Local Government and Regeneration Committee

3rd Report, 2015 (Session 4)

Stage 1 Report on the Air Weapons and Licensing (Scotland) Bill
Local Government and Regeneration Committee

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Stage 1 Report on the Air Weapons and Licensing (Scotland) Bill

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Local Government and Regeneration Committee

Remit and membership

Remit:

To consider and report on a) the financing and delivery of local government and local services, and b) planning, and c) matters relating to regeneration falling within the responsibility of the Cabinet Secretary for Infrastructure and Capital Investment.

Membership:

Clare Adamson (from 3rd December 2014)
Cameron Buchanan
Willie Coffey (from 3rd December 2014)
Cara Hilton (from 14th January 2015)
Mark McDonald (until 27th November 2014)
Stuart McMillan (until 27th November 2014)
Anne McTaggart (until 8th January 2015)
Alex Rowley
Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
David Cullum

Senior Assistant Clerk
Claire Menzies Smith

Assistant Clerk
Seán Wixted

Committee Assistant
Ross Fairbairn
Local Government and Regeneration Committee

3rd Report, 2015 (Session 4)

Stage 1 Report on the Air Weapons and Licensing (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

Introductory chapter

1. This report covers the scrutiny of the Air Weapons and Licensing (Scotland) Bill (“the Bill”) by the Local Government and Regeneration (LGR) Committee.

2. The Bill\(^1\) was introduced in the Parliament on 14 May 2014 and the Parliamentary Bureau referred the Bill to the LGR Committee to consider and report on the general principles. No secondary committee was appointed to scrutinise the Bill.

3. Prior to introduction the Scottish Government undertook a number of consultations on the constituent parts of the Bill (apart from public entertainment licensing) these were published between November 2012 and September 2013 on its website.\(^2\)

Parliamentary scrutiny

4. We agreed our approach to consideration of the Bill at Stage 1 at our meeting on 19 June 2014. A call for views\(^3\) on the general principles of the proposed Bill was subsequently issued and closed on 29 September 2014. As part of our approach, we agreed to write to the Scottish Government seeking clarification on a number of issues relating to the Policy Memorandum.\(^4\)

5. During the summer to autumn period of 2014 we arranged for one-off meetings with academics, legal and industry representatives to provide us with sufficient background understanding of the main issues to assist us with undertaking the scrutinising task before us. **We would like to express our gratitude to all those who spoke to us. These informal sessions assisted in our early engagement with the issues in what is a technical and diverse Bill.**

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\(^1\) Air Weapons and Licensing (Scotland) Bill, as introduced (SP Bill 39, Session 4 (2014)).

\(^2\) Scottish Government. Written submission, 1 September 2014.

\(^3\) Local Government and Regeneration Committee. Call for written evidence.

\(^4\) Scottish Government. Written submission, 27 June 2014.
Witnesses
6. We held nine evidence sessions with a wide range of stakeholders, on a themed basis, based on the parts of the Bill (air weapons; alcohol licensing; metal dealers; taxi and private hire cars; public entertainment venues and sexual entertainment venues; and civic licensing).

7. Minutes of all the meetings at which the Bill was considered can be found online and links to the Official Report of the relevant meetings can also be found online. Along with links to all written submissions, including supplementary written submissions and correspondence.

8. We extend our thanks to all those who gave evidence on the Bill. The detailed and wide-ranging submissions have enabled us to properly appreciate and understand the issues involved and to report to Parliament our views on the Bill.

Background to and purpose of the bill
9. The purpose of a licensing system is to regulate activities which although legal and legitimate, are considered to have the potential to be harmful or disruptive to society. Licensing protects various aspects of the public interest, such as public order and safety; public health or reducing the risk of criminality.

10. The pre-existing licensing regimes are set out in the Civic Government (Scotland) Act 1982 ("the 1982 Act"), and the Licensing (Scotland) Act 2005 ("the 2005 Act"). In the accompanying documents to the Bill, the Scottish Government states that the current licensing system works well, allowing local authority councillors direct responsibility for making key decisions in relation to licensing in their communities.

11. There are a range of bodies responsible for licensing under the Bill. These are: Police Scotland, for Air Weapons under Part 1 of the Bill; Licensing Boards for Alcohol Licensing under Part 2; and Licensing Committees (or other local authority entities) in relation to the various civic licensing covered in Part 3.

Difference between Licensing Boards and Licensing Committees
12. In order to understand the Report more fully, we set out some background to the latter two licensing authorities.

Licensing Boards
13. Licensing boards are constituted under section 5 of the Licensing (Scotland) Act 2005. A local authority can have one licensing board covering its whole area, or it can choose to sub-divide its area into divisions and have a licensing board for each division. Licensing boards carry out various functions in relation to alcohol licensing. They also have a role in the gambling licensing process, although their discretion is

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6 Local Government and Regeneration Committee. Air Weapons and Licensing (Scotland) Bill Committee web page.
7 Air Weapons and Licensing (Scotland) Bill, Policy Memorandum (SP Bill 49, Session 4 (2014)), paragraph 12.
very limited. Importantly, a licensing board has a separate legal identity to the local authority: it therefore sues and is sued in its own name.

**Licensing Committees**

14. Many local authorities have licensing committees which deal with applications for licences under the 1982 Act although there is no requirement to establish such a committee.

15. Local authorities have broader powers under the Local Government (Scotland) Act 1973 (section 56) to arrange for any of their functions to be carried out by a committee, sub-committee, officer of the authority or, indeed, another local authority. There are some specific exceptions to this (for example, setting the council tax rate). However, broadly, local authorities are able to arrange their administrative affairs as they see fit.

16. Thus, many local authorities have decided to delegate their licensing functions under the 1982 Act to a committee. Indeed, it is common for the licensing function to be delegated even further – to council officers – where there is perceived to be nothing controversial about the application, or where the situation is catered for in council policy on the matter.

17. Licensing committees in Scottish local authorities are different to licensing committees in English local authorities. In England, licensing committees deal with alcohol licensing under the Licensing Act 2003.

18. The Policy Memorandum which accompanies the Bill states the primary policy objective of the Bill is to—

“[…] strengthen and improve aspects of locally led alcohol and civic government licensing in order to preserve public order and safety, reduce crime, and to advance public health. This is being achieved through reforms to the existing systems to alcohol licensing, taxi and private hire car licensing, metal dealer licensing and; giving local communities a new power to regulate sexual entertainment venues in their areas. The Bill will also protect public safety by creating a new licensing regime for air weapons.”

19. The Bill establishes two new licensing regimes—

- a new licencing regime for owning and using an air weapon in Scotland, and
- a new separate licensing regime for the operation of sexual entertainment venues in Scotland.

20. The Bill also amends the current licensing regime in relation to the sale of alcohol under the 2005 Act. The Bill proposes to make it an offence to supply alcohol to people under 18 for consumption in a public place. The Bill also takes forward a number of technical changes to the licensing system for alcohol sales.

21. Finally, the Bill amends the existing civil licensing regime in relation to the licensing of taxis and private car hires; scrap metal dealerships and public entertainment venues.

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8 *Air Weapons and Licensing (Scotland) Bill, Policy Memorandum* (SP Bill 49, Session 4 (2014))
22. In addition the Bill addresses some general and miscellaneous provisions, such as to provide for greater consistency across civic licensing regimes in relation to issues such as hearings. The Bill also establishes a new role of Civil Licensing Standards Officers (“CLSO”), modelled on the Licensing Standards Officers (LSO) created under the 2005 Act.

Contents of the Bill

23. The Bill is presented in 3 parts as follows—

- Part 1 – Air Weapons
- Part 2 – Alcohol licensing
- Part 3 – Civic Licensing (including taxis and private hire cars, metal dealers, public entertainment venues, sexual entertainment venues, and miscellaneous and general)

24. Our report mirrors for ease of reference the structure of the Bill as detailed above.

25. Each part of the Bill is comparatively self-contained and we considered them and report upon them individually, extending this approach to the four discreet civic licensing regimes within Part 3 of the Bill. We have included an additional section looking at general issues germane to the civic licensing regimes covered by Part 3. Notwithstanding this approach we also ensured we did not lose focus on common strands and enquired about these whenever they arose.

26. Before moving to the general principles of the Bill and our detailed consideration of issues we report upon the common themes which arose during our scrutiny.

Common themes

27. In spite of the wide ranging subject matter, the differing licensing authorities or the activity or premises to be licensed, a number of thematic issues emerged from our deliberations.

The Brightcrew decision

28. What could be described as the most important impetus for change to licensing in recent years is the Brightcrew decision. This case cast significant doubt on the ability of licensing boards’ to control sexual entertainment through alcohol licensing. The Court of Session held that a licensing board is only permitted to consider the licensing objectives as they relate to the sale of alcohol rather than in relation to more general considerations. This has left sexual entertainment venues unregulated which has necessitated the new regime proposed under this Bill.

29. We also learned the court decision has made some Licensing Boards take a more cautious approach to other factors which are considered as being not directly concerned with the sale of alcohol. Matters such as noise complaints, fights, and other disturbances occurring in or around venues holding or seeking alcohol licences.

30. The consequences of the Brightcrew decision underpinned many of the submissions we have received and are considered in detail at Part 2 Alcohol Licensing, and at Part 3 Sexual Entertainment Venues, of this Report.

Review of civic licensing
31. The Bill is what could be described as a ‘pick and mix’; including within it new licensing regimes, amendment of a relatively recent licensing regime, and further changes to various existing civic licensing regimes.

32. This latter category gave rise to many discussions during the examination of the Bill. A number of witnesses suggested that a wider review of the licensing regime was required to ensure it remains fit-for-purpose and reflects modern circumstances.

33. SOLAR Licensing Group said—

“We would re-iterate that the Act is now over 30 years old and it is becoming increasingly difficult to address modern business activity within the structure of the Act. In addition, penalties for civic offences are not generally commensurate with other licensing regimes e.g. liquor, private landlord registration, HMO licensing.”

34. Many submissions which commented on the detail of the civic licensing regimes also took the opportunity to advise the Act was both out-dated and piecemeal having been amended a number of times. City of Edinburgh Council commented “continued amendment of the Act is not helpful”.

35. Two of the largest councils in Scotland went further stating the 1982 Act was not fit for purpose. Peter Smith of Glasgow City Council said “consolidation or revision of the Act is required to improve the licensing service that is delivered to businesses and communities we serve”. Andrew Mitchell of the City of Edinburgh Council had a similar view stating “the 1982 Act has probably passed its sell-by date”.

36. The Minister told us he had no plans to fundamentally review the 1982 Act as it was “reviewed only some 10 years ago and found fit for purpose”.

Interaction between the licensing regimes
37. Also worthy of note is the interaction between the various licensing regimes. Some regimes provided exemptions where licences had been granted for other purposes, a case being the exemption for a public entertainment licence where an alcohol licence is in place and the activity is included in a venue’s operating plan. On the other hand, a venue might need dual licences to cover its activities, for example if a venue sells alcohol and provides sexual entertainment then two licences will be required. These subtleties make it difficult for the public to engage with the various licensing regimes; it also makes it problematic achieving consistency across licensing.

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10 SOLAR. Written submissions 33-38.
11 City of Edinburgh Council. Written submission 49.
regimes, which in turn makes enforcement more difficult. To further complicate the situation other licensing regimes can apply, e.g. planning in relation to signage.

**Opportunity to future proof legislation**

38. One of the key reasons presented to us for change to the 1982 Act was to keep pace with modern business activity. Peter Smith of Glasgow City Council advised the 1982 Act regulates “obvious things such as taxis and private hire cars to more obscure things such as window cleaners and boat hire licences”.\(^{15}\) Andrew Mitchell expanded on this saying Edinburgh Council use the street-trading provisions to license pedicabs explaining there is an issue with the volume of pedicabs which causes significant community concern. He told us “we are struggling to use the powers in the 1982 Act to control the collective impact of those licences.”\(^{16}\) Glasgow City Council on the other hand took the view there was no power under the 1982 Act which could be used to license such an activity.

39. This was not the only matter raised with us regarding modernising licensing law. In relation to the licensing of taxi and private hire cars we were made aware of the implications of new smartphone “apps” which could be used to book transport. We were reassured by the Cabinet Secretary this did not pose a problem in terms of the Act, as drivers would still have to comply with the legislation and, if they did not, they would be subject to enforcement action. This does however illustrate how quickly new business models and developments in technology can impact on licensing authorities’ ability to regulate activities.

40. Nor was future proofing the sole domain of the 1982 Act. Issues were also raised with regard to the Licensing (Scotland) 2005. We heard concerns around home delivery services from police witnesses. While alcohol for home delivery must be purchased during licensing hours it can be delivered out-with these hours by licence holders. “Dial-a-booze” it was suggested is becoming a significant problem which requires legislation to be tightened.\(^{17}\)

41. The Bill provided an opportunity for the Scottish Government to bring forward more comprehensive provisions which seek to address developments in the business environment; we consider this opportunity has not been taken.

42. **We believe the time is right for a review of the 1982 Act as it is not designed for the modern age and, some witnesses suggested it struggled to be fit for purpose. We recommend the Scottish Government consider and report back to us within this Parliamentary term on undertaking a review of the 1982 Act, with a particular focus on where it can be modernised as well as considering harmonisation and streamlining across the various licensing regimes.**

43. **In the short term we recommend the Scottish Government considers the submissions we received on the Bill which suggest changes to the Bill to improve the operation of the 1982 Act and bring forward appropriate amendments at Stage 2.**

44. Given the dual licensing issues and our recommendation at paragraph 42 we also recommend the Scottish Government consider and report back to us within this Parliamentary term on bringing all licensing in Scotland under a single regime.

Accompanying Documents

Policy Memorandum
45. It was necessary to seek additional detail to supplement that supplied in the Policy Memorandum (“PM”). We wrote to the Scottish Government on 27 June\textsuperscript{18} seeking elaboration on the information contained in the PM to inform the Committee’s scrutiny, and make it easier to meet the challenging Parliamentary timetable for consideration. Full responses would also assist those who wished to provide us with written evidence to the Committee. The Scottish Government responded\textsuperscript{19} on 1 September providing full responses on each of the questions posed.

Financial Memorandum
46. Standing Orders Rule 9.6, require us, as the lead committee at Stage 1, to consider and report on the Bill’s Financial Memorandum (“FM”). In doing so we are required to consider any views submitted by the Finance Committee. That Committee reported to us on 18 February 2015.\textsuperscript{20}

47. The FM sets out the costs associated with each Part of the Bill (including for the individual civic licensing regimes covered under Part 3 of the Bill) and after page 84 includes a table summarising the additional costs expected to arise as a result of the Bill’s provisions.

48. The Finance Committee came to a number of conclusions throughout their report, and invited us to seek clarification, confirmation and detail from the Minister on some aspects of the FM and costs arising from them. These points are addressed under the appropriate part of our Report.

Delegated Powers Memorandum
49. The remit of the Delegated Powers and Law Reform Committee (DPLR Committee) includes “to consider and report on proposed powers to make subordinate powers in legislation including whether any proposed powers are appropriate”. DPLR Committee considered the proposed powers in the Bill and reported to us on 20 January 2015.\textsuperscript{21}

50. The Committee brought to our attention concerns about the powers under section 36 and 37 relating to Part 1 Air Weapons and new sections 45A and new section 45B of the 1982 Act which relate to sexual entertainment venues. We note the issues raised by the DPLR Committee in its report and we have sought to reflect these in this report.

\textsuperscript{18} Scottish Government. \textit{Written submission}, 27 June 2014.
\textsuperscript{19} Scottish Government. \textit{Written submission}, 1 September 2015.
\textsuperscript{20} Finance Committee. \textit{Report on Air Weapons and Licensing (Scotland) Bill}.
\textsuperscript{21} Delegated Powers and Law Reform Committee. 5th Report, 2015 (Session 4). \textit{Air Weapons and Licensing (Scotland) Bill at stage 1}. 
THE GENERAL PRINCIPLES OF THE BILL

51. The Committee reports to Parliament it is content with the general principles of the Bill although asks Parliament to note the comments made throughout this report.

52. Having provided this overview, the remainder of this report considers each Part of the Bill in turn.
PART 1: AIR WEAPONS

Background

Legislative competence
53. Section 10 of the Scotland Act 2012 transferred to the Scottish Parliament the legislative competence to make law relating to the use and regulation of most air weapons in Scotland.\(^{22}\)

Air weapons
54. For the purpose of Part 1 of the Bill, the owner of an air weapon classified as 'specially dangerous' will be subject to a certificate system. The Bill defines such weapons as—

“…any air weapon is “specially dangerous” if it is capable of discharging a missile so that the missile has, on being discharged from the muzzle of the weapon, kinetic energy in excess, in the case of an air pistol, of 6 foot pounds or, in the case of an air weapon other than an air pistol, 12 foot pounds”\(^{23}\).

55. In 2011 the Scottish Government established the Scottish Firearms Consultative Panel (“the SFC Panel”) to advise the Scottish Ministers on firearms policy.\(^{24}\) The SFC Panel consisted of representatives from the police, prosecution services, shooting organisations, campaign groups for gun safety as well as representatives of the gun trade industry. The proposals in the Bill follow on from the recommendations of the SFC Panel.

56. Based on the work of the SFC Panel, the Scottish Government has estimated that there are approximately 500,000 air weapons currently owned by people living in Scotland.

57. Part 1 would allow the Chief Constable to attach such conditions to an air weapons certificate as seem appropriate to him for the operation and use of an air weapon. This could cover aspects such as where an air weapon could be used, how it should be carried or transported (e.g. in a case or other covering) and how it should be stored by the owner. The accompanying documents to the Bill recognise there are many valid reasons why an individual may own and use an air weapon. The Bill seeks to regulate the ownership and use of air weapons in by way of an air weapons certificate system operated by Police Scotland. In this way the Bill treats the ownership and use of air weapons in a similar way to the ownership and use of other forms of firearms.

Scrutiny of Part 1
58. Following our call for written evidence on the Bill the Committee received 144 written submissions. Of these, 50 made specific reference to Part 1 of the Bill. In addition during the policy development of the Bill, the Scottish Government undertook

\(^{22}\) Scotland Act 2012, Section 10.
\(^{23}\) Scottish Parliament Information Centre. 2014 Air Weapons and Licensing (Scotland) Bill: Air Weapons. SPIe briefing SB14-84 (page 5).
an extensive consultation on the air weapons provisions. The Government received 1,101 written responses.²⁵

59. We have carefully considered all of the formal and informal submissions we have received from witnesses and members of the public. This body of information has helped shape our recommendations on Part 1 as set out in paragraphs 135 to 140 of this report.

Bill proposals

60. Part 1 of the Bill proposes a certificate system for the ownership and use of air weapons in Scotland.

61. The Policy Memorandum states the Scottish Government’s overarching policy objective is not to ban air weapons, but to ensure only those people who have a legitimate reason for owning and using an air weapon should have access to them. Such persons are to be properly licensed. The principles underpinning the proposed certificate system, as set out by the Government, are to—

- clearly define the air weapons to be subject to licensing;
- broadly follow the principles and practices of existing firearms legislation;
- set out the main principles of the Scottish regime in primary legislation, with detailed provisions – for example, on fees, procedures, forms, conditions, etc. – being provided for in future secondary legislation supported by detailed guidance;
- enable a fit person to obtain a licence to own, possess and shoot an air weapon in a regulated way, without compromising public safety;
- prevent those persons who are unfit, or who have no legitimate reason for holding an air weapon, from obtaining a licence;
- have as its objective the removal of unwanted, unused or forgotten air weapons from circulation;
- ensure appropriate enforcement of the new regime with suitable offences and penalties available within the justice system to deal with any person who contravenes the new regime.

The case for introducing air weapons certificates

Rationale

62. The Scottish Government’s rationale is principally based on the issue of preventing crime, ensuring public safety and preventing fear and alarm. This position the Government states, is grounded on two key elements, which can be summed up as follows—

- regulating the ownership and use of a specific category of firearm which can cause serious or fatal injuries, but which is not currently provided for in existing regulations;
- preventing public fear and alarm which may be caused by the use, or misuse, of air weapons.

63. Various stakeholders opposed to the introduction of an air weapons certificate system have questioned this rationale, and whether introducing a compulsory certificate system is a proportional response to the number of incidents of fatal or serious harm which have been caused by air weapons in Scotland in recent years.

64. All of the main representative organisations from the shooting community in Scotland have opposed the Government’s decision to introduce this legislation.

Reducing crime and the misuse of air weapons

65. The public debate on the use of guns and other firearms in British society, and the way in which this drives the policy response from government has been shaped, in part, by various incidents where members of the public have been killed or injured as a result of firearms misuse.

66. Instances of firearms misuse which have resulted in mass casualties are, thankfully, extremely rare in the UK. However, there have been four high profile incidents over the last 30 years in which large numbers of people were either killed or injured as a result of firearms misuse: Hungerford in Berkshire in 1987; Whitley Bay in North Yorkshire in 1989, Dunblane in Perthshire in 1996, and most recently in Cumbria in 2010. All of these instances involved the use of firearms or shotguns for which licensing provisions already existed in law.

67. Police Scotland highlighted the murder of Andrew Morton to us as a key point in the debate around the use of air weapons in Scotland—

“As far as Police Scotland is concerned, the bill is about ensuring that inappropriate people do not get access to lethal barrelled weapons that can, by definition, kill. The case of Andrew Morton, who was a two-year-old toddler when he was shot in the head by a man with an airgun in 2005, is a tragic example of what can happen when the wrong people have access to lethal barrelled weapons. Thankfully, such tragic incidents are very rare, but on most days the police and animal welfare groups have to deal with the results of air weapons being misused. Legislation that allows for responsible ownership of air weapons is to be welcomed. Air weapons in irresponsible hands are dangerous, and keeping people safe is the priority for Police Scotland.”

Opposing view

68. Several witnesses pointed to the fact that firearms related crime is currently falling in Scotland and that to introduce a dedicated certificate for air weapons ownership is an unnecessarily burdensome step for the Government to take. Generally, they expressed the view that the Bill will not serve to reduce crime or increase public safety.

69. The view that the Bill will do little to reduce criminality was widely held by witnesses representing the shooting community. For example, Graham Ellis of the Scottish Air Rifle and Pistol Association (“SARPA”) told us that his members were “concerned that [the Bill] does little or nothing to address the criminal element who

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would misuse airguns.”

