions under this Act as the Board consider appropriate.
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(4) At the request of a Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section.

(5) In discharging their duties under subsection (1) and section 9A(1) (annual financial report), a Licensing Board may, if they consider it appropriate, prepare and publish a combined report containing the information required under this section and under section 9A (which combined report must be published not later than 3 months after the end of the financial year in question).

(6) The Scottish Ministers may by regulations make further provision about reports under this section including, in particular, provision about—

(a) the form and required content of reports,

(b) the publication of reports.

(7) In this section, “financial year” means a yearly period ending on 31 March.

9A Annual financial report

(1) Each Licensing Board must prepare and publish a report not later than 3 months after the end of each financial year.

(2) A report under this section must include—

(a) a statement of—

(i) the amount of relevant income received by the Licensing Board during the financial year, and

(ii) the amount of relevant expenditure incurred in respect of the Board’s area during the year, and

(b) an explanation of how the amounts in the statement were calculated.

(3) For the purposes of subsection (2)—

“relevant income”, in relation to a Licensing Board, means income received by the Board in connection with the exercise of the Board’s functions under or by virtue of—

(a) this Act, or

(b) section 14(1) of the Alcohol etc. (Scotland) Act 2010 (social responsibility levy) in so far as relating to holders of premises licences or occasional licences, and

“relevant expenditure”, in relation to a Licensing Board, means any expenditure—

(a) which is attributable to the exercise of the Board’s functions under or by virtue of—

(i) this Act, or

(ii) section 14(1) of the Alcohol etc. (Scotland) Act 2010 (social responsibility levy) in so far as relating to holders of premises licences or occasional licences, and

(b) which is incurred by—
(i) the Board,
(ii) the relevant council, or
(iii) the Licensing Standards Officer (or Officers) for the Board’s area.

(5) At the request of a Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section.

(6) The Scottish Ministers may by regulations make further provision about reports under this section including provision—

(a) about the form and content of reports including, in particular—
   (i) how a statement required under subsection (2) is to be set out, and
   (ii) what constitutes relevant income and relevant expenditure for the purposes of subsection (2), and

(b) the publication of reports.

(7) Regulations under subsection (6)(a) may modify subsection (3).

(8) In this section, “financial year” means a yearly period ending on 31 March.”.

(3) In section 146 (orders and regulations: affirmative procedure),

(a) in subsection (4)(c), after “applies,” insert “regulations under section 9A(6) or”;

(b) in subsection (5), before paragraph (a) insert—

“(za) regulations under section 9A(6) containing provisions which add to, replace or omit any part of the text of subsection (3) of that section,“.

### 55A Licensing Standards Officers: general function in relation to personal licences

In section 14(1) of the 2005 Act (general functions of Licensing Standards Officers), after paragraph (b) insert—

“(ba) providing information to Licensing Boards about any conduct of holders of, or persons applying for, personal licences in the area, which is inconsistent with the licensing objectives,”.

### 55B Powers of Licensing Standards Officers

(1) The 2005 Act is amended as follows.

(2) After section 84A insert—

“84B Power of Licensing Standards Officers to report conduct inconsistent with the licensing objectives

(1) If a Licensing Standards Officer considers that any personal licence holder who is or was working in licensed premises in the Officer’s area has acted in a manner which is inconsistent with any of the licensing objectives, the Officer may report the matter to the relevant Licensing Board.

(2) Where a Licensing Board receives a report from a Licensing Standards Officer under subsection (1), the Board may hold a hearing.
(3) Subsections (6), (6A), (7), (7A) and (8) of section 84 and subsection (1)(b) of section 85 apply in relation to a hearing under subsection (2) of this section as they apply in relation to a hearing under subsection (3)(a) or (5) of section 84.

(4) In subsection (1), “relevant Licensing Board” has the meaning given in section 83(11).”.

56 Interested parties

(1) The 2005 Act is amended as follows.

(2) In section 40A (connected persons and interested parties: licence holder’s duty to notify changes)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (a) is repealed,

(ii) paragraph (b) is repealed,

(b) in subsection (2), the words “or an interested party” are repealed,

(c) the section title becomes “Connected persons: licence holder’s duty to notify changes”.

(3) The italic cross heading preceding section 40A becomes “Connected persons”.

(4) In section 48(1)(c) (notification of change of name or address)—

(a) the word “or” immediately following sub-paragraph (i) is repealed,

(b) sub-paragraph (ii) is repealed.

(5) In section 147(5) (interpretation), in the opening words, the words “nor the premises manager” are repealed.

57 Personal licences: grant, duration and renewal

(1) The 2005 Act is amended as follows.

(2) In section 74 (determination of personal licence application), in subsection (3)(c), after “revoked” insert “under any provision of this Act other than section 87(3)”.

(3) In section 77 (period of effect of personal licence), in subsection (8), for “3” substitute “9”.

(4) In section 78 (renewal of personal licence)—

(a) in subsection (2)—

(i) for “2” substitute “9”,

(ii) for “3” substitute “12”,

(b) in subsection (5), after “74” insert “(other than subsection (3)(ba))”.

(5) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives), in subsection (3), for “(8)(a)” substitute “(8)”.

58 Processing and deemed grant of applications

(1) The 2005 Act is amended as follows.

(2) After section 134 insert—
134ZA Duty to acknowledge applications

(1) This section applies where a Licensing Board receive a relevant application.

(2) In a case where the Licensing Board are satisfied that the application meets the prescribed requirements they must, unless subsection (3) applies, give an acknowledgement to the applicant—

(a) confirming that they are satisfied that the application meets the prescribed requirements,

(b) listing any documents received in support of the application and the date or dates on which the documents were received by them, and

(c) informing the applicant about the period for determining the application under section 134ZB.

(3) This subsection applies where the Licensing Board consider it appropriate to determine the application on its merits without first giving an acknowledgement to the applicant.

(4) In a case where the Licensing Board are not satisfied that the application meets the prescribed requirements, they must give a notice to the applicant—

(a) indicating that they are treating the application as incomplete and not having been made, and

(b) stating their reasons for treating the application in that way.

(5) Subsection (4) does not prevent an applicant from submitting further information in support of the application if that is otherwise competent.

(6) A Licensing Board must give an acknowledgement under subsection (2) or give a notice under subsection (4) as soon as is practicable.

(7) For the purposes of this section, “prescribed requirements”, in relation to a relevant application, means the requirements (as to form, content, etc.) which are imposed by or under this Act or any other enactment in respect of the type of relevant application in question.

(8) In this section, a “relevant application” is—

(a) a premises licence application,

(b) a premises licence variation application,

(c) an application under section 33(1) to transfer a premises licence,

(d) an application under section 35(1) for variation of a premises licence on transfer,

(e) a provisional premises licence application,

(f) an application under section 46 for confirmation of a provisional premises licence,

(g) an application under section 47(2) for a temporary premises licence,

(h) an occasional licence application,

(i) an extended hours application,

(j) a personal licence application,

(k) a personal licence renewal application.
134ZB Period for determination of applications

(1) A Licensing Board must determine every relevant application which meets the prescribed requirements (including an application mentioned in subsection (2)) before the end of the period of 9 months beginning with (the later of)—

(a) the date on which the Licensing Board received the application, or

(b) where the application did not initially meet the prescribed requirements, the date on which the application met the prescribed requirements.

(2) Where a Licensing Board consider it appropriate to determine a relevant application without first giving an acknowledgement under section 134ZA(2), they must determine the application as soon as is practicable.

(3) A sheriff of the appropriate sheriffdom may, on an application by a Licensing Board in relation to a relevant application, extend the period for determining the application under subsection (1).

(4) The sheriff may extend the period only if—

(a) it appears to the sheriff that there is a good reason to do so, and

(b) no previous extension has been granted in relation to the relevant application.

(5) The applicant in relation to a relevant application is entitled to be a party to proceedings on an application to a sheriff under subsection (3).

(6) In this section—

“prescribed requirements” has the same meaning as in section 134ZA, “relevant application” has the same meaning as in section 134Z.A.

134ZC Deemed grant of applications

(1) Subsection (2) applies where a Licensing Board have failed to determine a relevant application before the expiry of the determination period.

(2) Where this subsection applies—

(a) the application is deemed to have been granted on the date on which the determination period expired, and

(b) the deemed grant of the application has the same effect, for the purposes of this Act, as if the application had been granted by the Licensing Board.

