



**THE LAW SOCIETY
of SCOTLAND**
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Written Evidence

Air Weapons and Licensing (Scotland) Bill The Scottish Parliament Local Government and Regeneration Committee - Call for Evidence

**The Law Society of Scotland's response
September 2014**

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

The Society's Licensing Law Sub-Committee (the Sub-Committee) welcomes the opportunity to respond to the Scottish Parliament's Local Government and Regeneration Committee's call for evidence upon the general principles of the Air Weapons and Licensing (Scotland) Bill (the Bill) and has the following general comments to make.

General Comments

The Sub-Committee refers to paragraph 13 of the policy memorandum accompanying the Bill and has commented extensively on the consultation exercises across the existing licensing regime as follows.

1: Consultation paper- Further Options for Alcohol Licensing – March 2013

2: Taxi and Private Hire Car Licensing – Proposals for change - March 2013

3: Proposal for Licensing Air Weapons in Scotland - March 2013

4: Scottish Government Consultation on Licensing of Metal Dealers – July 2013

5: Consultation on Regulation on Sexual Entertainment Venues – September 2013.

The Sub-Committee has engaged extensively with both Scottish Government and Scottish Parliament in respect of the Licensing (Scotland) Act 2005 and its significant amendments in terms of the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol Etc. (Scotland) Act 2010 and the Alcohol (Minimum Pricing) (Scotland) Act 2012.

The Sub-Committee is a member of the National Licensing Advisory Group at present co-ordinated by Scottish Government, and welcomes the opportunity to help shape the licensing framework for the benefit of all licensing stakeholders and the public in general.

The Sub-Committee welcomes the introduction of this Bill and in particular welcomes the principal policy objectives which are to strengthen and improve aspects of locally led alcohol and civic government licensing in order to preserve public order and safety, reduce crime and to advance public health.

With particular reference to Part 2 of the Bill (Alcohol Licensing), the Sub-Committee refers to the following difficulties with regard to the Licensing (Scotland) Act 2005 encountered by both Licensing Boards and the licensed trade which have been highlighted to Scottish Government previously, but not addressed in the Bill.

The difficulties which the Sub-Committee welcomes the opportunity to comment upon at this stage are as follows:-

Transfer of Premises Licence (Sections 33 and 34) of the Licensing (Scotland) Act 2005

The Sub-Committee believes that Section 33 (Transfer on Application of Licence Holder) does not always take account of business requirements. Section 34 allows the transfer application to be made by the transferee but only in certain prescribed circumstances.

The Sub-Committee notes that one of those circumstances is set out at Section 34 (3)(d) of the 2005 Act whereby the business is to be transferred. This ignores the situation where a tenant disappears leaving premises closed for some time. It cannot be held that business is being transferred, there being no business left to transfer. The Sub-Committee questions who may make the application in those circumstances.

From a practical point of view, Licensing Boards are having to take the view that the licence has not in fact come to an end and can be resurrected.

Due to these practical difficulties in transferring the licence where a tenant has simply left the premises, many landlords have decided to hold licences in their own names.

This, the Sub-Committee believes, is because of a concern that the tenant will simply surrender the licence. It raises, however, the practical issue of a landlord not being in a position to comply fully with the terms of the Licensing (Scotland) Act 2005 where the landlord lets the premises to a third party and has limited control over the business carried on in the premises.

Also, the 2005 Act does not provide for consent to transfer nor does it provide for a situation where such a consent cannot be obtained although “consents” of this nature are frequently required by Licensing Boards. The Sub-Committee refers again to the situation where the licence holder, in particular a tenant, either disappears or refuses to co-operate.

The Sub-Committee makes specific reference to Section 25 of the Licensing (Scotland) Act 1976 where there was certainty of knowing when an application would be processed. The Act was amended in terms of Section 25A by the introduction of the temporary transfer which allowed the transfer of a licence to coincide with the transfer of ownership or a new tenancy. Unlike the 1976 Act, there is now a lack of certainty as to when an application will be processed and it can be extremely difficult to co-ordinate the conveyancing with the date of transfer leading to issues with the legality of the sale of alcohol due to administrative issues. It is the Sub-Committee’s understanding that it’s due in certain circumstances to the goodwill of Licensing Board clerks that these issues are avoided.

The current lack of certainty with regard to transfer causes significant problems in commercial property transactions, especially in transactions which may involve a number of licensed premises in different Licensing Board or licensing division areas.

