

Air Weapons and Licensing (Scotland) Bill: Introductory Questions



The Scottish Parliament
Pàrlamaid na h-Alba

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

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

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

*1. Please supply your name and contact details:

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

Yes

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

Yes

No

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

Personal

Professional

Commercial

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

Yes

No

*** 6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.**

Yes

No

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

All of the Bill

Equalities, climate change and other Scottish Government objectives

Air Weapons

General licensing issues

Alcohol licensing

Civic licensing – taxi/private hire car licensing

Civic licensing – scrap metal dealers

Civic licensing – theatre licensing

Civic licensing – sexual entertainment venues

Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

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

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

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

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

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

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

Name/Organisation:

2. Air Weapons Licensing

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

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

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

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

16. How will the air weapons licensing system affect those aged 14 to 17 who use air weapons?

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

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

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

20. Will the air weapons licensing system have a positive or negative impact on other areas of the public sector in Scotland (eg. The work of local government, public agencies etc.)?

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

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

Name/Organisation:

3. General Licensing Issues

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

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

24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. 'city space' etc.)?

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

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

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

Name/Organisation: Highland Licensing Board

4. Alcohol Licensing

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

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

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

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

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

Highland Licensing Board agree that returning to a “fit and proper” test would allow greater scope to present information to Boards and give Boards the ability to consider a greater breadth of relevant information when determining an application for all licences. The “fit and proper test” is still used without problem in the non-liquor licensing regime in relation to licences issued under the Civic Government (Scotland) Act 1982, Houses in Multiple Occupation etc.
Although allowing greater scope, tying it to the licensing objectives should mean that it cannot be used without relevance being established.

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

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

If spent convictions are to be disclosed, it should be all spent convictions for relevant offences. There would be no logic in requiring disclosure of spent convictions only in respect of certain types of relevant offences and it would create confusion for applicants. The benefit of full disclosure would be to show whether there was any long-term pattern of recurring convictions for relevant offences.

It is assumed that the authors of the Bill are aware that in addition to repeal of section 129(4) of the 2005 Act, amendment to Schedule 1 to The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 will be required before spent convictions can lawfully be considered by Licensing Boards in proceedings before them.

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

An opportunity has been missed to deal with a number of issues of concern to all involved in liquor licensing and which have been consistently made known to the Government before and since the 2005 Act came in to force.

Consolidated Act

To find the law, one has to look in the 2005 Act which has been amended several times eg the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol etc (Scotland) Act 2010 and now the proposed new Act. In addition there are some 37 Statutory Instruments. It is difficult enough for solicitors to find out the law; it is even more so for “lay” persons and those involved on the trade side.

Transfers

Sections 33 and 34 can lead to difficulties in the buying, selling and leasing of licensed premises. This is particularly so with regard to the following areas:

- 1. Tenant doing a “runner”;**
- 2. Company dissolution;**

1. Most leases will include clauses to ensure that on termination the out-going tenant will be obligated to co-operate with a transfer to the new tenant or Landlord. This would usually happen under Section 33 and is fine when the lease termination is civilised and professional. However it is well known that in business it does not always work out that way. Landlords and tenants do disagree and two things can happen

**–
The tenant disappears with the licence and cannot be contacted or traced, or**

the aggrieved tenant surrenders the licence to the licensing board. In scenario 1, the landlord re-claims possession but they need to transfer the licence to themselves or a new tenant. They can't transfer under Section 33, and none of the events in Section 34 have happened: the business carried on in the premises probably hasn't technically transferred. The licence doesn't cease to have effect so a new application can't be made.

This isn't something theoretical, this happens fairly regularly and the Act provides no solution. The only way to get round it has been to work with the Board's Clerk, who have to take a practical and pragmatic approach and allowed for transfers under Section 34 to be lodged. Now there may be technically no business transfer but to treat it as such is the only workable solution. This is clearly not acceptable and could lead the Clerk open to criticism or worse.

In scenario 2, if the licence is surrendered correctly, the Landlord is in a very difficult situation and has to lodge a new application. Clerks are

under pressure to process the application quickly and to grant occasional licences in the intervening period, to allow the business to trade as soon as possible.

2. If a company is dissolved, a licence cannot be transferred under either section 33 or 34. Although the licence does not cease to have effect it means that the premises must stop selling alcohol. The assets of the dissolved company fall to the Queens and Lord Treasurers Remembrancer who is unlikely to participate in a section 33 transfer. Administrative steps can be taken to have the company restored but if this is not an option then again there is pressure on Clerks to accept a section 34 transfer where strictly speaking there is no legislative authority to do so.

“Site only” Provisional Premises Licence

The 1976 Act allowed for two types of provisional premises licence: a site only without detailed drawings and the other akin to the position under the 2005 Act. This presented no great problems and would allow the principal of proposals to be tested without the need for detailed drawings etc.

