

**The Highland Licensing Committee**

**Meeting – 12 August 2014**

Agenda Item	<b>6</b>
Report No	<b>HLC/047/14</b>

## **AIR WEAPONS AND LICENSING (SCOTLAND) BILL**

### **Report by the Legal Manager**

#### **Summary**

This Report advises the Committee of the Air Weapons and Licensing (Scotland) Bill and asks the Committee 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 Civic Government Licensing provisions. The views of the Committee in relation to the licensing of Sexual Entertainment venues will be made known to the Highland Licensing Board as this will impact on those Premises Licences which include adult entertainment in their Operating Plan.

## **2.0 Taxi and Private Hire Car provisions**

### **2.1 Refusal to grant private hire car licences on grounds of overprovision**

This is something that the Committee was not in favour of in its response to the Government's consultation in 2012/13: "Taxi and Private Hire Car Licensing – Proposals for Change".

The Committee's response to the consultation is attached as Appendix 2 and members are referred to pages 3 and 4 of the Appendix in this regard.

If implemented there will be two different criteria for dealing with numbers:

- with regard to taxis the test is and will continue to be whether there is significant unmet demand;
- for Private Hire Cars, the test will be overprovision;

This could lead to confusion and additional expense.

### **2.2 Testing of private hire car drivers**

This is something that the Committee was not in favour of in its response to the said consultation - see page 4 of Appendix 2.

### **2.3 Removal of contract exemption.**

This proposal will remove the exemption for vehicles used for carrying passengers under a contract for hire for a period of 24 hours or more.

This proposal was supported by the Committee in its response to the said consultation - see pages 5 and 6 of Appendix 2.

## **3.0 Metal Dealers**

### **3.1 The Bill proposes the following changes:**

- **Removal of the exemption warrants system;**
- **Limit payment to dealers to prescribed methods i.e bank transfer or cheque;**
- **Amended standards for identification of customers;**
- **Amended standards for record keeping;**
- **Removal of the mandatory requirement that dealers should not process metal for 48 hours after receiving it.**

All of these matters were supported by the Committee in its response in 2013 to the Government Consultation on the Licensing of Metal Dealers.

#### **4.0 Public Entertainment Venues and Theatres**

This proposal will abolish Theatre Licences which will be licensed as places of public entertainment.

#### **5.0 Sexual Entertainment Venues**

The Bill creates a new licensing regime for sexual entertainment venues by including them as places which the Council can resolve to license under Part III of the 1982 Act which currently relates exclusively to the licensing of sex shops.

#### **5.1 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.

## **5.2 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.

## **5.3 Resolution and Numbers of venues**

If the Council decides to introduce the licensing of sexual entertainment venues it must pass a resolution to that effect.

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.

## **5.4 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.

## **6.0 Call for Evidence**

**6.1** An extract of the questionnaire supplied with the call for evidence is attached as Appendix 1. Part 3 relates to general licensing issues, Part 5 to taxi and private hire car licensing, Part 6 to metal dealer licensing, Part 7 to theatre licensing and Part 8 to the licensing of sexual entertainment venues.

The Committee is invited to consider whether it wishes to answer any or all of these questions. A number of the proposals were supported by the Committee in its response to earlier consultations and members may consider that the remaining provisions are, if not welcomed, then acceptable. Some suggested responses have been included where appropriate.

**6.2** The Highland Licensing Board will be asked to endorse the Committee's view with regard to the proposals for the licensing of sexual entertainment venues.

**7.0 Recommendation**

**7.1** It is recommended that the Committee:

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

Designation: Legal Manager

Date: 11 July 2014

Author: Alasdair Mackenzie

Appendix 1: Extract questionnaire from the call for evidence.

Appendix 2: response to the Governments consultation in 2012/13: "Taxi and Private Hire Car Licensing – Proposals for Change".

