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ABERDEEN CITY COUNCIL

COMMITTEE	LICENSING BOARD
DATE	16 SEPTEMBER 2014
DIRECTOR	EWAN SUTHERLAND (ACTING)
TITLE OF REPORT	RESPONSE TO CONSULTATION ON AIR WEAPONS AND LICENSING (SCOTLAND) BILL 2014
REPORT NUMBER	CG/14/123
CHECKLIST COMPLETED	Yes

1. PURPOSE OF REPORT

The purpose of this Report is to inform Members of the recent Scottish Government Consultation on the Air Weapons and Licensing (Scotland) Bill 2014 and approve the response to same.

2. RECOMMENDATION(S)

1. To approve the response to the consultation which forms Appendix 1 to this Report
2. To direct officers to submit the response to the Scottish Government no later than 29th September 2014.

3. FINANCIAL IMPLICATIONS

There are no financial implications.

4. OTHER IMPLICATIONS

There are no other implications.

5. BACKGROUND/MAIN ISSUES

The Air Weapons and Licensing (Scotland) Bill 2014 incorporates a range of measures involving air weapons, liquor and civic licensing. A

summary of the amendments to the system of alcohol licensing forms appendix 2 to this report.

A response from the Board is sought solely in relation to the provisions relating to alcohol licensing and a draft response is attached and forms appendix 1 to this report. The response must be submitted to the Scottish Government no later than 29th September 2014.

6. IMPACT

There will be no disproportionate impact on any of the protected characteristics.

7. MANAGEMENT OF RISK

It is important for the Government to obtain a full response to the proposals in the Bill and equally important for the Aberdeen City Licensing Board to make its views known. If the Board does not respond to the consultation it will miss an opportunity to flag up issues of importance to the Government that may be taken into account in the provisions of the Bill or in future legislation.

8. BACKGROUND PAPERS

The Air Weapons and Licensing (Scotland) Bill 2014 and Policy Memorandum

9. REPORT AUTHOR DETAILS

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Air Weapons and Licensing (Scotland) Bill: Introductory Questions

The Scottish Parliament
Pàrlamaid na h-Alba

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

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

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

***1. Please supply your name and contact details:**

Name:	Eric Anderson
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* 2. Please confirm that you have read and understood the Scottish Parliaments [“Policy on the treatment of written evidence by subject and mandatory committees”](#):

Yes

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

Yes

No

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

Personal

Professional

Commercial

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

Yes

No

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

Yes

No

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

All of the Bill

Equalities, climate change and other Scottish Government objectives

Air Weapons

General licensing issues

Alcohol licensing

Civic licensing – taxi/private hire car licensing

Civic licensing – scrap metal dealers

Civic licensing – theatre licensing

Civic licensing – sexual entertainment venues

Name/Organisation:

1. Equalities, Climate Change and other Scottish Government objectives

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

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

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

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

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

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

Name/Organisation:

2. Air Weapons Licensing

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

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

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

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

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

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

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

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

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

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

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

Name/Organisation:

3. General Licensing Issues

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

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

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:

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?

It is noted that the Bill provides for a new criminal offence, namely the purchase or attempted purchase of alcohol for or on behalf of a child or young person. It is presumed that the Scottish Government has received suitable advice from Police Scotland on the impact of such a provision on crime and public disorder.

The re-introduction of the "fit and proper person" test is noted and it is agreed that this will give Boards a wider discretion in dealing with liquor applications. The provisions in the Bill will further assist the Police in bringing matters of concern before the Board for its consideration.

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

There are no additional measures envisaged at this time.

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

The addition of “young persons” to the objective of protecting children from harm will widen the scope of the objective and its targets. This is essential. There have been examples of opportunities where decisions have not been made because the persons concerned were young persons and not children. Examples of underage drinking are more likely to involve young persons than children.

Further the amendment to section 7 of the 2005 Act will enable a Board to identify its entire locality for overprovision. This should make it easier for Boards to assess overprovision in relation to the public health objective where the relevant data will more than likely relate to the whole licensing board area rather than part of it or specific premises.