In contrast, the Sub-Committee notes that in England and Wales, the terms of the Licensing Act 2003 and in particular Sections 42-46, give effect to a transfer being made by any person who can apply for a Premises Licence and also for immediate effect of the transfer in terms of Section 43 of that Act. There is specific provision for consent to transfer but the Licensing Authority has power to grant the transfer where the applicant can show he has taken all reasonable steps to obtain a consent.

In all the circumstances, the Sub-Committee suggests that the following amendments could be made to the 2005 Act:-

Section 33 should be amended to provide that any legal person who may become the holder of a Premises Licence may make an application to have the licence transferred.

Section 34 should be amended to remove the reference to a business transfer.

Provisions should be made to allow an application for a Premises Licence which has ceased to have effect because of non-compliance with any time limit to be reinstated. Such an application should be competent at the instance of any party who may competently hold a Premises Licence, including a proposed transferee, and should be capable of being made along with the transfer application.

Transfer applications should be permitted to take effect from a date to be specified with the parties to the transfer, along the lines of the old temporary transfer system under the Licensing (Scotland) Act 1976 or Section 43 of the Licensing Act 2003 which applies to England and Wales.

The introduction of statutory provisions regarding consent to transfer and to regulate the process where such consent cannot be obtained.

Introduction of procedure whereby a Premises Licence which has ceased to have effect can be reinstated. While the Sub-Committee appreciates that a time scale would require to be put in place, it suggests that a Licensing Board should have discretion on cause shown to extend such a period to cover exceptional cases.

Where the proposed transferee is not the same person as the current Premises Licence Holder or Designated Premises Manager, intimation of a transfer application should be made to the current Premises Licence Holder and the Designated Premises Manager. Boards could have sufficient discretion to determine when a transfer should be effected if no consent is obtainable and that specific criteria or regulations should be avoided as they often fail to meet unexpected circumstances as is demonstrated above.

Lack of Site Only Application for Premises Licence

The Sub-Committee notes that a site only Provisional Premises Licence is not permitted in terms of Section 45 of the Licensing (Scotland) Act 2005.

Detailed information currently required for a layout plan and the operating plan will not yet have been decided at the early pre-construction stage, yet the requirements for a Provisional Premises Licence Application are identical to those for applying for a full Premises Licence, apart from there being no need to specify a Designated Premises Manager and the requirement under Section 50 being simply for a Provisional Planning Certificate. As a consequence, a developer may incur significant time and expense in the preparation of the Provisional Premises Licence Application with there being no guarantee of a grant. Also, from a practical point of view, it is highly unlikely that both the layout plan and the operating plan will remain unchanged throughout the development of a project, resulting in more expense for variations of both layout plan and operating plan at the confirmation stage. Accordingly, if an application for a Provisional Premises Licence is refused, then the applicant has incurred significant expense unnecessarily.

The Sub-Committee refers again to the Licensing (Scotland) Act 1976 and in particular Section 26 (2) of that Act.

While the Sub-Committee recognises that that particular procedure was criticised in that it was considered by Licensing Boards and those who were entitled to object or pass comment on such an application, notably the Police, being given to little information. In order to meet this criticism, the Sub-Committee respectfully suggests that certain specified information, being the types of matters of most concern to Licensing Boards should be provided by the applicant. Before the licence comes in to effect, the full confirmation procedure, including production of a full layout plan and operating plan will require to be produced.

The Sub-Committee therefore suggests that once the Board has affirmed the application, then any changes to the premises identified by the various council departments acting under their statutory duties should, insofar as they are minor changes, be accepted by the Board.

Surrender of licence

The Sub-Committee refers to Section 28 of Licensing (Scotland) Act 2005.

This is a new provision in that, in terms of the 1976 Act, there was no specific provision for the surrender of a licence. The Sub-Committee recognises that there are obligations incumbent upon a Premises Licence Holder, not least the requirement to pay an annual fee, and it is accordingly appropriate that there should be a means of renouncing those obligations.

The Sub-Committee refers specifically to the practical issues which can and do arise where premises are owned by someone other than the licence holder. The 2005 Act recognises that parties other than the Premises Licence Holder can be “an interested party” albeit the relevant section of the Act (Section 147) (5) is not yet in force. In any event, the 2005 Act offers no safeguards for such an interested party, in particular a landlord.

From a practical point of view a number of licensing practitioners have encountered the situation where a disgruntled tenant being the premises licence holder has surrendered a licence and disappeared.

It was also noted that some premises licence holding companies can be dissolved without the landlord ever being aware. Also, the Sub-Committee is aware of some situations where the tenant has simply disappeared.

