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

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

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

*1. Please supply your name and contact details:

Name: Susan Love, Policy Manager
Organisation: FSB Scotland
Address 1:
Address 2:
City/Town:
Postcode:
Country:
Email address (if no email leave blank):
Phone Number:
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

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

☑ Yes

☐ No

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

☐ Personal

☑ Professional

☐ Commercial

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

☑ Yes

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

☐ Yes
☐ No

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

☐ All of the Bill
☐ Equalities, climate change and other Scottish Government objectives
☐ Air Weapons
☐ General licensing issues
☐ Alcohol licensing
☐ Civic licensing – taxi/private hire car licensing
☐ Civic licensing – scrap metal dealers
☐ Civic licensing – theatre licensing
☐ Civic licensing – sexual entertainment venues
1. Equalities, Climate Change and other Scottish Government objectives

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

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

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

10. Do you consider that the Bill has any implications for preventative spending and/or public services reform? Please explain.

Name/Organisation:

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

Licensing can cause difficulties in relation to the Services Directive. The directive aims to ensure that businesses within the EU can easily obtain online the necessary permits or permissions to trade elsewhere in the EU. While we appreciate some progress made, in our view, there is still more that could be done to improve such processes, not just for businesses outwith Scotland but more importantly for those wishing to trade in a different local authority area.

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

There are elements of the Bill that arguably introduce unnecessary costs or processes for businesses. This would not be in line with the Scottish Government’s approach to better regulation and a supportive business environment, as set out in the government’s economic strategy.
2. Air Weapons Licensing

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

13. In what ways will the creation of an air weapons licensing system in Scotland contribute to preserving public order and safety, reducing crime and advancing public health policy?

14. Is there sufficient provision, or sufficient capacity to provide, suitable numbers of air weapons clubs across all areas of Scotland for use by registered air weapons owners/users?

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?
16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

17. How will the air weapons licensing system affect those using air weapons for commercial/professional reasons (for example: for pest control; as part of the tourist/hunting season; as part of fairs, paintballing centre, entertainment sector etc.)?

18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?
20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

21. What, if any, might the unintended consequences of introducing an air weapons licensing system in Scotland be?

22. Do you have any other comments to make on air weapons licensing aspects of the Bill?

The introduction of a certificate scheme is intended to reduce the threat posed by irresponsible use of air weapons. However, it seems reasonable to suggest that the overwhelming majority of air gun owners represent little or no threat to public safety. Consequently, requiring the majority to complete an application process, (which is likely to be costly in terms of time and resources for both applicants and Police Scotland) does not appear to be particularly well targeted legislation.

While the Scottish Government has indicated that it would seek to reduce some duplication by shortening the process for individuals already holding a shotgun/firearm certificate, there is potentially scope to reduce the process further, or perhaps integrate it with the existing shotgun certificate process. Regulation which is targeted and proportionate is more likely to be effective.

Lastly, the Scottish Government may need to consider how to approach enforcement in relation to air weapons purchased online from sellers outwith Scotland.
3. General Licensing Issues

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

23. Is the current Scottish licensing regime, as set out in the Civic Government (Scotland) Act 1982 and the Licensing (Scotland) Act 2005, fit for purpose?

FSB Scotland has made a number of comments about regulation, particularly licensing and its impact on small businesses. We have frequently cited problems with civic licensing (from the Civic Government (Scotland) Act 1982) and questioned whether some of the licensing provisions in the Act, and how they are interpreted by local authorities, remain appropriate. For example, we question whether certain commercial activity still needs to be licensed (window cleaners require a licence but cleaners in your home do not) while second hand bookshops and vintage clothes shops also require a licence in certain areas.

Furthermore, as new types of business emerge, especially in the retail and leisure sector, (e.g. outdoor activities), local authorities respond in different ways, often using the ‘catch all’ Public Entertainment Licence as a means of regulation. While new activities may have been added to such regimes, the conditions and processes attached may not have been updated for some time, thereby leading many businesses (posing a very low risk) to believe that such processes are overly-bureaucratic and unnecessary.

The potential to introduce national standards and systems, as a result of the Regulatory Reform (Scotland) Act 2014, could reduce inconsistency across Scotland. However, it does not address whether certain activities should still be regulated and, if so, how best to regulate.

While a review of the Act was conducted ten years ago and some limited changes introduced, we are disappointed that no consultation opportunity was offered on wider issues of civic licensing (other than those specific aspects in the Bill e.g. metal dealers and taxis) in preparation for this Bill.

