Thank you for responding to the Local Government and Regeneration Committee's Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee's scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee's Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

**1. Please supply your name and contact details:**

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2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☑ Professional

☐ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes

☐ No

* 7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☑ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☑ General licensing issues

☑ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☐ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☑ Civic licensing – sexual entertainment venues
1. Equalities, Climate Change and other Scottish Government objectives

You may respond to all the questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

8. Do you consider that the Bill has any implications for meeting Scotland’s climate change commitments? Please explain.

9. Do you consider that the Bill has any implications for meeting Scotland’s equality and/or human rights commitments? Please explain.

Alcohol Focus Scotland (AFS) does not believe that the Bill, in respect of its provisions on alcohol licensing, has implications in relation to Scotland’s human rights commitments. It is clear that EU law allows states to impose controls on possessions (such as licences) if it is deemed to be in the wider public interest. Moreover, in the Licensing (Scotland) Act 2005, overprovision policies and decisions only apply to the grant of new premises licences and not to existing licences and there is no property right in a prospective licence.

The Licensing (Scotland) Act 2005 was considered by the Scottish Parliament and Scottish Ministers to be compliant with both the ECHR and community law and AFS can see no reason why that situation would be altered by the proposed amendments to the 2005 Act.

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.
AFS believes the alcohol licensing system, provided it is well-functioning, is an important contributor to the preventative approach advocated by the Commission on the Future Delivery of Public Services (Christie Commission).

As noted in the Policy Memorandum at paragraph 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.’ The system of alcohol licensing is used to mitigate the risks of harm associated with alcohol consumption by managing and controlling the availability of alcohol. The licensing objectives set out in the 2005 Act give a clear focus to the preventative role that alcohol licensing plays: the underpinning objectives of the licensing system are to prevent crime and disorder, secure public safety, prevent public nuisance, protect and improve public health and protect children from harm.

We know that alcohol does lead to significant harm in Scotland. Empirical evidence shows that increasing access to alcohol, through more outlets and longer trading hours, is linked to a range of alcohol-related harms; the increased availability of alcohol has been linked to increased rates of harm including alcohol-related deaths, violence, traffic accidents, self-reported injuries and suicide, sexually-transmitted disease and child abuse and neglect.\(^1\) Alcohol harm has been estimated to cost Scotland £3.6 billion a year in health, social care, crime, productive capacity and wider costs.\(^2\)

Overall, the weight of evidence supports the conclusion that restrictions on the availability of alcohol can contribute to a reduction in alcohol-related problems. Investment in improving the effectiveness of the alcohol licensing system, particular in improving the pursuit of the licensing objectives, therefore has the potential to reduce the potential costs of alcohol-related harm that arise in other public services and the wider economy. Potential costs associated with implementing improvements in the licensing system must therefore be considered in the context of potential savings that could be made from reducing alcohol-related harms.

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11. Do you consider that the Bill has any implications in relation to European Union issues? Please explain.

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\(^1\) Popova S et al., (2009), ‘Hours and days of sale and density of alcohol outlets: Impacts on alcohol consumption and damage: A Systematic review’, Alcohol and Alcoholism, Vol 44, No.5 pp. 500-516.


AFS does not believe that the Bill, in respect of its provisions on alcohol licensing, has implications in relation to European Union issues. The EU Services Directive permits the use of authorisation schemes such as licensing if the scheme does not discriminate against service providers; the need for the scheme is justified by an overriding reason relating to the public interest; and the objective pursued cannot be attained by less restrictive means (Article 9). In the case of alcohol, an inherently risky substance, the need to regulate its availability to minimise the harm caused to individuals and society from its use has been established in law in Scotland for more than two centuries.

The Licensing (Scotland) Act 2005 was considered by the Scottish Parliament and Scottish Ministers to be compliant with European Community law and AFS can see no reason why that situation would be altered by the proposed amendments to the 2005 Act.