David John Penn of the British Shooting Sports Council agreed, cautioning that the Bill would do little to tackle the misuse of air weapons—

“...plenty of law exists now to prosecute effectively people who misuse air weapons. The licensing of air weapons would not help very much. It would provide another stick to beat people with, but a raft of sticks is already available.”

70. All of the witnesses we heard from acknowledged the vast majority of air gun and firearms users are responsible and law abiding citizens. Dr Colin Shedden of the British Association of Shooting and Conversation (“BASC”) stated “the only people who will submit themselves to the licensing system will be those who are already law-abiding.”

71. We also received numerous submissions from private individuals. Many argued the introduction of an air weapons certificate scheme would have no effect on those who chose to misuse such weapons and would simply penalise law-abiding owners who would almost certainly comply with the legislation.

Supporting view

72. Groups supporting the proposals took a differing view of its potential to reduce the level of misuse of air weapons.

73. Dr Mick North of the Gun Control Network (“the GCN”), spoke of what he saw as an underlying causal effect to many of the incidents of air weapons misuse which has led to serious or fatal injury as being “the casual way in which air weapons are treated” in Scotland. He told us—

“A number of the more serious incidents, particularly those involving young people, have occurred when someone has come across an airgun in the house that has been kept rather casually by the owner, who may be a parent, and has been playing around with it. We believe that, if the owner had to have a licence for that weapon, they would think seriously about whether it ought to be there.”

He continued—

“...one of the problems has been a rather lax and casual attitude towards air weapons, and we feel strongly that registration will send out the right message and will reflect the degree of dangerousness of air weapons. We believe that a licensing system will make anyone who wants to use an air weapon think seriously about their need to have one, which will lead to a subsequent reduction in the number of weapons and, therefore, the number of serious incidents.”

29 BASC. Written submission 76, page 6.
30 Amongst others, Callum Chesshire, Morag and Tim Liddon, Alex Pearson and Steven Wolf.
31 As above.
Both the League Against Cruel Sports ("the LACS") and the Scottish Society for the Prevention of Cruelty to Animals ("the SSPCA") spoke of the level of air weapon misuse directed towards both domestic animals and wildlife. The LACS noted that Police Scotland recorded 68 air weapons attacks on animals between 2010-2012\(^33\), and the SSPCA recorded 178 attacks in a single year.\(^34\) Both organisations believed the true level of air weapons attacks on animals in Scotland is underreported. Cats Protection also welcomed a certificate scheme and expressed the hope the scheme would result in fewer crimes being committed against animals.\(^35\)

While the SSPCA accepted there are lawful purposes for individuals to own and use air weapons, they said a certificate system should ensure that such individuals have a legitimate reason for using an air weapon and a lawful place to use it, be that a gun club or on land with landowners' permission.\(^36\)

Speaking about the use of air weapons in criminal activity in Scotland, Assistant Chief Constable (ACC) Wayne Mawson of Police Scotland told us—

"We have identified that recorded offences in Scotland involving all firearms fell in 2012-13 by 32 per cent to 365, compared with 535 offences in 2011-12. Of those 365 offences, almost half—171 offences—involved air weapons. That is the lowest figure that has been recorded in Scotland since comparable records began in 1980."\(^37\)

He added that between April and July 2014, police records show that—

"...there were 84 offences specifically involving air weapons: 75 of those offences were in public places, six involved injuries to animals, nine involved injuries to humans—one of which was an attempted murder, when a man was shot in the head—nine were in a private dwelling or a garden, and so on."\(^38\)

Police Scotland spoke about the potential value Part 1 of the Bill could add in further reducing the risk of harm to the public, as well as members of Police Scotland, as about half of all recent firearms incidents involved air weapons.\(^39\)

Scottish Government

We heard from the Cabinet Secretary for Justice, Michael Matheson, on 25 February 2015. He set out the view of the Government that the certificate system would provide new powers to assist in reducing crime.—

"...as a result of creating the licensing provision, we require individuals who wish to have, or have, an air weapon to have a licence for it [...] It is clear that there will be people who will choose not to have a licence. If they choose not to have a licence, they will be committing an offence [...] the police will have


\(^35\) Cats Protection. Written submission.


powers to take action if an individual holds a licence and uses the air weapon inappropriately or in an unsuitable way.  

80. While scrutinising Part 1 of the Bill, we noted recent media reports relating to the serious criminal misuse of air weapons. One case occurred in Shetland in September 2014, another in County Durham in England in November 2014, and most recently an attack on a rail worker in High Bonnybridge near Falkirk on 22 February 2015. This latter incident was referred to by the Cabinet Secretary in his oral evidence to us.

81. We find it reasonable and justifiable for the Scottish Government to legislate for the ownership and use of air weapons in Scotland.

The application process

Background
82. Police Scotland stated there are currently about 53,000 firearms certificate holders in Scotland under the current UK legislation. The firearms certificate system is administered through an ICT system called Shogun. It is intended Shogun will also be used to administer the air weapons certificate system. Police Scotland also confirmed Shogun will interlink with their new integrated national ICT system for key policing functions, called i6, which is currently under development.

83. While police officers in Scotland have long and detailed experience in administering and operating firearms legislation in Scotland, this Bill will see the first occasion on which police in Scotland will be administering two different firearms certificate systems.

84. Inevitably, a major question is how these separate systems will interact with each other, and what the implications will be for Police Scotland, firearms and air weapons owners, and other associated stakeholders (such as the gun trade sector).

Resourcing and smoothing
85. A key topic which emerged during scrutiny concerns the administrative and resource issues Police Scotland may face. This is as a result of the cyclical nature of firearms and air weapons certificate application/renewal process, as well as the varying verification processes and conditions which must be carried out for each regime. Ways in which difficulties or pinch-points in the operation and administration of these two certificate regimes could be alleviated has been referred to as smoothing.

41 BBC Scotland online, 4 February 2015. Three years in custody for teen after Shetland firearms incident.
42 Sky News, 17 November 2014. An 11-year-old boy was shot in the head with an air weapon as he waited to play football in Chester-le-Street.
43 BBC News, 23 February 2015. A railway worker has been shot in the leg with an air gun in an unprovoked attack.
46 The i6 project is intended to deliver a national integrated IT system for Police Scotland for 6 key policing areas: crime, custody, case reporting, vulnerable persons, missing persons and productions/property management.
86. Police Scotland highlighted the need for smoothing provisions to be provided in order to facilitate the efficient introduction of the new air weapons certificate system—

“It is vitally important, from a processing perspective to balance the monthly demand of applications on the police [...] the Bill states that an [air weapons certificate] shall last for five years [...] the proposed legislation allows for a certificate holder to align their [air weapons certificate] 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 [air weapons certificate] 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.”

87. Police Scotland also suggested an alternative option to this proposal would be to allow “the Chief Constable to have the ability to vary the length of the first certificate” for a period less than five years, so as to stagger the impact of the introduction of the air weapons certificate system vis-à-vis the current firearms licensing system. Following this, Police Scotland suggest, “the renewal of the first certificates would revert to five years.”

88. The Scottish Police Federation (“SPF”) also expressed concerns about the workload and resource implications for their members in terms of the new air weapons certificate system. Calum Steele, referred to what he saw as the lack of evidence in the Financial Memorandum to support the belief that about 40,000 air weapons in Scotland may be owned by existing firearms or shotgun certificate holders. He questioned this as a basis for estimating the potential workload in terms of initial air weapons certificate applications—

“Given our experience and the number of [police] staff who undertake such activities on a day-to-day basis, we have real difficulty in understanding how that translates into a limited number of inquiries based on there being a small number of individuals, when no guidance has been prepared on what will be required by way of background checks and supporting evidence before an air weapon certificate is granted [...]The impact of adding the burden of potentially having to deal with up to 500,000 air weapons—although it is questionable whether that number would ever fall under the licensing regime—needs to be properly understood.”

89. The BASC also flagged concerns around the impact the new air weapons certificate system will have on the way in which Police Scotland will administer the work to be carried out. They told us—

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48 As above.
“Police Scotland will provide the resource for administering a licensing scheme but will not prioritise resources for identifying those who illegally possess airguns. If resources and police numbers were not an issue, it would be ideal if we could have licensing and police investigation into those who were committing an offence by illegally possessing an air weapon. However, we are not in that position.”

90. Other witnesses, such as the GCN, also recognised the need for smoothing.

**Scottish Government**

91. The Cabinet Secretary acknowledged the cyclical nature of the workload for Police Scotland in managing applications for shotguns and firearms under the existing certificate system, which are renewed on a 5-year basis. This, he said had “significant peaks and troughs in firearms and shotgun registrations” which impact on the ability of Police Scotland to manage workloads. The Cabinet Secretary recognised the potential timing of this Bill might exacerbate this effect as “the 2015 to 2017 period is when there is a peak in the re-registration of firearms” under the current certificate system. He informed us—

“We have discussed with the police how we can shift much of the air weapons stuff to the periods when they are quieter, and part of the work that we are doing with them is looking at how we will commence implementation of the bill, including the lead-in time for people needing a certificate. We want to move the registrations to a quieter period for the police in order to level out their workload […] Some of the provisions on the commencement of different aspects of the bill can assist us in achieving that as well, through setting a lead-in time. I am open to working with the police on that.”

92. The Cabinet Secretary highlighted the need to ensure a comprehensive public information campaign is put in place to inform air gun owners of the forthcoming air weapons certificate system. This, he said, would be important in ensuring—

“…the owners of the potentially half a million air weapons […] are aware that they have a responsibility to have their weapons licensed—and, if they do not, that they could be committing an offence and could find themselves prosecuted.”

**The application fee for a certificate**

**Background**

93. The Financial Memorandum to the Bill provides estimates of potential fees for air weapons certificates. It suggests a fee of around £50 which is close to the current firearms/shotgun application fee. It also suggests an indicative level of £85, if it were based on estimates of the full cost of processing each type of air weapon application.
Current fees for firearms applications

94. The 1968 Act forms the basis of the statutory regime for the regulation of firearms. This also sets out the mechanism by which the UK Government sets the fees charged to those who wish to obtain a certificate to own and use a firearm. Currently, the UK Home Office has responsibility for setting the fees payable for anyone wishing to seek a firearms certificate. Since 2001, the fee for a firearms certificate is £50 per application. The standard period for which a certificate is valid is five years. Therefore, in essence, it costs £10 per year.

95. Between 27 November and 29 December 2014, the UK Home Office undertook a public consultation on a proposed increase in the firearms licensing fees. There is currently no indication when outcomes from this consultation will be available. Following the launch of the consultation, we asked Police Scotland for its views. In response they told us—

“It is the position of Police Scotland that a fee increase is well overdue, the last increase being in 2001. Police Scotland welcome an increase, but recognise that the proposed fees for Firearm and Shot Gun Certificates and other associated certificates remain under the true cost of firearms licensing to the police at this time […] using an activity based costing approach, suggested that the true cost to the police of a grant of a Firearm or Shot Gun Certificate was £189. The increase in fees is a step in the right direction, and it should remain under review until the fees reflect a full cost recovery basis.”

96. Part 1 of the Bill proposes to replicate the existing firearms certificate system for the application, processing, granting and monitoring of air weapons certificates. As it is the person making the application who is being certified, and not the air weapon (or weapons) they own, a single certificate may cover the ownership of multiple air weapons.

97. Two key themes emerged in terms of the fee level set at for an air weapons certificate—

- whether the fee to the applicant should be sufficient to fully cover the costs to the police in terms of administering the system, or whether the public should bear some part of the cost in recognition that having a safe and regulated air weapons certificate system benefits all;
- whether any disparity between the fee for an air weapon certificate (set by the Scottish Ministers), and a lower fee for a certificate for a more powerful firearm, such as shotgun or rifles (set by UK Ministers) may encourage people to opt for more powerful firearms, referred to as ‘trading up’.

Fees for air weapons certificates

98. Discussing the role of the certificate fee in the potential success of the air weapons certificate system, the Gun Trade Association ("GTA") told us—

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54 Policy Memorandum, paragraph 94.
55 A proposal to increase firearms licensing fees administered by the police, UK Home Office consultation.
56 Police Scotland, Written submission, 9 January 2015.
57 SPICe briefing SB14-84, page 11.
“We must take into account the fact that a considerable proportion of the air weapons that are held in Scotland are probably worth less than £100. If the certificate is enormously expensive and security requirements are more than described in the bill, there will perhaps be a temptation for some people not to register voluntarily at the start of the scheme. The cost will have an influence on how many people register.”

99. The BASC argued—

“As has been the case with firearm and shotgun certificates in the past, a proportion of the cost that the police face will be paid for by the applicant and the rest should be paid for by society because society benefits in relation to safety.”

100. This view was, however, rejected by Police Scotland. ACC Mawson stated—

“If people want to own a firearm of any kind, whether it is a shotgun, a rifle or an air weapon, they should pay the costs that are associated with that. We are not out to make any kind of profit from it; we just want the costs to be recovered.”

101. This opinion was shared by the SSPCA, who said, “In this country, we do not have a right to bear arms. If someone wants something that can potentially kill, they should be willing to pay for it.”

102. When asked if the current £50 fee fails to cover the costs of administering the firearms certificate system, ACC Mawson stated—

“In short, yes it does, at the moment. We do a lot of work to ensure that only fit and proper people receive firearms or shotgun licences. A huge amount of work is involved in that, including visits, follow-up visits and checking gun cabinets. To be frank, the cost of that work is not covered by the existing fees.”

103. In December 2013 Police Scotland stated “the cost to Police Scotland in carrying out proportionate checks in respect of air weapon certification would be approximately £85 per application.”

Trading up

104. Another issue raised is the risk that if an air weapons fee is set at a higher value than the fee for a more powerful firearms or shotguns (currently £50), people may be tempted to opt for owning a more powerful firearm as the lower certificate fee would act as an economic incentive.

63 Police Scotland. Written submission, 9 January 2015.
105. Referring to this point, the BASC pointed out that—

“…people who have in the past had air weapons because they were unlicensed and who would now be exposed to a licensing regime may think to themselves, “I have a low-powered air weapon but if I need to get a licence I might as well get a licence for a more powerful rifle or a shotgun.” A number of people may move from unlicensed air weapon shooting into licensed firearm and shotgun shooting.”

106. The BASC stated they believed ‘trading up’ would be a welcome by-product of the legislation as it would, in their view, encourage more people to move to more regulated shooting activities, which carry a higher level of scrutiny and regulation. This, in turn, would serve the interest of ensuring public safety.

107. The GCN were sceptical of this view, believing those involved in shooting have overestimated the degree of interest airguns only users actually have in shooting.

*Scottish Government*

108. The Cabinet Secretary confirmed that Scottish Ministers were making the case to the UK Home Office for a significant increase in the fees for shotgun and firearms certificates. The Cabinet Secretary said it would not be desirable to have a major disparity between the air weapons certificate applications fee, and the revised fees for shotgun and firearms certificates.

109. Speaking about the Government’s intention for the air weapon fee to fully fund the air weapons certificate system, the Cabinet Secretary told us—

“…we would like to get as close to full cost recovery as we can, but we have to wait to see how far we can pursue that, as it will be dependent on the approach that the Home Office takes to setting fees for firearms and shotguns.”

110. However, he informed us—

“The checks that will be undertaken for the purposes of licensing an air weapon will not be of the same degree as those for the licensing of a firearm. The work that the police will do will not be as onerous as it is when someone applies for a firearms certificate […] The process is unlikely to involve to any great extent home visits, inspection of the device’s location and so on […] Therefore, it is reasonable to expect that the cost will be significantly less as a result.”

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Other issues

Age restrictions in relation to air weapons

111. The Bill allows anyone who is aged 18 or over to apply for a certificate to own an air weapon. The Bill includes special requirements and conditions for people aged 14 to 17 who wish to acquire an air weapons certificate. Currently, 14 is the minimum age where a young person can shoot an air weapon on private land unsupervised under the 1968 Act. Fourteen is also the minimum age at which a young person can be granted a section 1 firearms certificate under the 1968 Act.  

112. There is currently no minimum age for the grant of a shotgun certificate in the UK, although a person must be aged 18 years or over to purchase a shotgun. Anyone aged 14 or younger must be supervised by someone aged 21 or over to be in possession of an assembled shotgun in a public place.

113. Under the Bill, a certificate granted to a young person between the ages of 14 and 17 would expire when that person became 18. A certificate application made by a young person must be counter-signed by a parent or guardian, and any certificate issued would specify the types of shooting which the young person may undertake. The Policy Memorandum stated this would include—

- target shooting on suitable private land or at an approved club;
- pest control;
- protection of crops or livestock;
- participation in events and competitions.

114. The BASC considered the provision for 14 to 17 year olds may effectively make a certificate for a young person proportionately more expensive than one for an adult. The requirements may also, in their view, lead to delays in making applications.  

115. SARPA also raised concern over the potential impact of the variations in age restrictions in Part 1 of the Bill—

“There are a number of issues around youth shooting [such as] Scottish tetrathlon, but there is also the Pony Club, the air training corps and the scouts. A whole plethora of youth organisations use shooting as a pastime or a sport. The regulation of facilities is fine where a dedicated facility is used, but a lot of events—for example, the tetrathlon—take place over various places.”

116. Commenting along similar lines, Police Scotland raised the issue of potential restrictions on under 18 year olds, and the difficulties which may arise—

“…the proposed conditions under which someone under 18 will be able to use an air weapon, one of which is that the person is employed to carry out pest control. That means that an individual under 18 who wanted legitimately to

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70 SPICe briefing SB14-84, page 15-16.
71 BASC. Written submission 76.
engage in pest control in an area where they were allowed to shoot would not be able to do so unless they were employed”.73

**Sale of air weapons to people who reside outside Scotland**

117. The GTA pointed out what they saw as an anomaly in the drafting of the Bill in relation to people living in other parts of the UK—

“A particular complication that we deal with in Scotland relates to what we call remote sales or, in other words, those in which a registered firearms dealer in Scotland sells an air weapon to somebody who is a visitor to Scotland and who has neither a certificate nor a visitor’s permit. The bill as it is drafted says that the dealer in Scotland may send that air weapon “outwith Great Britain”. The way in which that is written means that the dealer will not be able to send it to someone in England; they will have to send it elsewhere.”74

**Unique weapons identification mark**

118. Some discussion took place around the benefits, and practical feasibility, of placing a unique identifying mark, such as a sticker or label on an air weapon as part of the certificate process. Such a system would have the advantage of replicating some of the benefits of the unique serial number which all firearms and shotguns must carry, such as linking the weapons to a specific certified owner.

119. Discussing the effectiveness of the Bill in meeting the stated aim of addressing criminality in Scotland, the BASC pointed out that the lack of serial numbers on air weapons could pose a problem for the operation of a certificate system—

“We are faced with the problem that there is an estimated minimum of 500,000 airguns in Scotland. The vast majority of them do not have a serial number, unlike the vast majority of shotguns and other firearms. Consequently, introducing a licensing regime from scratch is unlikely to be successful because the only people who would submit themselves to it would be law-abiding people who wish to remain law-abiding.”75

120. Responding to the suggestion that a unique identifier system might be advantageous, Police Scotland stated—

“As far as we understand the bill, there would not be a mechanism for identifying, for instance, that the weapon is a .22 air rifle. As you say, a lot of the [air] weapons do not have identification numbers on them, so we would not be able to identify them.”76

**Scottish Government**

121. The Cabinet Secretary acknowledged various issues around the use of air weapons for people aged 14 to 17, and various activities in which they may be legitimately required to use and air weapons, such as activities with pony clubs, triathlons or tetrathlons etc. The Cabinet Secretary and his officials confirmed they

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are discussing these issues with relevant stakeholders in order to ensure the Bill does not impede young people from undertaking such activities.  

122. On developing a unique identifier for specific weapons, the Cabinet Secretary was more circumspect—

“The challenge is to create [an identifier] system that does not lend itself to being misused [...] It would be a much wider issue for us to try to deal with air weapons by having serial numbers embedded into them. That would go well beyond Scotland and would probably have to be taken forward on a Europe-wide basis, because there are also European regulations on firearms.”

Financial Memorandum

123. The Finance Committee’s report to us on the Financial Memorandum asked us to—

- “seek further detail of how the FM’s expected number of home visits corresponds to the BASC’s suggestion that a large proportion of applicants’ “good reason” will be informal target shooting in their gardens”;  
- “invite the Cabinet Secretary to confirm whether the Government intends to revisit the issue of possible costs arising from appeals”.  

124. Police Scotland said it had no budgetary provision to deal with the proposed legislation and that costs would be incurred in the handing in of air weapons. This includes any home visits Police Scotland carry out to assess the circumstances where the reason for seeking a certificate includes informal target shooting within the bounds of their own domestic residence, referred to as plinking.

125. Referring to the detail set out in the Financial Memorandum, Calum Steele of the SPF told us—

“…there is a suggestion that [Police Scotland] should not pursue air weapons as a significant priority but deal with issues as and when they occur. Costs should be broken down into three areas: the financial cost; the human cost, in terms of the impact on communities and individuals; and, of course, the cost of the time that police officers spend dealing with such cases […] what will inevitably contribute to that cost will be the increase in the number of licensing offences identified and, undoubtedly, reported to the Crown Office and Procurator Fiscal Service.”

126. The BASC told us of difficulties which, in their view, the effective restriction of informal target shooting, or plinking, may cause—

“…the British Shooting Sports Council has identified that the vast majority of people who use air weapons in Scotland and the rest of the UK use them for

79 Finance Committee Report, paragraph 37.  
80 Finance Committee Report, paragraph 44.  
informal target shooting in gardens, otherwise known as plinking. Although the bill does not prohibit plinking, the policy memorandum states that ministers would not normally accept shooting in domestic gardens as a good reason to grant a licence. It concerns us enormously that a significant number of owners of air weapons could be prohibited from getting a licence because they cannot provide a good reason, they do not have access to a large area of ground or they are not members of clubs.\(^{82}\)

127. It is clear the Government does not wish informal target shooting, or plinking to be considered as the sole valid reason for a certificate to be granted. This being the case, the only way to assess whether it is suitable to grant a certificate to an applicant who states that they wish to use an air weapons for informal target shooting on their property would be to visit the premises in question and assess the physical circumstances for target shooting. Such checks will add substantially to the costs incurred in processing air weapons certificate applications.