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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Submission  
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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?**

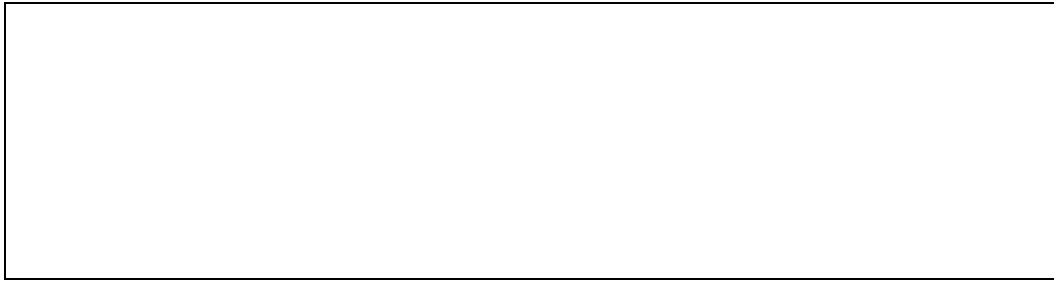
**29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?**

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**

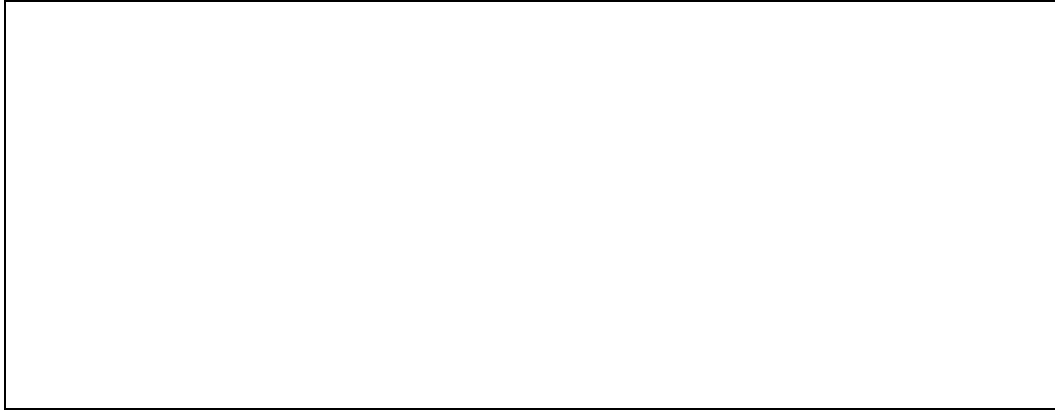
You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

**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.**

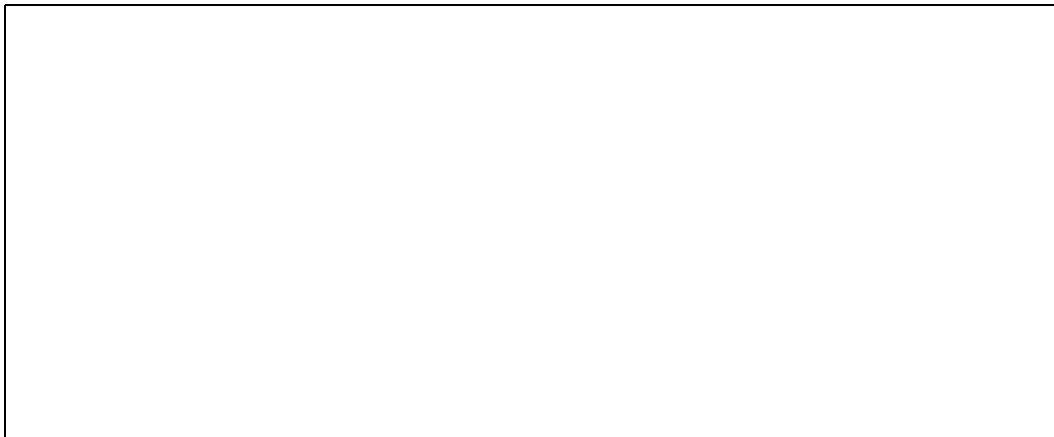
**How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?**