12. Do you have any other comments on the impact of the proposals contained in the Bill relation to Scottish Government objectives?

Overall, the proposals in this Bill should strengthen the alcohol licensing system in Scotland. Improvements enabling more robust management of the availability of alcohol should impact on a number of the Scottish Government’s objectives.

The Bill’s policy memorandum (at paragraph 5) identifies a number of national outcomes that are supported by the Bill. AFS believes that controlling alcohol availability also contributes to the achievement of the national outcomes ‘our children have the best start in life and are ready to succeed,’ ‘we have tackled the significant inequalities in Scottish society,’ ‘we have improved the life chances for children, young people and families at risk,’ and ‘we have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.’

The alcohol licensing system is an important means through which the Scottish Government’s priorities set out in its alcohol strategy *Changing Scotland’s Relationship with Alcohol: A Framework for Action* can be achieved, in particular the priority of reducing alcohol consumption.

Addressing alcohol use has been identified as one of the priorities of the Scottish Government’s *Strategy for Justice in Scotland*, in recognition that alcohol and drug use are significant contributory factors in many crime and civil justice problems. This strategy acknowledges the role the licensing regime has to play in delivering the changes the Scottish Government wants to see in curbing alcohol misuse.
The cost to the productive capacity of the Scottish economy due to the effects of alcohol misuse has been estimated at between £725.2 million - £1,006.1 million.\(^3\) These costs are the result of absenteeism, presenteeism (being present at work, but performance negatively affected by alcohol consumption), premature mortality (death due to alcohol-related causes before the age of 65) and unemployment. Reducing such effects has the potential to improve productivity, a priority of the Scottish Government’s Economic Strategy.

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3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

23. Is the current Scottish licensing regime, as set out in the Civic Government (Scotland) Act 1982 and the Licensing (Scotland) Act 2005, fit for purpose?
Overall, the 2005 Act has much to commend it in creating a policy-led system for alcohol licensing and, in principle, has the potential to create a robust alcohol licensing system in Scotland. However, it is our view that there is a breakdown in how this principle is translating into practice. We believe one cause of this is a failure by the 2005 Act to create robust mechanisms for ensuring the transparency and accountability of the licensing process.

Currently, the only mechanism of accountability built in to the 2005 Act is a requirement for licensing boards to have regards to guidance issued by Scottish Ministers on the exercise of their functions under the Act, and to give notice and reasons to Scottish Ministers when they decide not to follow the guidance (section 142). However, we believe this accountability mechanism is ineffective: the guidance is out-of-date and in urgent need of updating; we are unclear whether licensing boards are informing Ministers when they deviate from the guidance; and there appears to be little consequence if the guidance is not followed.

For example, despite a requirement for licensing boards to produce their 2013-16 policy statements by November 2013, by the end of April 2014, only 25 of 36 licensing boards had done so, and 6 of these 25 statements did not include an overprovision policy. These policies are essential to the transparent operation of a licensing board, providing a broad indication of how it will exercise its discretionary power. Failure to produce such statements creates uncertainty for all interested parties - the licensed trade, communities, Licensing Standards Officers, police, and health alike – undermining confidence about the consistency of approach in decision-making. The Scottish Government, in its letter to the Committee, suggests failure to update a policy within timescales could result in its validity being legally challenged. It is therefore concerning that there appears to be no other mechanism for holding licensing boards to account for failing to update their policies within the required timescales.

Given the public interest purpose that underpins alcohol licensing (policy memorandum, para. 11), the lack of transparency and accountability in the process is a substantial weakness of the 2005 Act. It is disappointing that the Scottish Government has not brought forward suggested improvements in this Bill, on the grounds that they would be unduly onerous (policy memorandum, para. 162). We believe that increasing transparency and accountability would benefit all interested parties. Measures we would like to see brought forward are:

- A statutory duty on licensing boards to promote the licensing objectives.
- A statutory duty on licensing boards to record, collate and report on a comprehensive licensing data set.
- A statutory duty on licensing boards to produce an annual report, including outlining how they have promoted the licensing objectives.
- A requirement for the Scottish Government to regularly review and update the statutory guidance for licensing boards.
- Retaining the requirement for overprovision assessments to take account of the number and capacity of licensed premises, whilst expanding this assessment to take account of licensed hours, numbers of members’ clubs and occasional licences.