128. We accept it may be difficult to assess the potential costs of the certificate system at this stage, in the absence of information on the number of people undertaking informal target shooting at their place of residence, who may go on to seek an air weapons certificate on that basis. Nevertheless, we suggest the Scottish Government keep these costs under review and, if required, make appropriate adjustment to the fee payable by applicants to cover any additional costs to the police.

129. We note the views expressed by the Scottish Government Bill Team to the Finance Committee who recognised it was difficult to estimate the number of possible appeals on refusals to grant an air weapons certificate. They suggested the proposed “light-touch system” along with the “very small” number of refusals under the existing firearms regime led the Government to expect there would not be many appeals.

Delegated Powers

130. In its report to us on delegated powers in respect of Part 1 of the Bill, the Delegated Powers and Law Reform Committee (“DPLR”) highlighted two specific areas. Firstly, in relation to the powers conferred by Section 37(1) regarding further provision for the application and approvals process for air weapon certificates, police permits, visitor permits, event permits, or club approvals. This includes prescribing the mandatory conditions that will attach to certificates, permits, or air weapon club approvals.

131. The DPLR Committee felt the powers set out in 37(1) went beyond the aim of the section as explained in the Delegated Powers Memorandum, namely to enable the “administrative minutiae” of those processes to be set out in regulations. The DPLR Committee called for such provisions to be set out in the Bill without the need for the “broad power” provided by 37(1).

132. Secondly, the DPLR Committee expressed concern in relation to Section 76 of Part 4 of the Bill (on general provisions). This section confers powers on the Scottish Ministers to make ancillary provisions in standalone regulations for any provision of

the Act or any provision made under it. As such this relates to all Parts of the Bill, including Part 1 on air weapons.

133. The DPLR Committee expressed concern at the use of the words “or any provision made under it” as a highly unusual power. They considered this to be too broad. The response from the Scottish Government did not, in the DPLR Committee’s view, justify the use of such broad wording in Section 76. It recommended the section be amended at Stage 2 to remove this wording.

134. We support the view of the Delegated Powers and Law Reform Committee in relation to both provisions.

Recommendations

The application process

135. In order to ensure all owners and users of air weapons are ready for the introduction of the system, a clear and comprehensive public information campaign will be vital. Many people may only own an air weapon, and no other form of firearm, and therefore be unaware of the conditions for applying for, and holding a firearms certificate. Therefore, we recommend the Scottish Government should work closely with the shooting community, Police Scotland, and other key stakeholders to design and implement a comprehensive public information campaign. This should begin well in advance of the commencement of any certificate system to allow enough time for those who wish to lawfully dispose of any air weapons to do so.

136. The Government and Police Scotland should develop a dedicated website for the air weapons certificate system. This should contain, amongst other things, clear information about what air weapons owners must do to obtain a certificate, information on how to dispose of an air weapon they no longer wish to retain, as well as the relevant timescales for applying for a certificate etc.

137. The Bill should be amended to give the Chief Constable of Police Scotland a degree of latitude in the rollout of the air weapons certificate system to address future application peaks and troughs.

The fee for the application process

138. The Scottish Ministers should continue to make the case to the UK Government for a fee for shotguns and firearms which will ensure full cost recovery.

Sale of air weapons to people who reside outside Scotland

139. The Scottish Government should ensure Part 1 of the Bill does not prevent remote sales outside Scotland to people who reside in all other parts of the UK.

Unique weapons identification mark

140. The Scottish Government consider whether it might be feasible to include some form of identifier mark as part of the design of the air weapons certificate system. The Government should also take the opportunity to engage the UK
Government and the European Commission, on the possibility of introducing suitable EU regulations in this area.
PART 2: ALCOHOL LICENSING

Background

141. Part 2 of the Bill contains provisions which are intended to improve the effectiveness of the alcohol licensing regime laid out in the Licensing (Scotland) Act 2005. That Act only came into force 4 years ago and according to the Policy Memorandum “the regime is still settling in. Many aspects of it are working well. However, there are areas that are not working as effectively as they should be. Therefore, rather than proposing radical overhauls of the regime, the Scottish Government has looked at these areas to find ways to improve the existing system.”

142. The 2005 Act contained a number of policy innovations, including:

- **licensing objectives** – section 4 of the 2005 Act sets down five specific objectives which are intended to guide all licensing decisions

- **licensing policy statements** – licensing boards are required to consult on and publish statements detailing their approach to their functions under the 2005 Act

- **mandatory conditions** – the Scottish Government can set mandatory conditions which apply to all alcohol licenses. These can be used to take forward national policy priorities – for example, tackling irresponsible drinks promotions

- **overprovision** – licensing boards are required to assess whether there is “overprovision” of licensed premises in their areas. A finding of overprovision creates a presumption against issuing new licenses

- **licensing standards officers** – this role is responsible for supervising compliance with the alcohol licensing regime and providing support to resolve complaints

143. The Bill proposes to make a number of changes to the current regime with the policy objectives of “preserving public order, reducing crime and advancing public health”. Following consultation, a range of suggestions were made in relation to the licensing regimes. This Bill amends the existing legislation to take forward those suggestions which were considered to be most effective and practical. The Scottish Government has suggested that people do not want a root and branch review of licensing legislation and restricted proposed changes in the Bill to ones designed to improve the existing system.
Bill proposals

144. The main proposals in Part 2 are:

- The creation of a new offence of supplying alcohol to children or young people for consumption in a public place and amendment of the licensing objective in relation to children to also include young persons;
- Amendment of the duration of a licensing policy statement to be more aligned with the term of Licensing Boards;
- Re-inserting a fit and proper person test in relation to the issue for continued holding of a premises or a personal licence;
- Amendment of the definition of relevant offences and foreign offences to no longer disregard a matter that is spent for the purposes of the Rehabilitation of Offenders Act 1974;
- Clarification that for an overprovision assessment, the whole Board area may be considered as an area of overprovision, and to allow Boards to take account of licensed hours, among other things;
- Imposition of a duty on Boards to prepare an annual financial report;
- Removal of the requirement for a premises licence holder to notify a change in interested parties and creation of vicarious liability for a premises manager for various offences;
- Removal of the five year restriction on re-applying for a licence revoked on grounds of failing to undertake refresher training and other changes to the personal licence holder requirements;
- Provision for the automatic grant of a licence (or its variation) where a Licensing Board has not either decided on an application or sought an extension from the sheriff within a set period. This will enable compliance with the EU Services Directive.

Committee submissions

145. In addition to the above areas submissions suggested a number of others which should be legislated upon. The principal additional areas covered in submissions were:

- Occasional licenses
- Members clubs
- Transfer of licenses
- Surrender of licenses
- “Site only” licenses
- Variations of conditions on premises licenses
- Home deliveries

146. Each of the areas covered by the main proposals and the additional areas above are considered in turn.

147. We sought to consider submissions against the statement in paragraph 123 of the Policy Memorandum—

“all provisions in the Bill need to be tested against the following themes:
Local Government and Regeneration Committee, 3rd Report, 2015 (Session 4)

- Reducing crime and preserving public order and safety;
- Providing Boards with powers to consider a broader range of information;
- Advancing public health;
- Improvements to the existing system and reducing burdens on trade and Licensing Boards.”

148. We also considered the contribution the licensing system and licensing policy makes to supporting community planning in preventing and reducing harm.

Section 52 - Supplying alcohol to children or young people

149. While it is illegal to buy alcohol on behalf of a child, it is currently legal to buy alcohol to share with a child. The Bill proposes to close this loophole by making it an offence for a person aged 18 or over to share alcohol with a person under 18 in a public place (including private property which the drinkers have accessed illegally).

150. The proposal is designed to tackle outdoor drinking by groups of children and young people. However, it would also criminalise behaviour which some respondents to the Scottish Government’s consultation characterised as “responsible”, such as parents introducing children to alcohol at a family picnic. Other respondents called for the supply of alcohol to children to be illegal in any circumstances.

Section 57 – Personal licences: grant, duration and renewal

151. Section 57 of the Bill amends the 2005 act by removing the five year restriction on re-applying for a personal licence revoked on grounds of failing to undertake refresher training and other changes to the personal licence holder requirements.

152. At present when a personal licence is revoked for any reason, the person who held the licence may not apply for another one for five years. Thus, for example, some personal licence holders who fail to submit evidence of the refresher training within the time limit, for example as a result of forgetting about the deadline, will have their licences revoked.

153. The Bill amends the legislation so that if a personal licence is revoked under section 87(3) of the 2005 Act (for failure to comply with the training requirement), the licence holder will not have to wait 5 years to reapply for a personal licence. They will still have to go through the cost and inconvenience of applying for a new licence, thus serving as a deterrent to those who may consider not undergoing the refresher training.

Section 58 Processing and deemed grant of applications

154. Section 58 of the Bill makes provision for the automatic grant of a licence (or its variation) where a Licensing Board has not either decided on an application or sought an extension from the sheriff within a set period.

155. This provision is designed to ensure applications to the Licensing Board for licences are processed more efficiently and seeks to bring timescales in line with the 1982 Act.
156. The provision requires the Licensing Board to determine every application within nine months of the date of receipt, unless this period has been extended by the Board applying to the sheriff for an extension. If the Board fails to determine the application within the permissible period then it will automatically be deemed to have been granted and the Board will be obliged to issue the licence/ appropriate authorisation.

157. Notwithstanding comments to the Scottish Government consultation respondents to us indicated general agreement on the addition of the above three provisions. Having considered the submissions received and the information contained in the Accompanying Documents, including written exchanges thereon with the Scottish Government we are content with each of the above three provisions.

Section 56 – Interested parties

158. This section removes the requirement for a premises licence holder to notify a change in interested parties and the creation of vicarious liability for a premises manager for various offences.

159. The Criminal Justice and Licensing (Scotland) Act 2010, at section 184, proposed that a premises licence holder be under a duty to notify their Licensing Board if a person becomes or ceases to be a connected person or interested party. This was to respond to concerns that the holders of premises licences were failing to advise Boards of connections with, for example, organised crime.

160. However the Law Society of Scotland raised concerns the provision was too vague and too broad to be practical. For example, if the premises licence is held by a tenant of large chain and there is a change on the parent board of directors they suggested notification might be required.

161. Other concerns were raised by the Association of Chief Police Officers in Scotland (ACPOS) that the provision would have the unintended consequence of a premises manager no longer having vicarious liability for the offences committed by employees. Others suggested the re-introduction of the ‘fit and proper’ test would address these concerns.

162. The Bill therefore revokes the provisions in section 184 of the 2010 Act, which have never been commenced, as far as they refer to requirements on premises licence holders to notify information about ‘interested parties’. The definition of “interested parties” would also be amended to include premises managers.

163. Police Scotland however wished to see section 184, which inserted new section 40A into the 2005 Act, commenced to provide them with “greater opportunities …to identify and disrupt serious and organized crime’s involvement in the licensed trade.”

Section 42 - Statements of licensing policy: licensing policy periods

164. This section deals with the duration of licensing policy statements, bringing them more in alignment with the term of Licensing Boards.

165. A Licensing Board is a quasi-judicial body consisting of locally elected councillors, with support from local authority staff, including a qualified solicitor who provides legal advice. A Board is an entirely separate legal entity from a local authority and its responsibilities are set out in the 2005 Act.

166. To ensure their independence Boards do not formally report to local authorities or Scottish Ministers on the exercise of their functions, although their decisions are subject to review by the courts. Decisions made by Boards on individual licence applications are made within the context of their licensing policy statement and overprovision assessments.

167. The 2005 Act introduced a duty on Licensing Boards to issue a statement of licensing policy, before the beginning of each three year period. The report is required to set out the Board’s general approach to licensing decisions and outline how it intends to promote the five licensing objectives.

168. The Bill amends the legislation to provide that a new Board has to prepare a new policy statement within eighteen months of being appointed. Once agreed the policy has a duration of up to five years, although Boards will retain the ability to make changes by way of a supplementary statement.

169. Responses from Alcohol Focus, the Wine and Spirit Trade Association and the Scottish Retail Consortium, COSLA and Midlothian Licensing Forum all agreed this was an appropriate approach to take. The Institute of Licensing said “it was helpful that the term of the policy will be linked to council terms instead of being triennial”\(^88\)

170. However Dumfries and Galloway Council while noting an immediate attraction set out a couple of concerns. It wondered whether a 5 year statement covered too long a period during which the views of community stakeholders and the trade would not be taken. They noted the period mirrored the political cycle of local authority elections and wondered whether by so doing it gave an impression the Board could reflect on the Board’s quasi-judicial status and if it could be considered as not being politically neutral.\(^89\)

Sections 43-48 – Fit and proper person test

171. These sections re-insert a fit and proper person test in relation to the continued holding of a premises or a personal licence.

172. The Bill would allow Licensing Boards to consider if an applicant, or those connected with an organisation, were “fit and proper” persons to hold an alcohol licence. The Policy Memorandum envisages that this would allow Boards to take into account a wider range of information about an applicant’s character when reaching a


\(^{89}\) Consultation submission number 73.
decision, including police intelligence. The proposals would also allow the consideration of spent convictions.

173. There was a general welcome for the reintroduction of this test although with reservations. The Co-operative Retail Trading Group\(^{90}\) were against it seeing no particular need to re-introduce.

174. Renfrewshire Licensing Board,\(^{91}\) amongst a number of others had a concern around the linkage of the test to the licensing objectives and were worried this would be subject to litigation to clarify its meaning.

175. Part of the reservations from both the Law Society of Scotland\(^{92}\) and the Institute of Licensing\(^{93}\) centred on the proposals around spent convictions and the use of police intelligence. These are covered in a later section of this report. The Institute of Licensing had a further concern referring to a decision in the case of Brightcrew\(^{94}\) by the Inner House of the Court of Session which according to the Glasgow Licensing Board\(^{95}\) had placed “limitations and constraints” on them.

176. Glasgow Licensing Board indicated they routinely received submissions that criminal conduct by applicants unconnected to the sale of alcohol should not be considered by them and noted their concern such submissions “have found favour in the courts”. They went on to suggest that—

“if the Board is not explicitly given the ability to deal with issues it considers to be of relevance to one or more of the licensing objectives but do not necessarily flow directly from the sale of alcohol, the Board considers that it will be unable to fully tackle issues relating to crime and public disorder, and therefore always unable able to act in the public interest.”\(^{96}\)

177. Police Scotland expressed similar concerns noting a frustration in both their and Licensing Boards’ ability to tackle issues not directly related to the sale and supply of alcohol in licensed premises.\(^{97}\)

178. The Law Society of Scotland were concerned the reintroduced test would lead to an increase in objections being made without admitted facts and/or proof although they accepted re-introduction could “strengthen the Board’s ability to exclude unsuitable persons from becoming holders of premises or personal licences”\(^{98}\)

179. We note the subject of the Brightcrew decision was covered in the Scottish Government consultation.\(^{99}\) The case having “potentially important implications for the operation of the licensing system.” However it has been argued the decision does not apply to alcohol provisions as it centred on the ability of the Board to refuse

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\(^{90}\) Consultation submission number 79.

\(^{91}\) Consultation submission number 103.

\(^{92}\) Consultation submission number 114.

\(^{93}\) Consultation submission number 99.

\(^{94}\) Brightcrew -v- City of Glasgow Licensing Board [2011] CSIH 46.

\(^{95}\) Consultation submission number 131.

\(^{96}\) As above.


\(^{98}\) Consultation submission number 114.

an application for a premises licence from a lap dancing club and did not relate to the sale of alcohol.

180. The Scottish Government consultation stated the implications of the Brightcrew decision—

“are open to dispute, and further court judgements would be required to provide greater clarity of interpretation of the existing legislation. Some argue that Brightcrew does not have profound implications as long as Boards have clear and evidenced licensing policy statements.”

181. The Cabinet Secretary in evidence went further stating—

“Our general view about the Brightcrew decision was that it confirmed the purpose of an alcohol licence for premises. There was clearly an issue about the way in which the case was conducted and about how the licensing board of Glasgow City Council sought to use the licence for other entertainment that was taking place within the establishment.”

182. However, it was clear in submissions that some Boards are now cautious about taking cognisance of factors such as noise complaints, fights, and other disturbances because they are not directly concerned with the sale of alcohol.

183. Glasgow Licensing Board also wished to see the test applied to the transfer of licence provisions as well as to anybody benefiting from the business or being involved in the management of the business.

Section 54 - Overprovision

184. Licensing policy statements must contain a statement as to whether there is overprovision of licensed premises in any locality within the Licensing Board’s area. The Bill would change the definition of overprovision to enable Licensing Boards to take into consideration licensed hours as well as the number and capacity of licensed premises. It would also clarify that the whole of a board’s area can be classed as a “locality” for the purposes of carrying out the assessment.

185. There was a clear split on this aspect with trade bodies firmly opposing these changes and questioning their proportionality, and Health Boards along with Alcohol and Drug Partnerships being strongly supportive. Submissions highlighted a fundamental difference in approach with health organisations highlighting a clear link between access to alcohol and poor health outcomes.

186. Trade bodies considered the assessment of overprovision should be linked to specific licensed premises. This was a particular problem for the health boards who pointed out data covering health outcomes tended to only be available at board wide level. We noted the guidance on overprovision indicated the point is only to establish a general link between a concentration of licensed premises and disruption. In

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100 See footnote 99.
Glasgow we heard policy on overprovision is based on where there is most harm not where there are most premises. Glasgow has specified some eight or nine areas as being overprovided.  

187. The Co-operative Retail Trading Group and the Scottish Grocers Federation were particularly concerned about the proposal allowing the whole of a board area to be classified. We heard how this could impact on investment with consequential stifling of job creation and competition. It was suggested that outlets should be sub divided into further categories including large supermarkets and convenience stores separately.

188. The Scottish Licensed Trade Association suggested this would exacerbate a current situation which saw inaction in relation to overprovision by boards for fear of being challenged through the courts. This it was suggested by some was a particular concern when considering applications by large retail outlets which had led to a two tier approach with smaller, less resourced applicants being more liable to have their applications refused.

189. The trade bodies were also concerned about boards considering trading hours when considering overprovision. Their fear was of potential unintended consequences to the detriment of more rural or outlying areas when any overprovision problems that might actually exist would be concentrated in conurbations.

190. A number of respondents observed that members clubs were not included in overprovision calculations, some observing that in the Borders 22% of all licensed premises held members club licenses. Similarly occasional licences were not included. We look more widely at members clubs and the granting of occasional licenses later in this report.

191. We heard suggestions local residents and communities were handicapped in lodging objections to applications with Licensing Boards on the grounds of overprovision as a consequence of there not being publicly available data showing the density and locality of licenced outlets. Similar issues arose in relation to the proposal to include trading hours, a concern echoed by Society Of Local Authority Lawyers and Administrators in Scotland (SOLAR) “because not every premises trades to the full hours that they have on their licence”. A point echoed by Jack Cummins along with concerns around measuring the storage capacity and shelf space within premises.

192. John Lee from the Scottish Grocers Federation thought the provision “could inhibit trade and be anti-competitive” particularly for more independent operators. He suggested any proposal to take account of sales areas could affect expansion and investment plans. Paul Waterson from the Scottish Licensed Trade Association thought there was an existing two tier system in effect in operation—

“Licensing boards are also under great pressure from the bigger operators and
they certainly operate a two-tier decision-making system in relation to overprovision. They are very worried about the financial problems that would occur if a decision was appealed. They know that the bigger companies will appeal and that the independent trade perhaps does not have the finance to appeal, so they look upon the bigger developments more favourably than they do on others.”

193. We also heard similar concerns from Paul Waterson about Licensing Boards endeavouring to secure jobs and employment and how objectors can suffer from exhaustion as applications are withdraw and re-lodged over a period of time. And we were told one Board considered the health benefits from employment as a significant factor in considering applications.

194. Equally we heard how some Licensing Boards (Highland, East and West Dunbartonshire in particular were mentioned) had taken considerable evidence on overprovision from a range of interests including Health Boards in formulating policy. We asked all Health Boards about their relationships with Licensing Boards as we wanted to understand the extent of their involvement in providing evidence to Boards.

195. Health practitioners suggested Licensing Boards struggle with the concept of overprovision and what information should be taken into account. While Audrey Watson, managing solicitor West Lothian Licensing Board, advised her board had difficulty in getting evidence including from NHS Lothian. The absence of evidence precluded them from taking health issues into account.

196. The responses we received from Health Boards were mixed. Some set out the detail of their involvement in depth while others provided minimal information. There were clearly different approaches being followed across Health Boards and Licensing Boards and while the quasi-judicial nature of the Licensing Board means they are free to set their own policies (subject to the provisions in the Act and the guidance) some Health Boards suggested their submissions were routinely ignored. Others commented favourably on relationships.

197. The Cabinet Secretary noted the variable approach by Licensing Boards and suggested the Bill provided greater scope and flexibility for Licensing Boards to “consider a wide range of issues relating to overprovision.” He added——

“…..I would like to see more progress being made. Some licensing boards have been enlightened and much more proactive than others; I would like to

110 Local Government and Regeneration Committee. Air Weapons and Licensing (Scotland) Bill Committee web page, correspondence section.
112 Refer to footnote 110: See for example Greater Glasgow and Clyde re Renfrewshire and East Renfrewshire.
113 Refer to footnote 110: See for example NHS Lothian re Edinburgh City, NHS Tayside re Dundee and Greater Glasgow and Clyde re Glasgow City, Inverclyde and West Dunbartonshire.
see more of them being proactive. It is important to make sure that local licensing policies are more reflective of public health.”

198. In relation to the role of Health Boards he indicated a desire to—

“ensure that local territorial health boards are proactive in the local licensing forum and in responding to the new applications or major variations that they must be consulted on. They should make their positions very clear and respond appropriately in order to inform licensing boards.”

Licensing Objectives
199. Section 41 of the Bill amends one of the licensing objectives to add “young persons” to the existing Board objective “to protect children from harm”. This change was welcomed by all who commented on it. We also heard the licensing objectives do not require the policy of boards to include the reduction of consumption. It was also suggested each of the five objectives could be viewed as contributing to wellbeing with a specific objective of “protecting and improving public health”.

Section 51 – Relevant offences and foreign offences: spent convictions

200. The effect of this section is that certain criminal convictions will in future no longer be regarded as spent for the purposes of the Rehabilitation of Offenders Act 1974 and can thus be considered by Licensing Boards. It also allows for the consideration of police intelligence by Licensing Boards.

