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

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

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

*1. Please supply your name and contact details:

Name: ACC Wayne Mawson
Organisation: Police Scotland
Address 1: Randolphfield Police Office
Address 2: 
City/Town: 
Postcode: 
Country: 
Email address (if no email leave blank): 
Phone Number: 

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

X Yes

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

X Yes

☐ No

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

☐ Personal

X Professional

☐ Commercial

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

X Yes

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

X Yes

□ No

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

□ All of the Bill

□ Equalities, climate change and other Scottish Government objectives

X Air Weapons
X General licensing issues
X Alcohol licensing
X Civic licensing – taxi/private hire car licensing
X Civic licensing – scrap metal dealers

□ Civic licensing – theatre licensing
X Civic licensing – sexual entertainment venues
1. Air Weapons Licensing

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

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

The criminal use of air weapons can have a devastating effect on those who are victims of that criminality. Criminals have used air weapons to kill and injure people. Pets and wildlife are also targeted by those who use air weapons irresponsibly. Property is also damaged.

It would appear that the contents of the Bill, as it relates to air weapons, is to ensure that those who should not have air weapons will not be authorised to possess them. Applicants will require to be deemed fit to be entrusted with an air weapon and have a good reason for the possession of an air weapon. They will only be permitted to possess an air weapon if their possession of such an air weapon will not pose a danger to the safety of the public or the peace. These tests are already carried out in relation to current firearm certification procedures and assist in minimising the risks associated with irresponsible firearm ownership.

Albeit crime in relation to the misuse of air weapons has fallen in recent years to very low levels, it is anticipated that crime relating the misuse of air weapons will fall further if these weapons are removed from those who are unfit to be entrusted with such weapons. Conversely however, with the introduction of a licensing regime, it will be expected that offences in relation to non certification will outweigh considerably the current crimes, such as reckless discharge of a firearm, as those who have not complied with the legislation are discovered and reported.

With an expected reduction in air weapons availability and the criminalisation of non certification, it would be expected that less people will be injured as a result of the criminal use of air weapons.

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

There are already a number of firearm ranges and clubs in Scotland. They are generally well run and comply with the relevant legislation. There has been no police involvement in the licensing of non certificated air weapon ranges. At this time ownership numbers for air weapons are unknown and therefore Police Scotland are not able to provide an assessment on capacity.

15. How will the air weapons licensing system affect those using air weapons for personal/recreational use?

Those who wish to own air weapons will require to have an Air Weapon Certificate (AWC). To acquire such a certificate, application will require to be made to the Chief Constable and a number of checks will be conducted on each application such as the presence of a criminal history or other adverse knowledge. There will be a fee set for the progression of an application. The air weapon will require to be securely stored. People who have a good reason to possess such a weapon will be free to continue their responsible use of it. That said, should the police come into possession of information that a person no longer has a good reason to possess an air weapon or that person is assessed as being a danger to the public safety or the peace, the AWC would be revoked by the Chief Constable. This will be an incentive for continued responsible air weapon ownership.

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?
It is widely recognised that air weapons are very often the first step towards responsible gun ownership and use within the shooting community. There are approximately 60 000 certificates holders in Scotland, the vast majority of who are law abiding citizens who value their access to guns and conduct themselves in a manner commensurate with this responsibility.

Currently a person aged 14 to 17 can borrow an air weapon and ammunition and use an air weapon, without supervision, on private premises where they have permission to use it.

The Bill sets out in Section 7 the conditions which would require to be adhered to when an AWC is issued to a person under 18. Assuming that the Chief Constable attached all of the conditions within Subsection 5 to an AWC, it is suggested that this would hinder the use of air weapons by young people for legitimate reasons. By way of example, a 17 year old student shooting rats with an air weapon in a factory for a friend would be contravening the proposed legislation.