4 Review of statements of licensing policy 2013 to 2016, Alcohol Focus Scotland, 2014. As at 11 September
24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?

AFS believes the alcohol licensing regime should regulate communities of space. Such an approach is consistent with the Scottish Government’s alcohol strategy, *Changing Scotland’s Relationship with Alcohol: A Framework for Action*, central to which is a ‘whole population approach’ to reducing alcohol harm, with alcohol policies aimed at the whole population rather than only dependent drinkers. Controlling availability of alcohol through licensing is a key component of a whole population approach. Regulating communities of space is also consistent with the priorities that have been set for tackling alcohol harm at local level: one of the core outcomes for local Alcohol and Drug Partnerships is to ensure that people live in positive, health-promoting local environments where alcohol and drugs are less readily available.

‘Whole population’ measures are important because despite a recent decline, alcohol consumption in the UK remains at historically high levels. A range of factors are likely to have contributed to this, but the interplay between the increased affordability, availability and promotion of alcohol provides a large part of the explanation. Restricting the sale of alcohol through the licensing system is not about punishing individuals, but rather about recognising that people’s behaviour is influenced by their environment. Physical environments can enable or constrain drinking behaviour, and a key means of supporting behaviour change is to change these environmental factors.

Overall, the weight of evidence from around the world supports the conclusion that approaches that regulate communities of space, such as restricting the availability of alcohol, can contribute to a reduction in alcohol-related problems. Such approaches have been found to be significantly more effective than measures which seek to regulate individual behaviour, such as education.

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

2014, AFS’ review of local authority websites suggests that 7 licensing boards are still to publish finalised licensing policy statements, and 13 are to publish overprovision statements (four of these licensing boards are the four South Lanarkshire boards). We would note, however, that we are aware of at least two licensing boards that have developed finalised policy and/or overprovision statements but do not yet appear to have made these publicly available, and others have produced draft statements that are currently out for consultation.

Scottish Government letter to Local Government and Regeneration Committee, 1 September 2014, qu. 31


It is important that the licensing system in Scotland does not operate in a silo when making decisions about alcohol. AFS believes local authorities should ensure that there are mechanisms in place to check consistency and complementarity of different policies of local government, including licensing, land use planning and community planning.

Many applicants will require to access the licensing and land use planning processes before they can open or modify a premises. It is therefore essential that there is clear and purposeful alignment between the alcohol licensing system and the land use planning system at a local level, in order to protect against inconsistent policies creating problems for the boards themselves or for applicants. Like alcohol licensing, the planning system in Scotland is a policy-led rather than application-led process, and such alignment should therefore be possible and practicable. However, we are unclear of the extent to which it is happening in practice. AFS’ analysis of statements of licensing policy for 2013-16 found that nearly all of the published statements stated that they would have regard to other local strategies, but with the exception of one licensing board, failed to demonstrate how.

There also needs to be close interaction between alcohol licensing and community planning. Many local authorities have Single Outcome Agreements with priorities that include addressing alcohol and drug use, and creating positive, healthy local environments for their citizens. It is critical that the alcohol licensing system in local areas is recognised by all stakeholders, including the licensing board itself, to be a key component of this wider agenda, and that the licensing board’s policy statement complements the community planning strategy. A key means for this to be achieved should be through better cooperation between licensing system and local Alcohol and Drug Partnerships (ADPs). ADPs are embedded within the community planning structure, with a key role in working to reduce alcohol harm in local areas. Their membership commonly includes local representatives from health, police and community safety, social work and voluntary sector organisations. Many ADPs are becoming increasingly involved in the licensing process, for example by preparing reports to inform the development of licensing boards’ policy statements and inputting to their local licensing forum. Improving cooperation between ADPs and the licensing system could contribute to ensuring the licensing system supports community planning priorities.

