

REPORT TO: Licensing Sub-Committee

MEETING DATE: 11 September 2014

BY: Service Manager - Licensing, Administration & Democratic Services

SUBJECT: Air Weapons and Licensing (Scotland) Bill

1 PURPOSE

- 1.1 To inform the Licensing Sub-Committee of the proposed changes to the Civic Government (Scotland) Act 1982 contained within the Air Weapons and Licensing (Scotland) Bill.

2 RECOMMENDATIONS

- 2.1 To note the report and to delegate authority to the Service Manager - Licensing, Administration & Democratic Services to respond to the consultation on behalf of the Board

3 BACKGROUND

- 3.1 On 14 May 2014 the Air Weapons and Licensing (Scotland) Bill (“the Bill”) was introduced in the Scottish Parliament. It is anticipated that it will take about a year to progress and that it will become law in 2016.
- 3.2 Some consultation questions listed in Appendix 1 have been published and the responses are sought by Monday **29 September 2014**.
- 3.3 Part 3 of the Bill applies to the Civic Government (Scotland) Act 1982 and proposes the changes to the existing legislation. The relevant changes are listed in Appendix 2 to the report.

4 POLICY IMPLICATIONS

- 4.1 None

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – none
6.2 Personnel - none
6.3 Other - none

7 BACKGROUND PAPERS

- 7.1 Civic Government (Scotland) Act 1982
7.2 Air Weapons and Licensing (Scotland) Bill

AUTHOR'S NAME	Catherine Molloy
DESIGNATION	Senior Solicitor
CONTACT INFO	01620 827448
DATE	26/08/2014

Name/Organisation:

3. General Licensing Issues

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

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

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

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

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

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

Name/Organisation:

4. Alcohol Licensing

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

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

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

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

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

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

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

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

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?

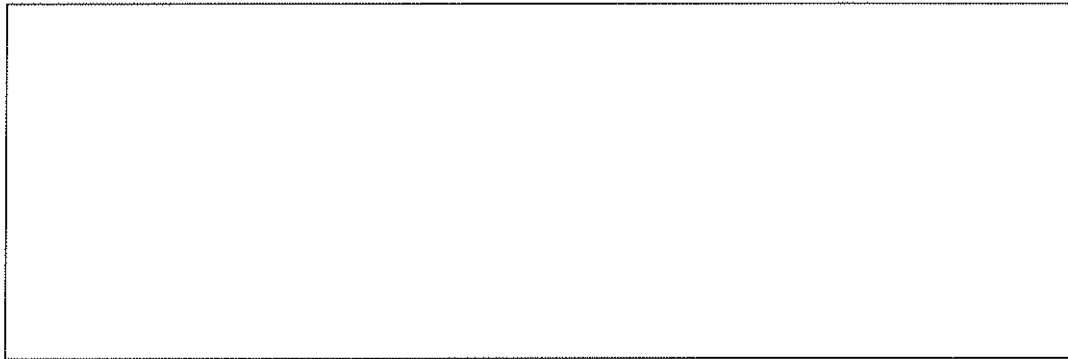
43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

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.

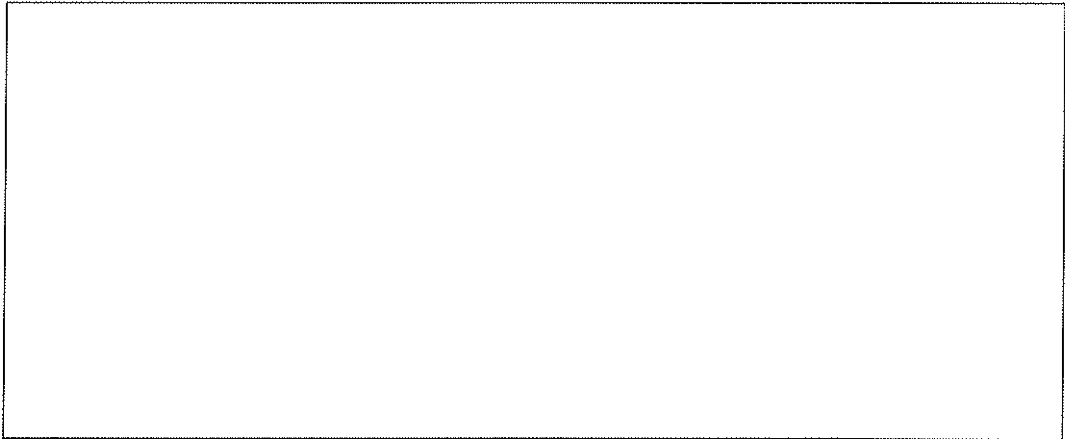
How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?



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?