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 re-introduction of the “fit and proper person” test will allow the Police to provide a wider range of information to Boards for consideration. This in turn may assist the Police in addressing criminal behaviour. It is noted that no definition of “fit and proper” has been provided for in the Bill presumably to enable Boards to have unfettered discretion on the matter.

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

As a Board representing a city, the effect on rural areas cannot be commented upon. It could be said that any overprovision policy could impact on the regeneration of areas by dissuading developers from building where there is a possibility that no licences for off-sales will be granted. No evidence of such incidents has been witnessed to date. However it is noted that Boards can relax any overprovision policy and make exceptions where justified. Each application can be looked at on a case by case basis.

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?

Given the re-introduction of the “fit and proper person” test it would be difficult to restrict the scope of the spent convictions to be disclosed. The provisions will widen the opportunity of the Police to introduce information that better supports any objection put forward by them.

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

The Bill is yet another statute amending the 2005 Act following on two previous statutes. In addition there are around 40 statutory instruments arising from the Act. This has created confusion and has made reference to the legislation unwieldy. It has also hindered consistent application of the provisions. Consolidation of the legislation would be welcomed to address this issue and assist the understanding and application of the law in an easier way.

Additional suggestions for reform were put forward to the Scottish Government as part of a previous consultation in 2013 however these have not been taken into account in the provisions of the Bill. It should be noted that the following issues remain problematic for Boards and require to be addressed:-

- (a) The Bill does not contain any provision for additional guidance or regulation for Licensing Boards on the conduct of hearings. This is essential. The greater uniformity of handling cases to avoid procedural error is a must. Clerks can only do so much and a procedure which all parties can understand and apply must lead to a more consistent approach throughout the country. Assistance in the assessment of evidence would be useful. Evolution through case law is costly and at least if the procedures are spelt out and the parameters of the Board are made clearer it should help reduce cost to all parties in time and money.
- (b) The previous consultation in 2013 had a number of questions arising from the Brightcrew case and a possible expansion to the scope of the 2005 Act. However the Bill is silent on the issue. Is there any reason why this has not been addressed?
- (c) The current mandatory condition in relation to Challenge 25 could be strengthened by amending its terms to state not just that a policy

has to be in place but is actively being adopted and effectively being put into practice. This would make it clearer to identify a breach. Is the Government satisfied that the current provision is adequate?

- (d) The geographical extent of a single premises licence should be clarified, e.g. Can non contiguous units within a shopping centre be licensed under a single licence?
- (e) Capacity of on sales premises should not be used for overprovision only. Capacity is also linked to public safety and control of overcrowding is a measure that should be considered as part of capacity.
- (f) The period in which parties can appeal should be the same across the board. At present the appeal procedure in respect of a Board's decision depends on the type of application made. In an application for a premises licence the period for lodging an appeal runs from either the date of the decision or, where a statement of reasons is requested, from the date the statement is issued. However if the application is for review the appeal period runs from the date of the Board's decision regardless of whether or not a statement of reasons is requested. The same situation applied to personal licences. This is inconsistent and confusing. It is suggested that the legislation be amended in order that the appeal periods are the same regardless of application and whether or not a statement of reasons is requested.
- (g) The position regarding irresponsible promotions requires clarification. New types promotions are regularly being formulated. Such promotions leave room for interpretation and therefore contribute to a patchwork application across the country. Introducing sale and supply in the context of promotions could be useful to address problems, for example offering free alcohol to encourage custom. It may be clearer to simply ban promotions that encourage the consumption of alcohol on the premises by sale or supply.

Name/Organisation:

5. Taxi and Private Hire Car Licensing

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

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

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

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

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

maintaining justifiable differences?

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?

Name/Organisation:

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?