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

Apart from requiring an AWC, or visitors permit for those outwith Scotland, there will be little impact upon an individual using an air weapon for business or recreational use. There are, however, some bureaucratic implications in respect of the recording and notifying of the movement of air weapons. These are;

Section 24 – Restrictions on transactions involving air weapons. This section generally reflects Section 3 of the Firearms Act 1968 which deals with Registered Firearms Dealers (RFD). The use of with word transfer, which is subsequently defined as ‘includes let on hire, give, lend and part with possession’ is included in both Section 3 of the 1968 Act and Section 24 of the Bill. A consequence of this is that potentially an individual transferring air weapons could fall under the terms of a dealer and require to be registered as such.

In respect of Section 26 of the Bill, what is the purpose of notifying the Chief Officer of police within 48 hours? This will increase the bureaucratic burden on both the police and the RFD.
18. How will the air weapons licensing system affect those using air weapons for competitive sporting purposes?

Apart from the requirement to obtain an AWC, target shooting, in the appropriate circumstances, would be a good reason.

19. Is it equitable for those applying for an air weapons certificate to pay a fee which cannot be refundable irrespective of whether a certificate is granted or not?

There is a cost to the administration of firearms licensing and the proposals contained in the Bill. It is widely accepted that the cost of administering the current firearms licensing system is not covered by the fees charged and the public purse picks up the difference. The firearms licensing fees have not increased since January 2001.

Police Scotland considers that the 1968 Act, which allows for the full refund of a fee should the application be refused, is an anomaly. In the vast majority of current circumstances, when there are no fit to be entrusted queries or medial matters to be considered, the processing work is straightforward. It appears counterintuitive, when considerable investigative resources are deployed to obtain information which allows the Chief Constable to make an informed decision in respect of refusing an application, that the fee should be returned given the vastly increased costs to the public purse.

It may be considered that an applicant applying for an AWC is paying for the process to take place rather than the actual certificate itself. Conversely, it is not equitable, from the perspective of public funds for a person not to pay for the increased public work when anomalies, which the applicant will likely be aware of, are discovered.

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?
The system is solely administered by Police Scotland. Enquiries will likely be required, in a minority of cases, with health professionals in an effort to ascertain medical information. The scale of this cannot be assessed at this time.

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

Due to the tests involved, there may be an increased application rate for Firearms Certificates under the terms of the 1968 Act as the same tests apply in respect of fitness and good reason.

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

It is vitally important, from a processing perspective to balance the monthly demand of applications on the police. Section 8 of the Bill states that an AWC shall last for five years. There are a number of Sections thereafter, Section 9 (2) by way of example where the proposed legislation allows for a certificate holder to align their AWC to conclude with their Firearm or Shot Gun Certificate, which may be of a period of less than five years.

In order to smooth the demand, Police Scotland would wish, that for the first AWC only, that the Chief Constable can decide the length of the Certificate. Accepting that there will be a wave of new applications when the legislation is enacted, the current proposals would mean that the same wave is replicated at five year intervals thereafter, causing undue pressure on the police to manage the resources to satisfy the demand. Alternatively, should the Chief Constable have the ability to vary the length of the first certificate, this brings with it the ability to thereafter smooth the demand, allowing for a more efficient and effective service. At the renewal of the first certificates they would revert to five years. This has the effect of stabilising the numbers of AWCs which require to be processed each month thereafter and allows for the effective planning of resources to meet the monthly demand.

It is also to be noted that there is no budgetary provision within Police Scotland to deal with this legislation. Costs will be incurred in the handing in of air weapons, the bureaucratic processes involved in dealing with
AWCs and the subsequent management of them. Costs will also be incurred in the provisions of prosecution evidence such as ballistics reports and the criminal justice impact upon reporting individuals for contraventions of the legislation.
3. General Licensing Issues

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

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

1. Both the LSA 2005 and CGSA 1982 are open to interpretation which has culminated in variations in application of legislation by regulatory authorities across Scotland. An example (LSA 2005) would be where the licence holder is a limited company that has subsequently been dissolved. Legal interpretation on that subject can vary considerably and there remains conflicting views on what action a licensing Board can take. Revised guidance and greater clarity would better inform the application of either act.
2. The CGSA 1982 would benefit from revision, in line with developing business practices, such as Internet taxi bookings, and legislation since enacted (serious organised crime).
3. Neither Act allows regulatory authorities to impose a punitive sanction.