It is for the above reasons that many landlords insist on holding the licence in their own names. They cannot exercise appropriate supervision of the premises on a day to day basis.

It has come to the attention of some Sub-Committee members that this is a preferred option to the very significant financial loss which a landlord faces if his tenant surrenders the premises licence.

On the basis that it is expected of a responsible licence holder to be aware of what goes on in the premises for which it holds the licence but because of this difficulty with the legislation at present, that is often not the case in many leased premises.

The Sub-Committee respectfully suggests the following:-

Provision should be made, similar to Section 50 of the Licensing Act 2003 applicable to England and Wales, to allow reinstatement of a licence following a surrender.

Provision should be made for any party having an interest in licensed premises to note that interest with the Licensing Board and to be notified in the event of a proposed surrender of the licence or of circumstances which might affect the premises licence such as a premises licence review or non-payment of the statutory fee. Furthermore, the landlord should be in a position to be represented before a Board to explain why the licence should not be surrendered.

The Licensing Board should have discretion to waive a time limit on cause shown in the interests of justice.

Air Weapons Licensing

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

The Sub-Committee believes that whether an air weapons licensing system in Scotland will contribute to preserving public order and safety, and reducing crime and advancing public health policy clearly remains to be seen.

It outlines the practical issues with regard to the system proposed whereby air weapons, unlike shotguns, do not have a serial number and are therefore untraceable. The Sub-Committee also notes that on the basis that a single air weapon certificate should cover all weapons held by an individual, there should be a narration of the number and type of weapons held otherwise the police will not know how many air weapons are in fact in circulation and/or if weapons have been disposed of to a third party by a certificate holder. In essence, the air weapons licensing scheme as set out at Part 1 of the Bill, licenses the applicant without any attempt to correlate this to the weapon. Furthermore, the Sub-Committee notes that the certificate will not require to be presented in order to purchase ammunition.

On the basis that pellets can only be fired from air weapons once (albeit darts may be capable of re-use), the Sub-Committee anticipates that air weapons in circulation which remain unlicensed will eventually run out of ammunition. Accordingly, the issue of the regulation of the purchase of air weapon ammunition should therefore be considered.

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

The Sub-Committee has no particular comment. It believes that air weapons clubs are better placed to answer.

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

The Sub-Committee notes the terms of Section 5 (1) of the Bill.

In particular, the Chief Constable may only grant or renew an air weapon certificate if satisfied that the applicant (c) has a good reason for using, possessing, purchasing or acquiring an air weapon.

The Sub-Committee believes that, rather than imposing this condition, the Chief Constable is much better placed to consider the applicant's reason for having an air weapon on a case by case basis. In particular, it is noted that specific conditions of use are not applied to shotgun certificates under the current legislation. The Sub-Committee believes that this should also be the case in relation to the licensing of air weapons and that the police are best placed to consider whether any offences have occurred such as the reckless discharge of a firearm.

The Sub-Committee also believes that this provision may have the unintended consequence of discouraging those who have a legitimate use for an air weapon from applying for an air weapon certificate.

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

The Sub-Committee is satisfied with the provisions at Section 7 of the Bill (special requirements and conditions for young persons) and in particular that a parent or guardian of the applicant must consent in the prescribed form and manner to the applicant making the application.

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

The Sub-Committee refers to the permits at Sections 12-17 of the Bill.

In particular, the Sub-Committee is content with this system on the basis that they are time limited and the costs of obtaining such a permit should be relatively low.

The Sub-Committee notes the provisions at Section 17 of the Bill (Event permits) but considers that consideration could be given to the grant of a permanent competition certificate for those who visit Scotland regularly to shoot in competitions.

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

The Sub-Committee refers to its comments at 17 above.

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

The Sub-Committee has no particular view on this provision but believes that any licensing scheme should be cost neutral.

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

The Committee is not in a position to comment. It believes that the agencies referred to in question 20 are better placed to answer.

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

The Sub-Committee refers to its comments at question 13.

The Sub-Committee notes that there are at present some 500,000 air weapons in circulation in Scotland which cannot be properly traced.

The Sub-Committee is concerned that there may be the potential for a large number of air weapons to be sold off or indeed just given away before the provisions at Part 1 of the Bill come into force as opposed to weapons simply being handed into the police with the resultant effect that many of these weapons may end up in the wrong hands. Some form of minor compensation for surrendering air weapons to the police may counter this potential issue.

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

The Sub-Committee believes that a suitable transitional period should be put in place in order to allow the giving up of air weapons by those who have no intention ever to apply for a certificate.