Highland Council

Name/Organisation:

5. Taxi and Private Hire Car Licensing

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

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

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

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

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

Greater consistency between existing section 10(3) of the 1982 Act (refusal of taxi licences where no significant unmet demand) and section 60 of the Bill (overprovision of private hire car licences) would be helpful.

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

- (i) The proposal would have a serious effect on Council contracts. Particularly in the more remote areas, the general market for private hire is small but the demand for school transport (and some other Council transport) is significant. In some areas it can be difficult to attract competition for tenders. There is no benefit from requiring operators to go through a licensing regime but there would be an increase in cost and a reduction in the number of available operators. Contracting authorities are able to require and enforce standards appropriate to the contract.

There could be a case for withdrawing the exemption for >24-hour hires made by the general public, while retaining it for all contracts let by public or private sector organisations. Those bodies should be able to set and ensure standards. Another solution would be to allow exemptions from licensing only for those who operate contracts on behalf of the Local Authority or Government Agencies such as the NHS where robust contract conditions are in place to address public safety issues.

- (ii) Contractors would be likely to object to increased bureaucracy if the exemption was withdrawn, and the costs of going through the licensing process would undoubtedly be passed on to Councils in higher contract prices. This would cause an increased workload.
- (iii) More operators would require to go through the licensing process, with extra expense (which would be passed on to the contracting authority) but little perceived or actual benefit.

The control of vehicles and drivers used on contract and currently exempted by Section 22(c) should be improved, but still recognising the need for flexibility to allow those operated under robust contractual terms and conditions to remain outside the licensing system. Currently, licensed vehicles and drivers whose licences are suspended for whatever reason may continue to operate on "contract" work; this is clearly placing the public at risk.

On the other hand, many operators work under detailed and robust contract conditions which equate well with the protection offered by licence requirements, whilst allowing the contracting organisations the flexibility that meets their requirements but would be difficult to address within a licensing regime.

- (iv) There should be no noticeable effect on passengers on Council contracts. Operators offering whole day excursions for holidaymakers currently enjoy the exemption; this has absolutely no justification.

Name/Organisation: Highland Council

6. Scrap Metal Dealer Licensing

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

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

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

It would always be a good thing for a dealer to achieve such accreditation and is something the public can use in deciding on the choice of a dealer. However to be of any use the system must be nationwide and not left to individual Councils. Clarification would also require to be sought as to who would be responsible for promoting/paying for any such system.

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

This will create an unambiguous system where anyone dealing in metal will fall within the licensing scheme.

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

Yes, in principle it is agreed that the retention of metal requirements should be removed as a mandatory requirement of a licence, however Highland Council would be interested in the view of Police Scotland given that this condition would assist with the enforcement (tracing of metal) of the licensing scheme.

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

HC is of the view that no cash sales be permitted regardless of the size of the transaction.

45. Forms of identification and record keeping:

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

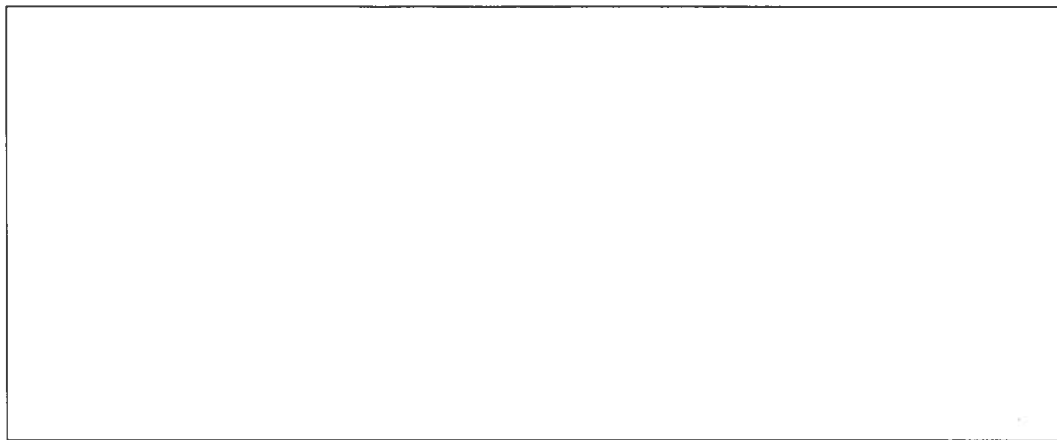
How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

The Council does not believe the proposed record keeping requirements to be too onerous and it would make sense for similar requirements to apply in Scotland as well as England and Wales.