(3) A Licensing Board may not impose any conditions (other than those which they must impose under this Act) in respect of an application which is deemed to have been granted under subsection (2).

(4) Subsection (5) applies in relation to an application—

(a) that is deemed to have been granted under subsection (2), and

(b) in respect of which the Licensing Board must, on granting such an application, determine the period during which the thing applied for is to have effect.
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(5) The thing applied for is to have effect for the duration of the period stated in the application (subject to any limits imposed by this Act).

(6) In this section—

―determination period‖ means, in relation to a relevant application, the period for determining the application under section 134ZB(1) including (if applicable) any extension to that period granted under subsection (3) of that section,

―prescribed requirements‖ has the same meaning as in section 134ZA,

―relevant application‖ has the same meaning as in section 134ZA.”.

59 Form etc. of communications under the 2005 Act

(1) Section 134 of the 2005 Act (form etc. of applications, proposals and notices) is amended as follows.

(2) In each of the following provisions, for “or notice” substitute “, notice or other communication”, namely—

(a) subsection (1)(a) and (d), and

(b) subsection (2).

(3) The section title becomes “Form etc. of applications, proposals, notices and other communications”.

PART 3

CIVIC LICENSING

Taxis and private hire cars

60 Refusal to grant private hire car licences on grounds of overprovision

In section 10 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) (taxi and private hire car licences), after subsection (3) insert—

“(3A) Without prejudice to paragraph 5 of Schedule 1, the grant of a private hire car licence may be refused by a licensing authority if, but only if, they are satisfied that there is (or, as a result of granting the licence, would be) overprovision of private hire car services in the locality (or localities) in their area in which the private hire car is to operate.

(3B) It is for the licensing authority to determine the localities within their area for the purposes of subsection (3A) and in doing so the authority may determine that the whole of their area is a locality.

(3C) In satisfying themselves as to whether there is or would be overprovision for the purposes of subsection (3A) in any locality, the licensing authority must have regard to—

(a) the number of private hire cars operating in the locality, and

(b) the demand for private hire car services in the locality.”.
61 Testing of private hire car drivers
In section 13 of the 1982 Act (taxi and private hire car driving licences), in subsection (5)—
(a) after “licence” where first occurring insert “or a private hire car driver’s licence”,
(b) after “taxi” where second occurring insert “or, as the case may be, private hire car”.

62 Exemptions from requirements of sections 10 to 21 of 1982 Act
(1) Section 22 of the 1982 Act (saving for certain vehicles etc.) is amended as follows.
(2) The existing provision becomes subsection (1).
(3) Paragraph (c) of that subsection is repealed.
(4) After that subsection, insert—
“(2) The Scottish Ministers may by regulations specify further circumstances in which sections 10 to 21 (with the exception of subsection (7) of section 21) are not to apply.
(3) Regulations under subsection (2)—
(a) may make transitional, transitory and saving provision,
(b) are subject to the negative procedure.”.
(5) The title to section 22 becomes “Exemptions”.

Metal dealers

62A Penalties for failure to have appropriate licence or comply with conditions
In section 7 of the 1982 Act (offences etc.)—
(a) in subsection (1)(a), after “is” insert “a metal dealer’s licence, an itinerant metal dealer’s licence or”,
(b) in subsection (2)—
(i) the word “and” immediately following paragraph (aa) is repealed,
(ii) after paragraph (aa) insert—
“(ab) in a case where the licence is a metal dealer’s licence or an itinerant metal dealer’s licence, to such fine or imprisonment as is mentioned in subsection (1)(a) (or to both), and”.

63 Removal of exemption warrants for certain metal dealers
(1) The 1982 Act is amended as follows.
(2) In section 28 (metal dealers: licensing and regulation)—
(a) in subsection (1), for the words “Subject to subsection (2) below, a” substitute “A”,
(b) subsections (2) and (3) are repealed.
(3) Section 29 (metal dealers’ exemption warrants) is repealed.
64 Abolition of requirement to retain metal for 48 hours
Section 31 of the 1982 Act (retention of metal) is repealed.

65 Acceptable forms of payment for metal
After section 33 of the 1982 Act insert—

“A33A Acceptable forms of payment for metal

(1) A metal dealer or an itinerant metal dealer may pay for metal only by a method of payment specified in subsection (2).

(2) The methods of payment are—
   (a) by means of a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or
   (b) by electronic transfer of funds to a bank or building society account in the name of the payee.

(3) If a metal dealer or an itinerant metal dealer pays for metal otherwise than in accordance with subsection (1), the dealer and each of the persons listed in subsection (4) (if any) commit an offence.

(4) The persons are—
   (a) in a case of payment being made by a metal dealer at a place of business of the dealer, the person with day to day management of the place,
   (b) in any case, any person who, acting on behalf of the metal dealer or the itinerant metal dealer, makes the payment.

(5) It is a defence for a metal dealer, an itinerant metal dealer or a person described in subsection (4)(a) who is charged with an offence under this section to prove that the dealer or, as the case may be, person—
   (a) made arrangements to ensure that the payment was to be made only in accordance with subsection (1), and
   (b) took all reasonable steps to ensure that those arrangements were complied with.

(6) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(7) The Scottish Ministers may by regulations—
   (a) amend subsection (2) so as to add, amend or remove methods of payment, and
   (b) make such consequential modification of section 33AA or 33B(3) as they consider appropriate.

(8) Regulations under subsection (7) are subject to the affirmative procedure.

(9) In this section, “place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer’s business as a metal dealer.
Acceptable forms of payment: meaning of “bank or building society account”

(1) In section 33A(2)(b), “bank or building society account” means an account held with a bank or a building society.

(2) For the purposes of subsections (1) and (4)—
   (a) “bank” means an authorised deposit-taker that has its head office or a branch in the United Kingdom, and
   (b) “building society” has the same meaning as in the Building Societies Act 1986.

(3) In subsection (2)(a), “authorised deposit-taker” means—
   (a) a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 (but see subsection (4) for exclusions),
   (b) an EEA firm of the kind mention in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule).

(4) The reference in subsection (3)(a) to a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 does not include—
   (a) a building society,
   (b) a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)),
   (c) a friendly society within the meaning given by section 116 of the Friendly Societies Act 1992, or
   (d) an insurance company within the meaning of section 275 of the Finance Act 2004.”.

Metal dealers and itinerant metal dealers: records

(1) The 1982 Act is amended as follows.

(2) Sections 30 (keeping of records) and 33 (receipts and invoices: itinerant metal dealers) are repealed.

(3) After section 33A (as inserted by section 65 of this Act), insert—

“33B Requirement to keep records

(1) This section applies where a metal dealer or an itinerant metal dealer (“the dealer”), in the course of the dealer’s business—
   (a) acquires any metal (whether or not for value), or
   (b) processes or disposes of any metal (by any means).

(2) In respect of any metal acquired, the dealer must record the following information—
   (a) the description and weight of the metal,
   (b) the date and time of the acquisition of the metal,
(c) if the metal is acquired from another person—
   (i) the name and address of the person,
   (ii) the means by which the person’s name and address was verified,

(d) the price, if any, payable in respect of the acquisition of the metal, if that price has been ascertained at the time when the entry in the record relating to that metal is to be made,

(e) the method of payment of the price (if applicable),

(f) where no price is payable for the metal, the value of the metal at the time when the entry is to be made as estimated by the dealer,

(g) in the case of metal delivered to the dealer by means of a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) borne by the vehicle.

(3) Where the dealer has paid for metal, the dealer must keep a copy of—

   (a) the cheque, or

   (b) the document evidencing the electronic transfer of funds.

(4) In respect of any metal processed or disposed of, the dealer must record the following information—

   (a) the description and weight of the metal immediately before its processing or disposal,

   (c) in the case of metal which is processed, the process applied,

   (d) in the case of metal disposed of by sale or exchange—

       (i) the consideration for which it is sold or exchanged,

       (ii) the name and address of the person to whom the metal is sold or with whom it is exchanged, and

       (iii) the means by which the person’s name and address was verified,

   (e) in the case of metal disposed of otherwise than by sale or exchange, its value immediately before its disposal as estimated by the dealer.

(5) The dealer must—

   (a) keep separate records in relation to—

       (i) metal acquired, and

       (ii) metal processed or disposed of,

   (b) record the information immediately after the metal is acquired, processed or disposed of,

   (c) keep a copy of any document produced by a person to verify that person’s name or address, and

   (d) retain information recorded or documents kept under this section for a period of not less than 3 years beginning with the date on which the information was recorded or document obtained.