With particular reference to Section 11 (1) (a) of the Bill the Sub-Committee suggests that this should read “can no longer be permitted to possess” on the basis that the air weapon certificate is granted by the Chief Constable in terms of Section 5 (1) (d) of the Bill if satisfied that the applicant “can be permitted to possess an air weapon”.

Similarly in Section 11 (2) (a) (i) of the Bill, the Sub-Committee suggests that this should read “is no longer a fit person” on the basis that the air weapon certificate is granted by the Chief Constable in terms of Section 5 (1) (a) of the Bill if satisfied that the applicant “is fit to be entrusted with an air weapon”.

The Sub-Committee also notes the terms of Section 25 (1) of the Bill and questions the requirement for a face to face sale with an individual in Great Britain who may well be outwith this jurisdiction.

General Licensing Issues

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

The Sub-Committee is of the view that there are a number of serious issues with regard to the Licensing (Scotland) Act 2005 which is not fit for purpose.

In particular, the Sub-Committee refers to its previous general comments.

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

Neither a Licensing Board nor a Licensing Committee can of course go beyond the scope of the legislation and consider what may be regarded as societal issues.

The Sub-Committee believes that it is instead, for each Board or Licensing Committee to regulate properly the licensing system within its jurisdiction.

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

The Sub-Committee believes that the licensing system in Scotland already interacts with the Land Use Planning System, Community Planning and Regeneration although sustainable growth and regeneration are not statutory considerations for Licensing Boards.

The Sub-Committee, however, makes particular reference to Section 50 of the Licensing (Scotland) Act 2005 where a premises licence application other than a provisional premises licence application must be accompanied by a planning certificate, a building standards certificate and a food hygiene certificate.

It should be noted that a Provisional Premises Licence Application must be accompanied by a Provisional Planning Certificate in respect of the subject premises

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

The Sub-Committee has no information with regard to the way a licensing system can assist with the delivery of sustainable development and economic balanced areas but does note that in times of the recent economic downturn, increased regulation without addressing the more practical issues such as the provision of licensed premises for the tourist trade etc. in rural parts of the country can be problematic. With particular reference to its response at question 25, the Sub-Committee believes further that commercial requirements and business need should be considered by Licensing Committees and Boards in addition to current criteria.

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

The Sub-Committee has no information with regard to how the licensing system in Scotland supports health and planning addressing health and inequalities and public health well-being. It suggests that evidence should be gathered in order to consider this.

The Sub-Committee does note, however, that unlike the Licensing Act 2003 applicable to England and Wales, Section 4 of the Licensing Scotland Act 2005 has an additional licensing objective at Section 4 (d) of “protecting and improving public health”. The Sub-Committee notes that a Licensing Board has a duty in terms of the Act to notify the relevant Health Board of a premises licence application.

Whether the licensing system has supported health and planning, addressing health and inequalities and public health wellbeing outcomes or not, the Sub-Committee fully supports any initiative, statutory or otherwise, which results in the responsible retailing and consumption of alcohol in Scotland.

Alcohol Licensing

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

The Sub-Committee notes the reintroduction of the fit and proper test in which it will comment in detail later and considers that the Bill should ensure that Boards and committees charged with determining applications should require to consider relevant evidenced objections and representations. Otherwise, it is not in a position to address this particular question.

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

The Sub-Committee has no comment other than the fact that Boards, in determining premises licence applications, must always have regard to the licensing objectives and should consider relevant, evidenced submissions.

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

On the basis that the five licensing objectives at Section 4 of the 2005 Act have been evidenced as operating successfully, the Sub-Committee questions in what way the Bill can enhance these objectives.

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?

The Sub-Committee has no concluded view as to whether the reintroduction of the "fit and proper person" test as outlined at Sections 43 - 48 of the Bill will assist with the implementation of the licensing objectives set out in the 2005 Act.

The Sub-Committee notes with concern, however, that a reintroduction of this test may result in objections being made either without evidence or upon facts which are not connected to the running of the premises and also based on allegations as opposed to relevant matters which have either been admitted or proved and resulted in conviction.

The Sub-Committee notes that the 2005 Act was implemented in order to bring in new tests based on e.g. the passing of exams, the training of staff and also relevant convictions and the five licensing objectives as referred to above.

The Sub-Committee does note however, that consideration could be given to such introduction on the basis that it will strengthen the Board's ability to exclude unsuitable persons from becoming the holders of premises or personal licenses but only if the fit and proper test is properly applied with regard to the rules of natural justice.

