

The Highland Licensing Board

Meeting – 12 August 2014

Agenda Item	8
Report No	HLB/088/14

AIR WEAPONS AND LICENSING (SCOTLAND) BILL

Report by the Clerk to the Licensing Board

Summary

This Report advises the Board of the Air Weapons and Licensing (Scotland) Bill and asks the Board if it wishes to respond to the call for evidence from the Scottish Government.

1. Background

- 1.1** The Air Weapons and Licensing (Scotland) Bill (“the Bill”) was introduced in the Scottish Parliament by the Cabinet Secretary for Justice on behalf of the Scottish Government (“the Government”) on 14 May 2014.
- 1.2** The purpose of the Bill is to protect public safety by creating a new licensing regime for air weapons to be administered by Police Scotland and to 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.
- 1.3** The Bill proposes new provisions relating to:
 - The licensing of Air Weapons which is to be administered by Police Scotland;
 - Alcohol Licensing;
 - Civic Government Licensing relating to Taxis and Private Hire Cars; Metal Dealers, Public Entertainment, Sexual Entertainment Venues, Civic Licensing Standards Officers and electronic communications.

This Report will concentrate on the Alcohol Licensing provisions although the Board may wish to follow the decision of the Highland Licensing Committee in relation to the licensing of Sexual Entertainment venues as this will impact on those Premises Licences which include adult entertainment in their Operating Plan.

2.0 Alcohol Licensing provisions

2.1 Licensing objectives: protecting young persons from harm

It is proposed to amend the definition of the licensing objective relating to protecting children from harm to include young persons. This proposal was supported by the Board in its response to the Government's consultation: "Further options for alcohol licensing" in 2013.

2.2 Statements of licensing policy: licensing policy periods

This proposal is to bring the period of the Board's policy statement in line with the term of local government elections. It presently sits at 3 years. This proposal was supported by the Board in its response to the said consultation.

2.3 Fit and Proper Person Test

This proposal marks the return of the fit and proper test as a ground for refusal in relation to Premises Licences, transfers and Personal Licences. The test will be different to that which existed under the Licensing (Scotland) Act 1976 in that it will be linked with the licensing objectives. The Board can only refuse if, having regard to the licensing objectives, the Applicant is not a fit and proper person.

This proposal was supported by the Board in its response to the said consultation.

2.4 Relevant and Foreign Offences

It is proposed to remove the automatic requirement for a Hearing to be held where the Board is notified of a relevant or foreign offence in relation to a premises or personal licence.

Further it is proposed to allow spent convictions to be considered by the Board.

2.5 Supplying alcohol to a child or young person

This proposal will create a new offence of giving, or making available, alcohol to a child or young person for consumption in a public place. This proposal was supported by the Board in its response to the said consultation.

2.6 Angostura Bitters

This proposal will include angostura bitters in the definition of alcohol.

2.7 Overprovision

This proposal will clarify that for an overprovision assessment, the whole of the Board's area may be considered as an area of overprovision. In addition, when assessing overprovision, the Board may also have regard to "licensed hours" as well as the number of licences and their capacity. This proposal was supported by the Board in its response to the said consultation.

2.8 Annual Financial Report

This proposal will oblige the Board to produce a Report not later than 3 months after the end of each financial year which will include a statement of income and expenditure attributable to the Board's functions. It is proposed that the Report should be published and it is hoped that this can be done by way of the Board's web pages. Clear definitions and precise instruction on the format of the Report will be needed to make meaningful comparisons possible.

2.9 Interested Parties

This repeals a provision of the 2005 Act which was never brought into force. An interested party was defined as someone who has an interest in the premises as an owner or tenant or had management and control over the premises or the business carried on in the premises. There was an obligation on a Licence Holder to notify changes but this was considered to be fraught with difficulties.

2.10 Personal Licences: grant, duration and renewal

As reported elsewhere on this Agenda, a Personal Licence holder who has had their Licence revoked for not completing refresher training cannot re-apply for 5 years. This proposal removes this restriction.

2.11 Processing and determination of applications

This proposal will impose a 9 month deadline by which applications require to be determined, with the clock starting to tick on receipt of a complete application.

3.0 Licensing of Sexual Entertainment Venues

3.1 The Bill creates a new licensing regime for sexual entertainment venues by including them as places which the Council can resolve to license as places of public entertainment.

3.2 Definitions

“Sexual Entertainment Venue” means any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.

“audience” includes an audience of one.

“financial gain” includes financial gain arising directly or indirectly from the provision of the sexual entertainment.

“organiser” means the person (“A”) who is responsible for the management of the premises, or the organisation or management of the sexual entertainment, or where A exercises that responsibility on behalf of another person (whether by contract of employment or otherwise), that other person.

“premises” includes any vehicle, vessel or stall but does not include a private dwelling to which the public is not admitted.

“sexual entertainment” means 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).

“display of nudity” means (a) in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus and (b) in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.

3.3 Exceptions

- A sex shop;
- Such other premises as specified by the Scottish Ministers;
- Premises offering sexual entertainment 4 or less times in a 12 month period.

3.4 Resolution and Numbers of venues

The Council must resolve to introduce the licensing of sexual entertainment venues.

The Council will be under a duty from time to time to determine the appropriate number of venues for their area and for each relevant locality.