(6) The Scottish Ministers may by regulations—
(a) specify the means by which a person’s name and address may be verified for the purposes of this section,
(b) require further information to be recorded about any metal acquired, processed or disposed of by metal dealers or itinerant metal dealers.

(7) Regulations under subsection (6)—
(a) may make different provision for different purposes, and
(b) are subject to the negative procedure.

33C Form of records

(1) A metal dealer or an itinerant metal dealer (“a dealer”) must record the required information—
(a) in books with serially numbered pages, or
(b) by means of a device for storing and processing information.

(2) Where a dealer records the required information in books, the dealer must use separate books for recording the required information about—
(a) metal acquired, and
(b) metal processed or disposed of.

(3) Where a dealer uses a device for storing and processing information, the dealer must, by means of the device or otherwise, keep details of all modifications made in the records kept by the device.

(4) Where a dealer is required to keep a copy of a document under section 33B, it is sufficient for the dealer—
(a) to keep an electronic copy of the document, and
(b) in relation to a document verifying a person’s name or address, keep only one copy of the document.

(5) In this section, “required information” means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33B(2), (4) or (6).

33D Metal dealer to keep records for each place of business

(1) A metal dealer must keep separate records of the required information in relation to—
(a) each place of business operated by the dealer, and
(b) any metal acquired, processed or disposed of otherwise than at such a place of business.

(2) Where a metal dealer records the required information in books, the dealer must not, at any time at a place of business, use more than—
(a) one book for recording the required information about metal acquired, and
(b) one book for recording the required information about metal processed or disposed of.
(3) In this section—

“place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer’s business as a metal dealer,

“required information” means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33B(2), (4) or (6).”.

(4) In section 34 (offences relating to metal dealing)—

(a) after subsection (2) insert—

“(2A) Any metal dealer or itinerant metal dealer who fails to comply with a requirement of section 33B, 33C or 33D commits an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.”,

(b) in subsection (3), for the words from “furnishes” to “keep” substitute “produces any information or document which the dealer is required to record or keep under section 33B which is false or misleading in a material particular”.

15 66A Register of dealers in metal

After section 35 of the 1982 Act, insert—

“35A Register of metal dealers and itinerant metal dealers

(1) The Scottish Ministers may by regulations make provision for and about the establishment, keeping and maintaining of a register of metal dealers and itinerant metal dealers.

(2) Regulations under subsection (1) may, in particular, make provision—

(a) about who is to keep and maintain the register,

(b) requiring the provision of information to the person who keeps the register,

(c) specifying the information to be included in the register in relation to each person who holds a licence as a metal dealer or itinerant metal dealer,

(d) about the form and publication of the register,

(e) for the charging of fees in such circumstances as may be specified in the regulations.

(3) Regulations under subsection (1) may—

(a) make incidental, supplementary, consequential, transitional, transitory or saving provision,

(b) modify this or any other enactment.

(4) Regulations under subsection (1) which contain provision which adds to, replaces, or omits any part of an Act are subject to the affirmative procedure.

(5) Otherwise, regulations under subsection (1) are subject to the negative procedure.”.

66B Interpretation of provisions relating to metal dealers etc.

(1) Section 37 of the 1982 Act (interpretation of sections 28 to 36) is amended as follows.
Part 5—Civic licensing

(2) In subsection (1), for the definition of “itinerant metal dealer” substitute—

““itinerant metal dealer” means a person who—

(a) carries on a business which consists wholly or substantially of buying or selling for scrap—

(i) metal articles that are old, broken, worn out or defaced, or

(ii) partly manufactured articles that are made wholly or partly from metal,

(b) collects articles of the kind described in paragraph (a)(i) and (ii) by means of visits from place to place, and

(c) disposes of such articles without causing them to be kept in a metal store or other premises (including by disposing or giving custody of the articles to a person who keeps a metal store),”.

(3) For subsection (2) substitute—

“(2) For the purposes of sections 28 to 36, a person carries on business as a metal dealer if the person—

(a) carries on a business which consists wholly or substantially of buying or selling for scrap—

(i) metal articles that are old, broken, worn out or defaced, or

(ii) partly manufactured articles that are made wholly or partly from metal, or

(b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).

(3) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists wholly or substantially of—

(a) recovering salvageable parts from motor vehicles for re-use or sale and selling or disposing of the rest of the vehicle for scrap,

(b) buying significantly damaged motor vehicles and subsequently repairing and reselling them, or

(c) buying or selling motor vehicles which are to be the subject (whether immediately or upon a subsequent resale) of any of the activities mentioned in paragraphs (a) and (b).”.

66C Exemptions from requirements of sections 28 to 37 of 1982 Act

After section 37 of the 1982 Act insert—

“37A Exemptions

(1) The Scottish Ministers may by regulations make provision specifying circumstances in which the provisions of sections 28 to 37 are not to apply.

(2) Regulations under subsection (1)—

(a) may make transitional, transitory or saving provision,

(b) are subject to the negative procedure.”.
Public entertainment venues

67 Licensing of theatres etc.

(1) In section 41 of the 1982 Act (public entertainment licences)—
   (a) in subsection (2)(d), the words “the Theatres Act 1968, or” are repealed,
   (b) after subsection (3) insert—

“(3A) In relation to a public entertainment licence which authorises the use of premises for the performance of plays, no condition may be attached to the licence as to the nature of the plays which may be performed, or the manner of performing plays, under the licence.

(3B) Subsection (3A) does not prevent a licensing authority from attaching, by virtue of section 3B or in accordance with subsection (3) or paragraph 5 of Schedule 1, any condition which they consider appropriate on the grounds of public safety.”.

(2) In section 1 of the Theatres Act 1968 (“the 1968 Act”) (abolition of censorship of the theatre), subsection (2) is repealed.

(3) Sections 12 to 14 of the 1968 Act (licensing of premises for public performances of plays) are repealed.

(4) In section 15 of the 1968 Act (powers of entry and inspection)—
   (a) in subsection (1)—
      (i) the word “or” immediately following paragraph (a) is repealed,
      (ii) paragraph (b) is repealed,
      (iii) the words “or, in a case falling within paragraph (b) above, any police officer or authorised officer of the licensing authority” are repealed,
      (iv) paragraph (ii) is repealed,
   (b) subsections (2), (3), (5) and (6) are repealed.

(5) In section 18 of the 1968 Act (interpretation), in subsection (1), the definition of “licensing authority” is repealed.

(6) Schedule 1 to the 1968 Act (provision about licenses to perform plays) is repealed.

67A Restriction of exemption from requirement for public entertainment licence

In section 41(2) of the 1982 Act (places not requiring public entertainment licences), in paragraph (f), for the words from “licensed” where first occurring to “(asp 16)” substitute “premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect”.

Sexual entertainment venues

68 Licensing of sexual entertainment venues

(1) The 1982 Act is amended as follows.

(2) In section 41(2) (definition of place of public entertainment), after paragraph (aa) insert—
“(ab) a sexual entertainment venue (as defined in section 45A) in relation to which Schedule 2 (as modified for the purposes of section 45B) has effect, while being used as such;”.

(3) After section 45 insert—

45A Licensing of sexual entertainment venues: interpretation

(1) This section applies for the purposes of the interpretation of section 45B and Schedule 2 (as modified for the purposes of section 45B).

(2) “Sexual entertainment venue” means any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.

(3) For the purposes of that definition—

“audience” includes an audience of one,

“financial gain” includes financial gain arising directly or indirectly from the provision of the sexual entertainment,

“organiser”, in relation to the provision of sexual entertainment in premises, means—

(a) the person (“A”) who is responsible for—

(i) the management of the premises, or

(ii) the organisation or management of the sexual entertainment,

or

(b) where A exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person,

“premises” includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted,

“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).

(4) For the purposes of the definition of “sexual entertainment”, “display of nudity” means—

(a) in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus,

(b) in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.

(5) Sexual entertainment is provided if (and only if) it is provided (or allowed to be provided) by or on behalf of the organiser.
References in Schedule 2 (as modified for the purposes of section 45B) to the use of any premises by a person as a sexual entertainment venue are to be read as references to their use by the organiser.

The following are not sexual entertainment venues—

(a) a sex shop (within the meaning of paragraph 2(1) of Schedule 2),

(b) such other premises as the Scottish Ministers may by order specify.

An order under subsection (7)(b) may make different provision for different purposes.