201. Section 51 of the Bill proposes to remove the restriction on licensing boards considering spent relevant or foreign convictions when deciding on licence applications. The Policy Memorandum states such a change is necessary in order to prevent unsuitable people from working in licensed premises.

Spent convictions
202. Currently, a licensing board is only able to consider relevant or foreign convictions which are not “spent” for the purposes of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). Under the 1974 Act, convictions can be considered spent after a certain amount of time has passed since conviction. More serious offences (those where an individual was sentenced a term exceeding two and half years in prison) are never spent. Where a conviction is spent, a person would not usually have to reveal it if asked about their criminal record.

203. Certain professions covering for example lawyers, police, healthcare workers and teachers, are exempt from the provisions of the 1974 Act, meaning that people applying for those roles do have to declare convictions which would otherwise be considered spent. Applicants for taxi, private hire car and gambling licenses are also exempt from the provisions of the 1974 Act.

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117 Policy Memorandum, paragraph 140.
204. Relevant offences are specific offences prescribed in subordinate legislation and generally require violent or dishonest behaviour, foreign offences and similarly grave offences committed in foreign countries.

205. The Scottish Licensed Trade Association suggested these were matters for the Licensing Board and police to determine and thought “whether the 1974 Act should apply depends on the severity of the crime”\textsuperscript{118}

206. City of Edinburgh Council supported this section indicating “it was important public confidence in the system was maintained” and noting other applications already required such disclosure. Glasgow Licensing Board also welcomed this section as allowing them to “come to an informed view” although they sought clarification as they considered they were bound by a judicial decision stating they could only do this if it were in the interests of justice.\textsuperscript{119}

207. The Law Society of Scotland questioned this approach while recognising each case would require to be considered in its merits by Licensing Boards. In relation to the Rehabilitation of Offenders provisions they noted that Act was passed “in order to allow people to move on with their lives and not have to disclose what may be a relatively minor offence from some stage in their past”\textsuperscript{120}

208. The Institute of Licensing suggested there was no evidence “the licensed trade had fallen into disrepute as a result of boards not being able to consider spent convictions.”\textsuperscript{121}

\textit{Police intelligence}

209. The provisions also propose to introduce new sources of information which a licensing board can consider when deciding whether an applicant for a licence is fit and proper. At present, a Licensing Board is able to look at “relevant” and “foreign” convictions when considering an application. The board can also consider whether granting the application would be consistent with the licensing objectives.

210. Under the Bill’s proposals, a Licensing Board will also be able to consider information which “the chief constable considers may be relevant to consideration by the Board of the application”. The Policy Memorandum\textsuperscript{122} envisages this may include police intelligence and information on associations with people deemed to be unsuitable. Unlike convictions, such allegations may not have been evidenced to a standard accepted by the courts.

211. We asked the Scottish Government to explain this provision further\textsuperscript{123} and it indicated it became a matter for boards to determine whether the material is “relevant and what reliance to place upon it.” While our concerns about ECHR issues were not addressed in the Scottish Government’s response a number of witnesses expressed concerns centred on the concept of natural justice. The Institute of Licensing stated—


\textsuperscript{119} O'Docherty v Renfrewshire Council 1998 SLT 327.

\textsuperscript{120} Consultation submission number 114.


\textsuperscript{122} Policy Memorandum, paragraph 136.

\textsuperscript{123} Scottish Government. \textit{Written submission}, 27 June 2014, Q&A 20.
“The proposal that the police may be able to produce "intelligence evidence" without specifying what that evidence is seems to the Institute to be at odds with principals of natural justice and convention rights such as the right to a fair trial." 124

212. Stephen McGowan on behalf of the Institute of Licensing amplified the concern that “unknown and unseen evidence as to whether a person is unfit” 125 would be presented to Licensing Boards. His contention was that such evidence could be presented by the police but it would be difficult for the Licensing Board to legitimately take it into account unless there is full disclosure to the applicant and the opportunity to challenge. He added—

“We do not believe that it is correct for an applicant to be faced with an allegation that is not substantiated or evidenced and to have their prospective livelihood held in the balance at a hearing without knowing what the evidence is.” 126

213. Finally he noted recent circumstances which had led to a recent case being overturned on appeal by the sheriff because of a lack of “sufficiency and probativity of the evidence” 127

Section 55 - Duty on Boards to prepare an annual financial report

214. Section 55 of the Bill requires all Licensing Boards to produce an annual report detailing their expenditure on alcohol licensing functions as well as the income raised from licensing fees.

215. The provision was generally welcomed although some respondents wanted further financial information to be produced.

216. We also heard suggestions that the accountability of Licensing Boards should be increased. These included that the annual report should also include outcomes data 128 including Boards measuring themselves against their policy statements and objectives. We note proposed new section 9A(4) allows for the report to include “such other information about the exercise of the Licensing Board’s functions as they consider appropriate.”

217. We are aware the Scottish Government consulted on such a proposal in response to which licensing boards were unanimously against and Alcohol and Drug Partnerships (“ADP”) were unanimously supportive. Reasons for opposing were given as “needless duplication of existing reports” and “an additional burden on Boards.” It was also suggested reporting could “skew Board actions and decisions to allow them to provide a more favourable report on their performance.” 129

124 Institute of Licensing. Written response 99.
125 Official Report 10 December 2014 column 23
126 Official Report 10 December 2014 column 26
127 Official Report 10 December 2014 column 26
128 Official Report 10 December 2014 column 16
218. Alcohol Focus Scotland were particularly keen to improve the accountability of Boards—

“A requirement to produce an annual report would bring licensing boards in line with other bodies undertaking public functions, such as regulators, judicial and quasijudicial bodies, and with the local planning process.”\textsuperscript{130}

219. We were also told boards are not all publishing the reports, policies, data and statements currently required by them—

“We know that licensing boards are required to produce a policy, an overprovision statement and a public register of licensing data. Six months after the deadline, 11 of the 40 licensing boards still had not published statements and 17 had not published overprovision statements. More recently, using standard online searching mechanisms, we found 13 public registers of licensing data out of a possible 40.”\textsuperscript{131}

220. A number of submissions also sought increased transparency from Boards particularly to show the extent to which they are following their policy statements and the licensing objectives. Borders ADP were among those seeking this.\textsuperscript{132}

221. The following aspects are not covered by the Bill but are matters raised with us through submissions.

**Occasional licenses**

222. It is necessary for a venue to apply for an occasional licence if there is an intention to sell alcohol for a particular event (e.g. a wedding, or a fair) and the venue is not otherwise licensed. The application process is quick and cheap as it is envisaged it will mainly be used by community groups and non-traditional venues.

223. Several respondents to our call for evidence expressed concern that this process is being abused by professional organisers putting on large scale events, such as music festivals. This is because, if an occasional licence to sell alcohol is in place, then any other activity is exempt from the requirement to have a public entertainment licence. The process is also significantly cheaper than applying for a public entertainment licence, although local authorities may incur large costs in dealing with the application.

224. A range of concerns were raised about the use of occasional licences. It was suggested “the current rules create a loophole enabling legal requirements of fully licensed premises to be bypassed.”\textsuperscript{133}

225. Specific concerns were that:

- The exemption from the requirement to obtain a Public Entertainment Licence if an alcohol licence is in place should be removed as occasional liquor

\textsuperscript{130} Alcohol Focus Scotland. Written submission 119.
\textsuperscript{132} Borders Drug and Alcohol Partnership. Written submission 63.
\textsuperscript{133} SHAAP. Written submission 65.
licences are increasing being used to licence events which would otherwise be licensed under the 1982 Act. For example large music events. This issue is exacerbated by the fact that Boards cannot enforce any conditions upon an occasional licence that are not connected to the sale of alcohol.

- An occasional licence allows groups to compete on an unfair basis with mainstream licensed premises where the same legal regulations are not required e.g. staff having completed basic training.

- Application of the fit and proper person test does not apply to applications for occasional licenses.

- The absence of a restriction on the number of occasional licences which can be granted for any premises in any 12 month period (unless the application relates to a voluntary organisation). Premises which would not be able to obtain the required Section 50 certificates are operating with occasional licences almost on a weekly basis. It was suggested some premises are utilising in excess of 70 occasional licences per year, meaning that while alcohol is sold in these premises on a regular basis they remain unlicensed premises.

- Large scale public events may take place under an occasional licence to sell alcohol because this removes the need to have a public entertainment licence too. This could mean such events are not properly regulated and the cost of an occasional licence (£10) can be a long way short of covering the licensing authority’s costs in considering it.

226. Others were concerned that occasional licences can add to the provision of alcohol in an area and should be included in assessments of overprovision.

227. In relation to members clubs it was noted that a voluntary organisation can apply for an occasional licence for its premises. The effect of that is to circumvent the requirement for guests to be signed in thus allowing members of the public access to such premises.

228. It was suggested a more restricted definition of occasional licence should be provided to ensure that such licences are only available for specific “occasions”. Also the exemption from the requirement to obtain a Public Entertainment Licence if an alcohol licence is in place should be removed where the sale of alcohol is ancillary to the public entertainment taking place.

229. The Cabinet Secretary was clear “There is absolutely no reason why local licensing boards cannot take action if they believe that occasional licences are being

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134 Edinburgh Licensing Board. Written submission 116.
135 Glasgow Licensing Board. Written submission 131.
136 West Lothian. Written submission 83.
137 SHAAP. Written submission 65.
139 Edinburgh Licensing Board. Written submission 116.
he added that the purpose of the occasional license “was to provide flexibility for local licensing boards.” He indicated that if clear evidence of misuse was presented the Scottish Government would consider whether further guidance was required.

**Members clubs**

230. Submissions highlighted a variety of concerns relating to members clubs. In particular, concerns some are operating in direct competition with local licensed premises. The other main complaints were that some clubs are acting commercially by allowing entry to non-members, selling to the underage and not applying for occasional licenses for public events. It general it was thought they have an advantage over the mainstream licensed trade.

231. Boards also expressed concern that the 2005 Act prevents them from dealing effectively with the minority of members’ clubs that appear to be abusing the system.

232. The Scottish Government’s consultation on further options for alcohol licensing at proposal 12 asked a series of questions around concerns raised about members’ clubs.

233. The summary of responses suggested the reasons clubs have special arrangements under the 2005 Act remain valid. They exist principally for the benefit of their members and are not commercial enterprises are open to members of the public. They also play a valuable part in community life in providing a range of sports and social activities.

234. One Local Authority Licensing Standards team’s submission summarised most of the concerns that exist around clubs:

"Current legislation has been shown to be ineffective in dealing with some aspects of the operation of members’ clubs. Some clubs appear to operate on a commercial basis in direct competition to licensed businesses. This is particularly in relation to members’ clubs admitting non members. Clubs pay less annual fees, rates and have no requirement for a trained manager (License holder) saving all that expense which trade members have to comply with. A club must not operate for profit, however, a club has overheads and needs to modernise. This is financed by their takings, so when does that become profit?"

235. The summary further noted the absence of any sanction for clubs operating in what would appear to be a commercial nature and that there are no grounds upon which to call for a review of the premises’ licence. The majority of respondents agreed with the above concerns, with the only main dissent coming from clubs themselves.

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142 Scottish Government. *Further Options for Alcohol Licensing – Summary of Consultation Responses*.
143 As above.
236. It was suggested in the consultation that minor changes to legislation might allow Boards to discharge their duty more effectively. This could be done by incorporating the constitution into the main operating plan or making adherence to the constitution a mandatory condition in terms of the mandatory club’s provisions. Any breach of the relevant provisions within the constitution relating to the sale of alcohol would then be a breach of licence and subject to review. Whilst this would in effect make clubs more accountable it was noted it would also generate more work for Boards.

237. In the event no provisions in this area have been brought forward in the Bill as introduced.

238. We received submissions raising issues broadly in-line with those to the Scottish Government consultation. Renfrewshire Licensing Board thought the provisions surrounding club licensing are open to abuse and argued for additional restrictions on the operation of members’ clubs. They suggested a breach of the provisions of a club constitution should become a breach of licence allowing a Board to review the licence.\footnote{Renfrewshire Licensing Board. Submission 103.}

239. Edinburgh Licensing Board made similar points noting the operation of clubs enjoy less restrictions than other premises. They also wished to see amendments to their constitutions being notified to prevent amendments that breach the Regulations.\footnote{Licensing ( Clubs) ( Scotland ) Regulations 2007/76.} They were concerned to ensure clubs were not becoming primarily commercial operations.\footnote{City of Edinburgh Licensing Board. Submission 116.}

240. Both Borders Licensing Board and Alcohol Focus Scotland were concerned about the exclusion of members clubs from overprovision assessments observing that in the Borders some 22% of all licensed premises are members clubs.\footnote{Borders Alcohol and Drugs Partnership. Written submission 63 and Alcohol Focus Scotland. Written submission 119.}

241. Paul Waterson from the Scottish Licensed Trades Association was clear “Many clubs simply run as pubs”\footnote{Local Government and Regeneration Committee. \textit{Official Report}, 10 December 2015, Col 9.} while Stephen McGowan from the Institute of Licensing suggested—

“a number of club premises have varied their licences, in effect to make them full public-access pub premises, albeit that they have a constitution and appear on the face of it to be members’ clubs. Because they have changed the conditions of their licence, they are allowed full public access. A number of premises in Edinburgh and throughout the country, which were historically club premises that were open to members and bona fide guests, have varied their licences and are allowed public access without those rules applying.”\footnote{Local Government and Regeneration Committee. \textit{Official Report}, 10 December 2014, Col 10.}
242. Police Scotland had no issues with the operation of club licences\textsuperscript{150} although in later correspondence they suggested they be included within overprovision assessments.\textsuperscript{151}

243. The Cabinet Secretary while recognising some issues existed, noted the earlier views of Parliament when passing the 2005 Act that members’ clubs should be given some exemptions. He indicated care was required to avoid unintended consequences if changes were made.\textsuperscript{152}

**Transfer of licences (sections 33 and 34 2005 Act)**

244. The Law Society of Scotland expressed concern on the provisions in the 2005 Act covering the transfer of licences\textsuperscript{153} and the Institute of Licensing after commenting on this matter in response to the Scottish Government consultation\textsuperscript{154} made a supplementary submission\textsuperscript{155} in relation to difficulties practitioners have been experiencing with the provisions for transfers of licence:

- **The Act does not deal with dissolution of companies.** It may well be the case that company "A" holds the licence but company "B" is trading the venue. In such circumstances company B or the individual is left without a livelihood in the event that company “A” is dissolved as a licence held by a dissolved company cannot, on the face of it, be transferred at all. They wished to see a mechanism to deal with this.

- **The Act does not reflect common practice such as the completion of sales taking place dependent on the grant of a transfer of a licence.** The purchase and sale or leasing of licensed premises can involve a large number of premises where transfer processing times vary across Scotland and it is impossible to agree on one "date" for the sale to complete. These difficulties can be more complicated when deals relate to properties in England as well as Scotland, such as a company buying pubs on both sides of the border.

- **The Act does not provide for an interim or deemed grant.** This creates problems in relation to new buildings which might be commercially relying on a licence such as a supermarket or club. (The position under the Licensing (Scotland) Act 1976 ("the 1976 Act") where there was a two-stage "temporary" and "permanent" transfer; allowing the temporary transfer to take effect immediately whilst the permanent was considered was not included in the 2005 Act. This was previously the position prior to the 2005 Act and is the position in the English Licensing Act 2003.)

- **Difficulties over who can apply for a transfer of licence:** the 2005 Act sets out certain circumstances where only certain parties can make an application. This includes where a "business" is to transfer (section 34(3)(d)). However, if the premises are not trading for whatever reason, there is doubt as to whether

\textsuperscript{151} Police Scotland. *Written submission*, 23 February 2015.
\textsuperscript{153} Consultation submission number 114.
\textsuperscript{155} Institute of Licensing. *Supplementary written submission*, 22 December 2014.
there is a "business" to transfer with some licensing boards refusing to accept transfers where the business is not a "going concern".

- **The 28 day deadline for transfers under certain circumstances is overly prescriptive**: the Act imposes a 28 day deadline for lodging certain transfer requests i.e. when the licence holder dies, becomes mentally incapable or declared insolvent. This time period is too short particularly in the case of insolvency. This quite often can result in a trading business and the jobs and livelihoods that the business represents being closed because the licence is "lost".

- **The Act does not deal with certain types of insolvency**.

- **The Act does not make it clear who is liable for licensing offences where a transfer of licence is pending**: The Act does not deal with this. The outgoing owner may still be on the licence and therefore liable yet no longer involved in the premises.

245. We asked the Scottish Government for their views on teach of the above issues and they said they "continued to consider the concerns raised".

**Surrender of licences**

246. The Institute of Licensing following their appearance on 10 December 2014\textsuperscript{156} made a supplementary submission in relation to difficulties practitioners have been experiencing with the provisions for surrender of licences. This was similar to the points made by the Law Society of Scotland in their written submission.\textsuperscript{157} Section 28 of the 2005 Act says that a licence which has been surrendered "ceases to have effect".

247. It was suggested licences can be surrendered out of spite. There are numerous examples of this across Scotland where in a landlord/tenant relationship the tenant holds the licence and surrenders the licence to spite the landlord following a fall-out over unpaid rent or any other dispute they may be having. This leaves the landlord with a public house or other type of premises with no licence and the only way back is to apply for a new one.

248. The premises would be subject to modern building regulations and in some cases might not be capable of getting a licence back due to the exorbitant cost of works. Examples were given of a Scottish castle or large country house. It may now be very difficult for such premises to meet current regulations and therefore no new licence could be granted.

249. Under the 1976 Act the licences could be brought back to life by way of a transfer application. It was, the Institute of Licensing suggested necessary to clarify whether surrendered licenses continue to exist or not and whether they can be restarted or reactivated in some way.\textsuperscript{158}


\textsuperscript{157} Consultation submission number 114.

250. We asked the Scottish Government for their views on this issue and they said the proposal had the “potential to undermine facets of the existing regime”. They considered the proposal would not be widely supported by others.\textsuperscript{159}

“Site only” licences

251. The 2005 Act does not allow for provisional licences where premises are yet to be built or under construction. The Institute of Licensing having discussed this with us on 10 December 2014 when they indicated “the current system puts off investment”\textsuperscript{160} made a supplementary submission in relation to difficulties practitioners have been experiencing with the provisions for “site only” licences. This was similar to points made by the Law Society of Scotland in their written submission.\textsuperscript{161}

252. This issue arises because applicants and developers need the commercial certainty of knowing a licence will be granted before a multi-million pound investment can be finalised and premises built. Applications are generally lodged very early in the process to secure the commercial certainty of the licence with the same level of detail for a provisional licence being required as for a full licence. This, it was suggested, causes difficulties because applicants have to lodge layout plans for premises which may not even be built resulting in applicants “lodging fictitious plans just to get the application in the system”.

253. The suggestion was to re-introduce the old ‘site only’ provisional licence route which would allow a new licence application to be lodged without the full detail of layout. It was suggested this would not jeopardise consideration because planning permission needs to be in place even where a provisional licence application is lodged. The Licensing Board would still see the general location of the premises, they would still see the operating plan detailing matters such as trading hours, activities, description of the premise. The only thing they would not see is a plan of the premises.

254. We asked the Scottish Government for their views on this issue and they indicated the proposal had the “potential to undermine facets of the existing regime”. They considered they would not be widely supported by others.

Major v Minor variations

255. Under the alcohol licensing regime the premises licence includes a large volume of information. This includes the application form, as well as the operating plan and layout plan. It is an offence to trade not in accordance with the premises licence. If the licence holder wants to operate in a manner which differs from the details originally approved, a variation is required. Variations are classed as either minor or major variations.

\textsuperscript{159} The Scottish Government. \textit{Written submission}, 23 January 2015.


\textsuperscript{161} Consultation submission number 114.
256. Variations which are considered minor are set out at section 29(6) of the 2005 Act, and further minor variations are provided for in regulations. Minor variations must be granted by the Licensing Board for a small fee. If a variation is not a minor variation then it will be a major variation. Major variations are subject to requirements to notify neighbours, health board and police, with it being open to anyone to lodge an objection. All major variations must be considered by the Board at a hearing.

257. West Lothian Licensing Board raised concerns with us about types of variations classified as minor about which members of local communities have no opportunity to object. They gave a practical example of the effect of the rules on what amounts to a minor variation. A variation to on-sales premises wishing to extend premises and increase the size of their outside area is treated as a minor variation. This is because the application stipulates no increase in capacity and as they are operating in the same manner as the information contained in their operating plan they are able to apply for a minor variation, which must be granted.\textsuperscript{162}

258. Another example related to an off-sales premises which has maximum trading hours for the sale of alcohol from 10 am until 10 pm and store opening hours of 8 am until 10 pm. To increase store opening hours from 7 am until 10 pm they have to make a major variation application to open although it has no effect on the hours they can sell alcohol. This is a change to information contained in the operating plan and is considered to be major.

Home deliveries and the licensing hours

259. We heard concerns around home delivery services from police witnesses. While alcohol for home delivery must be purchased during licensing hours it can be delivered out-with these hours by license holders. Known as “Dial a booze” it was suggested this is becoming a significant problem which requires the legislation to be tightened.\textsuperscript{163}

Additional enforcement powers - gambling premises

260. CoSLA suggested the Bill could be amended to close a loophole in the current law. The Gambling Commission submission explained the Gambling Act 2005 (“the Gambling Act”) has three licensing objectives:

- preventing gambling being a source of crime and disorder
- ensuring gambling is conducted in an open and fair way
- protecting children and vulnerable people from being harmed or exploited by gambling

Currently, section 304(2) of the Gambling Act, (a section which empowers licensing officers in England and Wales), refers to ‘officers’ of licensing authorities. Scottish Licensing Boards do not have employees or officers as such. Consequently the


Commission’s understanding, is that the enforcement powers under the Gambling Act cannot be exercised ‘as of right’ by a Licensing Standards Officers (LSOs).\textsuperscript{164}

**Recommendations**

*Duration of policy statement*
261. We support the extension of the period to a maximum of five years although we consider, given its importance, the new statement should require to be in place within 12 months of a new Board being appointed.