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

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8 Review of statements of licensing policy 2013 to 2016, Alcohol Focus Scotland, 2014
The primary purpose of the alcohol licensing regime is to regulate the sale of alcohol to promote the licensing objectives. As the Scottish Government acknowledges in its letter to the committee, the five licensing objectives are the ‘engine’ of the 2005 Act.\(^9\) Promotion of economic development is not a function of the 2005 Act and a licensing board is not empowered to restrict the degree of regulation it applies to licensed premises to achieve a non-licensing objective, such as job creation. However, AFS would argue that a properly regulated alcohol market is consistent with sustainable development. As documented elsewhere in this submission, rising alcohol consumption in Scotland is associated with a substantial burden of health and social harm, which has a negative impact on the productive capacity of the economy. Careful management of the availability of alcohol through the licensing system can ensure that alcohol is made available for sale in a way that minimises the risks and costs of alcohol-related harm to individuals and communities, thereby limiting the damaging effects of alcohol use on societal development.

AFS believes there needs to be more discussion and debate, particularly at a local level and involving local communities, on what sustainable economic development means and the role of alcohol licensing in assisting sustainable development. Despite it not being a licensing function, licensing policy and applications are quite often considered in terms of the economic benefits licensed premises bring to local areas. AFS’ analysis of licensing boards’ policy statements for 2013-16 found that more policy statements highlight the contribution of the licensed trade to the economy and tourism of a local area than mention any adverse health and social consequences linked to alcohol, which the licensing system is there to address. This focus on the purported economic benefits of an expanding licensed trade raises a number of issues. For instance, claims of the economic benefits of increasing numbers of licensed premises are often made with little or no supporting evidence. It is not clear the extent to which additional new licensed premises or extensions in capacity or hours, deliver economic benefits, such as job creation or increased tourism. The growth of supermarket off-sales over the past fifty years, for example, has been associated with the decline of independent off-sale retailers in Scotland and a struggling pub sector, with implications for jobs and the economic balance of the alcohol market in local areas.

In the absence of robust evidence it is difficult to have an informed debate about the kind of economic development envisaged by a growing licensed trade: whether it actually delivers in terms of increased employment opportunities and regeneration, whether the jobs it creates are the kind of jobs local people want, and whether the increased costs to health and wellbeing associated with the increased availability of alcohol are costs that local communities are willing to pay.\(^{10}\)

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\(^9\) Scottish Government letter to Local Government and Regeneration Committee, 1 September 2014, qu. 28

\(^{10}\) Alcohol Focus Scotland has produced local cost profiles that provide a summary of the overall costs of alcohol-related harm to local authority areas in Scotland in 2010/11, available at http://www.alcohol-focus-scotland.org.uk/alcohol-information/local-alcohol-cost-profiles.aspx
27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?

Consumption patterns are changing in the UK, with the increasingly dominant role of off-sales contributing to the majority of drinking now being done in the home. Alcohol consumption has been steadily rising in the UK over the last sixty years, and although consumption has been declining in recent years, alcohol-related harm is still at record levels. Scotland has gone from having one of the lowest liver cirrhosis rates in Western Europe to one of the highest.\(^{11}\) Alcohol-related health harms are disproportionately experienced by more deprived populations and communities.\(^{12}\)

As noted throughout this evidence, these high levels of alcohol-related harm have been linked to increased affordability and availability of alcohol. The licensing of alcohol is recognition that its supply must be controlled due to its potential to be harmful or disruptive. International evidence clearly indicates that reducing availability and increasing price are amongst the most effective policy measures to reduce alcohol consumption and harm in a population.\(^{13}\)