In this respect, the Sub-Committee notes that, regarding the fitness and propriety test to a Section 33 transfer of a licence, the Bill, in terms of Section 44 introduces additional powers to the Chief Constable to provide any information in a relation to either the transferee or where the transferee is neither an individual nor a council, a connected person, that the Chief Constable considers may be relevant to consideration by the Board of the application.

The Sub-Committee is concerned with regard to the potential for the Chief Constable to be in a position to make such information available to the Board on the basis of what he considers relevant.

The Sub-Committee believes that the relevancy of information should of course be a matter for the Board and any matters to be brought to the Board should be properly evidenced and directly related to a ground upon which an application may be refused.

The Sub-Committee identifies a practical issue whereby some form of “preliminary plea” may require to be considered by the Board to the effect to that the information being brought by the Chief Constable is not relevant or properly evidenced.

The Sub-Committee also identifies a number of drafting issues with regard to Section 44 (2) (d) of the Bill which inserts Section 33 (11) into the 2005 Act and allows Boards to refuse a premises licence on the basis that the transferee is not a fit and proper person to be the holder of a premises licence.

The Sub-Committee notes that there is no reference to a connected person upon whom a Chief Constable can bring information before the Board.

The Sub-Committee refers to Section 45 of the Bill and again, with reference to a review of the premises licence, notes that there is no reference to a connected person.

The Sub-Committee is concerned that Boards will be able to take this decision on the basis merely of a summary of information.

In the interests of justice, no review should take place without the actual information provided by the applicant being before the Board in reviewing the premises licence.

On the basis that the fitness and propriety of a connected person becomes a ground for review of premises licence, the Sub-Committee suggests that Section 45 (4) (b) of the Bill which inserts Section 39 (2) (a) of the 2005 Act is amended whereby the Board has a discretion in revoking the licence. For example, one director (connected person) of a company may be considered not to be a fit and proper person, but he or she may be one of a number of several directors who are to be considered acceptable.

The Sub-Committee notes the terms of Section 46 of the Bill and in particular Section 46 (2) which inserts Section 73 (5) of the 2005 Act.

The Sub-Committee reiterates its concerns that the Chief Constable may provide to the Board any information in relation to the applicant that the Chief Constable considers may be relevant.

In all the circumstances, while the reintroduction of the “fit and proper person test” may assist with the implementation of the licensing objectives, the Sub-Committee is concerned with regard to the specific provisions at Sections 42 - 48 of the Bill.

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

The Sub-Committee refers to its general comments.

Particularly, the Sub-Committee is concerned that the significant cost of a premises application in rural areas has discouraged applications.

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?

The Sub-Committee is concerned that section 51 of the Bill repeals Section 129 (4) of the Licensing (Scotland) Act 2005 in that Licensing Boards will now be entitled to take into account spent convictions.

While the Sub-Committee accepts that there will always be certain types of licence such as taxi and private hire driver licences whereby spent convictions should quite properly be taken into account, it questions the requirement for this provision albeit it will be a matter for the Board to consider each case on its own merits.

In particular, The Rehabilitation of Offenders Act 1974 was enacted in order to allow people to move on with their lives and not have to disclose what may be a relatively minor offence from some stage from their past.

While it is recognised that there must be certain exceptions as referred to above, the Sub-Committee questions whether this is appropriate with regard to both premises and personal licence applications and questions whether there has been any evidence presented to Scottish Government that the current system has been criticised as a result of Licensing Boards not being able to take spent convictions into account.

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

The Sub-Committee refers to its general comments.

The Sub-Committee would also like to highlight the following practical issues it has identified in terms of Part 2 of the Bill

Section 52 - Offences of supplying alcohol to a child or young person

The Sub-Committee notes that it is now to be an offence to buy or attempt to buy alcohol on behalf of a child or for a child or to give alcohol (or otherwise make it available) to a child.

While the Sub-Committee welcomes this provision, it notes that a child or young person is to be excluded from this offence.

On the basis that it may be considered more likely that a child or young person would supply alcohol to a child, the Sub-Committee questions the intent of this exception.

Section 54 - Overprovision

The Sub-Committee notes that a Board is entitled to take into account the whole of the Board's area as a locality as in terms of Section 54(2) of the Bill which amends Sections 7 (2) of the 2005 Act.

The Sub-Committee considers this an unnecessary amendment as Boards have always had such an ability.