24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?
Yes – Individual behaviour should be regulated and where standards have fallen and/or there is a breach in legislation it is entirely reasonable to hold a licence holder/member of staff to account for any omission or action on their part.

Evidence of conduct, past and present, should also form part of the determination as to whether a licence is granted in the first instance. This would ensure that an individual who may pose a risk to the public is not granted a licence, or in the case of those linked with SOC and criminality, are not legitimised by an inability to regulate and take account of individual behaviour, conduct and associations.

In the absence of individual accountability there would be no incentive to comply with legislation or locally determined policies. This could potentially impinge on regulatory authorities and statutory partner’s ability to ensure standards are met and public safety maintained.

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

Economic growth and regeneration is a priority for every Local Authority and community across Scotland. Regulated and licensable activity will obviously form a considerable part of this. However, economic growth linked to the sale and supply of alcohol should be carefully considered and full cognisance should be taken of the potential wider societal impact.

A holistic approach to the grant of licences, with an emphasis on partnership working and consultation with planning departments; community planning; ADPs, economic regeneration agencies as well as local communities, has the potential to develop a more sustainable and better informed approach to Licensing, representative of local needs and demographics, and plan for the short, medium to longer term growth.

The LSA 2005 presently requires the Licensing Board to produce an over provision policy and to consult with key stakeholders in this process. Through this process there is the potential to develop an overprovision policy that supports expansion of licensed premises in, for instance, city centre areas and/or conversely limit the expansion of licensable activity in areas where there is an evidenced link between overprovision and associated alcohol related offending, vulnerability and health related harm.
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

The licensing system affords an opportunity to regulate licensable activity, ensuring there are appropriate checks and safeguards in place and accountability where there has been any legislative breach. However there is also the potential, through considered regulation, to influence the sustainable development of local economies tailored to local requirements.

In terms of the LSA 2005 Licensing Boards are required to include a statement as to the extent to which it considers there to be overprovision of licensed premises and can implement local policies that govern how many pub; club; restaurant and off sale licenses they will grant a licence in a given area. In considering an overprovision policy they must consult with key stakeholders, such as police, health, trade, community and any other persons the Board thinks fit.

Through this consultative approach the grant of a licence, i.e. what type of premises, capacity, existing provision etc would be fully considered by a number of interested stakeholders, balancing economic growth against potential harm.

Developing a local economy on the sale and supply of alcohol may not be socially or economically viable or indeed sustainable and may cause more by way of socio-economic damage that the employment etc it creates.

Overprovision of licensed premises can increase accessibility and availability and, due to competitive pressures, can deflate the retail price of alcohol. Market elements should also be considered when developing local economic and overprovision policies, neither of which are mutually exclusive.

In terms of legislative provision, overprovision policies can substantially influence the economic buoyancy or otherwise, of a locality area and can be extremely positive or negative in terms of health, income generation and deprivation. However regulatory authorities are limited as to what policies they can implement. For instance, there are no legislative powers for overprovision in terms of CGSA 1982 or in areas such as Gambling. As such, an area can, in theory, have an unlimited number of Tanning Salons or Betting establishments.
27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?

As stated above in terms of the LSA 2005 Licensing Boards are required to include a statement as to the extent to which it considers there to be overprovision of licensed premises and can implement local policies that govern how many pub; club; restaurant and off sale licenses they will grant a licence in a given area. In considering if there is overprovision they must consult with key stakeholders, such as police, health, trade, community and any other persons the Board thinks fit.

Through this consultative approach the grant of a licence, i.e. what type of premises, capacity, existing provision etc would be fully considered by a number of interested stakeholders, taking full consideration of the potential impact on local communities' health and welfare.

This approach has the potential to positively impact on health related harm linked with alcohol abuse in areas of high deprivation, or where there exists evidence of over selling, over consumption with related offending and vulnerability.