3.5 Existing Venues

The only existing venues with some similarity to what is proposed and which would probably require a licence (if introduced) are premises licensed under the Licensing (Scotland) Act 2005 which have specified that adult entertainment will take place as part of their Operating Plan. The Bill is silent on how such existing premises will be dealt with.

4.0 Call for Evidence

4.1 An extract of the questionnaire supplied with the call for evidence is attached as Appendix 1. Part 4 relates to liquor licensing issues and part 8 to the licensing of sexual entertainment venues. The Board is invited to consider whether it wishes to answer any or all of these questions. A number of the proposals were supported by the Board in its response to the earlier consultation and members may consider that the remaining provisions are, if not welcomed, then acceptable. Some suggested responses have been included where appropriate.

4.2 However, one matter which the Board may wish to comment on with regard to “other comments” is on what is not included in the Bill.

The Board may consider that there has been a missed opportunity to deal with specific concerns which have been advanced for a number of years by all concerned in liquor licensing regarding a number of issues including the current transfer process and Provisional Premises Licence applications.

4.3 The Board should also consider whether it wishes to support and adopt the position of the Highland Licensing Committee with regard to the proposals for the licensing of sexual entertainment venues.

5.0 Recommendation

5.1 It is recommended that the Board:

- (a) note the proposals relating to liquor licensing and the licensing of sexual entertainment venues contained in the Air Weapons and Licensing (Scotland) Bill; and
- (b) Consider whether it wishes to submit written evidence to the Scottish Parliament.

Designation: Clerk to the Licensing Board

Date: 11 July 2014

Author: Alasdair Mackenzie

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 pupose?

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?

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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).

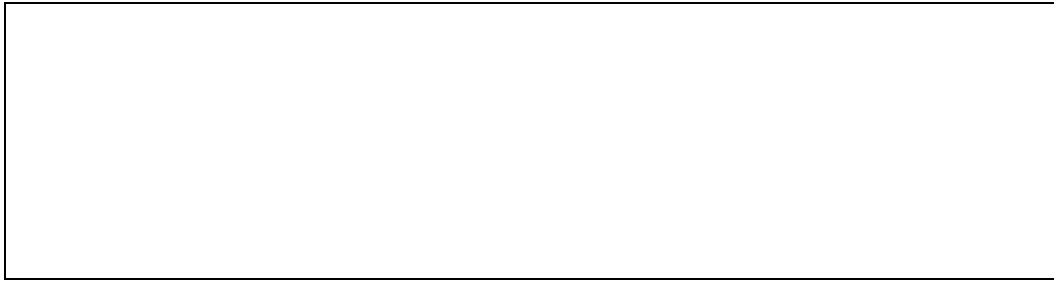
28. In what ways will the Bill's provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

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

1. Consideration should be given to allow Licensing Standards Officers to report breaches of mandatory national licensing conditions to the Licensing Board without first having to have served a compliance notice under section 14 of the Licensing (Scotland) Act 2005. Breaches such as not complying with the requirements relating to staff training and the Premises Manager not being properly qualified are serious enough to warrant a direct review application without the necessity of serving a compliance notice.

2. The formation of a National Register for Personal Licence Holders.

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?

The Highland Licensing Board self-evidently represents a very large area with meetings held in Inverness. Given the many requirements of the Licensing (Scotland) Act 2005 to have mandatory hearings there can be considerable cost implications for those wishing or having to attend a Board meeting, whether Applicant or Objector.

Section 43 of The Local Government in Scotland Act 2003 permits the remote participation in and calling of local authority meetings. This has been used to a significant extent by Highland Council permitting attendance at and participation in a number of committee meetings by video conference. However this section only permits remote participation in meetings of a local authority and its committees, including joint committees, and sub-committees. Licensing Boards are a separate legal body and are not a committee or sub-committee of a local authority. Consequently video conferencing is not available to Licensing Boards.

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 some of 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.

Name/Organisation:

Highland Council

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?

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.

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.

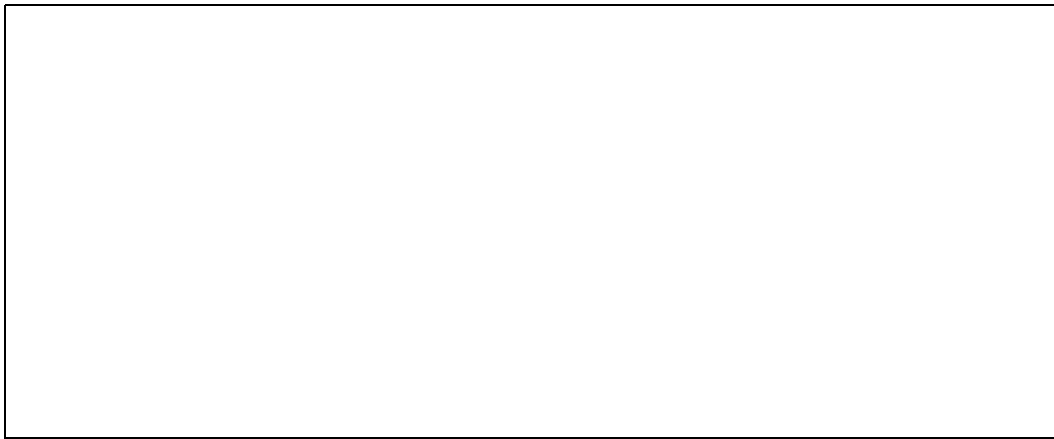
How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

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. 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.

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?