46. Mandatory and discretionary licensing requirements:

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

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



Name/Organisation:

7. Civic Licensing – Theatre Licensing

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

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

There will need to be a transitional period to allow Councils to consider whether they wish to include the performance of plays as a licensable activity and, if they do, comply with the procedures set out in section 9 of the Civic Government (Scotland) Act 1982. 12 months at least should be allowed.

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

There should be no significant costs or resources implications on either theatres or licensing authorities.

49. How should licensing authorities integrate their current fee charging structure into their public entertainment regime?

Name/Organisation:

8. Civic Licensing – Sexual Entertainment Venues

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

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

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

No adverse consequences are anticipated.

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

It makes no sense that the licensing authority would have power to set a desired number of sexual entertainment venues for localities in their area as nil, but then have no means of stopping any number of premises in those localities from providing sexual entertainment provided they did so only once or twice a year. Separately, it removes the ability of licensing authorities to set conditions controlling the sexual entertainment provided at premises which provide sexual entertainment only once or twice a year. Conditions such as conditions for the protection of performers and conditions for the protection of children and young persons are surely as necessary at premises providing sexual entertainment once or twice a year as they are at premises providing such entertainment all year round.

52. Local licensing authorities will be able to set the number of sexual entertainment venues in their area to below the existing level, or zero: are there any advantages or disadvantages to this approach?

It would be useful for the legislation to set out the matters which a Council could take into account in reaching such a decision or for the Government to provide guidance on this issue. It is unclear, for example, what, if any, difference there will be between the factors which can be taken into account in assessing the appropriate number of venues for the purposes of paragraphs 9(5)(c), 9(6) and 9(6A) of Schedule 2 and the factors which authorities may take into account under paragraph 9(5)(d) (grant of licence inappropriate having regard to character of locality, etc). Any such guidance should be produced as early as possible after enactment of the Bill, since authorities wishing to introduce licensing requirements for sexual entertainment venues will wish to carry out assessment of the appropriate number of venues for their area in advance of their resolutions under section 45B(1) coming into effect.

Secondly, the wording of paragraph 9(5A)(a) needs to be reconsidered. Paragraph 9(5)(c) will be amended to allow Local Authorities to refuse an application on the ground that “the number of sex shops in the local authority area or the relevant locality” is equal to or exceeds the number which the authority “considers is appropriate for their area or that locality”. However, paragraph 9(5A)(a) will then require authorities to determine, from time to time “the appropriate number of sexual entertainment venues for their area and for each relevant locality”.

If authorities are entitled to set the number of venues in their whole area as the existing level or zero, why must the periodic determination of the appropriate number of venues be both for the whole area and for each relevant locality? This will place an unnecessary burden on authorities who wish only to assess the appropriate number on a whole area basis. It is suggested therefore that paragraph 9(5A)(a) be reworded to read “from time to time determine the appropriate number of sexual entertainment venues for their area or for any relevant locality”.

Thirdly, it should be recognised that local authorities will be unable to rely on paragraph 9(5)(c) as a ground to refuse an application until they have made a determination under paragraph 9(5A)(a) of the appropriate number of venues for their area or for relevant localities. Ideally, therefore, authorities would wish to have their initial determination of the appropriate number of venues in place prior to the day specified in their resolution as the day on which Schedule 2 will have effect in their area.

However, if an authority makes a determination of the appropriate number before the day on which Schedule 2 will have effect, it could be argued that this was not a valid determination under paragraph 9(5A)(a) of Schedule 2 and cannot therefore be relied upon to refuse an application under paragraph 9(5)(c).

It would be prudent, therefore, if section 45B contained specific provision to the effect that, notwithstanding the terms of subsection (2), a determination of the appropriate number of sexual entertainment venues for a local authority’s area carried out after the date of passing a resolution under subsection (1) but before the day specified in the resolution as the day on which Schedule 2 shall have effect shall be deemed to be a determination made under paragraph 9(5A) of Schedule 2.

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

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

Yes, subject to the comments at question 52 above.

However, in paragraph 25, it is perhaps unclear what the position will be for persons using premises as a sexual entertainment immediately prior to a s45B resolution being passed, and who apply for a venue licence before the appointed day, but whose licence application is then refused on either of the grounds specified in paragraph 9(5)(c) or (d). In terms of paragraph 24(2)(b), there is no right of appeal against refusal on either of these grounds. Such persons presumably therefore cannot rely on paragraph 25(1) as allowing them to continue using the premises as a sexual entertainment venue until expiry of the 28 day appeal period etc, and would be committing an offence under paragraph 19 if they continued to use the premises as a sexual entertainment venue beyond the date of refusal of the licence application by the licensing authority. This should perhaps be clarified in paragraph 25.

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

The Bill is silent on how premises with a Premises Licence under the Licensing (Scotland) Act 2005 which permits adult entertainment are to be treated.

55. Civic Licensing

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