In theory, the introduction of the Licensing (Scotland) Act 2005 has positioned Scotland favourably with regards to addressing the consequences of changing drinking behaviours, supporting public health and wellbeing outcomes and addressing health inequalities. The inclusion of the licensing objective to protect and improve public health, and the requirement for licensing boards to include a statement on overprovision in its licensing policy statement, provides a strong foundation upon which licensing boards can act to address the alcohol-related health harms in their local area. However, AFS believes the potential offered by the legislation to protect and promote public health is yet to be fully realised in practice.

The duty to assess licence applications and formulate policy in relation to public health considerations is still relatively new for licensing boards, as is the involvement and engagement of public health practitioners in the licensing process. Effective implementation of the public health objective in licensing is likely to be a developmental process, in which practitioners find better ways to communicate health evidence and licensing boards’ understanding of the application of licensing law and practice to protect public health deepens. Although there is more work to be done in promoting the public health objective, progress is being made. AFS was pleased to see an increased use and reference to health evidence in the recently produced licensing policy statements.

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4. Alcohol Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?
We recognise the role that alcohol can play as an underlying cause of crime and disorder, and that this is an important priority for the Scottish Government. It should be noted however, that all five licensing objectives are given equal weight within the 2005 Act. While we welcome many of the provisions that have been brought forward within this Bill, in our view opportunities have been missed to bring forward provisions that would have benefits in relation to other licensing objectives, such as promoting and improving public health.

If alcohol availability is better managed, this should lead to reductions in harm, and improvements to all licensing objectives, many of which have overlapping benefits. In general, we support the provisions brought forward by the Bill. However, we are concerned about the effect the drafting of section 54(2)(b) of the Bill, amending the duty to assess overprovision, may have on the licensing objectives. Overprovision is one of the key mechanisms that can be used to prevent crime and disorder, and section 54(2)(b) widens the factors that a licensing board can consider when assessing overprovision. While we welcome this extension, we are concerned that the effect of the drafting is to change the requirement that licensing boards must have regard to the number and capacity of licensed premises in the locality to that they may have regard to (among other things) the number, capacity and licensed hours of licensed premises in a locality.

It is our view that by changing ‘must’ to ‘may’, rather than strengthening the existing legislation, this new provision unintentionally weakens it. It is difficult to see how boards can make a proper assessment of overprovision without a specific requirement to have regard to the number and capacity of licensed premises in a locality. We already know from the independent evaluation of the Scottish Government’s alcohol strategy (MESAS evaluation) that defining and measuring capacity and overprovision are areas of the Act that are working less well.\textsuperscript{14} AFS’ analysis of the 2013-16 licensing policy statements found a lack of transparency in how assessments of overprovision are made, with 8 licensing boards not providing any explanation of how they reached their decision that there is no overprovision in their area or the evidence they took into account in formulating their policy position. We have concerns that the change proposed in section 54(2)(b) may exacerbate these difficulties.

We recognise that taking account of licensed hours may in some circumstances be difficult in practice, given maximum opening hours may not always be utilised by licence holders. However, having regard to these challenges should not be at the expense of watering down the existing obligations. We believe that this can be rectified by retaining the requirement that regard must be had to the number and capacity of licensed premises, but adding that licensing boards may also have regard to (among other things) licensed hours. As discussed at question 34, we would also like numbers of members’ clubs and occasional licences granted to be included in an assessment of overprovision.

\textsuperscript{14} MacGregor A, Sharp C, Mabelis J and Corbett J; ScotCen Social Research (2013) \textit{An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005: Final Report}, NHS Health Scotland
29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

AFS believes that that there is an urgent need to improve the quality and detail of published licensing data. There is a paucity of publicly available data on the operation of the licensing system in Scotland; difficulty accessing comprehensive local and national data was one of the challenges highlighted by the MESAS evaluation. Consideration, in our view, should be given to placing licensing boards under a statutory duty to record, collate and report on a comprehensive licensing data set, in a format that can be compared with other areas. We believe this would assist in the achievement of all licensing objectives, including preventing crime and disorder, securing public safety and preventing public nuisance.