*Fit and Proper Person Test*
262. We welcome the reintroduction of this test. We consider the test should also be applied to connected persons.

*Whole Board areas for overprovision determinations.*
263. We welcome the additional flexibility this provision will give Licensing Boards although we have concerns about the inflexibility of Licensing Boards based in large measure upon a fear of challenge. We recommend the guidance be revised as a matter of priority and the guidance make clear Boards have the maximum flexibility to make different policy decisions relating to individual localities, types of license and types of premises.

264. We also recommend club licenses and occasional licenses require to be included by Boards when considering their overprovision statements.

265. We see a clear role for Health Boards and Alcohol and Drug Partnerships as well as the Police in providing evidence to Boards to assist them in reaching their determinations. We expect all Health Boards to be proactive in presenting and championing health inequalities to Boards. Our later recommendations around reporting should also assist in this regard.

266. We recognise the quasi-judicial status of Licensing Boards. In our opinion this should allow them to be more robust in setting out their policy on overprovision and less inclined thereafter to “hide” behind the prospect of review by the courts. A well developed and rigorous policy should prevent Licensing Boards from the risk that decisions will be successfully reviewed.

267. We also expect Boards to involve their local communities and recommend in line with other empowerment initiatives Boards be required to consult local communities before and during their consideration of overprovision determinations.

*Licensing Objectives*
268. We welcome the amendment to the licensing objectives to include “young persons”.

269. We also recommend, given the overwhelming evidence we received of harm and links to disorder from overconsumption, an additional objective be added to include the reduction of consumption.

\textsuperscript{164} The Gambling Commission. Written submission 144.
Spent convictions and police intelligence

270. We accept the rationale for adding spent convictions as proposed.

271. We also recommend, given the nature of crimes that can now result in alternatives to prosecution (ATP’s), that Boards be advised of all ATP’s.

272. We do not consider that police intelligence in a raw form should be made available to Boards. It is a matter for the Police to make available relevant information to Boards in a manner consistent with ECHR considerations.

Duty on Boards to prepare an annual financial report

273. We welcome this provision and also recommend Boards, in order to become more accountable to the public prepare annual reports. We draw to the attention of the Scottish Government the suggestions in this regard contained in the letter to us from Alcohol Focus dated 15 January 2015. As a minimum we expect to see the report containing information on how the board has delivered in relation to the licensing objectives and its policy statements including overprovision. We also expect a sufficient amount of data to be contained showing the number and type of each licensed premises within the Board area along with details of the number of occasional licenses granted during the period. We would expect the Bill to set out as a minimum the above along with a requirement to report within 6 months of the end of each reporting year.

Occasional Licenses

274. We expect to see section 57 of the Bill commenced without delay.

275. When applying to club premises provision should be made that these do not have the effect of circumventing other requirements generally applying to the club, for example the requirement for the signing in of guests.

276. We recommend that a licence to sell alcohol should not automatically cover the provision of public entertainment. If no public entertainment licence exists one must be sought, if required, as part of the occasional licence application.

Members Clubs

277. The Scottish Government requires to satisfy us the existing legislation is adequate to prevent the abuses of club licences identified during our evidence sessions. Failing which we recommend appropriate provision is made to incorporate the club’s constitution into the main operating plan.

278. We recommend the fit and proper person test applies to all transfers.

Surrender of Licenses

279. We do not support the suggestions made for change in this area. We have heard no evidence to convince us that businesses should be able to avoid current regulations designed for safety or other reasons through this method.

165 Alcohol Focus Scotland. Supplementary written submission, 15 January 2015.
Site Only Licenses
280. We do not support the suggestions made for change in this area. We consider greater clarity within overprovision statements and procedures thereunder should provide the necessary information required by developers. We note for example the effect of recent business decisions made by large retail groups not to develop sites. They could under these proposals hold these types of licenses for a considerable period before trading commences. This could impact on other businesses seeking licences during the interim period between a grant and sales commencing.

Major v Minor variations
281. We recommend the Scottish Government urgently review the types of applications falling into each of these categories with a view to ensuring local residents have adequate opportunity to make representations about variations which might adversely affect them. We expect the revised guidance to enhance the rights of residents to make representation and remove existing anomalies as reported to us.

Home Deliveries
282. The Scottish Government should confirm existing legislation is adequate to deal with any issues arising around home deliveries, so called “Dial-a-booze” arrangements.

Additional enforcement powers - gambling premises
283. We recommend the Scottish Government amend the Bill to close a loophole which prevents Licensing Standards Officers from undertaking an important public protection role in gambling which they currently fulfil in relation to alcohol.
PART 3: CIVIC LICENSING: TAXIS AND PRIVATE CAR HIRE

Background

284. Sections 60-61 of the Bill cover taxis and private hire vehicles. They seek in part to provide greater consistency within the licensing regime while tightening regulation.\(^\text{166}\) The proposals follow a consultation carried out by the Scottish Government at the end of 2012.

285. A framework of licensing of taxis and private hire cars by local authorities is set out in sections 10 to 23 of the 1982 Act. This regime although optional has been adopted by all local authorities in Scotland.

286. The framework provides for the issue of taxi licences and private hire car licences (which relate to a particular vehicle) and for the issue of taxi drivers’ licences and private hire car drivers’ licences (which relate to drivers). The regime is essentially a two-tier system, with different rules applying in certain respects in relation to taxis and private hire cars. Some principal differences are:

- taxis can be hailed on the street or use a taxi rank or be pre-booked, whereas private hire cars must be pre-booked;
- local authorities are able (but not required) to limit the number of taxi licences that they grant (on the ground of there being no significant unmet demand), but not the number of private hire car licences;
- local authorities are able (but not required) to require applicants for taxi drivers’ licences, but not applicants for private hire car drivers’ licences, to undergo a knowledge test and other training;
- local authorities are required to fix maximum fares that may be charged by taxis, but are not able (or required) to specify fares for private hire cars.

287. Some vehicles fall outwith the licensing regime. For example, vehicles that are exclusively hired for a period of not less than 24 hours do not require to be licensed (nor do their drivers require a taxi driver’s licence or a private hire car driver’s licence). The types of service that fall within this “contract exemption” vary widely, from chauffeur driven cars hired for business purposes or for sightseeing to cars contracted by local authorities or health boards to transport school pupils or patients.

288. In addition to the above, regulations have been made under the 1982 Act requiring licensing authorities to license the use of premises used for the taking of bookings for taxis and private hire cars.\(^\text{167}\) These were made “in the interests of public safety and crime prevention”.\(^\text{168}\) We comment on the appropriateness of this provision in its current form, standing the development and use of mobile technology, later in this section.

289. The changes to the 1982 Act proposed in the Bill bring the two tiers of licensing closer together in term of local authorities’ ability to impose quantity restrictions and testing of drivers.

\(^\text{166}\) Policy Memorandum, paragraphs 192-4.
Bill Proposals

290. The Bill proposes three changes in the licensing regime:

- section 60 introduces a power (not a requirement) for local authorities to limit the number of private hire car licences granted. In contrast to that for taxis (see above) the grounds under this section are that there is (or would be) overprovision of private hire car services in the localities in which the private hire car would operate;
- section 61 introduces a power (not a requirement) for local authorities to require applicants for private hire car drivers’ licences to undergo a knowledge test and other training (which may or may not be the same as any knowledge test that the local authority requires applicants for taxi drivers’ licences to undergo);
- section 62 removes the “contract exemption” in relation to vehicles exclusively hired for a period of not less than 24 hours, with the effect that vehicles used to provide such services will require to be licensed, as will their drivers. Section 62(4) introduces a new power for the Scottish Ministers to specify in regulations circumstances in which licences will not be required.

291. In many places in the world, the market in which taxis and private hire cars operate has been significantly changed by recent technological developments, mainly through the use of smartphone “Apps” to book vehicles. In addition to the three changes above we heard from Dr James Cooper that parts of Scotland at least are on the brink of entering this “transformed market”. In view of these global changes, we also considered the rationale behind taxi and private hire car licensing from first principles and asked in our call for evidence for views on what benefits licensing should deliver for consumers.

Committee Submissions

292. We received 16 submissions on this aspect of the Bill. Following the release of our video, and its publicity on social media, in which we asked the public for their views on taxi and private hire car licensing, we received a number of responses from the general public as well as the taxi and private hire car trade.

Reasons for regulation

293. The submissions gave a number of reasons why regulation is necessary. A particularly common advantage cited was safety standards. West Lothian Council commented—

“The benefits which hire car licensing should deliver for customers are a system of public transportation within taxis and private hire cars which offers high standards of safety, accessibility, comfort, reliability and customer service.”

294. Renfrewshire Council saw the power to determine the type of vehicles used, as way of enabling the promotion of equality via accessible cars, and to encourage the

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169 West Lothian Council. Written submission 51.
use of greener vehicles.\textsuperscript{170} Police Scotland considered another main advantage of regulation to be it ensured “legitimate business thrives and provides opportunity to prevent organised crime groups from gaining a foothold in this industry”.\textsuperscript{171}

\textit{Is the current two-tier licensing system such a framework?}

295. We considered the appropriateness of maintaining a two-tier system. Dr Cooper, an international academic expert on taxi licensing was pessimistic, contending that “the Bill fails to address the needs of the transformed market that is likely to emerge in the very near future.”\textsuperscript{172}

296. The issue, he pointed out, is not that the current two-tier system is without justification or has not served its purpose well in the current market, but that the tiers may become irrelevant if new business models ignore the tiers altogether.

297. Taxi and private hire car operators were more sanguine about possible changes in the market. Les McVay of City Cabs stated “it is up to us to pull up our socks and be on our toes to provide a better service”\textsuperscript{173}, while Kevin Woodburn of Edinburgh City Private Hire said “the public will decide what they want.”\textsuperscript{174}

298. Overall it was argued, in submissions from the licensing authorities and taxi companies, that the two tier system both delivers and increases choice (especially re accessibility) and reliability for consumers. It also provides safety for passengers, value for money, the ability for the authorities to target regulation where needed (i.e. public hire), competition and overall a better quality service.

299. Two licensing authorities disagreed about the continuation of a two tier system arguing there would be long term advantages from a single regime including savings to the authorities from the streamlining of processes.\textsuperscript{175}

300. The taxi and private hire car industry has also been the subject of investigation by the Office of Fair Trading which made a number of recommendations, particularly around the power to issue licences on the basis it was a restraint of trade. Both the Scottish Government and the Westminster Government rejected the proposal to deregulate in relation to the setting of numbers of licences.\textsuperscript{176}

301. According to the Policy Memorandum, the aim of a licensing regime is the preservation of public safety and order and the prevention of crime.\textsuperscript{177} It is against this objective we have considered the proposals in the Bill and the existing regimes that apply.

302. We believe it is important to take a long-term view when considering how to ensure the main policy objective underlying the licensing of taxis and private hire cars is achieved. Choice can be an important contributor, along with licensing, towards

\textsuperscript{170} Renfrewshire Council. Written submission 101.
\textsuperscript{171} Police Scotland. Written submission 135.
\textsuperscript{172} As above.
\textsuperscript{175} Aberdeen City Council, written submission 84 and East Lothian Council, written submission 112.
\textsuperscript{176} Office of Fair Trading (2003) The regulation of licensed taxi and PHV services in the UK.
\textsuperscript{177} Policy Memorandum, paragraph 189.
guaranteeing quality of service at a reasonable price and so innovation in the market is to be welcomed. But a situation where a near-monopoly emerges due, for example, to existing operators being unable to compete on price against new market entrants, might lower quality of service and threaten passenger safety in the longer term. We therefore welcome the level of awareness amongst operators, and potential operators, of the need to provide a quality service and note the widespread views that the current two-tier licensing system contributes to choice and quality of service, particularly in relation to the accessibility of vehicles.

Section 60 power to limit the number of private hire car licences granted

303. There were mixed views in submissions with some arguing for local flexibility on numbers and others for consistency across the country. The difference between the approach proposed for private hire car drivers (over provision), to that existing for taxis (unmet demand), was commented upon. Bill McIntosh, Scottish Taxi Federation, wondered how this could operate “because there is no measurement of which I am aware that councils can use to ascertain whether there is an appropriate number of private hire cars or not.”

304. We heard about surveys to ascertain demand and were told West Lothian had done away with any limits on taxis to allow the market to work. In particular they were seeking to address disabled access and a shortage of vehicles while also addressing the creation of a market in taxi licences which can happen when a cap is in place. We note such a market exists in other areas in relation to black cab licence plates.

Section 61 power to require applicants for private hire car drivers’ licences to undergo a knowledge test

305. In general this provision was welcomed by those who responded to us. The City of Edinburgh Council welcomed the ability to set a minimum standard of training for drivers and Aberdeen City Council considered all should be treated equally. West Lothian Council referred to the use of existing training modules covering customer service, accessibility, pricing and the law, which the Council helped to develop with the Scottish Government and could be rolled-out to other authorities.

306. We received some suggestions as to the differences with private hire vehicle drivers, who are pre-booked, having the ability to pre prepare for journeys in advance and utilise satellite navigation facilities. Set against that we are aware of limitations in such systems particularly in urban areas and the need for a degree of flexibility in routes to take account of ongoing conditions and traffic problems.

Section 62 removal of the “contract exemption” for vehicles exclusively hired for a period over 24 hours.

307. Almost all local authority respondents welcomed this provision suggesting it created a level playing field and would make enforcement easier. However, COSLA noted a division between urban and rural authorities, with the latter concerned the need to be licensed might cause operators to withdraw from the market, reducing services and increasing costs for activities like cars to take children to school.

308. Highland Licensing Board suggested the exemption be removed for services to the general public but kept for public authority contracted services as they are able to enforce contract terms for the latter.\textsuperscript{181}

309. Others were concerned the removal might bring a large number of services within the licensing regime, pointing to England and Wales where removal had resulted in services as diverse as ambulances and child minders requiring to be licensed. Some called for specific licences for stretch limousines and “party” buses although some already license such vehicles.

310. The Cabinet Secretary indicated he was alive to issues surrounding public authority contracted services and before commencing this provision the Scottish Government “will take forward some aspects [of concerns] that will allow local authorities to provide exemptions as they see fit.”\textsuperscript{182}

\textit{Booking Offices}

311. A taxi or private hire company with more than 3 cars, requires a booking office licence to operate. We heard from taxi companies and a local authority solicitor who disagreed the need for a booking office to be physically located in every local authority area in which a company operates. It was suggested to us by Audrey Watson of West Lothian Licensing Board, that no booking office need be situated in Scotland.\textsuperscript{183} In Renfrewshire a local condition exists preventing the control office being out-with the local authority area.\textsuperscript{184}

312. Scottish Government officials confirmed the need for a booking office to be “licensed where the order was taken.”\textsuperscript{185} Officials recognised the existing approach “does not translate quite so well to a smartphone app existing in the ether.”\textsuperscript{186}

313. We are content the requirement for booking offices is not a barrier to technological advances and therefore recommend no change to this aspect of the licensing regime.

\textit{Cross-authority licensing co-operation}

314. We also considered a recent example of complaints against a licence holder not being available or considered by a neighbouring authority. We wondered how such information could be better shared between licensing boards. While boards have a great deal of discretion in the questions they ask of applicants there are opportunities for greater information sharing across boundaries. The existence of a national police force should assist to a degree in this respect.

\textit{Technological advances}

315. We heard a lot of evidence around the changes that have taken place and will take place in the way the industry operates. Dr Cooper in particular gave us considerable background and international detail around the use of smartphones and

\textsuperscript{181} Highland Licensing Board. Written submission 16.


Apps in relation to booking and the hiring of taxis and private hire vehicles.\(^{187}\) We heard about difficulties in other countries and the ways operators had sought to evade licensing regimes.

316. We heard how the market was changing in London and other cities with price being more linked to demand and the opportunities for differentiation in the level of the service focusing on the luxury of the vehicle provided. We heard from taxi operators\(^ {188}\) about forthcoming applications which allow users to receive detailed information about the vehicle, driver and time of arrival in advance. We also heard about the technology allowing others to monitor the journey of passengers linked to the use of satellites. The safety advantages of the latter were self-evident to us.

317. After hearing from witnesses we received a submission from UBER\(^ {189}\) explaining how its approach provided more choice for consumers and drivers and also advised of its focus on safety.

318. Maximum fares vary across the country and are fixed locally. We understand in some countries the price of a fare can be linked by new technological functions to the demand being experienced by the operator. This, we learned, has varied at different times of the day by up to seven fold. We further observed that section 17 of the Civic Government (Scotland) Act 1982 (on taxi fares) does not prevent fares being set at a lower level than the maximum and understand some companies currently offer discounted rates to corporate users. We heard about attempts in Edinburgh to match demand with supply with one operator referring to a tariff review and indicating “At a time of year when our customers most need us, we are overpricing.”\(^ {190}\)

**Recommendations**

319. **In our opinion the principal reason for licensing taxis and private hire cars must be to ensure the safety of passengers.** The separate licensing of vehicles and drivers both contribute towards delivery of this objective. Changes in the market must therefore take place within a framework that does not allow this fundamental requirement to be evaded. Further reasons must include the delivery of an accessible, reliable and affordable service to customers whilst also preventing opportunities for criminal activity.

320. We are in no doubt that if a licensing system was being designed now it would be a single regime applying to both taxis and private hire vehicles and their respective drivers. We accept the majority view that change would be disruptive to operators and the licensing authorities nor do we consider change should be made without full consideration of all factors and detailed consultation. That said we are clear the licensing regime requires review and we recommend the Scottish Government consider a full review of all aspects of

\(^{187}\) Local Government and Regeneration Committee. *Official Report, 21 January 2015* and Dr James Cooper, Edinburgh Napier University, written submission 146.


\(^{189}\) UBER is a smartphone app allowing customers to book taxis and private hire cars at the touch of a button currently operating in London, Manchester and Leeds as well as other cities around the world. Link to submission.

taxi and private car licensing and report back to this Committee within this Parliamentary term; see our recommendation at paragraph 42.

321. We have discrimination concerns around two aspects of the existing regime. With the advent of the smartphone technology the difference between taxis and private hire cars, at least in the minds of the user, has been significantly eroded. Provided the service is safe, responses to our video suggested users saw little difference between the two types. However, for those who do not own, or those who cannot operate a smartphone the benefit could be limited. Equally, for reasons of infirmity or disability, some people may be more restricted in their use of modern technology and some private hire cars may not be accessible for their needs. Secondly on price, in the event demand sees price rise, as has been the case in other countries, there will be an adverse impact on the less well off. We therefore ask the Scottish Government to address both of these concerns at stage 2.

322. On section 60 we are unclear why the overprovision test for private hire vehicles should be different or how that “creates greater consistency within the regime”\textsuperscript{191} to an extent which would be recognised by users. We ask the Scottish Government to reassess their approach here and unless this can be achieved through guidance amend accordingly at stage 2.

323. We recommend the same knowledge test should apply to all drivers regardless of their vehicle. Again an appropriate amendment to avoid local authorities applying internally different tests for the two regimes should be made.

324. We have no recommendations on section 62, being content with the proposed course of action set out by the Cabinet Secretary.

325. We recommend greater sharing of information between licensing authorities. This should cover the operation of firms within areas as well as information about licence holders and their vehicles. We expect the Scottish Government to encourage and facilitate through appropriate legislation, if necessary, the sharing of information between authorities.

\textsuperscript{191} Policy Memorandum, paragraph 196.
PART 3: CIVIC LICENSING: METAL DEALERS

Background

326. Sections 63 to 66 of the Bill cover metal dealer licensing. They seek to modernise and improve the existing licensing regime for metal dealers as set out in the Civic Government (Scotland) Act 1982 (the 1982 Act). The aim is to “ensure more effective regulation of the [metal dealing] industry and to make it more difficult for metal thieves to dispose of stolen metal”\(^{192}\). Ultimately, the Scottish Government hopes the proposals will help to reduce metal crime across Scotland.

Bill Proposals

327. Specifically, the Bill proposes the following reforms—

- removing the exemption warrant system (currently metal dealers with over £1m annual turnover are exempt from the licensing regime);
- removing the requirement that dealers should not process metal within 48 hours of receiving it;
- banning cash payments for metal; and
- improving standards for identification of customers and record keeping.

328. These proposals are consistent with recent legislative reforms\(^{193}\) and non-legislative measures (including the launch of the National Metal Theft Taskforce\(^{194}\) and Operation Tornado\(^{195}\)) aimed at targeting metal theft in England and Wales.

329. The British Transport Police (BTP), which has lead responsibility for metal crime in the UK and leads the National Metal Theft Taskforce, told us that the results of the suite of measures introduced in England and Wales speak for themselves: in 2012-13, England and Wales saw an overall 43 per cent reduction in metal theft.\(^{196}\) A recent Home Office study (January 2015) analysed the data in more detail and concluded: “the interventions themselves can be credited with a fall [in metal theft incidents] of around 30 per cent, with the rest being attributable to falling prices and other downward pressures on acquisitive crime.”\(^{197}\)

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\(^{192}\) Policy Memorandum, paragraph 9.

\(^{193}\) Cashless payments were introduced in England and Wales by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, in December 2012. The Scrap Metal Dealers Act 2013, which came into force from October to December 2013, established a licensing regime administered by local authorities.

\(^{194}\) The National Metal Theft Taskforce, established in January 2012, is a multi-agency group that develops intelligence, coordinates activity and targets and disrupts criminal networks.

\(^{195}\) Operation Tornado required participating scrap metal dealers in England and Wales to request identification documentation for every cash sale and retain copies for 12 months. It was piloted in the police forces in North East England in January 2012 before being rolled out on a phased basis across England and Wales by September 2012.


\(^{197}\) Home Office. An evaluation of government and law enforcement interventions aimed at reducing metal theft (January 2015), page 18.
Committee Submissions

330. We received 28 written submissions on this aspect of the Bill. Respondents included licensing authorities, the metal dealing industry, enforcement agencies and victims of metal theft.

Compliance and enforcement
331. The significant success of the interventions in England and Wales was reflected in the widespread support for the proposals for Scotland. In particular, the proposals to remove the exemption warrants system, ban cash payments and enhance record keeping requirements were regarded as central to the success of the Bill. These are discussed later.

332. While the metal dealing industry supported the measures in the Bill, it called for them to be further strengthened. The British Metals Recycling Association (BMRA) – the representative body for the metal dealing industry – told us its members actively supported the intentions and principles in the Bill, but believed it could be made clearer and more practical to implement and enforce.198 These comments are also discussed in more detail later.