Premises at which sexual entertainment is provided as mentioned in subsection (2) on a particular occasion (“the current occasion”) are not to be treated as a sexual entertainment venue if sexual entertainment has not been provided on more than 3 previous occasions which fall wholly or partly within the period of 12 months ending with the start of the current occasion.

For the purposes of subsection (9)—

(a) each continuous period during which sexual entertainment is provided on the premises is to be treated as a separate occasion, and

(b) where the period during which sexual entertainment is provided on the premises exceeds 24 hours, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion.

The Scottish Ministers may by order provide for—

(a) descriptions of performances, or

(b) descriptions of displays of nudity,

which are not to be treated as sexual entertainment for the purposes of this section.

An order under subsection (7)(b) or (11) is subject to the negative procedure.

45B Licensing of sexual entertainment venues

A local authority may resolve that Schedule 2 (as modified for the purposes of this section) is to have effect in their area in relation to sexual entertainment venues.

If a local authority passes a resolution under subsection (1), Schedule 2 (as so modified) has effect in their area from the day specified in the resolution.

The day mentioned in subsection (2) must not be before the expiry of the period of one year beginning with the day on which the resolution is passed.

A local authority must, not later than 28 days before the day mentioned in subsection (2), publish notice that they have passed a resolution under this section.

The notice must—

(a) state the general effect of Schedule 2 (as modified for the purposes of this section), and

(b) be published electronically or in a newspaper circulating in the local authority’s area.
(6) For the purposes of this section, paragraphs 1 and 3 to 25 of Schedule 2 apply with the following modifications—

(a) references to a sex shop are to be read as references to a sexual entertainment venue,

(b) references to the use by a person of premises, vehicles, vessels or stalls as a sexual entertainment venue are to be read as references to their use by the organiser,

(c) in paragraph 1—

(i) in sub-paragraph (b)—

(A) the word “or immediately following paragraph (i) is omitted,

(B) paragraph (ii) is omitted, and

(ii) sub-paragraph (c) is omitted,

(d) in paragraph 7—

(i) in sub-paragraph (2), at the beginning insert “Subject to sub-paragraph (3A),”

(ii) after sub-paragraph (3) insert—

“(3A) If a local authority consider it appropriate to do so in relation to an application, the local authority may dispense with the requirement to publish an advertisement under sub-paragraph (2) and may instead publish notice of the application electronically.

(3B) Publication under sub-paragraph (3A) must be not later than 7 days after the date of the application.

(3C) The applicant must also, not later than 7 days after the date of the application—

(a) send a copy of the application to each person or body listed in the local authority’s determination under sub-paragraph (3D), and

(b) submit to the local authority a certificate stating that the applicant has complied with this sub-paragraph.

(3D) For the purposes of sub-paragraph (3C), a local authority must—

(a) from time to time determine the persons or bodies who must receive a copy of the application, and

(b) publicise the determination in such manner as they consider appropriate.”,

(e) in paragraph 9—

(i) in sub-paragraph (5)(c)—

(A) after the word “in” insert “the local authority’s area or”,

(B) after the word “for” insert “their area or”,

(ii) after sub-paragraph (5) insert—

“(5A) For the purposes of sub-paragraph (5)(c), a local authority must—
(a) from time to time determine the appropriate number of sexual entertainment venues for their area and for each relevant locality, and

(b) publicise the determination in such manner as they consider appropriate.”,

(iii) after sub-paragraph (6) insert—

“(6A) A local authority may refuse an application for the grant or renewal of a licence despite the fact that a premises licence under Part 3 of the Licensing (Scotland) Act 2005 is in effect in relation to the premises, vehicle, vessel or stall to which the application relates.”,

(f) in paragraph 12(2)(b), for “shorter” substitute “other”,

(g) in paragraph 19(1)(e), for the words from “without” to the end of paragraph (e) substitute “knowingly permits any person under the age of 18 to enter the sexual entertainment venue—

(i) at a time when sexual entertainment is being provided, or

(ii) without reasonable excuse, at any other time,”, and

(h) in paragraph 25, in each of sub-paragraphs (1)(a) and (2), for “45” substitute “45B”.

(7) In carrying out functions conferred by virtue of this section, a local authority must have regard to any guidance issued by the Scottish Ministers.

45BA Statements of policy in relation to sexual entertainment venues

(1) This section applies where a local authority passes a resolution under section 45B(1).

(2) The local authority must prepare a statement of their policy with respect to the exercise of their functions in relation to the licensing of sexual entertainment venues (a “SEV policy statement”).

(3) In preparing a SEV policy statement, a local authority must—

(a) consider the impact of the licensing of sexual entertainment venues in their area, having regard, in particular, to how it will affect the objectives of—

(i) preventing public nuisance, crime and disorder,

(ii) securing public safety,

(iii) protecting children and young people from harm,

(iv) reducing violence against women, and

(b) consult such persons or bodies as they consider appropriate.

(4) The local authority must publish the SEV policy statement at the same time and in the same manner as they publish the notice of the resolution under section 45B(4).

(5) The local authority must—

(a) from time to time review the SEV policy statement and make such revisions as they consider appropriate (if any), and
(b) publish the revised statement in such manner as they consider appropriate.

(6) Subsection (3) applies to a review of a SEV policy statement as it applies to preparing such a statement.

(7) In exercising their functions in relation to the licensing of sexual entertainment venues, a local authority must have regard to their SEV policy statement or revised statement.

(8) In this section—
(a) “children” means persons under the age of 16,
(b) “young people” means persons aged 16 or 17.”.

(4) The title of Part 3 becomes “Control of sex shops and sexual entertainment venues”.

Miscellaneous and general

69  Deemed grant of applications

(1) The 1982 Act is amended as follows.

(2) In section 3 (discharge of functions of licensing authorities)—

(a) in subsection (1), for the words from “shall” to the end substitute “must—

(a) consider each relevant application made to them within the period of 3 months beginning with the date on which the application was made, and

(b) subject to the following provisions of this section, reach a final decision on the application within the period of 6 months beginning with the end of the 3 month period referred to in paragraph (a).”,

(b) in subsection (4)—

(i) the words “applied for” are repealed,

(ii) for “or, as the case may be, renewed” substitute “, renewed or, as the case may be, varied”,

(iii) the words from “and” where first occurring to the end are repealed,

(c) after subsection (4) insert—

“(4A) A licence deemed to have been granted or renewed under subsection (4) is—

(a) in the case of a temporary licence, to remain in force for the duration of the period sought in the application (up to a maximum period of 6 weeks), or

(b) in any other case, to remain in force for the period of one year.

(4B) A variation of the terms of a licence deemed to have been granted under subsection (4) is to have effect for the remaining period of the licence.

(4C) Subsections (4) and (4B) do not affect—

(a) the powers of revocation under section 7(6)(a),

(b) paragraph 8(5) of Schedule 1 (which relates to renewals of existing licences),

(c) the powers of variation under paragraph 10 of that Schedule, or
(d) the powers of suspension and revocation under paragraphs 11 and 12 of that Schedule.”,

(d) for subsection (5) substitute—

“(5A) The deemed grant, renewal or variation of the terms of a licence under subsection (4) is, for the purposes of Schedule 1, to be treated as a decision of the licensing authority to grant, renew or vary the terms of a licence.

(5B) For the purposes of this section, a “relevant application” is an application under paragraph 1, 7 or 10 of Schedule 1.”.

(3) After section 45B (as inserted by section 68 of this Act) insert—

“45C Deemed grant of applications

(1) For the purpose of the discharge of their functions under this Part, every local authority must—

(a) consider each relevant application made to them within the period of 3 months beginning with the date on which the application was made, and

(b) subject to the following provisions of this section, reach a final decision on the application within the period of 6 months beginning with the end of the 3 month period referred to in paragraph (a).

(2) On an application by the local authority within the 6 month period referred to in subsection (1)(b), the sheriff may, if it appears that there is a good reason to do so, extend that period as the sheriff thinks fit.

(3) The applicant is entitled to be a party to proceedings on an application under subsection (2).

(4) Where the local authority have failed to reach a final decision on the application before the expiry of—

(a) the 6 month period referred to in subsection (1)(b), or

(b) such further period as the sheriff may have specified on application under subsection (2),

the licence is deemed to have been granted, renewed or, as the case may be, varied on the date of such expiry.

(5) A licence deemed to have been granted or renewed under subsection (4) is to remain in force for the period of one year.