Annual liquor licensing statistics are currently available from the Scottish Government by local authority area\(^\text{15}\) and local authority websites also publish decisions taken at licensing board meetings. This information is not easy to access, however, as it has to be extracted from multiple documents, nor is it presented in a standard format that enables comparison across different time periods or localities. The current statistics are also limited in scope. While information is available on the total number of on-sales and off-sales premises licences in force in each area, these are very broad categories. In reality, specialist off-sales, large-volume, low-priced supermarkets, restaurants and vertical drinking establishments operate very differently and can exert different pressures on the licensing objectives. In addition, despite the fact that the law defines overprovision in terms of the number and capacity of licensed premises, statistics on capacity are not routinely reported and there is no collection of volume sales data. There is a similar lack of reporting of other statistics that could be taken into account when assessing overprovision, such as operating hours or the number of occasional licences granted.

It is difficult to see how a licensing board can effectively undertake its duties, particularly to assess overprovision, or to be held to account for its licensing decisions on this basis, if there is a lack of data available to assist them in this decision making process. Collection of such data would enhance the information available to licensing boards to inform the development of their policy statements. It would also assist in understanding and reviewing how the licensing system is functioning, or assess whether it is achieving its purpose.

We acknowledge establishing a standardised, comprehensive licensing data set will have resource implications, and these costs would be recouped from licensing fees. However we believe these costs should be relatively modest and largely associated with set up costs.

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

\(^{15}\) http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/PubLiquor
We are broadly supportive of the Bill’s provisions, many of which take forward recommendations of our 2011 report Rethinking Alcohol Licensing. AFS supports section 41 of the Bill expanding the licensing objective of protecting children from harm to include young people. The definition of a child within the 2005 Act as a person under 16 resulted in a loophole whereby people between 16 and 17 were unprotected within the licensing objective.

We support the clarification provided by section 54(2)(a) that in assessing overprovision, a licensing board may determine that the whole of the board’s area is a locality. This change reflects the reality that different-sized localities are needed for assessing overprovision in relation to different alcohol problems. While alcohol-related public nuisance and social disorder issues are often localised to relatively small areas, other important indicators of relevant alcohol-related harm are only measured at a licensing board level.

However, we are disappointed that the opportunity has been missed within this Bill to further enhance the licensing objectives by strengthening their status within the legislation. It is AFS’ view that the licensing objectives should be clearly identified as the overriding principles underpinning the Act, with a general duty placed on licensing boards to promote the objectives when undertaking their work. Imposition of such a duty would give the objectives in Scotland similar weight to those in the equivalent English legislation.

This proposal has been rejected by the Scottish Government, despite the responses to the Further Options for Alcohol Licensing consultation being marginally in favour of such a duty being introduced. This proposal, together with the proposal for licensing boards to produce an annual report on how they have promoted the licensing objectives, has been rejected on the grounds that rather than leading to a change in attitude or practice, it would simply lead to additional reporting. AFS believes the imposition of such a statutory duty would help ensure licensing boards embed the licensing objectives in their day to day practice, by making explicit that the five licensing objectives should be the primary consideration when deciding licensing applications. As outlined within question 34, we also believe additional reporting, while extra work for licensing boards, would introduce much needed transparency and accountability in the licensing system.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out

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16 Rethinking Alcohol Licensing, Alcohol Focus Scotland, 2011
17 Section 4(1) of the Licensing Act 2003 states that a licensing authority must carry out its functions under the Act with a view to promoting the licensing objectives. The Licensing (Scotland) Act 2005 requires only that a licensing board must ensure that its licensing policy seeks to promote the licensing objectives and that the licensing board must have regard to its policy statement in exercising its functions.
18 Further Options for Alcohol Licensing – Summary of Consultation Responses, Scottish Government, 2012
19 Scottish Government letter to Local Government and Regeneration Committee, 1 September 2014, qu. 33
in the 2005 act?