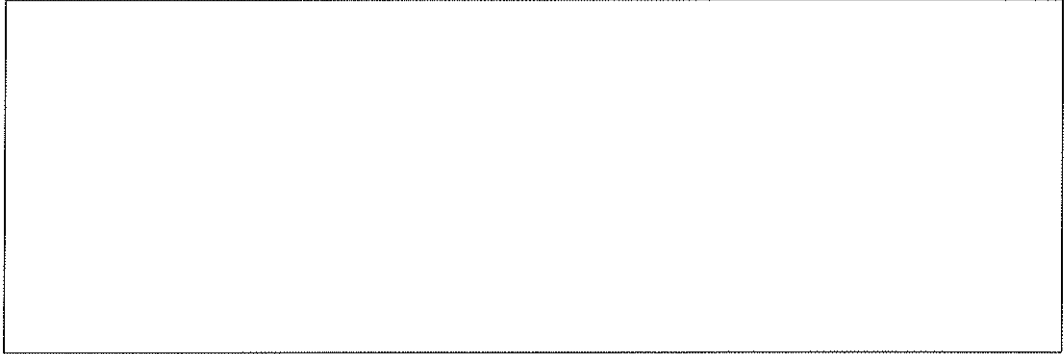
53. The Bill relies mainly on the existing licensing regime for sex shops as set out in

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?



These documents relate to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

175. The acknowledgement must amongst other things inform the applicant of the timescale within which the application must be decided. The acknowledgement must be issued as soon as is practicable.

176. Where an application does not meet the requirements, the Licensing Board must give notice to the applicant that they are treating the application as incomplete and as not having been made, along with their reasons.

177. A Licensing Board must determine accepted applications within nine months of the date of receipt, as recorded in the letter of acknowledgement. This period of nine months can be extended, once, on application to the sheriff. The sheriff may extend the period for determining the application only if it appears to them, that there is a good reason for doing so. The applicant is entitled to be a party to proceedings to consider such an extension.

178. The Licensing Board is not required to issue an acknowledgement where it would not be appropriate to do so, however this would not alter the requirement to determine an application within nine months unless an extension has been granted by the sheriff. A Board may for example decide to grant a minor variation under subsection 30(2) without first issuing an acknowledgement.

179. If the Licensing Board fails to determine the application in this period then the licence will be deemed to have been granted and the Licensing Board must issue the licence to the applicant as soon as practicable. The Licensing Board must apply the relevant mandatory conditions, under schedule 3, or 4, including, where applicable, the Late Opening Premises Conditions, as set out in The Licensing Conditions (Late Opening Premises)(Scotland) Regulations 2007, but at time of issue, may not apply pool conditions or local conditions to a licence granted in this way.

Section 59 – Form etc. of communications under the 2005 Act

180. Section 59 expands the order making power provided at section 134 of the 2005 Act in relation to the form etc. of applications, proposals and notices to also include other communications. This means, for example, that the Scottish Ministers may make regulations expressly facilitating the use of email or other internet based systems for any type of application, notice, proposal or communication required under the 2005 Act.

PART 3 – CIVIC LICENSING

181. This Part of the Bill makes a number of amendments to the licensing provisions in the Civic Government (Scotland) Act 1982.

Taxis and private hire cars

Section 60 – Refusal to grant private hire car licences on grounds of overprovision

182. Section 60 amends section 10 of the 1982 Act. This enables (but does not require) the licensing authority to refuse a private hire car licence application on the grounds of overprovision of private hire car services in a given locality or localities. It allows the licensing

authority to determine the localities within their area, allowing them to either treat the whole licensing authority area as one locality or sub-divide it. The section also provides that when assessing overprovision the licensing authority must have regard to the number of private hire cars operating in the locality and the demand for private hire car services in the locality.

Section 61 – Testing of private hire car drivers

183. Section 61 amends section 13 of the 1982 Act to allow licensing authority to require testing of applicants for a private hire car driver licence, as per the current ability to do so for a taxi driver's licence. Licensing authorities will be able to require the same testing of both taxi and private hire car drivers or different elements of testing (or no testing) of one set of drivers.

Section 62 – Exemptions from requirements of sections 10 to 21 of 1982 Act

184. Section 62 amends section 22 of the 1982 Act to remove the exemption at subsection (c) which applies to 'any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours'. This brings vehicles that are being used on contract in this manner into the licensing regime for taxis and private hire cars. Examples of the type of service that could potentially be brought within the licensing regime for taxi and private hire cars are: executive hire work – where a car is hired to transport an individual between meetings over the course of a day; airport transfers – where a car is hired to transport customers on longer journeys (meaning the car can only do one job in the 24 hour period) e.g. collecting from Glasgow Airport and taking a group to Iona.

185. Subsection (4) gives the Scottish Ministers the power to specify by order further exemptions from taxi and private hire car licensing. It is assumed the definition of a hire car within the 1982 Act makes clear the type of operation that should be covered: '...“hire car” means a motor vehicle with a driver...which is, with a view to profit, available for hire by the public for personal conveyance.' However, if it becomes clear types of service not intended to be covered are being swept up in taxi and private hire car licensing, this power could be used e.g. where a service is providing some kind of transport as an ancillary part of the wider service, not the main focus. An example could be if child-minders are being expected to be licensed as private hire car drivers and their vehicles licensed for collecting children in their care from school by car. The power could be used to make explicit that this type of operation is not intended to be covered.