333. Of particular concern to many was that the licensing regime in Scotland needed to be consistent with the standards already set in England and Wales. Many felt that a weaker regime in Scotland would simply attract criminals to take advantage of the system here, referred to as 'regime shopping'.

334. This concern was borne out, to some extent, in the Home Office study. Over the period when the interventions were made in England and Wales, the study found "tentative evidence of some displacement of offences to Scotland"199. The graph below shows metal theft incidents in Scotland began to increase from around the time when the ban on cash payments was introduced in England and Wales in late 2012. This trend contrasts with a steady decline in such incidents in England and Wales.

\[\text{Graph showing metal theft incidents in Scotland increasing from late 2012.}\]

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199 See footnote 197.
335. The BTP described the legislative measures in England and Wales as “hugely important”, but said they were only part of the activity undertaken. As part of Operation Tornado and through the National Metal Theft Taskforce, the BTP worked closely with the metal dealing industry to ensure activity to combat metal theft was joined up between the Home Office and other agencies such as the Environment Agency and local authorities.

336. The importance of non-legislative interventions was highlighted by the Motor Vehicle Dismantlers’ Association, which stated “legislation on its own is not sufficient to drive compliance, and it is absolutely essential that a robust compliance and enforcement programme is implemented.”

337. We strongly support the Scottish Government’s intention to strengthen the licensing regime for metal dealers in Scotland to combat metal crime. Similar legislation in England and Wales has been effective in helping to reduce metal crime south of the border. This view reflects the support for the Bill from enforcement agencies, victims of metal crime and the metal dealing industry.

338. Also, we believe it is important that the licensing system in Scotland is similarly robust to that in England and Wales. This consistency is important because we do not want Scotland to be seen as an easy option for criminals who deal in stolen metal.

**Removal of exemption warrant system**

339. Under current licensing arrangements, a metal dealer with an annual turnover of more than £1m is eligible to receive an exemption warrant. This excuses the metal dealer from the requirement to hold a metal dealers’ licence and, therefore, the existing requirements placed on metal dealers in the 1982 Act, such as record keeping.

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340. We understand that the vast majority of metal dealers that currently operate from fixed premises hold an exemption warrant. So, the proposal to revoke the warrant system is a significant move and will ensure the same high standards apply industry-wide.

341. There was universal support for the proposal to remove the system of exemptions and require all metal dealers to hold a licence irrespective of their size. The BMRA supported taking such a consistent approach across the whole industry, and the BTP and Police Scotland said the proposals would afford greater scrutiny and regulatory oversight.

342. It was also welcomed by licensing authorities. For example, Highland Council said it would result in an “unambiguous system”. A number of other councils noted the proposal in the Bill would allow them to charge all metal dealers a licence fee (the cost of issuing an exemption warrant is non-recoverable).

343. We support the proposal to remove the exemption warrant system, which will rightly ensure all metal dealers require a licence. All metal dealers will, therefore, have to comply with the other proposals in the Bill that will together help to strengthen the licensing regime.

**Banning cash payments for metal**

344. In line with the licensing regime in England and Wales, the Bill seeks to ban cash payments for metal. The Bill proposes that payment should be limited to either bank transfer or cheque. The intention is to ensure transactions for scrap metal are “traceable and auditable with a proper paper trail, thus deterring theft and increasing chances of detection.”

345. Cashless trading for metal was introduced in England and Wales in December 2012, which has been shown to have played a part in reducing metal theft. The BTP and Police Scotland supported a similar ban in Scotland and argued it was crucial to removing the incentives for metal theft by requiring traceable transactions. Others, such as Glasgow City Council, wanted to see a similarly robust system in place in Scotland to stop metal thieves being attracted north of the border to take advantage of cash payments.

346. Apart from Stephen Dalton Scrap Metal Merchants, which considered that everybody had the right to be paid in cash if they wanted, the metal dealing industry was generally supportive of the proposal. Metal dealers told us that banning cash payments would remove some of the incentive for metal crime and expected the ban to stop 95 per cent of metal thefts.

347. However, metal dealers also raised some concerns about how the ban would operate. Rosefield Salvage Ltd was concerned that banning cash payments from

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202 Highland Council. Written submission 70.
203 Renfrewshire Council, written submission 101 and North Ayrshire Council, written submission 118.
204 Policy Memorandum, paragraph 225.
206 Glasgow City Council. Written submission 132.
metal dealers would simply mean people would go elsewhere to get cash for their scrap metal, such as going to a garage to sell a catalytic converter.\textsuperscript{208} This, it said, would mean the “properly licensed scrapyard will be hurt, but people will still be being paid cash”. To resolve this, John R Adam & Sons Ltd suggested that the definition of a metal dealer needed to be “tightened up dramatically”\textsuperscript{209} (this is discussed in more detail later in this Part).

348. Metal dealers also expressed concern that a cash ban would impact on their business by discouraging private householders from scrapping metal and could result in increased fly-tipping. However, we heard from the BTP that the experience of implementing the measure in England and Wales had shown such fears to be “unfounded” and that, since the introduction of the Scrap Metal Dealers Act 2013 (2013 Act), there had been “no complaints”.\textsuperscript{210} The BTP also told us – although it does not have a completely definitive picture - it had approached a number of local authorities to ascertain whether there was any anecdotal, historical or statistical data linking a cash-ban with fly-tipping and reported none had any evidence of this.\textsuperscript{211}

349. The BMRA, along with Scottish Power Energy Networks, considered the payment methods permitted by the Bill were poorly defined and unclear.\textsuperscript{212} For example, they were critical that the Bill did not appear to restrict the person to whom a cheque may be made out; it did not need to be the seller or any person whose identity had been verified.

350. A number of others suggested steps should be taken to prevent cheque cashing facilities being opened at metal dealers’ premises to circumvent the cash ban.\textsuperscript{213} However, the BTP did not appear to be concerned about this issue. It said that the ‘know your customer’ regulations and requirements in place at such businesses tended to be much more stringent than those imposed on the metal dealing industry.\textsuperscript{214}

351. We also invited comments on whether an alternative approach that allowed small cash payments below a certain threshold could be effective. It was felt that allowing some cash into the system would create a loophole and leave the system open to exploitation by criminals. Calor, for example, was concerned that gas cylinders could potentially fall within a definition of a small transaction and felt such an allowance would do nothing to deter the theft of such items.\textsuperscript{215} The National Metal Theft Taskforce argued a blanket ban would relieve metal dealers of any pressure from unscrupulous customers to make a series of payments under a threshold.\textsuperscript{216}

352. The Cabinet Secretary acknowledged the cash ban in England and Wales had appeared to have made a significant impact in reducing metal crime. Removing the

\textsuperscript{210} British Transport Police. Written submission 94.
\textsuperscript{211} British Transport Police. \textit{Supplementary written submission}, 3 February 2015.
\textsuperscript{212} British Metals Recycling Association, written submission 85 and Scottish Power Energy Networks, written submission 75.
\textsuperscript{213} National Metal Theft Taskforce, written submission 81 and SSE, written submission 134.
\textsuperscript{215} Calor Scotland. Written submission 67.
\textsuperscript{216} National Metal Theft Taskforce. Written submission 81.
cash element, he said, made it much more difficult for people to dispose of metal that had been received illegally.\textsuperscript{217}

353. We welcome the proposal to ban cash payments for metal. However, we are concerned about suggestions it could encourage traders to obtain cash for selling metal to, for example, vehicle dismantlers. We discuss the issue of defining a metal dealer later in this report, at paragraphs 377 to 382.

Improved standards of record keeping and customer identification
354. The Bill seeks to improve the standards of record keeping by metal dealers, and to create a universal system for itinerant dealers and metal dealers that operate from fixed premises.

355. The Bill proposes that a metal dealer must verify the name and address of a person from whom they have acquired metal or to whom they have disposed of metal. In each case, a metal dealer would have to record the means by which they verified the name and address of the person, and to keep a copy of the relevant document. A copy of the document showing payment would also have to be kept, which is connected to the proposal to ban cash payments for metal.

356. Metal dealers would be required to retain these records in either hard copy or electronic format for three, rather than the current two, years.

357. There was wide support for these measures, which were regarded as proportionate and pragmatic. There was particular support for standardising record keeping across the industry, which the BTP reported had been successful in England and Wales in terms of deterring low level criminality.\textsuperscript{218} The National Metal Theft Taskforce referred to the requirement to verify a customer’s name and address as “one of the key tenets of the legislation”, removing the opportunity for thieves to dispose of stolen metal anonymously.\textsuperscript{219}

358. However, several organisations felt there needed to be greater clarity about the types of ID that would be deemed acceptable for verification purposes. Police Scotland\textsuperscript{220} wanted photo ID and proof of address, such as a utility or council tax bill, to be specified in the Bill itself, while others said they would be content with a suitable definition included in regulations. Aberdeen City Council pointed to existing requirements in section 102 of the 2005 Act as a suitable example that could be reproduced for metal dealers.\textsuperscript{221}

359. While metal dealers supported strengthening the record keeping requirements, they had a specific concern about the requirement to record the date that metal was processed. This was due to the fact that metal is sorted and consolidated with other similar material.\textsuperscript{222} We note that while this is not a new requirement (it is currently included in the 1982 Act), most metal dealers that operate from a fixed premises are

\textsuperscript{218} British Transport Police. Written submission 94.
\textsuperscript{219} National Metal Theft Taskforce. Written submission 81.
\textsuperscript{220} Police Scotland. Written submission 135.
\textsuperscript{221} Aberdeen City Council. Written submission 84.
\textsuperscript{222} British Metals Recycling Association. Written submission 85.
currently exempt from holding a licence. Many metal dealers have, therefore, been unaffected by this requirement to date.

360. We put this view to the Scottish Government, which replied that it saw the “force of these arguments” and that it would consider amending the Bill at Stage 2.  

361. Other suggestions to strengthen the Bill related to electronic record keeping. Police Scotland felt this type of record keeping could lend itself to data manipulation and concealment and wanted metal dealers to be required to retain hard copy duplicates. Aberdeen Council suggested the Bill should require metal dealers to have appropriate means to back up their electronic records.  

362. We support the enhanced record keeping requirements and, particularly, the move to impose the new conditions on itinerant metal dealers. These measures will establish an audit trail, making it easier to investigate metal crime and acting as a deterrent to criminals.

Removing the requirement to retain metal

363. The Bill proposes the removal of the mandatory requirement that metal dealers should not process metal for 48 hours after receiving it (known as tag-and-hold). The Scottish Government considers such a requirement to be “impractical for many dealers”.  

364. There were contrasting views on this proposal. Metal dealers strongly supported the Scottish Government’s view that retaining the tag-and-hold provision would be impractical. Rosefield Salvage Ltd suggested a metal dealer with an acre-sized yard would run out of space by the end of a working day if it had to keep the material and not move it for 48 hours. John R Adam & Sons Ltd agreed and said SEPA – the national regulator for waste management licensing – would have huge issues with the amount of metal being left unprocessed. We saw, first hand, some of the practical issues to do with storage limits and space constraints that a metal dealer would face if the Bill did not remove tag-and-hold when we visited William Waugh Ltd scrap metal yard in Edinburgh.

365. We asked SEPA about this issue and it acknowledged that on many metal dealers’ sites space was constrained. SEPA explained that for environmental protection reasons, it often imposed conditions, such as maximum quantity and storage limits and storage conditions. It recognised tag-and-hold could result in a potential conflict with waste management licensing conditions, which could cause metal dealers “some difficulties”. SEPA said it was “comfortable with the current proposal in the Bill”.  

366. However, others saw the benefits of the tag-and-hold provision and felt it should be kept. The National Metal Theft Taskforce said it had seen “no convincing

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223 Scottish Government. Written submission, 6 February 2015.  
224 Police Scotland, written submission 135 and Aberdeen City Council, written submission 84.  
225 Policy Memorandum, paragraph 225.  
commercial argument for not retaining metal for 48 hours”\textsuperscript{229}. To keep the requirement, it said, would assist the identification of stolen metal and deter metal dealers from accepting metal that they thought may have been stolen.

367. The Police was also against removing the provision, but appeared to recognise there needed to be a balance between the needs of enforcement agencies and what is practical for metal dealers.\textsuperscript{230}

368. The BTP said “in an ideal world, we as enforcement agencies would have everything in place that we possibly could … the 48-hour rule would help considerably”.

369. However, it also said it understood the business objections from metal dealers and recognised that, in addition to the environmental regulations imposed by SEPA, the 48-hour requirement “could prove very onerous” for metal dealers. The BTP also acknowledged there would be ways in which metal dealers could, if they wanted, get round the 48-hour rule “by not having the 48-hour stock in the 48-hour pile”.

370. BTP also accepted that other measures in the Bill – such as enhanced record keeping and verification of customers – would strengthen the licensing regime and help enforcement agencies trace stolen metal.

371. The Cabinet Secretary stated the Bill seeks to balance the burden on metal dealers with the need to ensure a reasonable enforcement regime. He recognised the possibility that requiring metal dealers to retain metal for 48 hours could “push the burden so far that, for many metal dealers, it would become unsustainable”\textsuperscript{231}

372. We agree with the balanced approach taken by the Cabinet Secretary in the Bill. While we accept that the requirement for metal dealers to retain metal for 48 hours would benefit enforcement to some degree, we believe the Bill strikes the right balance between tightening up the licensing regime and minimising the burden placed on legitimate metal dealers. We recognise that the other measures in the Bill – cashless trading and enhanced record keeping – should lead to significant improvements in enforcement.

373. We also received a number of comments about whether the tag-and-hold requirement would be available as a condition that licensing authorities could impose on a case by case basis. Although the Policy Memorandum\textsuperscript{232} states that licensing authorities would be able to impose such a condition if they wanted, Police Scotland\textsuperscript{233} suggested that, if the requirement was removed at a national level, it may not be possible to impose it at a local level.

374. Renfrewshire Council appeared to make a similar point and suggested licence holders could potentially challenge discretionary conditions as onerous, leaving the courts to decide on such matters.\textsuperscript{234} While the Council was specifically referring to

\textsuperscript{229} National Metal Theft Taskforce. Written submission 81.
\textsuperscript{232} Policy Memorandum, paragraph 225.
\textsuperscript{233} Police Scotland. Written submission 135.
\textsuperscript{234} Renfrewshire Council. Written submission 101.
CCTV requirements, it suggested that by including conditions in the Bill as voluntary conditions would enable licensing authorities to adopt them, or not, at a local level.

375. Although we do not regard the tag-and-hold requirement as an appropriate mandatory requirement for licensees, we would want licensing authorities to have the freedom to impose the condition locally.

Further strengthening and new measures

376. While there was strong support for the intention of the Bill, we heard that new measures could be added that would make the Bill more effective at reducing metal theft.

Definition of a metal dealer

377. A large number of bodies raised concerns about the definition of a metal dealer under the 1982 Act.

378. Section 37 of the 1982 Act states that a metal dealer is a person who “carries on a business which consists wholly or partly of buying and selling [metal]”. Along with the metal dealing industry, the Police called for this definition to be amended to specify persons who ‘buy or sell’ metal. The BTP suggested such a change would allow it to catch itinerant dealers who often uplift scrap metal (without paying for it) and then sell it. There was considerable evidence, the BTP said, that an element of itinerant dealers was to blame for stolen metal entering the trade chain.

379. In addition, it was suggested that skip hire operators, demolition contractors and car breakers would also escape the licensing regime. The BMRA told us that “a clear and comprehensive” definition of metal dealer, which included vehicle dismantlers and other businesses generating a significant proportion of their income from sale of scrap metal, was “essential”.

380. We asked the Scottish Government to respond to these suggestions. It told us that the aim of the Bill was to “modernise and strengthen the regulatory regime of those currently defined as metal dealers or itinerant metal dealers.” However, the Government also said it was aware of the arguments that expanding the definition of a dealer to include those at the periphery of the industry may assist enforcement, and was considering the implications of widening the definition in this way.

381. When they gave evidence to us, Scottish Government officials confirmed that people who were on the margins, such as itinerant dealers who collected metal without paying for it and sold it, were not currently covered by the licensing regime. They said they would consider whether the definition could be changed without capturing people who were “very peripheral”, such as a plumber.

382. We are concerned that the current definition of a metal dealer may not extend far enough and we welcome the Scottish Government’s offer to consider how it could be widened.

236 Scottish Government. Written submission, 6 February 2015.
National regulation of itinerant metal dealers

383. The regulation of itinerant dealers was of particular concern to many who submitted their views on the Bill. This is reflected in the specific call to widen the definition of a metal dealer to include itinerant dealers who collect metal for free and then sell it. It is further illustrated by the views of the Police, SEPA and the metal dealing industry by calling for the introduction of a national register that would provide oversight of itinerant dealers who can operate Scotland-wide. These specific issues are covered later, at paragraphs 391 to 398.

384. Currently, in Scotland, people can apply to any licensing authority for an itinerant metal dealer’s licence, which would allow them to operate as an itinerant metal dealer anywhere in Scotland. The Bill does not propose any changes to this arrangement. The position in England and Wales is slightly different, as itinerant metal dealers (or collectors, as they are termed) are required to hold a licence for each local authority in which they operate.

385. We discussed with Glasgow City Council how it oversaw the activities of its licensees who could be operating as itinerant dealers across Scotland. Speaking hypothetically, the Council explained that it would not always know what the itinerant dealer was doing in other parts of the country and would rely on Police Scotland to be the enforcement agency and to take action. If, the Council said, a breach of the licensing conditions was found to have taken place then Police Scotland would be able to bring a complaint to the Glasgow licensing committee.

386. Given the obvious difficulties licensing authorities faced in overseeing itinerant dealers, we were interested to know whether a national licensing system would make enforcement easier. SEPA said it recognised the benefits of local decision making for local licensing considerations. It was, however, open-minded about what the best option would be: “itinerant dealers could be registered with a local authority, if that system could be made to work, or directly with a national body, such as SEPA”. Overall, SEPA considered a full options appraisal of the various options would be necessary.

387. Police Scotland drew a comparison with the way in which the peddler’s certificate system operated. These certificates, which are issued by the Police, allow a peddler to operate throughout Scotland. Police Scotland keeps records of those who have been issued with certificates.

388. We asked the Scottish Government to comment on the matter and it replied as follows:

“All licensing system balances effective regulation against disproportionate administrative burden. In the case of itinerant metal dealers, the Parliament, in passing the Civic Government (Scotland) Act 1982, felt that the balance fell in allowing an itinerant dealer to work nationally as opposed to having to seek up to 32 different licences to operate across local authority boundaries.”

238 Civic Government (Scotland) Act 1982. Section 32.
239 Scrap Metal Dealers Act 2013. Section 2.
“We accept that enforcement may be strengthened by limiting the scope of a licence. That said, we would not regard it as an insuperable problem. If an individual comes to the attention of either a licensing authority or the Police then they can check the position with the issuing authority.”

389. We also raised this issue with the Cabinet Secretary when he gave oral evidence to us. While the Cabinet Secretary stated it would be possible to set up such a national licensing system, he did not think the problem was particularly extensive and emphasised the importance of taking a proportionate approach. He also felt that, rather than a move to a national licensing scheme, the regime in the Bill would allow local authorities to be able to take things forward in a way that best fits their areas.

390. **The Scottish Government should consider the merits of a national licensing scheme and report back to the Committee in this Parliamentary term.**

*National register of metal dealers*

391. There were also calls for the Bill to be strengthened by requiring a public register of metal dealers in Scotland. Equivalent registers for England and Wales were introduced by the Scrap Metal Dealers Act 2013.

392. Again, this was an issue on which there was general agreement from the enforcement agencies and the metal dealing industry.

393. The BTP said such a register would be “really helpful” from the point of view of the general public “if they were able to identify recognised, bona fide scrap metal dealers”. It also considered that, from an enforcement point of view, a register would assist sharing information and intelligence among the key agencies (Police, local authorities and SEPA) on a business-by-business basis. It would also be “very useful to have clarity and visibility around who has registration and licensing in which local authority areas”.

394. The BMRA highlighted that metal trading was far from a localised activity – metal dealers may well be buying from businesses or suppliers from all over Scotland and they will be selling all over Scotland and beyond. The BMRA saw particular benefit in having a national register of itinerant dealers who, it said, were highly mobile and worked in multiple authority areas.

395. From a business perspective, Scottish Power Energy Networks suggested it would be helpful as it could require its contractors to work within the register and to go to registered scrap dealers. It also considered there had been problems establishing the register in England and emphasised the importance of ensuring that responsibilities for managing the register were “absolutely clear”.

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243 Scottish Government. [Written submission], 6 February 2015.
244 The Environment Agency manages the register in England and Natural Resources Wales has responsibility for the register in Wales.
396. Given the role of the Environment Agency, which manages the register in England, we asked SEPA to comment on whether it thought a Scottish register would be of benefit and if it could host such a register. SEPA’s view was that a national register could deliver benefits and improvements:

“That is the kind of system that we operate. That would allow better co-ordination and multi-agency efforts to tackle metal theft, and it could improve information sharing between the authorities, Police Scotland and the British Transport Police. It could also help to address some of the concerns around the control and oversight of itinerant metal dealers.”

397. However, SEPA emphasised that any move to a national register would require a thorough evaluation of options, costs and benefits, and would need to be considered alongside the licensing process. There were, it said, a range of potential options that would need to be explored.

398. We acknowledge the licensing regime in England and Wales places a duty on relevant bodies to maintain a public register of metal dealers in their particular area. We heard there is a lot of support for an equivalent Scottish register. We believe such a register would promote transparency and assist businesses and members of the public to find legitimate metal dealers, as well as allowing enforcement agencies to maintain closer oversight of itinerant dealers.

**Requirement to display a licence**

399. The BTP suggested the Bill could be strengthened to require a metal dealer to clearly display a copy of its licence at its premises, or in the case of an itinerant dealer, from inside its vehicle. Current legislation, the BTP said, allowed five days for the production of a licence, which could hinder police investigations.

400. A similar requirement had been seen as important enough to be inserted in the Scrap Metal Dealers Bill at the amending stage and is now in force in England and Wales.

401. The BMRA supported BTP’s suggestion, which it described as a “useful measure to assist enforcement agencies in identifying illegal dealers”.