In addition, effective regulation of premises that over sell alcohol and operate against the licensing objectives and legislation, has the potential to improve public health.
4. Alcohol Licensing

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

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

1. Amending the licensing objectives to include young persons will potentially enable Licensing Boards (LB) and Police Scotland (PS) to more effectively tackle the sale and supply of alcohol to young persons, associated victimisation and offending.

2. The introduction of Fit and Proper brings Liquor Licensing in line with the CGSA 1982, and allows LB and PS to consider bad character and previous conduct in addition to convictions. However there are limitations in that fit and proper will still be intrinsically linked to the licensing objectives. This may potentially limit the ability to effectively target those linked to and actively involved in SOCG. In applying a fit and proper test to premises licence applicants/holders and connected persons affords comment on more than relevant convictions and fewer limitations as to comments on conduct. It would be advantageous if sec184(2) Criminal Justice and Licensing Scotland Act.2010 or sec 40 (a) LSA 2005 as amended by sec 184 was commenced. This would provide an opportunity to provide comment on interested parties, particularly those linked with SOCG.

3. Extending overprovision to whole areas will potentially facilitate a more holistic approach to the grant of licences, recognising the potential impact on neighbouring communities (particularly where transient populations will be affected).

4. The repeal of section 129 (4) will allow spent convictions to be notified to the LB, better informing the decision making process linked to the licensing objectives. In addition this will further inform if an applicant meets the criteria of fit and proper.

5. The repeal of section 40 A (1) (b) and (2), albeit to date has never been committed, will impinge of PS’s ability to tackle interested parties, such as lease holder, who may be connected or actively involved in SOCG activity. Clarity is sought as to whether the definition of connected person extends to interested parties.
29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

Fit and proper - Is there an onus on an individual to prove that he/she is fit and proper?

There is no prescribed definition to determine the criteria for fit and proper, or otherwise. However it is anticipated that being overly prescriptive would potentially be counterproductive.

However financial transparency provides an indication of links with SOCG and it is anticipated that PS would potentially make comment in relation to this when responding to a LB re an applicant’s suitability.

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

Including 16-17 year olds within the licensing objectives will enable LBs and PS to more effectively address the sale and supply of alcohol to 16 and 17 year olds. In addition extended the provisions of the Act to include the supply of alcohol to a child or young persons will able PS to tackle agent purchase. The provisions in the Bill are however limited to public space. As such there is the potential for an adult to supply a young person within a domestic setting, such as drinking dens.

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

Fit and proper test will allow PS to comment on conduct and information held, and potentially spent convictions, better informing the Board when considering whether to approve or refuse a licence.

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

Off sales provision in rural areas has influenced availability of alcohol in urban conurbations, which has increased accessibility and availability and potentially contributed to overprovision.

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

Sexual offences
Crimes of violence
Crimes of dishonesty

Disclosure would better inform the LB’s decision whether to grant/refuse a licence.

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

Overprovision –

PS welcome the extension of overprovision to whole areas. However there are inherent limitations within the Act that could thwart the application and enforcement of an overprovision policy.

Home deliveries effectively extend the period in which alcohol can be delivered, i.e. any time except between midnight and 6am. This has the potential to increase availability, accessibility and thereby overprovision (vicariously extending “operating” or terminal hours). The sale, supply and delivery of alcohol should be brought in line with core off sales licensed hours, namely 10 am to 10pm. This would remove any inconsistencies across Scotland and would not be dependant on LB’s policies, including overprovision.

In addition if a LB determines an overprovision policy in a given area that includes home deliveries, a neighbouring Board may not take a similar position. This has the potential to undermine what the Licensing Board set out to achieve.
5. **Taxi and Private Hire Car Licensing**

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

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

The Licensing of taxis and private hire cars should ensure that customers have a level of comfort around the suitability of the drivers and condition of vehicles used in this industry.

The licensing regime ensures that legitimate business thrives and provides opportunity to prevent organised crime groups from gaining a foothold in this industry.

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

No View

37. **The Government states that a radical overhaul of the current two-tier licensing regime would “clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, the police and ultimately the travelling public”. What are your views on this and would the potential costs and disruptions outweigh any potential benefits of a unified system?**
From a police perspective the same scrutiny and application of legislation is applied in respect of both taxi types.