(6) A deemed variation of the terms of a licence deemed under subsection (4) is to have effect for the remaining period of the licence.

(7) Subsections (4) and (6) do not affect—

(a) the powers of revocation under paragraph 13 of Schedule 2, and

(b) the powers of variation under paragraph 15 of that Schedule.

(8) The deemed grant, renewal or variation of the terms of a licence under subsection (4) has the same effect, for the purposes of Schedule 2, as a decision of the licensing authority to grant, renew or vary the terms of a licence.

(9) For the purposes of this section, a “relevant application” is an application under paragraph 6 or 15 of Schedule 2.”.
(4) In Schedule 1 (licensing: further provisions as to the general system), in paragraph 10, after sub-paragraph (5) insert—

"(6) Sub-paragraph (5) does not apply to a deemed variation of the terms of a licence under section 3(4).".

(5) In Schedule 2 (control of sex shops and sexual entertainment venues), in paragraph 15, after sub-paragraph (4) insert—

"(4A) Sub-paragraph (4) does not apply to a deemed variation of the terms of a licence under section 45C(4).".

69A  Revocation of Part 2 licences

(1) The 1982 Act is amended as follows.

(2) In section 5 (rights of entry and inspection), in subsection (2)(a)(ii), after “suspended” insert “or revoked”.

(3) In Schedule 1 (licensing: further provisions as to the general system)—

(a) the italic heading preceding paragraph 10 becomes “Variation, suspension and revocation of licences”,

(b) in paragraph 11—

(i) in sub-paragraph (1), after “suspend” insert “or revoke”,

(ii) in sub-paragraph (2), after “suspension” insert “or revocation”,

(iii) in sub-paragraph (4), after “suspend” insert “or revoke”,

(iv) in sub-paragraph (6), after “order” insert “to suspend a licence”,

(v) in sub-paragraph (7), after “suspend” insert “or revoke”,

(vi) in sub-paragraph (8), after “suspension” insert “or revocation”,

(vii) in sub-paragraph (9)—

(A) after “suspension” where first occurring insert “or revocation”,

(B) after each subsequent occurrence of “suspension” insert “or, as the case may be, revocation”,

(viii) in sub-paragraph (10), after “suspension” where first occurring insert “or revocation”,

(c) in paragraph 12(5)(b), after “suspend” insert “or revoke”,

(d) in paragraph 13—

(i) in sub-paragraph (2)(a), after “suspend” insert “, revoke”,

(ii) in sub-paragraph (3), after “suspending” insert “or revoking”,

(iii) in sub-paragraph (4), after “suspension” where first occurring insert “or revocation”,

(e) in paragraph 14(2)(b), after “terms,” insert “revocation”,

(f) in paragraph 17, in sub-paragraph (1)(d), before paragraph (i) insert—

“(ai) to revoke a licence or to refuse to do so,”.

(g) in paragraph 18(10)—
(i) after “suspension” where first occurring insert “or revocation”,
(ii) the words “above that the suspension be immediate” are repealed.

70 Procedure for hearings

(1) The 1982 Act is amended as follows.

(2) In Schedule 1 (licensing: further provisions as to the general system), after paragraph 18 insert—

“Power to make provision about hearings

18A(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a licensing authority under this Schedule.

(2) Regulations under this paragraph may, in particular, make provision—

(a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,

(b) about the rules of evidence which are to apply for the purposes of the hearing,

(c) about the representation of any party at the hearing,

(d) as to the times by which any step in the procedure must be taken, and

(e) as to liability for expenses.

(3) Regulations under this paragraph may make different provision for different purposes including, in particular, different types of licence.

(4) Regulations under this paragraph are subject to the negative procedure.”.

(3) In Schedule 2 (control of sex shops and sexual entertainment venues), after paragraph 24 insert—

“Power to make provision about hearings

24A(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a local authority under this Schedule.

(2) Regulations under this paragraph may, in particular, make provision—

(a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,

(b) about the rules of evidence which are to apply for the purposes of the hearing,

(c) about the representation of any party at the hearing,

(d) as to the times by which any step in the procedure must be taken, and

(e) as to liability for expenses.

(3) Regulations under this paragraph may make different provision for different purposes, including, in particular, different types of licence.

(4) Regulations under this paragraph are subject to the negative procedure.”.
71 Conditions for Part 3 licences

(1) The 1982 Act is amended as follows.

(2) After section 45C (as inserted by section 69) insert—

“Conditions of licences granted under this Part

45D Mandatory licence conditions

(1) The Scottish Ministers may by order prescribe conditions to which licences granted by local authorities under this Part are to be subject.

(2) Different conditions may be prescribed under subsection (1)—

(a) in respect of different licences or different types of licence,

(b) otherwise for different purposes, circumstances or cases.

(3) An order under subsection (1) is subject to the affirmative procedure.

(4) Subsection (1) does not affect any other power of the Scottish Ministers under this Act or any other enactment to prescribe conditions—

(a) to which licences granted by local authorities under this Part are to be subject, or

(b) to be imposed by local authorities in granting or renewing licences under this Part.

(5) The following conditions are referred to in this Part as “mandatory conditions”—

(a) conditions prescribed under subsection (1),

(b) conditions prescribed under any power referred to in subsection (4), and

(c) conditions imposed, or required to be imposed, by any provision of this Part.

(6) In this section and section 45E, references to licences granted by local authorities include references to—

(a) licences renewed by local authorities, and

(b) licences deemed by virtue of section 45C to have been granted or renewed by local authorities.

45E Standard licence conditions

(1) A local authority may determine conditions to which licences granted by them under this Part are to be subject.

(2) Conditions determined under subsection (1) are referred to in this Part as “standard conditions”.

(3) Different conditions may be determined under subsection (1)—

(a) in respect of different licences or different types of licence,

(b) otherwise for different purposes, circumstances or cases.

(4) A local authority must publish, in such manner as they think appropriate, any standard conditions determined by them.

(5) Standard conditions have no effect—
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(a) unless they are published, and
(b) so far as they are inconsistent with any mandatory conditions.

(6) Subsection (1) is subject to paragraph 9(1A) of Schedule 2.”.

(3) In paragraph 9 of Schedule 2 (disposal of applications for licences)—

(a) in sub-paragraph (1)—

(i) in paragraph (a), the word “unconditionally” is repealed,
(ii) paragraph (b) is repealed,

(b) after sub-paragraph (1) insert—

“(1A) In granting or renewing a licence under sub-paragraph (1)(a), a local authority may (either or both)—

(a) disapply or vary any standard conditions,
(b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.”,

(c) in sub-paragraph (2)—

(i) for “sub-paragraph” where first occurring substitute “sub-paragraphs (2ZA) and”,
(ii) for “(1)” substitute “(1A)(b)”,

(d) after sub-paragraph (2) insert—

“(2ZA) A variation made under sub-paragraph (1A)(a) or a condition imposed under sub-paragraph (1A)(b) has no effect in so far as it is inconsistent with any mandatory condition to which the licence is subject.”,

(e) in sub-paragraph (2A), for “(1)” substitute “(1A)(b)”.

71A Conditions for Part 3 licences: displays or advertising
In paragraph 9(2) of Schedule 2 to the 1982 Act (examples of conditions which may be imposed in relation to Part 3 licences), in paragraph (b), after “on or in” insert “or otherwise connected with”.

72 Civic licensing standards officers
After Part 3 of the 1982 Act insert—

“PART 3A

CIVIC LICENSING STANDARDS OFFICERS

45F Civic licensing standards officers
(1) Each local authority must appoint for their area one or more officers (a “civic licensing standards officer”)—

(a) to exercise, in relation to the authority’s area, the general functions conferred on civic licensing standards officers by virtue of section 45G, and

(b) to exercise any other functions that may be conferred on such an officer by virtue of this or any other enactment.
(2) A civic licensing standards officer appointed by a local authority is taken to be an authorised officer of the authority for the purposes of Parts 1 to 3.

(3) A person may hold more than one appointment under subsection (1) (so as to be a civic licensing standards officer for more than one local authority area).

(4) Nothing in this section prevents an officer of a local authority other than a civic licensing standards officer from being an authorised officer of the authority for a purpose of Parts 1 to 3.

(5) In this Part, a reference to a local authority includes a reference to that authority acting as the licensing authority for their area and a reference to an authorised officer of a local authority (however expressed) is to be construed accordingly.