We have some concerns that not specifying relevant factors that will considered when applying the ‘fit and proper person’ test may in practice make it more difficult for people to raise concerns about an applicant or licence holder. It could also make it problematic to assess whether the test is being applied consistently by a licensing board, impacting on a board’s accountability. A potential solution might be to require licensing boards’ policy statements to outline how the test would be applied, such as including as a non-exhaustive list of factors they would consider relevant.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

As discussed at question 30, the objective to protect children from harm left a loophole leaving young people aged 16 and 17 unprotected by the 2005 Act. We support the closure of this loophole.

AFS is concerned that the current exclusion of members clubs from the assessment of overprovision has the effect of the overall availability of alcohol being underestimated during these assessments. In some areas, the contribution of members’ clubs to availability can be considerable; in the Scottish Borders for instance, 22% of all licensed premises are members’ clubs.\(^20\) We believe members’ clubs should be included within the assessment of overprovision, as should occasional licences, which are cheap, easy to obtain, and add to the overall provision of alcohol in an area.

As noted at question 30, we believe the lack of a general statutory obligation to promote the licensing objectives has created ambiguity about the extent to which these objectives should be the primary consideration in licensing boards’ decision making. We believe this unintended consequence could be addressed by using this Bill to amend the 2005 Act to include a general duty on licensing boards to promote the licensing objectives.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

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\(^{20}\) Scottish Borders Alcohol Profile, Scottish Borders Local Licensing Forum, February 2013
34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

**Licensing Policy Periods (section 42)**

We support extending the period of time a statement of licensing policy is in force for up to five years. The process of developing a new statement of licensing policy, if done properly, is a substantial task for licensing boards and other stakeholders. Extending the licensing policy period will allow for more detailed monitoring and review of the policies implemented, thereby informing future licensing practice. It will be important for licensing boards to keep their policies under review within this period, issuing supplementary policies if necessary. It will also be important for safeguards to be put in place to strengthen the mechanisms of accountability of licensing boards in relation to this function.

Firstly, the robustness of accountability mechanisms must be improved. The current mechanism whereby boards should notify ministers if they deviate from guidance does not appear to be effective. There needs to be better oversight from Scottish Ministers of how licensing boards are undertaking their functions, and to ensure they are meeting their statutory obligations.

Secondly, to counteract the reduced opportunities for stakeholders to scrutinise and influence policy direction, licensing boards should be required to produce an annual report for Scottish Ministers, which should include a report on how their actions have promoted the licensing objectives, or at the very least how they have complied with their own licensing policy. We are disappointed that the Scottish Government has decided not to bring forward such a requirement on the grounds that this would impose additional work on licensing boards but would have little positive impact.\(^1^)\) We believe it would have an important positive impact by improving the transparency and accountability of the licensing process, which are key to building public trust in this process and encouraging public engagement. We can see no justifiable reason why a licensing board should not have to be publicly accountable for how it undertakes its public functions. A requirement to produce an annual report would bring licensing boards in line with other bodies undertaking public functions, such as regulators, judicial and quasi-judicial bodies, and with the local planning process. We note the Bill introduces a requirement for licensing boards to produce an annual financial report (section 55), brought forward on the basis of increasing transparency of licensing board income and expenditure for the trade.\(^2^)\) We believe this provision should be extended to impose a requirement to produce an annual report, which would increase transparency of licensing board functions for the public and all interested stakeholders.