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

No view

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

No view.
6. Scrap Metal Dealer Licensing

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

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

It is anticipated that the proposed amendments, as outlined in the Bill, will improve current business practices and allow this industry to be more effectively regulated, deterring criminals and opportunists who seek to exploit current legislative gaps.

Greater controls over payment methods, record keeping, identity checks and record keeping will certainly benefit legitimate enterprise. Furthermore the removal of exemption warrants ensures that all metal dealers, including those who trade in precious/semi precious metals, will now be licensed, affording greater scrutiny and compliance.
41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers? The following considerations may further improve industry regulation and deter criminal/opportunist exploitation:

1. Standardised conditions, such as CCTV standards;
2. The potential repeal of sec 31 places restrictions on LAs ability to effectively regulate all metal dealers. Local authorities should have the ability, and associated powers, to make addition requirements, such as determine the retention period for holding metal prior to disposal. This is particularly valid for crime prevention purposes in relation to the trade in precious/semi precious metals;
3. Stipulating requirement for photographic ID and address verification (such as utility bill, council tax);
4. Licence must be stored on the premises and produced to a constable immediately on request;
5. Every individual should hold a personal licence, allowing accountability and appropriate action to be taken, in addition to fulfilling training requirement.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?

Police Scotland supports the proposal to remove the exemption warrant system. This will enhance crime prevention and disruption activity and allow the police to enter and inspect metal dealers at any time.

The current exemption system is potentially open to exploitation. For instance, a company can technically circumvent control under CGSA 1982, particularly umbrella companies who obtain a franchise under a global name whereby the total income exceeds the required exemption figure but individually would fall below this amount.

Removal of the exemption would place all businesses under the same legislative requirements and standards.

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal...
activities?

A retention period of 48 hrs should be mandatory, not include Saturday or Sundays, and all metal purchases should be stored on site. This permits police powers to enter and inspect for the purpose of crime prevention and investigation (where there has been an allegation of theft/reset), especially where a business trades in precious/semi precious metals.

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

No minimum amount should be cashless and cash payments would still cause issues within this industry. The opportunity to exploit cash loop holes could potentially increase with the addition of minimum cash payment, i.e. for those unscrupulous traders, payment for a larger, more valuable item could be made by a number of small cash payment transactions, and would also encourage low level offending.

In addition, linked activity, such as cheque cashing facilities sub let on a premise, should be legislated for, reducing the opportunity and real potential for cash to remain part of day to day business.
45. Forms of identification and record keeping:

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

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

The proposed record keeping requirements are not unduly burdensome; however there remain concerns regarding what proof if identification is taken and how it is recorded.

Photographic identification and proof of address (such as utility bill, council tax) should be the industry standard.

Retaining records on data systems can lend itself to data manipulation and concealment and the preferred option would be hard copy back up records or hard copy receipts with serial numbers.

Records should be retained for three years.
46. Mandatory and discretionary licensing requirements:

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

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

CCTV should be a standard and mandatory condition, to the satisfaction of the Chief Constable, otherwise standards may vary across Scotland. Labelling metal and forensic coding will also account for the provenance of any transaction and make it more traceable.
7. Civic Licensing – Sexual Entertainment Venues

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

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

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

If enacted there will be a dual licensing for sexual entertainment venues and (alcohol) licensed premises, however this could address the subsequent developments in case law (namely Brightcrew) that has restricted LB’s capability to specifically address issues within licensed premises relating to the sale and supply of alcohol only and not any other activity ongoing on those premises. It may be necessary for a premises licence’s operating plan to make reference to the sexual entertainment however it would be for the SEV licence to regulate how that activity is carried out.