402. We asked the Scottish Government whether it would consider including the provision in the Bill. The Government said it was considering the merits of the suggestion, and that its current view was such a requirement could be delivered by existing secondary powers and did not require provision to be made in the Bill.

**Penalties**

403. A number of organisations called for the maximum penalty for an offence under the legislation to be increased. For example, Scottish Power Energy Networks felt the maximum penalty of £5,000 was “disproportionate given the implications that the

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249 British Transport police. Written submission 94.
250 *Scrap Metal Dealers Act 2013* – see amendment paper for 9 November 2012
251 British Metals Recycling Association. Written submission 85.
theft of metal can cause‖, and suggested an increase was required to have any “meaningful impact”.\textsuperscript{253}

404. We asked SEPA how the fine level compared with environmental offences. It said the proposed penalty provisions in the Bill were the same as the penalties for ‘duty of care’ offences, which included failing to adhere to certain record keeping requirements\textsuperscript{254}. By contrast, the penalties for failing to obtain a waste management licence\textsuperscript{255} were much higher, at up to £40,000.\textsuperscript{256}

405. When the Scottish Government gave oral evidence to us on the Bill, officials stated the fine level was “probably inadequate” and was something that they “may seek to address at Stage 2”.\textsuperscript{257}

Recommendations

Compliance and enforcement

406. Experience in England and Wales has shown that non-legislative interventions – Operation Tornado and the establishment of the National Metal Theft Taskforce – have had a significant impact in reducing metal crime and strengthened the impact of the legislation. We urge the Scottish Government to continue to work with the British Transport Police and Police Scotland to ensure the legislation is supported by a robust compliance and enforcement programme.

Banning cash payments for metal

407. We ask the Scottish Government to respond to comments we heard that the payment methods are poorly defined in the Bill, and to consider whether further clarification is needed.

Improved standards of record keeping and customer identification

408. We welcome the commitment from the Scottish Government to consider amending the Bill to remove the need for metal dealers to record the date on which metal was processed.

409. We ask the Scottish Government to respond to the suggestions made to us about the need to clarify the types of ID that would be deemed suitable to verify customers’ identity and in relation to keeping digital records.

Removing the requirement to retain metal

410. We ask the Scottish Government to respond to the suggestion that revoking the requirement to retain metal would make it difficult for licensing authorities to impose this locally.

Definition of a metal dealer

411. We welcome the Scottish Government’s commitment to consider expanding the definition of a metal dealer. The Bill represents a good

\textsuperscript{253} Scottish Power Energy Networks. Written submission 75.
\textsuperscript{254} Environmental Protection Act 1990. Section 34.
\textsuperscript{255} Environmental Protection Act 1990. Section 33.
\textsuperscript{256} SEPA. Supplementary written submission.
opportunity to modernise the definitions in the 1982 Act and we urge the Government to work with the metal dealing industry and enforcement bodies to find a suitable form of words that captures the industry as a whole and has limited unintended consequences.

National regulation of itinerant metal dealers
412. How does the Committee wish to conclude on this issue? Is the Committee content to accept the Scottish Government’s view or to call for a national licensing scheme?

National register of metal dealers
413. We recommend the Scottish Government considers options for establishing a national register of metal dealers in Scotland.

Requirement to display a licence
414. We welcome the Scottish Government’s commitment to consider how best to introduce the requirement that metal dealers must display their licence.

Penalties
415. We believe the maximum penalty liable under the legislation for breaching any of the licensing conditions should be uprated to take account of the substantial impact metal theft can have in terms of disruption to services and risk to life. Such a move would emphasise the seriousness of metal theft and act as a deterrent to criminals. We recommend that the Scottish Government consider bringing forward amendments at Stage 2 to increase the scale of fines liable under the legislation.
PART 3: CIVIC LICENSING: PUBLIC ENTERTAINMENT

Background

416. The Bill contains additional proposals which would impact on the way the 1982 Act operates. The Scottish Government argues “licensing arrangements should be proportionate and appropriate to what is being regulated. In light of that the Scottish Government believes that less onerous licensing requirements for theatres may in some circumstances be appropriate”.258

417. Theatres are currently licensed under the Theatres Act 1968 (“the 1968 Act”). This is a mandatory licence that is required by all premises where a public performance of a play is to be held. No allowance is made for the size of the premises or potential audience, or if the performance is free.

418. “Play” is defined in the 1968 Act as “any dramatic piece, whether involving improvisation or not, which is given wholly or in part by one or more persons actually present and performing and in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role”.259 The performance of ballet also requires a theatre licence.

419. Currently, theatre cannot be separately licensed under the public entertainment provisions of the 1982 Act.

Bill proposals

420. The Bill proposes to abolish the requirement for a theatre licence instead allowing theatres to be licensed under the public entertainment provisions of the 1982 Act.

421. The Bill intends to allow greater flexibility by moving theatre licensing from a mandatory to an optional regime. It would therefore be up to licensing authorities to decide whether or how to license theatres.

422. The Scottish Government also states that consistency will be enhanced as theatre licensing will be brought into the same regime as other forms of public entertainment. The licensing requirements of the 1968 Act will be repealed, with other parts, for example dealing with obscenity offences and public records of scripts, remaining in force.

423. The Scottish Government has not consulted on proposals contained in the Bill.

Committee submissions

424. We received 12 submissions relating to public entertainment licensing. Of these, the majority came from local authorities.

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258 Policy Memorandum, paragraph 232.
259 Theatres Act 1968.
425. Respondents to the call for submissions were largely non-committal on the issue of moving theatre licensing into the regime for public entertainment licences. A number of local authorities stated that as public entertainment licensing was part of the ‘optional’ licensing regime in the 1982 Act, it would be local authorities’ decision whether to licence theatres.

Impacts during transitional period

426. Authorities that decide to licence theatres with a public entertainment licence would have to pass a new resolution or amend existing resolutions to cover theatres as a form of public entertainment. Under section 9 of the 1982 Act, they are required to allow at least nine months between the passing of a resolution and the coming into force of any new licensing requirements.

427. The vast majority of submissions echoed the need for a suitable transition period to allow these changes to take place. The Federation of Scottish Theatre stated—

“...we would ask that all licensing authorities and licensed premises are given sufficient time and guidance in advance of the transition to make any necessary adjustments in order to comply with the change in licensing arrangements.”

428. Renfrewshire Council suggested that, for local authorities that will require a change in resolution “it would be useful to those authorities where this is an issue for there to be transitional provisions put in place, so that such premises can remain licensed between the adoption of a new public entertainment resolution and the acceptance and processing of new applications.” They further suggest a resolution to incorporate theatres would require consultation along with a nine month period for introducing that resolution.

429. An issue was highlighted by the City of Edinburgh Council that the proposal to licence theatres under public entertainment makes the assumption that local authorities will make the necessary amendments to their Public Entertainment resolution.

“There is a risk that Theatres will be unlicensed if a particular licensing authority does not include these premises within its public entertainment resolution.”

Cost implications

430. In written evidence we received mixed views on the issue of additional costs. Where venues hold both a Theatre Licence and Public Entertainment Licence, owing to their nature of operation, it was suggested that these venues would expect to see a reduction in cost.

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260 Federation of Scottish Theatre. Written submission 86.
262 City of Edinburgh Council. Written submission 49.
431. SOLAR Licensing Group suggested there would be “conversions costs to theatres in obtaining new licences and costs associated with updating resolutions for licensing authorities.”

432. The cost of Public Entertainment Licences varies across the country. Jon Morgan from Federation of Scottish Theatre told the Committee—

“In one local authority area, it will cost £140 for a year if the venue is up to 5,000 seats and, in another, it will cost £1,855 for the same size of venue. There is a huge discrepancy.”

Alcohol licensing

433. Premises that have a licence to sell alcohol do not require a public entertainment licence where entertainment takes place during licensed hours. However, currently for theatres, a theatre licence is required regardless of an alcohol licence being in place at the venue.

434. It was brought to our attention that licensing authorities’ ability to exert control over theatre venues which held alcohol licences would be minimal due to the Brightcrew decision.

Recommendations

435. We are of the view that the proposals in this section of the Bill are non-contentious and are in general agreement with them. We recognise the concerns around transitional timescales and recommend the Scottish Government allow suitable timescales and provide guidance to deal with this transition.

436. We recognise concerns around costs and, while we would not expect a need for current costs of Public Entertainment licences to increase, we understand this would be a matter for licensing authorities.

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263 SOLAR Licensing Group. Written submission 33-38.
PART 3: CIVIC LICENSING: SEXUAL ENTERTAINMENT VENUES

Background

437. The Bill will introduce a licensing regime for sexual entertainment venues (SEVs) based on the current system in place for sex shops. This is achieved by amending the existing licensing scheme for sex shops found in Part 3 and Schedule 2 of the 1982 Act, so it applies to sexual entertainment venues also, with modifications as necessary.

438. Currently, live sexual entertainment is not an activity which is licensed of its own accord. Conditions attached to alcohol licences issued under the 2005 Act were deemed sufficient to regulate this type of business because all known live sexual entertainment venues had an alcohol licence.

439. The Policy Memorandum\(^{265}\) indicates around 20 SEVs exist in Scotland. In response to our letter, the Scottish Government advised these venues are located in Edinburgh, Dundee, Glasgow and Aberdeen and are lap dancing clubs, with the greatest concentrations to be found in Edinburgh and Glasgow.

Adult Entertainment Working Group

440. In March 2005, Scottish Ministers set up a Working Group on Adult Entertainment to review the scope and impact of adult entertainment activity and make recommendations to Ministers on the way forward. This followed concerns expressed about the lack of controls on adult entertainment activity. The report of the Adult Entertainment Working Group\(^{266}\) recommended sexual entertainment should be regulated regardless of where it occurred, which necessitated a specific regime. Regulation was not taken forward at that time.

441. The Working Group also made other recommendations, including a requirement for all performances to take place in public and improved conditions for performers. A number of licensing boards incorporated the recommendations into conditions which they applied to premises’ licences of venues offering sexual entertainment.

Proposed amendments to Criminal Justice and Licensing (Scotland) Act 2010

442. In response to the lack of a specific licensing regime for sexual entertainment venues Sandra White MSP proposed an amendment to the Criminal Justice and Licensing (Scotland) Bill (which became the 2010 Act). This is in the same terms as the system proposed in the Bill. Her amendment was supported by the Scottish Government at Stage 3 but was not agreed to by the Parliament. The reasons for opposing her amendment were broadly, dual licensing was undesirable and, insufficient consideration had been given to the proposal to rule out unintended consequences.

Need for a specific licensing regime for sexual entertainment venues

443. A 2011 court case cast significant doubt on licensing boards’ ability to control sexual entertainment through alcohol licensing. In the case of Brightcrew Ltd. v The

\(^{265}\) Policy Memorandum, Paragraph 250.
City of Glasgow Licensing Board\textsuperscript{267}, the Court of Session held that a Licensing Board is only permitted to consider the licensing objectives as they relate to the sale of alcohol rather than in relation to more general considerations. The case involved Glasgow Licensing Board’s refusal to renew an alcohol licence on the basis of evidence that the licensing conditions it had applied to the venue had been breached. The venue was used for sexual entertainment. The breaches included contact between customers and performers. The court held that it was beyond the Licensing Board’s powers to try to regulate matters which did not relate to the sale of alcohol.

Approach in England and Wales

444. The Policing and Crime Act 2009 introduced SEV licensing in England and Wales. The arrangements are very similar to those proposed in this Bill with one key exception, in England and Wales venues can host sexual entertainment up to 11 times in one year without requiring a licence.

Bill proposals

445. Section 68 of the Bill sets out a new licensing system for SEVs to be administered by local authorities.

446. A licensing authority can grant a licence unconditionally, refuse it, or grant it subject to conditions. Conditions must be reasonable and may include (non-exhaustively) matters such as hours of operating, window displays and visibility from the street. The Scottish Government expects Licensing Boards will focus on the sale of alcohol and Licensing Committees would licence sexual entertainment.\textsuperscript{268}

447. Enforcement is a matter for the licensing authority and the police, both of whom have rights of entry and inspection. If a matter is brought to the attention of the police then they would determine what action to take. Actions could include reporting the matter to the Fiscal for possible prosecution or referring the matter to the licensing authority for potential action such as revocation of the licence or the imposition of additional conditions.

448. Public notice (either electronically or in a local newspaper) of any applications for a SEV is required no later than 7 days after the application is received. Objections and representations can be made by any member of the public prior to the licensing authority taking its final decision. There is no process for transferring a licence. A right of appeal to the Sheriff exists for applicants unhappy at a decision of a licensing authority.

449. A licence will run for one year or for a shorter period determined by the licensing authority. There is no requirement for a licensing policy statement, however a local authority may choose to prepare one.

Committee submissions

450. We received 49 submissions on this aspect of the Bill, mainly from those who worked in the industry or licensing authorities, but also from businesses, equality bodies, health organisations and an arts group.

\textsuperscript{267} Brightcrew -v- City of Glasgow Licensing Board [2011] CSIH 46.
\textsuperscript{268} Scottish Government. Written submission on Policy Memorandum, 1 September 2014.
Licensing of the sexual entertainment industry

451. A new licensing regime was welcomed by those responding to our call for evidence. It was generally recognised the Brightcrew decision had created uncertainty about the regulation of sexual entertainment and therefore a specific regime would be required going forward. On the merits of licensing SEVs, and in response to Sandra White MSP comments on the need for premises to be licensed, Mairi Millar from Glasgow City Council said—

“It strikes me that we have licensing legislation and regulations to cover everything from window cleaning to selling burgers from a van or selling chewing gum at 3 o’clock in the morning under late hours catering regulations, but adult entertainment activity is currently not regulated.”

452. ACC Telfer of Police Scotland said the Bill “will provide the police and the local authority with greater scope to ensure compliance in this business area” he went on to say it would also better enable “the police and partners to ensure the safety and wellbeing of those who work in such premises”. The focus of the responses we received was around the detail of the proposed licensing regime and how it impacted on owners of sexual entertainment businesses, those working in the sexual entertainment industry, and licensing and enforcement authorities tasked with implementing and enforcing the scheme. Issues raised centred around seven main areas:

- Definition of a sexual entertainment venue
- Exemption for venues holding no more than four performances a year
- Power to set an “appropriate” number of sexual entertainment venues for an area
- Appropriateness of a discretionary regime
- Responsibility for licensing sexual entertainment venues
- Location and advertising of sexual entertainment venues
- Young people working in sexual entertainment venues

453. In many ways, the differing attitudes towards sexual entertainment, is fundamental to considering the policy approach taken by the Scottish Government, and the views presented to us by stakeholders.

454. It is therefore worthwhile exploring briefly the import of these views before considering the detailed issues associated with the creation of a specific licensing regime.

455. Some respondents who had worked in the sexual entertainment industry advised they did not view the entertainment on offer as sexual. A few respondents, including Grant Murray Architects Ltd, considered sexual entertainment a necessary facility for attracting business conventions etc. to a city. While Kelvin Smith Insurance Brokers Ltd said these venues were “merely light hearted entertainment and a far cry from anything underground or seedy.” A number of...
performers commented on the fact that they had always felt safe and respected; that performing gives them a flexible way to make money; and that venues (at least the ones they’ve experienced) were well run.

456. While others such as such as Zero Tolerance, a charity working to tackle the causes of men’s violence against women, made a specific link, on the basis of academic research, between sexual entertainment, prostitution and, in both cases, women who are vulnerable to violence. In their view, sexual entertainment harmed all women and controls therefore benefitted society. Zero Tolerance said—

“In a civilised society in which ‘our people and communities support and respect each other’ (SG Strategy for Justice in Scotland, 2012) some choices are curtailed in the interests of all. It is interesting and disappointing that men’s choices to watch women perform in a sexualised manner are being protected here.”

457. The Scottish Government’s policy on violence against women defines stripping, lap dancing and pole dancing as commercial sexual exploitation and therefore violence against women. This is because “these activities have been shown to be harmful for the individual women involved and have a negative impact on the position of all women through the objectification of women’s bodies.”

458. When the Cabinet Secretary was asked why sexual entertainment venues had not been banned by the Scottish Government given the harm caused by commercial sexual exploitation of women, he said—

“What we are doing is giving local authorities the power to license the venues and to determine what the number of them should be. If a local authority believes that the desirable number is zero, there is a process that it can go through in order to achieve that.”

**Definition of a Sexual Entertainment Venue**

459. The Bill proposes a number of fairly complicated definitions in order to capture the sort of activities which it is intended to license, such as lap dancing, strip shows, peep shows, live sex shows, but to avoid licensing, for example, artistic performances. The main definitions are:

- sexual entertainment venue – “any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser”
- sexual entertainment – “any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)”

460. The Bill’s proposals only license sexual entertainment taking place on premises. This leaves out sexual entertainment taking place in private property and may also

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273 Zero Tolerance. Written submission 68.
exclude other types of performance. In addition, sexual entertainment must be provided by or on behalf of the “organiser” (the controller of the venue or the sexual entertainment). This means that sexual entertainment provided without the knowledge of the organiser (e.g. a strip-o-gram booked to attend a group in a pub) is not included.

461. A number of those who had worked in the sexual entertainment industry objected to the term ‘sexual entertainment’. In their view, the performances were not necessarily sexual, and there was also concern that the term led to an assumption that other sexual services were on offer.

462. Equality groups, were also critical of the term, for example, Highland Violence Against Women Partnership criticised the term as a euphemism for commercial sexual exploitation and saw it as legitimising violence against women. Most equality groups did support further regulation of sexual entertainment – although reluctantly – as a way of reducing harm. Zero Tolerance was disappointed about the emphasis on licensing law in the proposals, and felt the focus should have been on gender equality and community safety issues. It stated:

“The current Bill appears to have been written with a view to ironing out legal technicalities in the regulation of sexual entertainment and alcohol, rather than with a consideration of the more important themes of gender equality, women’s safety, child protection and the rights and safety of communities. The final Bill must cohere clearly with Scottish Government policies on gender equality, child protection and violence against women and girls, including Equally Safe.”

463. Local authorities noted various technical issues about the definitions. One area of concern was that the requirement for an ‘organiser’ and/or ‘financial gain’ may allow venues to circumvent regulation. City of Edinburgh Council explained a venue could argue the entertainment is provided for the financial benefit of any self-employed entertainer as opposed to the organiser.277 The Scottish Government provided us with reassurance the definition was robust and the same principle of ‘indirect gain’ would apply to someone facilitating self-employed performers.278 The Scottish Government shared the view of Professor Hubbard of the University of Kent given to us in evidence—

“The provisions clearly refer to direct or indirect financial gain. There has been no case in England in which anybody has challenged the idea that somebody providing free striptease entertainment may not be benefiting indirectly from increased patronage, which results in increased alcohol sales. I think that the definition is adequate in that sense.”

464. Several local authorities wanted private clubs to be specifically covered and one local authority suggest temporary structures should also be included. We also heard from the Association of Licensed Adult Entertainment Venues Scotland (“the ALAEVS”). Its particular concern was about unregulated sexual entertainment, Janet

276 Zero Tolerance. Written submission 68.
277 City of Edinburgh Council. Written submission 49.
278 Scottish Government. Written submission, 6 February 2015.
Hood representing ALAEVS told us groups of young men could engage the services of a stripper to come to their house or hotel room without the woman being accompanied by a chaperone, she said “those are the people who are being seriously exploited in Scotland”.  

465. Another area of concern was a lack of clarity about what forms of sexual entertainment would be covered. Edinburgh Council highlighted that venues which charged an entrance fee and then allowed customers to engage in sexual activity among themselves (e.g. fetish clubs or swingers’ clubs) may be covered. Professor Hubbard suggested that massage parlours (where massages were given by naked or partially dressed staff) and gay saunas (where men stripped off for the titillation of others) could also be covered. Although Scottish Government officials advised us—

“if they meet the licensing definition in terms of the activities conducted on the premises and the need for financial gain, then the Scottish Government is content for them to be licensed. We note that nothing in the licensing regime would serve to permit or mitigate illegal activity if offences are being committed e.g. brothel keeping, trading in prostitution or use of premises for unlawful intercourse.”

466. Jon Morgan of the Scottish Federation of Theatres wanted the Bill’s definition to be reconsidered on three counts, firstly “the potential misinterpretation or misapplication of sexual entertainment venue licensing to restrict unreasonably their legitimate artistic performances”, secondly “the potential for individual members of the public to make vexatious complaints, perhaps on the ground of taste or decency rather than on the ground of a performance being an example of sexual entertainment” and lastly, “self-censorship by our own sector: out of fear of falling foul of the legislation, people may simply choose not to put on a particular performance or production.” He went on to suggest a solution would be to create an exemption for those venues which hold a Public Entertainment Licence and also to look to the 1968 Act which contains a definition of “play” which would cover legitimate theatrical performances. Aberdeen City Council believed that exotic or burlesque dancing might also be caught in the definition.

467. The Scottish Government believed these fears were unfounded since the definition of sexual entertainment would exclude activity that isn’t intended for sexual stimulation.

468. The Minister did however acknowledge concerns in this area and sought to provide reassurance on the matter. To this end he advised the Scottish Government would “produce guidance to give specific direction about the premises and productions that would be exempt”.

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281 Scottish Government. Written submission, 6 February 2015.
285 Scottish Government. Written submission on Policy Memorandum, 1 September 2014.
Exemption for venues holding no more than four performances a year

469. The vast majority of those responding to the call for evidence did not support this proposal. It was generally considered, if an activity needed to be licensed, it needed to be licensed every time it occurred.

470. According to the Policy Memorandum, “frequency makes a qualitative difference and to not allow a de minimis level would significantly increase the scope of the scheme”. It was also considered the level is set “so as not to allow a loophole to emerge whereby frequent activity is unlicensed”. Eric Anderson, Aberdeen City Council however argued the provision did create a loophole—

“Instead of having a permanent premises with a licence and proper facilities for performers, they could simply transfer the activity to different venues where there are no such facilities or protection. Such an exemption could therefore mean defeating the aims and purposes of the amendments to the 1982 Act.”

471. Those who had worked as performers in the sexual entertainment industry commented that they would rather work in properly licensed premises. Scottish Women’s Convention considered “an organiser using several venues throughout a Local Authority to provide sexual entertainment, with each venue being used no more than three times, and all the while avoiding being subject to specific sexual entertainment licensing”.