45G General functions of a civic licensing standards officer

(1) The general functions of a civic licensing standards officer are—

(a) to provide to any interested person information and guidance concerning the operation of Parts 1 to 3 in the officer’s area,

(b) to supervise the compliance by the holder of a licence granted under Parts 1 to 3 in the officer’s area with—

(i) the conditions of the licence, and

(ii) the other requirements of Parts 1 to 3,

(c) to provide mediation services for the purposes of avoiding or resolving disputes or disagreements between—

(i) the holder of a licence granted under Parts 1 to 3 in the officer’s area, and

(ii) any other person,

concerning any matter relating to compliance with the conditions of the licence or the other requirements of Parts 1 to 3.

(2) The function under subsection (1)(b) includes, in particular, power for a civic licensing standards officer, where the officer believes that a condition to which the licence is subject has been or is being breached—

(a) to give a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice, and

(b) to refer the breach to the local authority which granted the licence for consideration at a meeting of the authority.

(3) A civic licensing standards officer may only refer a breach of a condition under subsection (2)(b) if—

(a) the officer has given notice under subsection (2)(a) and the holder of the licence has failed to comply with it, or

(b) the officer considers that it is appropriate for the breach to be referred to the authority without such a notice being given.

(4) In this section, a reference to an officer’s area is a reference to—
(a) the local authority area for which the officer is appointed under section 45F(1), or

(b) where the officer is appointed for more than one local authority area, the area for which the officer is exercising a function at the relevant time.”.

73 Electronic communications under the 1982 Act

(1) The 1982 Act is amended as follows.

(2) In Schedule 1 (licensing: further provisions as to the general system)—

(a) after paragraph 3(3), insert—

“(3A) Where a licensing authority have determined to accept objections and representations by means of an electronic communication under paragraph 16A, an objection or representation is made for the purpose of sub-paragraph (1) of this paragraph if it is sent—

(a) to the authority by means of an electronic communication which complies with the determination, and

(b) within the time specified in sub-paragraph (1).

(3B) Sub-paragraph (3A) is without prejudice to sub-paragraph (3).”,

(b) after paragraph 16 insert—

“Electronic communications

16A(1) A licensing authority may determine to accept—

(a) applications for the grant or renewal of a licence under paragraph 1,

(b) objections or representations under paragraph 3,

(c) notifications of a change to a licence under paragraph 9,

by means of an electronic communication.

(2) Where a licensing authority make a determination under sub-paragraph (1) they must—

(a) specify in the determination—

(i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,

(ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and

(iii) any means of authentication (in addition to an electronic signature) that are acceptable, and

(b) publicise the determination as they consider appropriate.

(3) In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—

(a) to be in writing is satisfied if the communication is—

(i) in the form specified under sub-paragraph (2)(a)(i), and

(ii) sent to the address specified under sub-paragraph (2)(a)(ii),
(b) to be signed is satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).

(4) A licensing authority may determine to—

(a) give notices under paragraphs 5, 9, 10, 11 or 12, and

(b) give reasons under paragraph 17,

by means of an electronic communication.

(5) A licensing authority may only give a notice or reasons by means of an electronic communication if—

(a) the person to whom the notice or reasons is or are to be given has agreed to receive notices and reasons by means of an electronic communication, and

(b) the communication is sent to an electronic address, and is in an electronic form, specified for that purpose by the person.

(6) In relation to any notice or reasons given by means of an electronic communication, any requirement of this Schedule for the notice or reasons to be given in writing is satisfied if the communication is sent in accordance with sub-paragraph (5).

(7) When a licensing authority gives a notice or reasons by means of an electronic communication then, unless the contrary is proved, it is to be treated as having been received by the person to whom it was sent on the second working day after the day on which it was sent.

(8) For the purposes of sub-paragraph (7), “working day” means a day which is not—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning, or

(e) a day which is a local or public holiday in the area in which the electronic communication is to be sent.

(9) A licensing authority may make different determinations for different purposes including, in particular, for different types of licence.

(10) In this Schedule—

“electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,

“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.”.

(3) In Schedule 2 (control of sex shops and sexual entertainment venues)—

(a) after paragraph 8(4) insert—
“(4A) Where a local authority have determined to accept objections and representations by means of an electronic communication under paragraph 22A, an objection or representation is made for the purpose of sub-paragraph (2) of this paragraph if it is sent—

(a) to the authority by means of an electronic communication which
complies with the determination, and

(b) within the time specified in sub-paragraph (2).

(4B) Sub-paragraph (4A) is without prejudice to sub-paragraph (4).”

(b) after paragraph 22 insert—

“Electronic communications

22A(1) A local authority may determine to accept—

(a) applications for the grant or renewal of a licence under this Schedule,

(b) objections or representations under paragraph 8,

(c) notifications of a change to a licence under paragraph 14,

by means of an electronic communication.

(2) Where a local authority make a determination under sub-paragraph (1) they must—

(a) specify in the determination—

(i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,

(ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and

(iii) any means of authentication (in addition to an electronic signature) that are acceptable, and

(b) publicise the determination as they consider appropriate.

(3) In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—

(a) to be in writing is satisfied if the communication is—

(i) in the form specified under sub-paragraph (2)(a)(i), and

(ii) sent to the address specified under sub-paragraph (2)(a)(ii),

(b) to be signed is satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).

(4) A local authority may determine to—

(a) give notices under paragraphs 8, 10, 13, 14 or 15, and

(b) give reasons under paragraph 23,

by means of an electronic communication.

(5) A local authority may only give a notice or reasons by means of an electronic communication if—
(a) the person to whom the notice or reasons is or are to be given has agreed to receive notices and reasons by means of an electronic communication, and

(b) the communication is sent to an electronic address, and is in an electronic form, specified for that purpose by the person.

(6) In relation to any notice or reasons given by means of an electronic communication, any requirement of this Schedule for the notice or reasons to be given in writing is satisfied if the communication is sent in accordance with sub-paragraph (5).

(7) When a licensing authority gives a notice or reasons by means of an electronic communication then, unless the contrary is proved, it is to be treated as having been received by the person to whom it was sent on the second working day after the day on which it was sent.

(8) For the purposes of sub-paragraph (7), “working day” means a day which is not—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning, or

(e) a day which is a local or public holiday in the area to which the electronic communication is sent.

(9) A local authority may make different determinations for different purposes including, in particular, for different types of licence.

(10) In this Schedule—

“electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,

“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.”.

PART 4

GENERAL

74 Interpretation

(1) In this Act—

“the 1982 Act” means the Civic Government (Scotland) Act 1982,

“the 2005 Act” means the Licensing (Scotland) Act 2005.

(2) See section 40 for the interpretation of words and expressions used in Part 1.

75 Regulations

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—
(a) different provision for different purposes,
(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(2) Regulations under section 2(4), 8(3) or 20(3) are subject to the affirmative procedure.

(3) Regulations under section 76(1) containing provisions which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.

(4) All other regulations under this Act are subject to the negative procedure.

76 Ancillary provision

(1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision of this Act or any provision made under it.

(2) Regulations under this section may modify this or any other enactment.

77 Minor and consequential amendments and repeals

Schedule 2 contains—

(a) minor amendments, and
(b) amendments and repeals consequential on the provisions of this Act.

78 Commencement

(1) Section 57(1) and (2) and this Part, other than section 77, come into force on the day after Royal Assent.

(2) The other provisions of this Act (including section 77) come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under this section may include transitional, transitory or saving provision.

79 Short title

The short title of this Act is the Air Weapons and Licensing (Scotland) Act 2015.
SCHEDULE 1
(introduced by section 2(3))

EXEMPTIONS

Approved air weapon clubs

1. It is not an offence under section 2(1) for an individual ("A") to use or possess an air weapon without holding an air weapon certificate if—
   (a) A is a member of an approved air weapon club,
   (b) the use or possession occurs while A is engaged as such a member—
      (i) in target shooting at the club, another approved air weapon club, an event or competition, or
      (ii) in connection with such target shooting, and
   (c) where A is under the age of 14, A's use and possession of an air weapon is supervised by another club member aged 21 years or more.

Registered firearms dealers and their employees

1. It is not an offence under section 2(1) for an individual to use, possess, purchase or acquire an air weapon without holding an air weapon certificate if—
   (a) the individual is carrying on business as a registered firearms dealer or is the employee of a registered firearms dealer, and
   (b) the possession occurs in the ordinary course of the business as such a dealer.