The Sub-Committee also notes that Section 7 of the 2005 Act is being amended whereby Boards' mandatory requirement to "have regard to the number and capacity of licensed premises in the locality" is now being changed to a discretionary requirement to have regard to " (among other things) the number, capacity and licensed hours of licensed premises in locality.

The Sub-Committee questions the ability of Boards to consider "licensed hours" in considering overprovision

By way of example, many licensed premises have their licensed hours determined in terms of their operating plans but may well choose not to operate those hours at all times.

The Sub-Committee is aware of circumstances where certain Boards have already prepared overprovision statements in their licensing policies which have resulted in no new premises licences being granted on the grounds of overprovision yet certain premises do not operate either to their full capacity or to their licensed hours.

The Sub-Committee has in the past taken a view that there is no "duty to trade" and, against this background, considers that Boards may be proceeding on misleading information.

The Sub-Committee also welcomes clarity as to what is meant by "among other things" as referred to at Section 54(2)(b)(ii)(a) of the Bill.

Section 55 - Duties to Licensing Boards to Produce Annual Financial Reports

The Sub-Committee, while welcoming this provision, believes that this will place an even greater burden on Licensing Boards and may raise costs to the licensed trade. The Sub-Committee believes that an accounting mechanism, having regard to the “costs recovery only” requirements in the Provision of Services Regulations 1999 has to be considered. In all the circumstances, there has to be transparency as to what happens in the event of a Board having either a surplus or a deficit.

Section 56 - Interested Parties

The Sub-Committee, although noting that the obligation upon the premises licence holder to notify a Board not later than one month after a person becomes or ceases to be an interested party in relation to the licensed premises has never really been enacted, welcomes this provision.

The Sub-Committee was concerned that the provision was so wide-ranging as to be unworkable.

Section 57- Personal Licences: Grant, Duration and Renewal

The Sub-Committee welcomes these provisions on the basis that the longer time limits for making applications for renewal should ease the pressure on Licensing Boards.

Section 58 - Processing and deemed the grant of applications

While the Sub-Committee welcomes these provisions it questions the reference to nine months on the basis that this seems to be an inordinately long period.

The Sub-Committee notes that in terms of the Licensing (Scotland) Act 1976 and its quarterly Boards, applications could be processed and considered within 36 days.

The Sub-Committee questions how this sits with the time limits for certain applications as provided for in The Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007/453) and questions whether a nine month period would be compliant with Provision of Services Regulations 1999.

The Sub-Committee is concerned that the 9 month period only applies to “relevant applications” once determined as such.

The Sub-Committee highlights the practical issues at present and, with particular reference to confirmation of licence, a confirmation application should not begin to be processed until such time as the Section 50 certificates from the various departments of the local authority have been obtained.

This has the practical effect of premises being a position to trade but for the fact that they have to await this confirmation process. As a consequence premises can sit empty for a considerable period of time until confirmation.

The Sub-Committee suggests that confirmation should be automatic once the Board has obtained the Section 50 certificates. This process could be similar to minor variation to change a Premises Manager which can come into effect immediately if requested.

The Sub-Committee suggests that different time scales could be applied in determining different types of applications.

Taxi and Private Hire Car Licensing

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

The benefits of the licensing of taxis and private hire cars for customers will only become apparent once the Bill has been enacted and sufficient time has been allowed to assess its impact.

However, at this stage, the Sub-Committee notes a marked difference in the limitation policy for taxi licences.

The Sub-Committee notes from Section 60 of the Bill that Section 10 of the Civic Government (Scotland) Act 1982 is to be amended in that the grant of a private hire car licence may be refused if a licensing authority is satisfied that this would result in overprovision of private hire car services in the locality.

This is of course a different threshold than the threshold in place for taxi licences which is a higher threshold in terms of Section 10(3) of the 1982 Act, namely a taxi licence may be refused by a licensing authority for the purpose of limiting the number of taxis in respect of which licences are granted by them, but only if they are satisfied that there is no significant demand for the services of taxis in their area which is unmet.

The Sub-Committee accordingly anticipates that licensing authorities may find it difficult to deal with this distinction.

The unmet demand test is a blanket “no new licence” position, whereas an overprovision test contains a “rebuttable presumption” and therefore new licences can be issued by exception.

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?

The Sub-Committee is not in a position to answer this question. It believes those representing consumer interests are better placed to answer.

- 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?**

The Sub-Committee believes that the impact of this move will vary from local authority to local authority as some local authorities are met with more applications for private hire car than taxi licences and vice versa.

Accordingly this may not be too much of an issue in some rural areas where there is a tendency to apply for private hire car.