472. Police Scotland and several local authorities also noted that allowing an exemption would make enforcement tricky as it would be very difficult to demonstrate how many times a venue had hosted sexual entertainment in the past year. Aberdeen City Council believed this could be an issue, Eric Anderson commented “itinerant type of entertainment, which moves from place to place—here one day and gone the next—that makes monitoring, control and keeping tabs very difficult”. Mairi Miller, Glasgow City Council, considered it almost impossible to enforce, she stated—

“Licensing boards or licensing standards authorities simply would not know how many times it had happened, because there would be no requirement for them to know.”

473. Highland Council drew our attention to the potential anomalous position whereby if a local authority had resolved to have no venues in its area, this would not prevent sexual entertainment taking place under the exemption.

474. In its letter to the Committee, the Scottish Government advised the alcohol licensing system already regulates, to a limited extent, sexual entertainment through, for example, the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007. It anticipated that some amendment would be required to

287 Policy Memorandum, paragraph 255.
289 Scottish Women’s Convention. Written submission 77.
292 Highland Council. Written submission 70.
secondary legislation to ensure consistency of definitions and to avoid overlap in regulation. These controls would continue to be necessary for premises which offer sexual entertainment on fewer than four occasions per year and therefore will not be licensed under the new sexual entertainment venue licensing arrangements.293

475. The Cabinet Secretary explained why an exemption had been created under the Bill’s SEV provisions—

“The exemption was included largely to reflect the fact that there could be unintended occasions on which a venue finds that it might have required an additional licence. It would be difficult for us to regulate such situations or to understand the full extent of that activity, and the exemption provision is an attempt to strike a balance.”294

Power to set an “appropriate” number of sexual entertainment venues for an area

476. Under the Bill, it will be open to a local licensing authority to introduce a sexual entertainment licensing regime for their area. They cannot specify a date for the scheme to come into effect any less than one year from the date of the resolution. This will allow existing venues a full year’s trading (which is also the proposed duration of the licence) and a year in which to submit an application to be licensed under the new scheme.

477. This aspect of the licensing of SEVs policy was the most contentious. Local authorities and COSLA generally welcomed this power, however, concerns were expressed, both about the impact on existing businesses if the limit was set at zero and about technical issues with assessing an appropriate number.

478. Siobhan Murphy, who had worked in a lap dancing club had concerns if Glasgow’s licensing authority set the number of venues at zero then “dancers would be forced to travel to Edinburgh or Newcastle to work, perhaps even further afield”.295 Andrew Cox also told us of his employment concerns, “if there is a ban or zero licences in Glasgow. I will get put out of a job”.296

479. Mairi Millar of Glasgow City Council clarified although local authorities should have the power to set the number of venues in their area she explained before setting the number at zero “each local authority would have to gather a significant amount of research evidence to determine the appropriate number in its area. It is not my position, on behalf of my local authority, that the number would automatically be zero. Such a decision would have to be based on wide-ranging consultation and evidence gathering.”297 Licensing authorities would welcome guidance from Scottish Ministers in making these decisions.

480. Professor Hubbard argued strongly that a nil limit should be removed from the legislation, saying it “is legally unreasonable and indefensible” and urged the Bill is

293 Scottish Government. Written submission on the Policy Memorandum, 1 September 2014.
295 Siobhan Murphy. Written submission 14.
amended to “make it clear that every case should be decided on its merits and in relation to the facts of the case”. 

481. In addition, a number of local authorities called for clarity in the Bill on the treatment of businesses already operating as SEVs. The ALAEVS called for ‘grandfather’ rights (in other words, legal protection for those venues which are already operating). Other business respondents, such as the Federation of Small Businesses felt it was unfair that local authorities could shut down overnight “hitherto legitimate businesses” and suggested either grandfather rights or a transitional period be provided. Several local authorities called for Scottish Government guidance on the treatment of existing clubs in order to head off protracted legal battles.

482. Equality groups (which usually favoured a zero limit) also called for clarity.

483. The Cabinet Secretary highlighted licensing authorities must go through a number of stages before they set a limit and they must consider a range of factors. He gave a commitment to provide guidance which will assist local authorities in their interpretation of this provision.

484. In relation to grandfather rights, the Cabinet Secretary confirmed licensing authorities would need to go through the proper process to set the level at nil, otherwise “they will find themselves the subject of a legal challenge for applying a measure for no rational reason or for not considering the issue proportionately”.

**Appropriateness of a discretionary regime**

485. Several local authorities noted that a resolution was necessary before sexual entertainment could be licensed. They feared that this would create cost and administration, as well as attracting adverse publicity. This seemed unnecessary if the chance of a venue offering sexual entertainment opening was not high. North Ayrshire Council and North Ayrshire Licensing Board suggested that it would make more sense for the law to require sexual entertainment to be outlawed unless the council had passed a resolution to licence it.

486. Professor Hubbard believed lessons could be learned from the implementation of similar legislation in England and Wales. He explained to us how one local authority adopted a licensing regime while a neighbouring authority did not. There was also disparity in the fees charged by licensing authorities, these ranged from £300 to £26,000. What was permitted under the regime also varied with some authorities banning nudity and others not. His concern for Scotland was—

“This situation had given rise to a range of appeal cases and litigation in which legal unreasonableness and inconsistency have been raised as valid concerns. Some of those appeals have been upheld”

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299 Association of Licensed Adult Entertainment Venues Scotland. Written submission 105.
300 Federation of Small Businesses Scotland. Written submission 124.
487. Police Scotland also felt licensing should be a mandatory requirement on local authorities. ACC Telfer said a discretionary approach “would encourage regime shopping whereby there might be a disproportionate presence of sexual entertainment venues in an area where they are not a licensed activity”. Laura Tomson from Zero Tolerance considered a discretionary approach would allow local authorities to ignore important issues such as child protection, saying “it should not be up to local authorities to decide whether those issues are relevant to them”.

488. The Cabinet Secretary however advised—

We were trying to strike a balance. In our approach to licensing sexual entertainment venues, we recognise that such facilities operate in only a handful of local authority areas—about four or five. We want to take an approach that will allow them to develop policy in a way that best reflects their local circumstances. That is why we have made the provision discretionary rather than mandatory.”

Responsibility for licensing of SEVs
489. We also received calls to address the interplay between alcohol licensing and sexual entertainment venue licensing. Several local authorities highlighted it was not clear how venues currently licensed to provide sexual entertainment under an alcohol licence should be treated. Police Scotland was concerned a situation might arise where a liquor licence is revoked and an SEV licence remains in effect. The need to co-ordinate, for example, the conditions attached to both licences, was also highlighted. ACC Telfer also emphasised the need for conditions to drive up standards in the industry and some should be mandatory to promote a consistent approach across Scotland. Laura Tomson of Zero Tolerance believed having a multitude of planning or licensing authorities made it confusing for people and suggested everything concerned with SEVs should be dealt with under the new proposed regime to make it easier for communities to complain or object to planning or advertising issues.

490. The Law Society of Scotland, the Institute of Licensing, the ALAEVS Scotland and Edinburgh Licensing Board believed Licensing Boards would be more appropriate bodies to license SEVs. It was argued that they had experience already in this area and could deal with potential conflicts between the two forms of licence. Janet Hood from the Association of Licensed Adult Entertainment Venues Scotland told us “the licensing board is undoubtedly the appropriate place to deal with such venues” because “dual licensing will confuse the issue and make it harder for the public to know where to bring their complaints”.

491. A number of witnesses who attended our roundtable session were also concerned under the current system there was insufficient control over the advertising of SEVs. Laura Tomson explained “if you walk down Lothian Road—or
what is called the pubic triangle by locals—in Edinburgh, you will see that it is very clear that very sexualised, very obvious signage is being used”, she went on to say “the signage is within one or two streets of at least three schools” 311 Professor Hubbard told us there was significant evidence that people were anxious about venues being located close to homes, places of worship, schools and other community facilities. 312 Janet Hood advised the 2005 Act took account of the location, character and condition of the proposed venue and therefore local government, either the licensing board or the planning committee could comment on its unsuitability. 313

492. In relation to advertising, Professor Hubbard considered moving control of advertising under the new regime “would have flexibility through annual renewal to look at what had been happening and to impose new conditions on signage and advertising in, on, or in the vicinity of particular premises” 314

493. When asked about bringing together all the aspects of sexual entertainment licensing and advertising under the remit of one body so that the public knew where to go if they have a complaint about a venue, the Cabinet Secretary replied—

“I am inclined to retain the current approach, although that is not to say that there is no scope for improving how the system operates. When an individual wants to complain to a local authority—whether about alcohol or some form of entertainment—they should be put through to the relevant officer, who will pursue that for them. That applies to any matter in a local authority. I do not think that having one committee or board to deal with all the issues would necessarily improve that process.” 315

494. The Cabinet Secretary further argued—

“We would have to go right back and redo licensing for alcohol and for civic purposes if the idea was that we should move to a single unified piece of legislation for both aspects. That would be a significant piece of work and a significant undertaking, and it would be well outwith the scope of the bill that we are considering.” 316

Young People
495. According to the Explanatory Notes, unlike sex shops, it will be permissible for a person under 18 to enter a sexual entertainment venue or be employed by such a venue but only at times when sexual entertainment is not taking place. 317

496. Zero Tolerance and Spittal Street Women’s Clinic called into question this approach; they argued that this could lead to the further sexualisation of children and may risk their exposure to pornographic images. Laura Tomson said “There is an issue with the images in such premises and, I would argue, with the attitudes and

317 Explanatory Notes, paragraph 204.
daily work of most of the people who work in them. It is not appropriate for under-18s to be in such premises.” Janet Hood of the ALAEVS confirmed her clients do not have anyone under the age of 18 working in the premises.\textsuperscript{318}

497. In response to this issue, the Cabinet Secretary advised the suggestion amounted to “banning under-18s from being cleaners in venues that are used for sexual entertainment” and “given the nature and intended purpose of such a provision, we would have to consult more widely on what the implications would be” as such he did not think it was something that could be addressed within the scope of the Bill.\textsuperscript{319}

\textit{Delegated Powers}

498. The DPLR Committee highlighted two specific areas. Firstly in relation to powers conferred at 45A(7)(b) which enables Ministers to prescribe other types of premises, that are not SEVs (apart from sex shops which are separately regulated), and also, new section 45A(11) of the 1982 Act which allows the Ministers to prescribe descriptions of performances or “displays of nudity” that are not to be treated as “sexual entertainment” for the purposes of the licensing regime.

499. The Committee asked the Scottish Government why it was not possible to avoid the need for this power by using more appropriate or clearer definitions in the new section 45A of the 1982 Act, to remove the possibility that certain types of performance or display could inadvertently be caught within the licensing regime.

500. The Scottish Government explained the number of premises that are expected to be subject to the new licensing regime is very limited – around 20 across Scotland. It was not expected that the power to exempt particular types of premises would either be extensively used or required beyond “very limited circumstances”. It was considered the exact circumstances where an exemption might arise in future would be hard to define, in advance of the scheme becoming fully operational. It also advised of its concern if theatrical and other forms of artistic performance were caught by the provisions.

501. We note the Scottish Government’s response to the DPLR Committee, but consider the definition should be refined to explicitly exclude plays from the definition (see our recommendation at paragraph 503).

502. Secondly, in relation to section 45B which provides that local authorities (in carrying out functions conferred by the section), must have regard to any guidance issued by the Ministers. The DPLR Committee considered, in relation to the new section 45B(7), that the Bill should provide that any guidance issued by the Scottish Ministers to local authorities must be published, and a copy laid before the Parliament on issue.

503. \textbf{We support the view of the Delegated Powers and Law Reform Committee in relation to second provision.}

Recommendations

Definitions

504. We welcome the Scottish Government’s commitment to provide guidance to assist licensing authorities in interpreting the definition and to utilise subordinate legislation to make specific provision to exclude an activity should it become necessary. Given the sustained concerns on this matter we recommend the Scottish Government amends the definition to exclude plays as defined in the Theatres Act 1968 from the licensing regime.

Exemption for venues holding no more than four performances a year

505. It is clear from the evidence we have received from all quarters a provision to exempt four occasions from the SEV licensing regime creates a loophole whereby those who wish to circumvent the licensing regime could move from venue to venue avoiding regulation. We believe all SEVs should be regulated to safeguard the performers and therefore we recommend the exemption provision should be removed from the Bill.

Power to set an “appropriate” number of sexual entertainment venues for an area

506. We acknowledge licensing authorities when implementing the provision will have to give consideration to all the factors in their area as the power is not unfettered. This will require careful determination otherwise there is potential for legal challenge from existing businesses. We therefore welcome the Scottish Government’s commitment to provide guidance which will assist licensing authorities with their interpretation of this provision.

Appropriateness of a discretionary regime

507. The Committee acknowledges the Scottish Government’s reasoning for adopting a discretionary approach to licensing of SEVs, however the overwhelming opinion of those who submitted evidence, including importantly enforcement authorities, was the licensing regime should be mandatory. We recommend the SEV regime should be mandatory not least to avoid the potential for “regime shopping”.

Responsibility for licensing sexual entertainment venues

It was clear from the evidence we took from those who are pro-sexual entertainment, and those who are anti-sexual entertainment, it would be more appropriate to bring all the elements of licensing SEVs (including advertising and alcohol) under the control of a single body. This would allow dual licensing issues to be dealt with more easily and simplify the complaints route for the public. We recommend The Scottish Government should identify the most appropriate body to carry out this role in light of the experience of the previous regime and, taking into account the need to have oversight to deal with any dual licensing issues, bring forward amendments at Stage 2.
PART 3: CIVIC LICENSING: CIVIC LICENSING GENERAL

Background

508. The Bill contains additional proposals which would impact on the way the 1982 Act operates. The Scottish Government argues these proposals will provide greater consistency and clarity across the licensing regime. They could also be argued to improve the regulatory environment for businesses.

Bill proposals

509. The proposals include:

- deemed grant of licences and variation requests where the licensing authority has failed to process the application within nine months. The licensing authority can apply to the sheriff for an extension to this time period. The proposals apply to general licences under the 1982 Act as well as licences issued under the specific regime for sexual entertainment venues and sex shops (section 69)
- regulation-making powers for Scottish Ministers to set standard requirements, if considered necessary, for licensing hearings under the 1982 Act (section 70)
- the ability for Scottish Ministers to set mandatory conditions applying to sexual entertainment venue or sex shop licences. Such conditions can apply to all such licences or specific types of licence (section 71)
- the ability for licensing authorities to set standard conditions applying to sexual entertainment venue or sex shop licences. As above, such conditions can apply to all such licences or specific types of licence (section 71)
- the creation of a mandatory job of civic licensing standards officer, modelled on licensing standards officers under the Licensing (Scotland) Act 2005 (section 72). This is discussed in more detail below
- clarification of the law to ensure that applications can be made and dealt with using electronic means (section 73)

Committee Submissions

510. Responses concerning these sections of the Bill were primarily from local authorities as the body tasked with operating licensing activities under the 1982 Act.

511. The main areas of discussion focussed on:

- the proposals in the Bill to create a new role of civil licensing standards officer; and
- the effectiveness of the 1982 Act.

Requirement to appointment a civil licensing standards office

512. One of the main proposals which gave rise to discussion was the proposal to require local authorities to appoint a civil licensing standards office (“CLSO”).

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320 Policy Memorandum, paragraph 265.
513. Section 72 of the Bill proposes to create a new local authority role of civil CLSO. The Bill would require each local authority to appoint at least one CLSO (although local authorities can also share a CLSO). The job would include the following functions:

- to provide information and advice on the operation of licensing regimes created by the 1982 Act
- to supervise compliance with the requirements of the 1982 Act by licence holders
- to provide mediation in disputes between licence holders and other parties (eg. neighbours or customers)

514. The CLSO would be a new role, created by the Bill. It is modelled on the job of the “licensing standards officer”, who performs a similar function in relation to alcohol licensing under the 2005 Act.

515. The licensing standards officer is generally considered to be one of the success stories of the Licensing (Scotland) Act 2005. Research commissioned by NHS Scotland (2013)\(^{321}\) into the implementation of the 2005 Act found that the role was viewed positively by all stakeholders. The key strengths of the role were considered to be in building up good working relationships with stakeholders – including the licensed trade and licensing boards – and in taking a proactive approach to resolving issues. However, licensing standards officers themselves reported a desire for greater support. They also noted that their perceived association with the licensing board could make relationships with the trade difficult.

516. Advantages of the new post proposed under the Bill were seen to be the creation of a single point of contact for communities, Peter Smith of Glasgow City Council said “at the moment, officers in councils are spread across different teams, such as trading standards and environmental health, and they deal with aspects of activities that are regulated under the Act”, however he was not confident all authorities would create a role and may instead split responsibility across other licensing roles.\(^{322}\)

517. On disadvantages, CoSLA suggested in its response to us that the creation of CLSO posts should be discretionary for local authorities. This was due to concerns around costs, especially for local authorities where enforcement was carried out across a number of different departments.\(^{323}\) In terms of costs, the Financial Memorandum notes\(^{324}\) local authorities which require to recruit CLSOs will face additional costs. However, in some cases, staff will already be in place in similar roles, so there will be no need for new recruitment. The Financial Memorandum\(^{325}\) also highlights local authorities are able to recoup their costs under the 1982 Act by way of licence fees.

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\(^{321}\) MacGregor, A. et al. (2013) *An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2004: Final Report*


\(^{323}\) COSLA. Written submission 133.

\(^{324}\) Financial Memorandum, paragraphs 210-211.

\(^{325}\) Financial Memorandum, paragraph 213.
518. Another perceived disadvantage was there would be an expectation that CLSOs could deal with ongoing issues between licence holders and communities—eg. public nuisance matters. Whereas, Peter Smith explained actually they would only be able to take enforcement action if there was a breach of licence conditions. However, Andrew Mitchell of City of Edinburgh Council welcomed the introduction of mediation as a means for CLSOs to resolve issues.  

Effectiveness of the 1982 Act  
519. Most of those who responded about specific civic licensing regimes also raised overarching concerns about the 1982 Act, this central theme is dealt within the introduction to this report.  

520. In recognising a review of the 1982 Act is a time intensive process and not an option for the Bill currently being considered, licensing authorities drew our attention to a few specific issues, which impeded licensing officers from carrying out their roles. The following matters were singled out as needing to be addressed in the short-term:  

- the setting of licensing objectives for the 1982 Act;  
- the introduction of neighbourhood notification; and  
- the power to review and revoke a licence, based on an assessment of its contribution to the licensing objectives as mentioned above.  

521. Concerns were raised that, without aims clearly articulated in legislation, it was not possible for officers to review licence holders’ performance or impact. They could only take action when a condition was breached, even though it might be obvious the licensed activity was causing a problem in the community.  

522. Peter Smith provided an example to assist us in understanding the impact—  

“For example, with scrap metal dealers, we might be given the power to condition a licence for non-cash payments, but that is not backed by a requirement for the licence holder to meet objectives such as preventing crime and disorder and securing public safety.”  

523. He explained the disadvantage was if a business was creating a public nuisance licensing authorities could only deal with a breach of a specific condition as there was no overriding objective to which businesses had to adhere.  

524. In relation to creating licensing objectives for the 1982 Act, the Cabinet Secretary questioned what the existence of objectives would lead licensing authorities to do differently.  

525. For Andrew Mitchell, one of the flaws of the current licensing system under the 1982 Act was the lack of any requirement to notify neighbours of a licence application. He explained the 2005 Act, and planning legislation, had “quite a
sophisticated system for neighbour notification” adding one of the most common complaints from the public was they have very little chance to engage in the licensing process before the premises opened. A statutory requirement for neighbourhood notification was also welcomed by Peter Smith as it would improve engagement which would in turn help the application process. When asked why legislation was required to enable notification, Peter Smith advised “we run the risk of seeking objections and overstepping boundaries” He explained—

“There is legislation that instructs licensing authorities on what they should do. If an authority goes beyond what it should do, an assessment has to be made about whether that authority is seeking objections.”

526. On the suggestion of a neighbour notification process, Scottish Government officials recognised the current system was “quite archaic and the requirement is currently met by publishing a notice in the local library or something like that. It is not terribly fit for purpose in the modern world.” A commitment was given to look at any proposal put forward. The Minister however added, “there is nothing to prevent local authorities from being more proactive in the way in which they engage with local communities that are affected.”

527. Another aspect of the licensing system which we were told needed to be addressed in the short term was the need for a power to review and revoke licences, Andrew Mitchell said—

“We can revoke a licence under liquor legislation, we can revoke a house in multiple occupation licence and we can even revoke a sex shop licence, but there is no power to revoke a licence under the 1982 Act. A council can suspend a licence for the unexpired portion but, even if someone can say that there is a problem or that there has been serious misconduct by the applicant, there is no power under the act to revoke a licence, which is fairly fundamental. That shows how far that act has drifted behind other pieces of legislation.”

528. Peter Smith considered communities should have the right, where a business is causing a definable public nuisance, to bring the issue to the licensing authority, in much the same way as with licensed premises under the 2005 Act. He went on to say a review process would have the ability to deal with frivolous or vexatious complaints.

529. In response to this proposal, the Cabinet Secretary reminded us that “although a local authority cannot revoke someone’s licence, it can suspend it, which can have the same effect”. He did however consider further measures could be taken in

331 Local Government and Regeneration Committee, Official Report, 18 February 2015, Col 3.
relation to revoking licences, and advised he would consider suggestions for improvement of the system.\footnote{Local Government and Regeneration Committee, \textit{Official Report}, 25 February 2015, Col 36.}

\section*{Recommendations}

\subsection*{Effectiveness of the 1982 Act}

530. \textit{We recommend the Scottish Government amends the Bill to create licensing objectives for the Civic Government (Scotland) Act 1982 in order to assist licensing authorities to deal with, for example, public nuisance. Allied to this recommendation, we recommend the bill should be further amended to provide for a system to review and revoke licences having regard to these licensing objectives.}

531. \textit{From our earlier work on community empowerment, we are only too well aware local authorities can be risk averse, however they are also fearful without legislation notifying communities might lead to legal challenge; we therefore recommend a framework to enable neighbour notification with regard to licence applications, in a similar manner as the Licensing (Scotland) Act 2005, is added to the Bill to increase community participation in the licensing process.}
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