The conditions sought on any SEV licence may need to make reference to the alcohol licence and vice versa and any issues encountered would technically be dealt with by two separate bodies within the Local Authority (Liquor licensing board and the Regulatory Functions committee.) Whilst there is a need for dual licence arrangements, there may be technical difficulties encountered with separating the requirements of the two issuing authorities and there may be a need to ensure that terminal times for both licences are commensurate and that ‘activities’ licensed by the Local Authority only take place within mutually licensed times. There may be separate inspection regimes for both licences held and the Scottish Government needs to ensure that the powers conferred to Local Authority Officers are cross transferable. Typically the Local Authority licensing Standards Officer (LSO) works in tandem with civic enforcement officers, however their respective ‘powers’ of entry and inspection will require to be the same in order to overcome potential legal challenge.

In the event of a suspension or revocation of an alcohol licence, there needs to be a consideration that licensed activities may still continue, where alcohol is not sold, but “bring your own bottle” could technically continue within the premises until a hearing by the other committee can be concluded.

Audience

An audience of one should be applied. Many premises regularly referred to as ‘lap dancing’ venues operate private booths that facilitate titillation on a one to one basis.

Local Authorities should not be given the opportunity to decide whether they wish a regulatory regime for sexual entertainment venues, they should be required to have one. Given the diverse approach regarding local authorities management of SEV’s under public entertainment or alcohol licences there should be little discretion in any new regulatory regime.
Furthermore, national consideration as to what does and does not define adult entertainment needs to be established (as the legislation covering licensing is a national statute and should not be subject to regionalisation). It is clear that any developments may be subject to litigation and we may find further complications in case law, with different interpretations of local authority policy being tested in appeal courts with contrasting outcomes (see Tesco v Aberdeen and Glasgow) Ministers should consider comprehensive mandatory conditions in order to ensure a consistency of approach across the entire country rather than leaving the majority of conditions within the discretion of Local authorities to appoint local conditions. A policy document along similar lines to the Home Office Sexual Entertainment Venues Guidance for England and Wales would also be welcomed.

Advertising including flyers / bill posters / online advertising for any licensed premises shall not portray any sexualised image, nakedness of any figure or any other image that any reasonable person would find inappropriate etc., or alternatively, any promotional advert shall consist of text only, the only advertising image being permissible being any commercial logo of the licence holder. Any advertisement will clearly indicate the licence number of the premises.

In line with other aspects of the Civic Gov legislation, SG should strongly consider that ‘individuals’ taking part in a performance or working within the venue as a performer (whether for payment or not) shall apply for and be granted a personal licence and be licensed by the Local Authority, in addition to the venue being licensed. This will enable greater protection to performers / patrons as well as deter human trafficking which this area has allegedly occurred previously. A ‘personal licence’ will ensure participants are:

- fit and proper
- have a right to work in UK
- identity confirmed
- permit cross reference with other Local Authority data sets

This will ensure that the same protections are in place as taxi drivers, window cleaners etc.

Recommended mandatory conditions that provide consistency re the following would also be welcome:

1. External Appearance of the Premises and Public Displays of Information
2. Control of Entry to the Premises

3. Conduct of performers and Rules relating to performances of sexual entertainment and nudity permitted

4. The protection of performers and the prevention of crime on the premises

5. Record Keeping and Management

6. CCTV

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

A similar system to occasional licences for alcohol should be prescribed for premises wishing to only operate on one or two occasions. There is also the potential that this may be open to exploitation by performers (such as touring production) who may conduct a performance for one night only, but may perform on town and cities on consecutive nights across the country.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?
Local Authorities should be allowed to decide how many premises are allowed in a given area including a figure of zero. However they should be required to publish a policy for sexual entertainment venues outlining their rationale for each element of the policy.

Each local authority should have a requirement to produce a ‘Statement of SEV’ policy, which will provide the evidential basis underpinning their policy. Any presumption of rebuttal will be open to challenge and may potentially be counter productive / open to protest unless it is published with a statement of reasons and with transparency. Local Authorities that seek to grant SEV licences should include detail of any areas where applications are acceptable/tolerated and where provision of a SEV would not be permissible (e.g. within radius of schools, vulnerable locations etc) This will also inform the community / local residents of what can be expected within an area.

Any policy decision to remove Adult entertainment from a local authority area will require transitional arrangements within a reasonable time frame.

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

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

See response to Q 50.

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

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