The Sub-Committee believes that the cities are to be distinguished to such an extent that a taxi licence, as a result of the limitation policy can have the effect of giving it a value.

Accordingly, the Sub-Committee anticipates some difficulties with this proposed change.

- 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?**

The Sub-Committee has no view on this matter but notes that the same “knowledge test” will now be applied to private hire car drivers albeit a different limitation policy will be in place.

The Sub-Committee suggests that licensing authorities are better placed to consider whether Sections 60 and 61 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?**

The Sub-Committee has no view on Section 62 provisions, but notes that if vehicles being used for carrying passengers under a contract for its exclusive hire for a period for not less than 24 hours are to be brought the licensing regime then consideration must be given to licensing the driver as well as the vehicle.

Scrap Metal Dealer Licensing

- 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?**

The Sub-Committee welcomes the removal of exemption warrants for certain metal dealers. It is anticipated that this will have the desired effect on strengthening the metal dealers' licensing regime in order to reduce metal theft and related criminal activity. In particular, the Sub-Committee notes that the theft of metal from railway lines in particular together with the untold inconvenience to the public as well as the potential for danger to both the public and offenders is a matter which requires to be addressed.

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

The Sub-Committee has no view on this matter.

It believes that licensing authorities are better placed to comment.

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

The Sub-Committee refers to its comments at 40 above.

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?

It is anticipated that the repeal of Section 31 as provided for in terms of Section 64 of the Bill will have the desired effect of prevention of criminal activities.

In particular, the Sub-Committee notes that many dealers turn around metal very quickly in order to respond to fast changing prices and international metal markets and they are also constrained physically by the limitations of their premises as to how much metal they can store and process for 48 hours.

The Sub-Committee further notes this difficulty against the background of the SEPA licence requirements which places a limit on how much can be stored on a metal dealer's premises.

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?

The Sub-Committee welcomes the provisions of Section 65 of the Bill which inserts a new Section 33A into the 1982 Act whereby in terms of Section 33A(3), if a metal dealer or an itinerant metal dealer pays for metal otherwise than in accordance with Sub-Section 1 (cheque or electronic transfer) the dealer and each of the persons listed in Sub-Section 4 (the metal dealer or anyone acting on his behalf) commits an offence.

The Sub-Committee considers this most welcome initiative in order to combat metal theft.

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 Sub-Committee notes the terms of the new Section 33 B of the 1982 Act as inserted by Section 66 of the Bill.

The Sub-Committee notes, however, that metal dealers are already licensed by the Scottish Environmental Protection Agency (SEPA) and, on the basis that it is Scottish Government's intention to avoid placing an unduly burdensome or bureaucratic requirement on the trade then this proposal would have the trade having to record the same information twice or require information that adds little to the information already required by SEPA.

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'?

The Sub-Committee has no particular view on this matter other than the mandatory conditions of the Bill should strike the correct balance between the legitimate trade of metal dealing and the combating of metal theft.

Civic Licensing – Theatre Licensing

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

The Sub-Committee welcomes the incorporation of theatre licences in terms of the Theatres Act 1968 into the public entertainment licence regime as provided for at Section 41 of the 1982 Act and would indeed welcome further reform in this area by way of incorporation of licences in terms of the Cinemas Act 1985 to be incorporated into public entertainment licences.

With particular reference to the transition period, the Sub-Committee believes that a fair period of time should be afforded and that a last lodging date for Theatres Act Licences should be provided for.

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

The Sub-Committee further notes that there is a marked difference between the cost of application for a theatre licence which can be as little as £50.00 and a public entertainment licence which can be considerably higher.

Standing the level of the fee, the Sub-committee believes that regard has to be had to the recent case of Hemming and Others v the Lord Mayor and Citizens of Westminster [2013] EWCA Civ 5912 in which it was held that fees charged by Westminster Council were incorrectly calculated after the European Services Directive became effective and accordingly “charges which a Council imposes on applicants/ licences under an authorisation scheme must be proportionate and reasonable under the circumstances to the fees or costs payable under the provisions of the scheme.

Furthermore, the fees must not exceed the costs of administering the process

The Sub-Committee questions whether consideration has been given to the interplay between the alcohol licensing regime and exemptions to public entertainment licensing. A number of theatre premises in Scotland will operate with an alcohol licence. The 1982 Act exempts alcohol licensed premises from requiring a public entertainment licence. If the stated aim is to replace the theatre licence with a public entertainment licence, then there is a question as to how that would capture those theatres who have alcohol licences, which under the terms of the Act would be exempt. The Sub-Committee notes that this anomaly is dealt with in England and Wales by having theatre as a form of regulated entertainment in terms of a premises licence; with no separate public entertainment or theatre licence required.

