Finance Committee

Report on Air Weapons and Licensing (Scotland) Bill

The Committee reports to the lead committee as follows—

Introduction

1. The Air Weapons and Licensing (Scotland) Bill (“the Bill”) was introduced on 14 May 2014. Its Financial Memorandum (FM) can be found at page 41 of the accompanying Explanatory Notes.

2. The Committee received 14 responses to its call for evidence on the FM, around half of which were from local authorities and licensing boards. Responses were also received from organisations representing air weapons users and vendors and from the Scottish Taxi Federation.

3. At its meeting on 4 February the Committee took evidence from the Scottish Government Bill Team. The Official Report of the evidence session is available here: [http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29824.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29824.aspx)

The Financial Memorandum

4. The FM states that—

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

5. In oral evidence the Bill Team suggested that—

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

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

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• Part 1 – Air Weapons
• Part 2 – Alcohol
• Part 3 – Civic Licensing
  o Taxis and private hire cars
  o Metal dealers
  o Public entertainment venues
  o Sexual entertainment venues
  o Miscellaneous and general.

Potential for Legal Challenges

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

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

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

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

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

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

Part 1 – Air Weapons

11. The Bill introduces a licensing regime for air weapons which will be administered by Police Scotland. The FM states that “there will be a long lead in time for full commencement” to ensure maximum awareness of the legislative changes and to allow for unlicensed air weapons to be handed in before their possession

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2 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 32
becomes a criminal offence. Those who hand in unlicensed air weapons will not be entitled to compensation.

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

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

Applications and fees

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

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

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

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

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

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

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

20. When asked to expand upon the FM’s figures in oral evidence, the Bill Team explained that they related to “brand-new applicants to the system who do not have more powerful weapons.” The Bill Team also pointed out that certificates did not relate to single air weapons but that “one, two or any number” could be held on a single certificate.³

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

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

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

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

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

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

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

³ Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 28
28. The BASC went on to state that “the recommendations that we made relating to the financial costs have largely been ignored and the assumption that most applications for an air weapon certificate (98%) will be dealt with without the need for further inquiry is, we feel, misleading.”

29. Expanding on this, the BASC stated—

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

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

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

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

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

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

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

34. When asked to expand on the basis for its figures the Bill Team stated that there were an estimated 60,000 to 65,000 existing certificate holders for other types of firearms and it was expected that many of them would also have air weapons. As “many of the security issues” would already have been looked at in licensing those holders…a large number of people would already be taken out of the system.”
35. The Bill Team further stated that there would be “a relatively light touch” for new applicants and Police Scotland had told the Government that a “disclosure-style arrangement, under which they will check an applicant’s basic criminal history should suffice for the majority of applicants.”

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

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

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

**Enforcement**

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

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

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

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

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

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4 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 26
5 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 26
6 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 26
7 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 28
43. The BASC noted that the FM did not appear to identify any possible costs arising from appeals against refusals to grant a certificate or revocation of one. The Bill Team acknowledged this omission in oral evidence and undertook to look at the issue “and, perhaps, revisit it”. However, the Bill Team did confirm that whilst it was difficult to estimate the number of appeals, the proposed “light-touch system” along with the “very small” number of refusals under the existing firearms regime led it to expect there would not be many.

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

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

46. The GTA stated that—

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

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

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

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

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

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51. When asked whether the absence of compensation might make it less likely that air weapons would be handed in, the Bill Team explained that its expectation was that there would be a high number of low-value weapons in lofts or “at the back of people’s garages.” As the legislation did not amount to a ban on air weapons and people would be free to sell them on privately the policy position was that compensation would not be provided.

Part 2 – Alcohol Licensing

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

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

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

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

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

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

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

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

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

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

59. COSLA also commented on the reports, stating—

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

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

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

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

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

63. However, the Bill Team explained that—

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

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

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

10 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 30
11 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 30
12 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 30
scope of the Bill, “we feel that we can increase the occasional licence fee without extensive further work, and fairly soon.”

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

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

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

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

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

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

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

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

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

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

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13 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 30
“Referencing the fit-and-proper-person test to the overarching licensing objectives ensures that decisions that the board makes are constrained within the scope of the 2005 Act.”\textsuperscript{14}

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

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

Part 3 – Civic Licensing

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

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

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

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

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

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

81. SLC and DGLB agreed with this perspective, with SLC suggesting that the costs in the FM “would be a minimum figure” and estimating that such an

\textsuperscript{14} Scottish Parliament Finance Committee, \textit{Official Report}, 4 February 2015, Col 34
assessment would cost it “in excess of £20,000” whilst DGC stated that these costs “appear low”.

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

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

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

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

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

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

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

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

“We therefore, do not accept that the anticipated cost of court challenges to the question of over provision, which in our view are more likely as a result of the weakness in the legislation, should simply be passed back to licence fees.”

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15 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 31
90. The STF went on to suggest that “licence holders are in effect being punished for a system that the Scottish Government acknowledge in advance, is more likely to be challenged.”

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

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

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

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

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

Public entertainment venues

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

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

97. DGC stated that those authorities not currently licensing places of public entertainment would need to undertake a “substantial and detailed process” to assess whether there is a need to licence theatres as places of public entertainment. It further stated that those that already do would incur “significant press publication fees for statutory notices if the authority’s resolution is to be widened to include theatres.”

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16 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 36
17 Scottish Parliament Finance Committee, Official Report, 4 February 2015, Col 36
98. GCCLA agreed with this point suggesting that “there will be costs associated with the amending and publishing of the public entertainment resolution.” It urged the Government to introduce “provisions to allow the necessary amendment to the resolution to be expedited” which, it suggested, would “reduce the costs to theatre owners etc.”

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

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

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

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

**Sexual entertainment venues**

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

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

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

106. GCC expressed similar concerns stating—

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

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

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

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

110. The Bill Team further stated that—

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

**CONCLUSION**

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

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

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