

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

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 focussing 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 well¹. 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>. 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>. 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>. 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;

- 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 licensing 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

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

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

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 licence. 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.

137. 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 straight forward 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’ from 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 Deloitte 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 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.

234. 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.

235. 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

236. 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.

237. In addition the Bill replicates the anti-censorship provisions contained within the 1968 Act in the 1982 Act.

Consultation

238. Informal discussions have been held with those representing licensing authorities and arts groups.

Alternative approaches

239. 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.

Effects on equal opportunities, human rights, island communities, local government and sustainable development etc. of the public entertainment venue provisions in the Bill

240. 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.

241. 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.

242. 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

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 their 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 compliant 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

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 (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

AIR WEAPONS AND LICENSING (SCOTLAND) BILL

POLICY MEMORANDUM

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