If enacted, the net result will be that the majority of theatre premises will be left requiring only their existing alcohol licence and no other licence (unless the theatre operated without an alcohol licence in which case a public entertainment licence would be needed where a local authority has resolved to license theatre as a form of public entertainment). The Sub-Committee suggests that further consideration be given to this issue.

Separately, the Sub-Committee believes that this issue also brings into focus the question of whether a late hours catering licence in terms of Section 42 of the Civic Government (Scotland) Act 1982 is required in respect of premises in respect of which a premises licence has been granted in terms of Section 26 of the Licensing (Scotland) Act 2005 and welcomes clarification in this regard.

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

The Sub-Committee refers to its comments above.

Civic Licensing – Sexual Entertainment Venues

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'

The Sub-Committee notes that Scottish Government's has taken the view that, in licensing Sexual Entertainment Venues, they consider that there is a "regulation gap" as a result of the judgement in the case of *Brightcrew Ltd v The City of Glasgow Licensing Board* [2011] CSIH 46 .

While the Sub-Committee holds no unanimous view as to whether the *Brightcrew* decision led to the "regulation gap" referred to above, it suggests that the Licensing Board should administer sexual entertainment venues as opposed to the Licensing Authority. The Sub-Committee therefore suggests that the Licensing Board could regulate numbers by way of its overprovision statement which could be amended to take into account there being no sexual entertainment venues. On the basis of premises already operating as a sexual entertainment venue, a Licensing Board could grant a licence for a sexual entertainment venue in terms of Section 68 of the Bill subject to taking into account the "regulation gap".

Otherwise, if in terms of Section 68 of the Bill, sexual entertainment venues are to be licensed by the Licensing Authority, the Sub-Committee believes that this could lead to a curious and anomalous situation whereby a Licensing Board grants a premises licence in respect of premises providing adult entertainment all in terms of Section 23 of the 2005 Act, yet the Licensing Authority refuses a licence for sexual entertainment in respect of the same premises where that Authority has resolved in terms of Schedule 2 of the Civic Government (Scotland) Act 1982 to have effect in their area in relation to such venues.

The Sub-Committee is particularly concerned with the terms of Section 45 B (6A) of the 1982 Act as inserted by Section 68 of the Bill whereby a local authority may refuse an application for the grant or renewal of a licence despite the fact that a premises licence under Part 3 of the Licensing (Scotland) Act 2005 is in effect in relation to the premises, vehicle, vessel or stall into which the application relates.

The Sub-Committee anticipates that this provision will be particularly problematic where the Licensing Board has already granted a premises licence and the Licensing Authority thereafter resolves in terms of Schedule 2 (9) Sub-Paragraph (5) (c) of the 1982 Act as amended by Section 45 (B) (1) to fix “nil” as the appropriate number of sexual entertainment venues.

The Sub-Committee remains concerned that a double licensing system of the nature proposed in the Bill could lead to confusion and conflict between licensing regimes which will be brought into effect as a result of this amendment.

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?

The Sub-Committee believes that the provisions at Section 45A (9) of the Bill will have the resultant effect of a Licensing Authority having no means of prohibiting such sexual entertainment on the basis that such sexual entertainment has not been provided on more than three previous occasions which fall wholly or partly within the period of 12 months. It may well be that a Licensing Authority that has set its desired number of sexual entertainment venues for localities in their area as nil.

The Sub-Committee believes that this has the unintended consequence of such activity not being subject to the new regime on the basis that it has only been provided for once or twice a year as opposed to it being provided throughout the year.

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?

The Sub-Committee refers to its comments at Question 50 above.

- 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?**

The Sub-Committee has no particular view on the existing licensing regime for sex shops being made applicable to sexual entertainment venues.

The Sub-Committee again refers to its comments at Question 50 above.

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

The Sub-Committee refers to its comments at Question 50 above and believes that this new scheme should be operated by Licensing Boards as opposed to Licensing Authorities.

- 55. Civic Licensing**

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

The Sub-Committee refers to Section 69 of the Bill.

It is concerned that the six month period within which a decision on a licence applied for in terms of the Civic Government (Scotland) Act 1982 is being in effect extended from six months to nine months.

Accordingly, the Sub-Committee reiterates its comments made with regard to Section 58 above.

For further information and alternative formats, please contact:

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