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

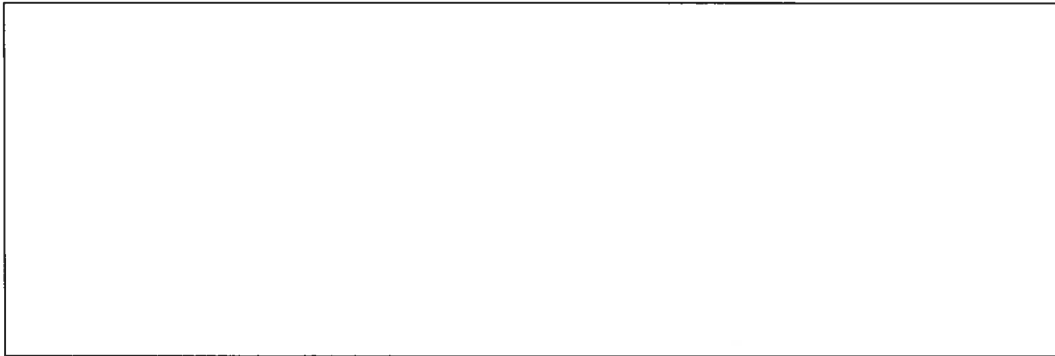
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

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?

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.

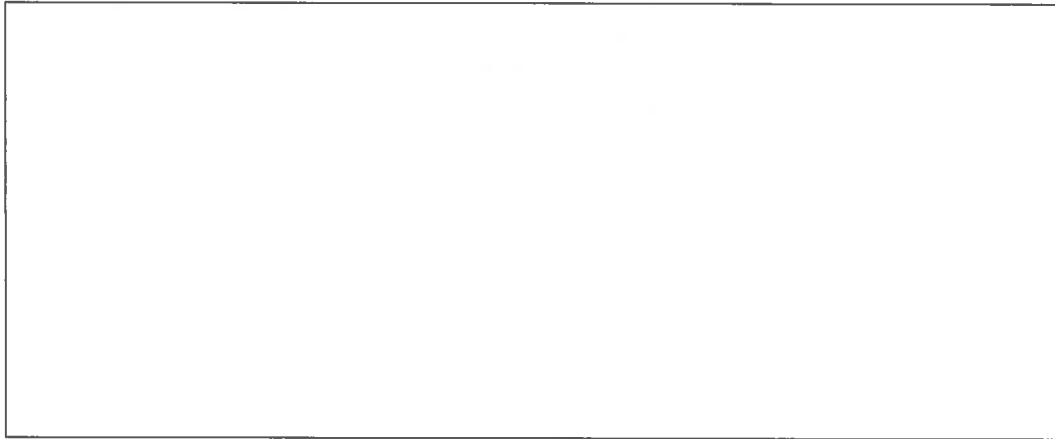
How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?



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?

48. Are there additional costs or resource implications on 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'

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?

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?

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?

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

55. Civic Licensing

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

APPENDIX 2

Part 2 of the Air Weapons and Licensing (Scotland) Bill 2014 amends the system of licensing by:-

- The creation of a new offence of supplying alcohol to children or young people for consumption in a public place;
- Amendment of the licensing objective in relation to children to also include young persons;
- Amendment of the duration of a licensing policy statement to better align with the term of Licensing Boards;
- Inserting a fit and proper person test in relation to the issue or continued holding of a premises or a personal licence;
- Removal of the automatic requirement for a hearing where a Licensing Board is notified of a relevant or foreign offence in relation to a premises or personal licence;
- Amendment of the definition of relevant offences and foreign offences to no longer disregard a matter that is spent for the purposes of the Rehabilitation of Offences Act 1974;
- Inclusion of the flavouring angostura bitters in the definition of alcohol for the purposes of the Act;
- Clarification that for an overprovision assessment the whole Board area may be considered as an area of overprovision, and allow Boards to take account of licensed hours among other things;
- Imposition of a duty on Boards to prepare an annual financial report;
- Removal of the requirement for a premises license holder to notify a change in interested parties and removal of a premises manager from the definition of interested party;
- Removal of the five year restriction on re-applying for a licence revoked on grounds of failure to undertake refresher training and other changes to personal licence holder requirements;
- Introduction of a requirement for a Licensing Board to issue an acknowledgement unless it would be impractical;
- Provision for the automatic grant of a licence (or its variation) where a Licensing Board has not either decided on an application or sought an extension from the Sheriff within a set period.

The Bill and associated papers can be found online at <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76383.aspx>