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?**





**ANNEX C: CONSULTATION QUESTIONNAIRE**

**Taxi and Private Hire Car Licensing**



**RESPONDENT INFORMATION FORM**

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

**1. Name/Organisation**

Organisation Name

Highland Council

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

Mackenzie

Forename

Alasdair

**2. Postal Address**

Tigh na Sgìre,		
Park Lane,		
Portree,		
Isle of Skye.		
Postcode IV51 9GP	Phone (01478) 613826	Email <a href="mailto:alasdair.mackenzie@highland.gov.uk">alasdair.mackenzie@highland.gov.uk</a>

**3. Permissions - I am responding as...**

**Individual** / **Group/Organisation**   
*Please tick as appropriate*

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

## APPENDIX 2

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*

Yes

No

## CONSULTATION QUESTIONS

**Please provide examples/evidence for your answers. Of particular interest will be information on the impact to business and regulators as a result of proposed changes including information on the additional costs of any changes proposed, the impact on competition and impact on micro and small businesses. Solutions to mitigate any negative impacts are also welcome.**

### **1. Should local authorities have the power to restrict numbers of private hire cars?**

Yes  No

The Highland Council (HC) is of the view that the power to restrict the numbers for private hire cars (PHC) should not be implemented. However if it is to be introduced it should be subject to the same provisions that currently apply to taxis, i.e. there being no significant unmet demand.

### **2. What issues would arise from allowing local authorities to restrict numbers of private hire cars and how could these be resolved? For example, would consideration need to be given to setting percentages for certain vehicle types?**

Whilst it appreciated that this would be a discretionary power, Local Authorities who decide to implement this would have to deal with the significant enforcement problems associated with limiting numbers in terms of the time and resources spent dealing with the issue of the 'leasing or renting' of PHC licences/plates.

This was experienced by one of the Highland's former Local Authorities, Inverness District Council, which previously imposed a limit on the number of taxi licences it issued. Taxi licence holders would take the opportunity to rent/lease out their licence for which they would receive an income rather than returning the licence to the Council.

To restrict the licensing of PHC in a similar way would completely close the market to any form of competition and would result in a reduced level of service to the public. For Authorities which currently limit the number of taxi licences the PHC licensing route is the only alternative that someone has if they wish to enter the trade.

As per Section 10(3) of the Act in relation to taxi licences, it is assumed that in order to administer a limit on the numbers of PHCs that a separate survey of unmet demand would require to be undertaken at regular intervals. This would result in additional expenditure which would require to be recovered through the fees. Notwithstanding the proposal "to provide updated, improved guidance on overprovision studies to support local authorities in conducting timely, cost-effective overprovision studies", there

would still be additional expenditure which would require to be recovered through fees.

The demand for different vehicle types (those with larger seating capacity, disabled friendly etc.) would require to be taken into account when considering restricting numbers with the test for unmet demand being applied to each vehicle type.

There would also be a restriction on the availability of cars for school transport and other contracted transport, and in particular it would become harder for new entrants to compete for tenders.

In terms of strengthening the case for no restriction on PHCs, in 2003 the OFT issued a report following a study carried out into the UK licensed taxi and private hire car services market, which concluded that while some aspects of regulation were entirely sound, other aspects could be improved, and in particular it recommended that quantity regulation should be removed. The report also stated that limiting the number of taxis reduces availability and lowers the quality of service to the public and these restrictions should therefore be lifted.

### 3. Training:

**(a) Is it necessary to specifically allow local authorities to require training of private hire drivers? What evidence is there of local authorities already doing this with their current powers?**

**(b) What might that training include? Should this be specified in legislation?**

(a) HC do not currently require applicants for a private hire car driver's licence to undergo any formal training at present. It is not felt necessary to require PHC drivers to undertake a knowledge test of the area as the operation of PHC's means that the start and finish points of the journey are known in advance. This combined with the increased use of satellite navigation in vehicles makes this an unnecessary requirement.

(b) Suggestions for other types of training would include disability awareness and customer care.

It is suggested that if this was to be specifically included in the legislation then the type of training should be broadly referred allowing Licensing Authorities some discretion to decide the exact type of training they would require.