**Deemed grant of applications (section 58)**

While we agree there should not be unnecessary delay in considering licence applications, it will be essential to ensure that sufficient protections are in place to guard against automatic grant of licences which have been delayed to allow more

\(^1^)\) Scottish Government letter to Local Government and Regeneration Committee, 1 September 2014, qu. 35

\(^2^)\) Scottish Government letter to Local Government and Regeneration Committee, 1 September 2014, qu. 41
information to be sought due to concerns or controversy about the application.

**Guidance**

As noted elsewhere in our evidence, the current guidance on the 2005 Act is out-of-date and in need of urgent updating. It has not kept abreast of developments in licensing policy, and opportunities to clarify areas of confusion through the guidance have not been taken. Indeed, in some instances the drafting of the guidance has contributed to some of the confusion, for example the reference to a requirement to have a causal link between evidence of overprovision and licensed premises.

Providing comprehensive, up-to-date guidance to licensing boards should help them undertake their functions effectively and consistently. It is essential that the guidance is updated as a matter of urgency and that a requirement be placed on the Scottish Government to regularly review the guidance and update as appropriate.

As recommended by the MESAS evaluation, it would be helpful if boards were given more guidance on:

- the public health objective;
- how to assess overprovision, including how to measure capacity;
- the role and function of Licensing Forums;
- any new, relevant legislation that is implemented.  

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6. Civic Licensing – Sexual Entertainment Venues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

50. What are the consequences of operating the new licensing regime using the definitions set out at section 68 of the Bill?

- 'sexual entertainment venue'
- 'audience'
- 'financial gain'
- 'organiser'
- 'premises'
- 'sexual entertainment', and
- 'display of nudity'

51. The Bill specifies that a venue hosting sexual entertainment on three occasions or less within a 12 month period would not be treated as a sexual entertainment venue: does this have any unintended consequences?

We note the position of violence against women groups, who wish to see an end to the existence of sexual entertainment venues.\(^\text{24}\) It is the view of AFS that sexual entertainment and the sale of alcohol should be licensed separately, but we would like to see more robust regulation of sexual entertainment venues as a step towards their elimination. We do not agree with proposals to exempt venues hosting sexual entertainment on three or fewer occasions within a 12 month period from licensing requirements. If activity causes sufficient harm so as to require to be licensed, the number of times that activity occurs should not be relevant.

\(^{24}\) Consultation on Regulation of Sexual Entertainment - Summary of Responses, Scottish Government, 2014
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
Alcohol Focus Scotland supports the proposal to separately licence sexual entertainment and the sale of alcohol. This will increase the regulatory requirements on sexual entertainment venues that sell alcohol. Sexual entertainment activities and the sale and consumption of alcohol each pose specific risks to society. It is therefore justifiable and appropriate that premises that offer both the sale of alcohol and sexual entertainment are subject to more extensive regulation than premises that sell alcohol alone.

We welcome the Scottish Government’s acknowledgement of the need to ensure the sexual entertainment and alcohol licensing systems are consistent. It is crucial that these systems are appropriately coordinated and that licensing boards are still informed by applicants and licence holders that sexual entertainment is to be provided on a licensed premises. A separate licensing scheme for sexual entertainment should not erode the responsibility of a licensing board to consider the general and specific risks of selling alcohol in a venue that offers sexual entertainment and to impose measures to minimise risk. For example, whilst alcohol does not cause domestic violence, evidence suggests that it can be a contributory factor. Evidence also indicates that controlling the availability of alcohol can limit and minimise alcohol-related problems, including violence. It is therefore legitimate for a licensing board, in seeking to promote the licensing objectives, to consider the imposition of additional conditions on licensed premises that offer sexual entertainment to reduce the risk of alcohol-related violence within the premises and outwith. Such conditions could include, inter alia, reduced licensed hours, restrictions on all promotional activity involving alcohol, and the use of CCTV.

55. Civic Licensing

Do you have any other comments to make on the civic licensing aspects of the Bill?

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25 Scottish Government letter to Local Government and Regeneration Committee, 1 September 2014, qu. 68