2. For the purposes of sub-paragraph (1), it is irrelevant whether the use, possession, purchase or acquisition of the air weapon occurs at a place—
   (a) which is not a place of business of the registered firearms dealer, or
   (b) which the dealer has not registered as a place of business under section 33 or 37 of the 1968 Act.

3. It is not an offence under section 2(1) for an individual ("A") to—
   (a) borrow an air weapon from a registered firearms dealer, and
   (b) use and possess the weapon on land occupied by the dealer,
   without holding an air weapon certificate, if the conditions in sub-paragraph (4) are complied with.

4. The conditions are—
   (a) A uses and possesses the air weapon under the supervision of the registered firearm dealer or an employee of the dealer ("the supervisor"), and
   (b) where A is under the age of 14, the supervisor is aged 21 years or more.

Auctioneers

1. It is not an offence under section 2(1) for an individual to possess, acquire or purchase an air weapon without holding an air weapon certificate if—
   (a) the individual is carrying on business as an auctioneer or is the employee of an auctioneer, and
(b) the possession occurs in the ordinary course of the business as an auctioneer.

(2) It is not an offence under section 24 for an individual (“A”) who is an auctioneer (but not a registered firearms dealer) in the course of A’s business as such an auctioneer to sell (or expose for sale) by auction an air weapon if A holds a police permit granted by the chief constable under section 12.

Carriers and warehouse keepers

4 It is not an offence under section 2(1) for an individual to possess an air weapon without holding an air weapon certificate if—

(a) the individual is carrying on business as a carrier or warehouse keeper or is the employee of a carrier or warehouse keeper, and

(b) the possession occurs in the ordinary course of the business as a carrier or warehouse keeper.

Artistic performers

5 (1) It is not an offence under section 2(1) for an individual to use or possess an air weapon without holding an air weapon certificate while the individual is taking part in an activity listed in sub-paragraph (2).

(2) The activities are—

(a) a theatrical performance or a rehearsal of such a performance,

(b) the production of a film for cinema, television or other genuine and prearranged artistic purpose.

Cadet corps

6 (1) It is not an offence under section 2(1) for an individual to use or possess an air weapon without holding an air weapon certificate if—

(a) the individual is a member of an approved cadet corps or the instructor of such a member, and

(b) the use or possession occurs while the individual is engaged in drill or target shooting exercises as such a member or instructor.

(2) In this paragraph “approved cadet corps” means a cadet corps which has been approved by the Secretary of State under section 54(5)(b) of the 1968 Act.

Bodies corporate etc.

7 (1) It is not an offence under section 2(1) for a person who is not an individual (“the entity”) to possess, purchase or acquire an air weapon without holding an air weapon certificate if an officer of the entity holds an air weapon certificate in the officer’s capacity as such an officer.

(2) For the purposes of sub-paragraph (1), a reference to an officer of the entity is a reference to—

(a) in relation to a body corporate (other than a limited liability partnership)—

(i) a director, manager, secretary or similar officer of the body,
(ii) where the affairs of the body are managed by its members, a member,
(b) in relation to a limited liability partnership, a member,
(c) in relation to a Scottish partnership, a partner,
(d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

_Holders of police permits_

8 (1) It is not an offence under section 2(1) for an individual who holds a police permit under section 12 to possess or acquire an air weapon without holding an air weapon certificate if the permit authorises the possession or acquisition.

(2) It is not an offence under section 24 for an individual who holds a police permit under section 12 to sell (or expose for sale) an air weapon, in the course of the holder’s business, if the permit authorises the sale.

_Holders of visitor permits_

9 It is not an offence under section 2(1) for an individual who holds a visitor permit under section 13 to use, possess, purchase or acquire an air weapon without holding an air weapon certificate if the permit authorises the use, possession, purchase or, as the case may be, acquisition.

_Authorised events_

10 (1) It is not an offence under section 2(1) for an individual to—

(a) at an event in respect of which an event permit has been granted by the chief constable under section 17, and

(b) engaging in an event activity.

(2) In this paragraph, “event activity” has the meaning given in section 17(7).

_Supervised use of air weapons on private land_

11 (1) It is not an offence under section 2(1) for an individual (“A”) to—

(a) borrow an air weapon from the occupier of private land, and

(b) use and possess the weapon on that land, without holding an air weapon certificate, if the conditions in sub-paragraph (2) are complied with.

(2) The conditions are—

(a) A uses and possesses the air weapon under the supervision of the occupier of the land or an employee or agent of the occupier (“the supervisor”),

(b) the supervisor holds an air weapon certificate,

(c) A complies with any conditions attached to the supervisor’s certificate so far as relevant to the use and possession of the air weapon by A, and

(d) where A is under the age of 14, the supervisor is aged 21 years or more.
Use of air weapons at recreational shooting facilities

12 (1) It is not an offence under section 2(1) for an individual (‘A’) to borrow, hire, use or possess an air weapon without holding an air weapon certificate at a recreational shooting facility, if—

(a) A reasonably believes that an individual who is responsible for the management and operation of the facility holds an air weapon certificate, and

(b) A’s use or possession occurs only while A is at the facility.

(2) It is not an offence under section 2(1) for an individual (‘B’) to use or possess an air weapon without holding an air weapon certificate at a recreational shooting facility, if—

(a) B reasonably believes that an individual who is responsible for the management and operation of the recreational shooting facility holds an air weapon certificate, and

(b) B is an employee of the operator of the facility and is acting in the ordinary course of the employer’s business as such an operator.

(3) In this paragraph, “recreational shooting facility” means—

(a) a miniature rifle range or a shooting gallery at which air weapons are used, or

(b) a facility for combat games which involve an air weapon, which is operated with a view to making a profit.

Museums

13 (1) It is not an offence under section 2(1) for an individual who is responsible for the management of a museum or is an employee of the museum to possess, purchase or acquire an air weapon without holding an air weapon certificate if—

(a) the possession, purchase or acquisition is for the purposes of the museum, and

(b) either—

(i) there is a museums firearms licence in force in respect of the museum, or

(ii) an individual mentioned in sub-paragraph (2) holds an air weapon certificate.

(2) The individuals are—

(a) an individual responsible for the management of the museum, or

(b) a curator at the museum.

(3) In this paragraph—

(a) a reference to an individual responsible for the management of the museum is a reference to a member of the board of trustees or the governing body or an individual exercising corresponding functions,

(b) “museum firearms licence” means a licence granted under the Schedule to the Firearms (Amendment) Act 1988.
Air weapons on ships

14 It is not an offence under section 2(1) for a person to use and possess an air weapon without holding an air weapon certificate while on board a ship if the weapon is part of the equipment of the ship.

Purchase of air weapons for delivery outwith Scotland

15 It is not an offence under section 2(1) for an individual to purchase an air weapon from a registered firearms dealer without holding an air weapon certificate if—

(a) the purchaser is aged 18 years or more, and

(b) the weapon is to be delivered to a place outwith Great Britain, or to a registered firearms dealer in England or Wales, without first coming into the purchaser’s possession.

Loaning of air weapons for exempted purposes

16 (1) It is not an offence under section 24(1) or (2) for a person listed in sub-paragraph (2) to lend or to let on hire an air weapon to an individual (“A”), who does not hold an air weapon certificate, for the purpose of A’s using and possessing the weapon in accordance with an exemption under this schedule.

(2) The persons are—

(a) a holder of an air weapon certificate, or

(b) a person who—

(i) does not hold an air weapon certificate, but

(ii) is entitled to use or possess an air weapon without committing an offence by virtue of an exemption under this schedule.

Public servants carrying out official duties

17 (1) It is not an offence under this Part for a person listed in sub-paragraph (3) to carry out an activity listed in sub-paragraph (2) without holding an air weapon certificate, if the carrying out of the activity is for or in connection with the person’s duties.

(2) The activities are the use, possession, purchase, acquisition, manufacture, testing, repair, sale, transfer or disposal of an air weapon.

(3) The persons are—

(a) a constable,

(b) a member of police staff,

(c) a police cadet appointed under section 25 of the Police and Fire Reform (Scotland) Act 2012,

(d) a person providing forensic services in pursuance of section 31 of the Police and Fire Reform (Scotland) Act 2012,

(e) a member of the Ministry of Defence police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987,

(f) a member of the British Transport Police,
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Schedule 2—Minor and consequential amendments and repeals

Part 1—Amendments and repeals relating to Part 1

(g) a member of the Civil Nuclear Constabulary,
(h) a civilian officer of the British Transport Police or the Civil Nuclear Constabulary,
(i) a member of any other police force while executing a warrant or otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
(j) a person in the armed forces of Her Majesty,
(k) a member of the armed forces of another country when that member is serving with the armed forces of Her Majesty,
(l) the Queen’s and Lord Treasurer’s Remembrancer (or a person authorised to act on the Remembrancer’s behalf).