Lastly, in relation to liquor licensing, we are aware of a number of concerns about certain practical aspects of the 2005 Act. We have further noted concerns, from both local authority and trade representatives, that the Bill as introduced does not address a number of these difficulties. We are not best placed to comment on some of the technical details but it would be disappointing if an opportunity to ‘fix’ legislation were missed.
24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?

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

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

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?
4. Alcohol Licensing

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

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?


29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?


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


31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

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

The number of licensed premises in Scotland has reduced and while this may, in part, be linked to economic conditions, the increasing complexity of the licensing system may also be a factor. Some FSB members have told us that the level of complexity and cost (e.g. the cost of architectural plans/drawings of properties in addition to the application fee) means it is not worth applying for a licence for premises in which alcohol is incidental to the business. This might include, for example, a small gift shop selling miniatures, or a B&B wishing to serve a dram to guests.

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

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?
5. Taxi and Private Hire Car Licensing

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

35. **What benefits should the licensing of taxis and private hire cars deliver for customers?**

36. **In what ways do customers, providers of taxi/private hire car services and local authorities benefit from the two-tier licensing regime for taxis and private hire cars?**

37. The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any
potential benefits of a unified system?

It is worth noting that a wide range of vehicles and businesses may currently be licensed under the private hire regime e.g. ‘party’ vehicles, courtesy buses, and chauffeur services. Accordingly, a more flexible approach than that afforded by the taxi licensing regime is perhaps appropriate. This would justify the maintenance of two regimes.

38. Do the changes made by sections 60 (overprovision of private hire car licences) and 61 (testing of private hire car drivers) of the Bill strike the right balance in terms of introducing greater consistency while maintaining justifiable differences?

39. Do you have any views on the section 62 provisions bringing vehicles contracted for exclusive use for 24 or more hours within the licensing regime for taxis and private hire cars, and should any exemptions be included in the Bill?

We are unclear about the impact of this proposal on existing small businesses and, as noted in the BRIA, it is difficult to ascertain the number of businesses or individuals likely to be affected. However, if exemptions are considered, it is worth noting that the exemption should apply to the activity and not the ownership of the vehicle. For example, it would be unfair to require a small business delivering a contract in a rural area to be licensed, but exempt a similar vehicle and contract run by a not-for-profit organisation.
6. Scrap Metal Dealer Licensing

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

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller's name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer's licence, such as installing CCTV at metal dealers' premises or in relation to labelling of metal and 'forensic coding'?

It is worth noting that, in line with new provisions in the Regulatory Reform (Scotland) Act 2014, avoiding an inconsistent pattern of additional local conditions would keep the regime simpler and easier to enforce.
7. Civic Licensing – Theatre Licensing

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

47. Will there be any impacts during the transitional period between ending the current theatre licence and starting the public entertainment licence?

48. Are there additional costs or resource implications on theatres or licensing authorities?

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?
8. Civic Licensing – Sexual Entertainment Venues

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

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

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

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

It is possible that some small venues, such as pubs, clubs or halls, may be defined as sexual entertainment venues due to the 3-event restriction. This may occur in venues where burlesque or 'stripograms' perform from time to time.
52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

It may be worth considering whether grandfather rights for existing businesses would be appropriate, or whether a period of transition should be required following a decision to set a zero limit. This would seem reasonable when discussing the potential to close, perhaps overnight, hitherto legitimate businesses.

53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

section 44 and Schedule 2 of the Civic Government (Scotland) Act 1982 (application, notification, objections and representations, revocation of licences etc., enforcement and appeals): is this mechanism adequate for the licensing of sexual entertainment venues - if not, please explain why?

54. Are there any barriers to licensing authorities operating the new licensing regime?
55. Civic Licensing

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

We are disappointed by the lack of consultation (beyond a question in the consultation on taxis) on the requirement to appoint a civic licensing standards officer in each local authority area. As far as we are aware, there has been no wider discussion with business representatives about advice, support or enforcement in relation to civic licensing. Discussion has been restricted to local authorities.

We are not clear how the remit of such enforcement officers will differ from existing environmental health and trading standards officers. Furthermore, it is unclear whether local authorities will simply re-title an existing post, or whether this will be a new post.

Under either scenario, it is highly likely that additional costs will be created which will be passed on to civic licence holders. As outlined above, we are not convinced that further increasing the fees for businesses operating in low-risk areas, and unlikely to benefit from any additional service, is justified.