**4. What alternative options are there – legislative or non-legislative – that could improve the process of justifying a restriction on numbers of vehicles (taxis and/or private hire cars)?**

HC is not aware of any alternative options. It is noted however that in paragraph 21 of the consultation document it states *'We would aim to ensure local authorities had improved guidance on conducting surveys of unmet demand if we extend the provision to restrict numbers of private hire cars using the same grounds.'* It is suggested that this guidance be made available regardless of whether the proposal to restrict the number of private hire cars is implemented as any guidance on this issue would be beneficial for Authorities proposing to or currently restricting the numbers of taxi licences under Section 10(3) of the Act.

**5. Inclusion of contract work in licensing:**

**a) How would the inclusion of contract work within licensing affect:**

- i) Those tendering and awarding contracts?**
- ii) Licensing authorities?**
- iii) Those providing driving services which are currently unlicensed?**
- iv) Passengers using a contracted service?**

**b) How could issues be resolved?**

- (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.

**6. Are there any issues that need to be considered with reference to operations not run for profit? (Such as voluntary transport arrangements that are run basically as charitable activity, which will continue to be excluded from licensing.)**

Whether operated for profit or by charities, those who use such services deserve the protection of the law.

While not seeking to include voluntary transport arrangements in the licensing requirements, it should be pointed out that there could be a significant gap in scrutiny and standards.

Voluntary sector transport provides important social benefits to many people, and particularly to more vulnerable members of the community. It is right that community transport which is not operated for profit remains out of scope of the licensing regime.

The Transport Act 1985 allows for a Section 19 permit to be held by the operators of not for profit services using cars or minibuses; the permit regime includes maintenance conditions. Funding bodies are able to require appropriate maintenance and other standards, whether or not the service is within scope of the Section 19 Permit.

## 7. Updating licensing conditions:

**(a) Would the use of a combination of mandatory and recommended conditions achieve an appropriate balance between national consistency and local context?**

**(b) Do different levels of licence (driver, vehicle, booking office) require a different combination of mandatory and recommended conditions?**

**(c) What issues of national concern could be included in a set of mandatory conditions?**

**(d) Who should be involved in this work? (Please also indicate if you would be willing to be involved).**

(a) Lessons can be learned from the operation of the Licensing (Scotland) Act 2005 which specifies a similar system of mandatory and local conditions. The introduction of mandatory and recommended licence conditions would possibly have the effect of achieving a more consistent approach by all Local Authorities but would depend on what the mandatory conditions were. It is suggested that a large number of Local Authorities will have the same or very similar conditions in relation to aspects of licensing e.g. requirement for the vehicle to be inspected, to hold and maintain adequate insurance & MOT certification, notification of convictions etc.

(b) Yes, the three types of licence mentioned are distinctly different and therefore will require a different combination of mandatory and recommended conditions.

(c) Whilst it does not appear to be an issue at present in Highland the infiltration of organised crime into the taxi and private hire industry is an issue which will be raised by other Authorities. Other than this HC is not aware of any other issues of national concern. There could also be some accessibility requirements, though not necessarily for all vehicles.

(d) Licensing Authorities, Scottish Government, the Scottish Police Service, the Association of Transport Co-ordinating Officers and trade associations should all be part of the stakeholders involved in the drafting of any mandatory and recommended conditions. Highland Council would be willing to be involved in this.

## 8. Is the extension of the Booking Office Order a proportionate response to concerns at some companies circumventing this layer of licensing?

No, in Highland there does not appear to have been an issue to date of companies either sub-contracting or splitting up businesses in order to avoid the requirement of the booking office licence. It is the view of HC that to



reduce the numbers further i.e. below 4 would cause unnecessary burden and bureaucracy on very small operators who may manage only 2 or 3 vehicles. However there is a need to bring businesses over the 3 car limit, which do not operate out of premises as such but use IT, mobile and smart phone technology, within the Booking Office Order.

Booking offices are not perceived to present the same issues in Highland that appear to exist in the Central belt and consideration should be given to allowing local authorities discretion whether to licence them at all.

**9. What specific measures would assist the enforcement of a licensing regime that covers businesses using mobile/smart phone technology?**

By removing the words "use of premises for the" from Article 2 (2) of the Booking Office Order.