(4) In this paragraph “armed forces” means naval, military or air services.

Holders of certificates or permits with conditions

18 (1) It is not an offence under section 6(4) for a holder of an air weapon certificate to fail to comply with a condition attached to the holder’s certificate if the conditions in subparagraph (2) are complied with.

(2) The conditions are—

(a) that the holder of the certificate would be entitled to use, possess, purchase or, as the case may be, acquire an air weapon by virtue of an exemption under this schedule if the holder did not hold the certificate, and

(b) that the failure relates to the use, possession, purchase or, as the case may be, acquisition of an air weapon in accordance with the exemption.

(3) It is not an offence under section 15(4) for a holder of a police permit or a visitor permit to fail to comply with a condition attached to the holder’s permit if the conditions in sub-paragraph (4) are complied with.

(4) The conditions are—

(a) that the holder of the permit is entitled to use, possess, purchase or, as the case may be, acquire an air weapon by virtue of an exemption under this schedule, and

(b) that the failure relates to the use, possession, purchase or, as the case may be, acquisition of an air weapon in accordance with the exemption.

SCHEDULE 2
(introduced by section 77)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1

AMENDMENTS AND REPEALS RELATING TO PART 1

Firearms Act 1968

1 (1) The Firearms Act 1968 is amended as follows.
(2) In section 3(1) (offences relating to manufacturing, selling or transferring firearms when not a firearms dealer)—
(a) immediately following paragraph (a), insert “or”,
(b) the word “or” immediately following paragraph (b) is repealed,
(c) paragraph (c) is repealed.

(3) In section 21A (firing an air weapon beyond premises), after subsection (1) insert—
“(1A) A person commits an offence if the person—
(a) is supervising the use and possession of an air weapon on private premises by a person under the age of 18, and
(b) allows the supervised person to fire any missile beyond those premises.”.

(4) Section 22(4) (offence for person under 18 to possess an air weapon or ammunition for an air weapon) is repealed.

(5) Section 23 (exceptions from section 22(4) of that Act) is repealed.

(6) In section 24(4) (supplying firearms to minors), in paragraph (b), for the words from “by” to the end substitute “the person holds an air weapon certificate granted under section 5 of the Air Weapons and Licensing (Scotland) Act 2015 or the possession is otherwise in accordance with Part 1 of that Act.”.

(7) In section 24ZA (failing to prevent minors from having air weapons), for subsection (2) substitute—
“(2) Subsection (1) does not apply where—
(a) the person under the age of 18 holds an air weapon certificate granted under section 5 of the Air Weapons and Licensing (Scotland) Act 2015, or
(b) the use or possession of the weapon by the person under the age of 18 is otherwise in accordance with Part 1 of that Act.”.

(8) In section 57 (interpretation)—
(a) in subsection (3), for “22(4), 22(5), 23(1)” substitute “21A(1A)”,
(b) in subsection (4), in the definition of “firearms dealer”, in paragraph (b), for “sells or transfers” substitute “manufactures, sells, transfers, repairs or tests”.

(8A) In Schedule 4 (particulars to be entered by firearms dealer in register of transactions)—
(a) in Part 1, in the note, after “2” insert “or 3”,
(b) in Part 2, for the note substitute—
“Notes:
This Part does not apply in relation to Scotland.
In this Part “air weapon” includes any component of, or accessory to, an air weapon.”,
(c) the heading of Part 2 becomes—
“PARTICULARS RELATING TO AIR WEAPONS: ENGLAND AND WALES”,
(d) after that Part insert—
PART 3

PARTICULARS RELATING TO AIR WEAPONS: SCOTLAND

Notes:
This Part applies in relation to Scotland.

In this Part “air weapon” includes any component of, or accessory to, an air weapon.

1 The quantities and description of air weapons manufactured and the dates of manufacture.

2 The quantities and description of air weapons purchased or acquired with the names and addresses of the sellers or transferors and the date of each transaction.

3 The quantities and description of air weapons accepted for sale, repair, testing, cleaning, storage, destruction, or any other purposes, with the names and addresses of the transferors and the date of each transaction.

4 The quantities and description of air weapons sold or transferred with the names and addresses of the purchasers or transferees and the date of each transaction.

5 The quantities and description of air weapons in possession for sale or transfer at the date of the last stocktaking or such other date in each year as may be specified in the register.”.

(9) In Schedule 6 (prosecution and punishment of offences)—

(a) in the table in Part 1 (punishments)—

(i) in the entry for section 21A (person making improper use of air weapon), in the first column, for “21A” substitute “21A(1) and (1A)”,

(ii) the entry for section 22(4) is repealed,

(iii) the entry for section 23(1) is repealed,

(b) in Part 2 (supplementary provisions as to trial and punishment of offences)—

(i) in paragraph 7, for “21A, 22(3) or (4), 23(1)” substitute “21A(1), 21A(1A), 22(3)”,

(ii) in paragraph 8, for “21A, 22(3) or (4), 23(1),” substitute “21A(1), 21A(1A), 22(3),”.

Criminal Procedure (Scotland) Act 1995

1A In Schedule 9 to the Criminal Procedure (Scotland) Act 1995 (certificates as to proof of certain routine matters), at the end of the table insert—

| “The Air Weapons and Licensing (Scotland) Act 2015” | A constable or a person employed by the Scottish Police Authority, if the constable or person is authorised to do so by the chief constable of the Police Service of Scotland. | In relation to a person identified in the certificate, that on the date specified in the certificate the person held, or as the case may be, did not hold, an air weapon certificate (within the meaning of Part 1 of that Act).” |
Violent Crime Reduction Act 2006

2 Section 32 of the Violent Crime Reduction Act 2006 (sales of air weapons by way of trade or business to be face to face) is repealed.

PART 2
AMENDMENTS RELATING TO PART 2

Licensing (Scotland) Act 2005

3 (1) The 2005 Act is amended as follows.
   (1A) In section 28(2) (period of effect of premises licence), for “34(1)” substitute “33(1)”.
   (1B) In section 29(4) (application to vary premises licence), for “and 22” substitute “, 22 and 24A”.
   (1C) In section 35 (variation on transfer), in each of subsections (1) and (3)(b), the words “or 34(1)” are repealed.
   (2) In section 37 (review of premises licence on Licensing Board’s initiative)—
       (a) in subsection (3), for “subsection” where second occurring substitute “section”,
       (b) in subsection (4)—
           (i) in paragraph (a), for “subsection” substitute “section”,
           (ii) in paragraph (b), for “subsection” substitute “section”.
   (3) In section 49(1)(c) (Licensing Board’s duty to update premises licence), the words “or 34(1)” are repealed.
   (4) In section 57 (notification of occasional licence application to chief constable and Licensing Standards officer), in subsection (5)—
       (a) for “Subsections (2) and (3) have” substitute “Subsection (3) has”,
       (b) for “references” where first occurring substitute “reference”,
       (c) for “references” where second occurring substitute “a reference”.

PART 3
AMENDMENTS RELATING TO PART 3

Civic Government (Scotland) Act 1982

4 (1) The 1982 Act is amended as follows.
   (2) In Schedule 1 (licensing: further provisions as to the general system)—
       (a) in paragraph 5—
           (i) the sub-paragraph (2A) which was inserted by section 172(6)(d) of the Criminal Justice and Licensing (Scotland) Act 2010 is renumbered as sub-paragraph (2ZA),
           (ii) in the sub-paragraph (2A) which was inserted by paragraph 11(6)(b)(ii) of Schedule 1 to the Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006, SSI 2006/475, for “(1)(b)” substitute “(1A)(b)”,
(b) in paragraph 7(3), for “(2), (2A)” substitute “(1A), (2), (2ZA), (2A)".
Air Weapons and Licensing (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision for the licensing and regulation of air
weapons; to amend the Licensing (Scotland) Act 2005; to amend and extend the licensing
provisions of the Civic Government (Scotland) Act 1982; and for connected purposes.

Introduced by: Kenny MacAskill
On: 14 May 2014
Bill type: Government Bill