Metal dealers

Section 63 – Removal of exemption warrants for certain metal dealers

186. This section amends section 28 of the 1982 Act and repeals section 29 of the 1982 Act to remove the current provisions that allow a metal dealer with an audited turnover in excess of a figure specified by order (currently £1 million) to be exempted from licensing requirements. This will have the effect of ensuring that all dealers are subject to licensing requirements.

Section 64 – Abolition of requirement to retain metal for 48 hours

187. This section repeals section 31 of the 1982 Act to remove the mandatory requirement that metal dealers should not process metal for 48 hours after receiving it. This would allow a dealer to process metal quickly (which may be required for the safe operation of the site).

Section 65 – Acceptable forms of payment for metal

188. This section creates a new section 33A in the 1982 Act. This specifies acceptable forms of payment that may be accepted by a metal dealer or itinerant metal dealer. The acceptable forms of payment are a cheque or electronic transfer. Cash is not an acceptable form of payment. A dealer who makes payment in a method not specified commits an offence. The offence extends to a person with day to day management responsibilities and the person who makes the payment. The metal dealer and manager are provided with a defence that they have made arrangements to ensure that payment is made by the specified methods and have taken all reasonable steps to ensure compliance. Subsection (7) gives Scottish Ministers the power by regulation to add or remove forms of payment that are acceptable.

Section 66 – Metal dealers and itinerant metal dealers: records

189. This section amends the record keeping requirements for metal dealers and itinerant metal dealers. A new section 33B is inserted into the 1982 Act and provides the details that must be recorded by a dealer when metal is acquired or disposed of and supports the separate provisions stipulating acceptable forms of payment by requiring dealers to keep copies of documentation evidencing the form of payment used. Subsection (6) of section 33B provides the Scottish Ministers the power by regulation to amend the record keeping requirement.

190. The section also inserts a new section 33C into the 1982 Act to stipulate how records should be stored and a new section 33D to require records to be kept for each place of business a dealer operates from.

191. The section also creates an offence in relation to a failure to comply with the new requirements in relation to record keeping and amends the existing offence in relation to providing false or misleading information.

Public entertainment venues

Section 67 – Licensing of theatres etc.

192. This section repeals existing licensing requirements in the Theatres Act 1968 (“the 1968 Act) and supporting provisions in the 1968 Act that allow for powers of entry and inspection and prevent licensing being used to censor the content of plays.

193. The section also removes the exemption for premises licensed under the 1968 Act from the 1982 Act thereby allowing plays to fall into the activities that may be licensed under public entertainment licensing arrangements. An equivalent of the anti-censorship provisions in the 1968 Act is inserted into the 1982 Act.

Sexual entertainment venues

Section 68 – Licensing of sexual entertainment venues

194. The Section creates a new licensing regime for sexual entertainment venues.

195. This is achieved by amending the existing licensing scheme for sex shops found in Part 3 and Schedule 2 of the 1982 Act, such that it applies to sexual entertainment venues also, with modifications as necessary. The following paragraphs explain the key features of the new regime as modified.

196. The section amends section 41(2) of the 1982 Act to preclude a sexual entertainment venue from being licensed under public entertainment licences.

197. The section creates a new section 45A which establishes for the purposes of the legislation what is meant by a sexual entertainment venue and provides definitions of ‘audience’, ‘financial gain’, ‘organiser’, ‘premises’, ‘sexual entertainment’ itself and ‘display of nudity’.

198. A power is provided by the section to allow the Scottish Ministers to prescribe types of premises that are not sexual entertainment venues. Sex shops are specifically identified as not being sexual entertainment venues.

199. A further power is provided to allow the Scottish Ministers to prescribe descriptions of performances or displays of nudity that are not to be treated as sexual entertainment for the purposes of the legislation.

200. The section specifies that a venue hosting sexual entertainment very occasionally (defined as three occasions or less) would not be treated as a sexual entertainment venue.

201. A new section 45B is created which requires a resolution by a local authority in order for sexual entertainment venue licensing to have effect in their area. The section requires that a resolution under the section would not have effect until a specified date (which cannot be less than one year after the resolution is passed). A resolution must be publicised either electronically or in a local newspaper.

202. The section also allows a local authority to determine an appropriate number of sexual entertainment venues for their area. The appropriate number so determined must be publicised then the determination must be publicised in a manner considered appropriate by the local authority.

203. Section 45B also clarifies that a licence for a sexual entertainment does not have to be granted even when a premises licence under Part 3 of 2005 Act (an alcohol licence) is in place.

204. Unlike sex shops, it will be permissible for a person under 18 to enter a sexual entertainment venue or be employed by such a venue but only at times when sexual entertainment is not taking place.”