**10. Role of police:**

**a) How might the role of the police within the 1982 Act be refocussed?**

**b) What would be an appropriate timeframe for police to respond to a request for information?**

**c) How well defined should the information be that they should submit?**

(a) HC are unaware of what "criticism of this undefined nature" amounts to or what the "perceived inconsistency and randomness" is. However there is no objection to the proposal provided this does not place an undue burden on the Police. It is the experience of HC that the Police presently have great difficulty in fulfilling the requirement under the Licensing (Scotland) Act 2005 to provide details of foreign offences.

(b) HC are of the view that the current timeframe of 28 days for submission of objections would be an appropriate timescale for responding. It is suggested that the views of the Scottish Police Service be sought in relation to such timescales however HC would recommend that the period be no more than 28 days.

(c) HC are of the view that any information submitted should be clear and concise in order that the relevant Local Authority can take this into account when determining the application.

**11. Licensing objectives:**

**a) Is the introduction of statutory licensing objectives a useful tool for local authorities?**

**b) Who should be involved in the creation of the licensing objectives?**

(a) HC are of the view that licensing objectives would not be a particularly useful tool. As indicated in the consultation document the Act states that the intention of licensing is for the preservation of public order and safety and the prevention of crime, which would appear to be fairly clear. However if licensing objectives are to be introduced there could be a broad requirement for Councils to set licensing objectives with reference to the relevant Local and Regional Transport Strategies. As these are not uniform across Scotland, the statutory objective should be simply that the licensing regime should support the relevant Strategies.

(b) If the introduction of licensing objections were to go ahead it is suggested that Licensing Authorities, Scottish Government, the Scottish Police Service, Regional Transport Partnerships, the Association of Transport Co-ordinating Officers and trade associations should all be part of the stakeholders involved in the drafting of any objectives.

**12. Should one set of licensing objectives apply to all Civic Government regimes or be specific to taxi and private hire car licensing?**

This is something which could probably only be fully answered following detailed consideration as to what such licensing objectives would look like, need to cover and how they would translate into other licensing activities.

Initial thoughts however are that whilst there will be a common theme around all licence activities, e.g. safety of the public and prevention of crime, there may be some objectives which may be associated with individual types of licence activities e.g. transport strategy, and as such there should be one set of licensing objectives applied to taxi and PHC licensing.

**13. Guidance on licence application process:**

**a) Is guidance an appropriate response to this issue?**

**b) Are there other elements this specific guidance should cover?**

**c) Should a power be introduced to the 1982 Act (similar to the Licensing (Scotland) Act 2005) to make regulations on hearings procedures?**

- (a) HC are of the view that a best practice guidance document in relation to the issues detailed in Proposal 9 would be welcome.
- (b) No, other than it being accurate and precise unlike the Guidance introduced under the Licensing (Scotland) Act 2005.
- (c) Specific Guidance would be the preferred option rather than a regulation as guidance will allow a more flexible approach.

**14. Do you agree improved Best Practice Guidance is required?**

HC is of the view that improved Best Practice Guidance would be of benefit to Licensing Authorities.

**15. Requiring applicant for any level of licence (driver, vehicle, booking office) to prove they are 'fit and proper':**

**(a) What would be the effects on the system of requiring applicants to prove they are 'fit and proper'?**

**(b) What would be a suitable set of requirements for applicants to meet?**

**(c) Who would be responsible for setting these?**

- (a) It would place the onus on the applicant to ensure they meet the criteria set out and prove that they are fit and proper. This would include the issue of being physically and medically fit which at present is down to the Licensing Authority to determine.
- (b) It would be very difficult to produce a set of requirements to which an applicant for taxi or PHC drivers licence would either 'pass or fail'. The example provided is the issue of establishing the existence of foreign criminal convictions which the Police have difficulty in fulfilling under the Licensing (Scotland) Act 2005. Declaring all convictions is an obvious requirement. However medical fitness to drive is also an essential requirement and any set of requirements should include evidence that an applicant for a Driver's Licence is medically fit to drive.
- (c) If the introduction of a set of requirements for applicants were to be established it is suggested that Licensing Authorities, Scottish Government, the Scottish Police Service, the Association of Transport Co-ordinating Officers and trade associations should all be among the stakeholders involved in the setting of any requirements.

**16. Develop licensing policy network:**

**(a) Who should be part of this network?**

**(b) Could this network be used to share information on licence refusals, suspensions and revocations?**

**(c) What format could a policy network take? E.g. physical meetings, shared web space?**

(a) All Scottish Local Authorities should be involved together with representatives from the Scottish Government and the new Police Service of Scotland.

(b) Yes, the HC are of the view that this would be a good way of information sharing between Licensing Authorities.

(c) It is suggested that physical meetings (annual conference) be used together with the suggested web space which would include a forum for information and experience sharing.

**17. Taking into account the proposals on the Booking Office Order, updated conditions and contract work and proposals on the licence application process, do you think that these will assist in tackling the presence of organised crime in the industry?**

As intimated elsewhere in this response the Highland Council at present are not aware of the presence of organised crime within the taxi/PHC industry in this Local Authority area. If the proposals suggested are to be implemented there will have to be a careful balance between introducing additional requirements which help to assist with the problem and making the process overly cumbersome and bureaucratic.

**18. Is there sufficient access for disabled people to taxi and private hire car services? What would make it easier for everyone to access taxis or private hire cars?**

From previous experience the % of wheelchair accessible vehicles (WAV) in relation to the total fleet varies greatly throughout the various Licensing Authorities. Highland at present have a very low % of WAV's in relation to its overall fleet numbers and is considerably lower than many other areas, especially city authorities. However Highland are currently in the early stages of considering how the numbers of WAV's can be increased through licensing policy.

A centralised policy which required Licensing Authorities to ensure that either a certain percentage of its fleet are wheelchair accessible together with clear guidance would assist. However a very high percentage requirement may have the unintended consequence of reducing or

eliminating taxi/PHC availability in isolated localities.

**19. What measures or support could be implemented that would increase the availability of wheelchair accessible taxi and private hire vehicles, particularly outside of Scotland's cities?**

A centralised policy and best practice guidance would assist Licensing Authorities in developing their own policies in relation to trying to increase the numbers of wheelchair accessible taxis and private hire cars.

In addition, feedback from local disability groups has also suggested improvements in relation to:

- Better integrated as well as accessible public transport, including community transport schemes, so that people can plan journeys using more than one form of accessible transport.
- Improved information about the availability of accessible taxis and PHCs.

Local access panels and other groups with an interest in disability issues should be involved in discussions about accessible transport.

**20. As well as the specific requirements in relation to taxis and private hire vehicles in sections 160 to 173, the Equality Act 2010 places a general duty on public bodies such as local authorities to advance the equality of opportunity of disabled people. Do you believe that this has had an effect on the provision of wheelchair accessible taxi and private hire vehicles?**

All Council services are asked to take account of the general equality duty and to undertake equality impact assessments when developing or reviewing policies, practices and decisions. This should apply in the case of the policy introduction referred to in Q18.

Under the Council's procurement guidance, those commissioning services should also carry out equality impact assessments.

**21. Are there any other issues related to taxi and private hire car licensing for people who share other protected characteristics under the Equality Act 2010 (age, race, religion or belief, sex, sexual orientation, gender reassignment, pregnancy or maternity)?**

Recognition that accessibility is not only restricted to vehicles being wheelchair accessible. Under the Equality Act, the definition of disability is wide ranging and in addition to covering physical disabilities it also provides protection for, for example, people who are blind or partially sighted, deaf and hard of hearing, learning disability, mental health problems as well as

“hidden” disabilities such as epilepsy (as long as it meets the criteria of having a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities).

There is limited information about any related issues. However, a recent report by Northern Constabulary on hate crimes and hate incidents highlighted that, although the number of reported incidents in Highland is low (and tend to be mostly low-level verbal abuse), taxi drivers appear to be among the victims of the majority of racist incidents. There are opportunities for operators to be aware that incidents can and should be reported to the police, and to promote and encourage reporting.

Licensing bodies need to be aware of the requirements of the Equality Act and in particular the application of the Public Sector Equality Duty. Taxi and private hire operators need to be aware of the scope of the Equality Act, their responsibilities as an employer and service provider. Training should be available and clarification and guidance available about what would be considered reasonable assistance provided by drivers to disabled passengers.

## **22. Statutory Licensing Enforcement Officer:**

**a) How would a statutory requirement for local authority enforcement officers work in the context of Civic Government licensing?**

**b) What would be the potential pitfalls?**

(a) Simply by placing a statutory duty on the Local Authority to enforce the provisions of the CG(S)A and to require them to produce an annual plan followed by an annual activity report covering a number of key indicators, licensed vehicle numbers; vehicle test failure rates; FTE enforcement staff; number of S11 suspensions issued; number of reports of licensees to licensing committees; existence of penalty point type schemes, etc.

This approach would provide local authorities the maximum freedom to achieve any desired outcomes using whatever resources they considered appropriate and be subject to public scrutiny on their performance that could be compared with other similar local authorities.

The costs associated with employing enforcement officers would require to be recovered in the licensing fees and therefore this will drive up application fees. The effect on recovery of costs for both administration and enforcement need of the Provision of Services Regulations 2009 (SI 2999 of 2009) needs to be clarified and understood. This is particularly so given the decision in *Hemming and Others –v- Westminster City Council* [2012] EWHC 1260 (Admin) which appears to provide that the European Directive

prohibits recovery of costs incurred in enforcement activities.

**23. Are there other solutions to creating increased enforcement/compliance capacity e.g. taxi marshals at night. Who should provide/pay for these?**

Potentially yes, in conjunction with the answer to the previous question, by requiring the local authority to review and assess the extent of any problem that may exist and to address this in the regulatory service's operational planning process, meeting any additional cost from increased licence fees.

Failure to do this would simply place additional pressures on other already hard pressed local authority regulatory services with little or no likelihood of any improvement being achieved.

The provision of taxi marshals can be beneficial, but goes far beyond the needs of regulation, being closer aligned to customer services improvement. For this reason, where the demand from the trade existed, the cost should be borne by the taxi trade and/or the town/City centre businesses whose customers provide the taxis with the majority of their customers.

**24. Do you know of licensing authorities that currently licence special events vehicles under the 1982 Act?**

Not aware.

**25. What prevents those authorities who don't licence special events vehicles from doing so?**

A number of these operators will be exempt, or claim to be exempt, under Section 22(c) of the Act which relates to exemption where the vehicle is used under a contract for its exclusive hire for a period of not less than 24 hours. There is also confusion over applicability of the law; absence of available vehicle standards; Section 22(c) exemption; non-availability of appropriate vehicle test facilities.

**26. Does this issue require a national response and why?**

Yes, a national response would be useful to ensure a consistent approach and also to highlight the issue on a national level.

**27. What form should a national response take?**

Suggestions would include clear Government guidance and Best Practice Documents and amendment of the Section 22 (c) exemption.

**28. What effect, if any, would the proposal to bring contract work within the taxi and private hire car licensing regime have on the operation of special event vehicles?**

In terms of the Council's contracts this should have no effect. In terms of the licensing of special events vehicles for hires to members of the public it is suggested that this would be fairly significant.

**29. How would the weddings exemption within the 1982 Act affect any attempt to specifically licence special events vehicles?**

The existing exemption in Section 22(b) could be strengthened by re-wording this section so that a vehicle which is being used exclusively for weddings and/or funerals would be exempt.

**30. Do you have any other information or comments related to taxi and private hire car licensing not covered in the consultation document?**

It is suggested that Section 13(4) be amended so that the onus is placed on the applicant or licence holder to provide evidence to the Licensing Authority that they are physically fit to drive a licensed taxi or private hire car. The associated costs in relation to medical examinations should also be borne by the applicant or licence holder. From experience HC have found that the cost of a medical examination can vary greatly in different areas. It is also difficult to try and recover these costs through the fees as the it is not known how many new applicants will require to be the subject of an examination and how many existing drivers will during the course of their licence develop conditions which require medical checks.